



**AN BILLE UM AN DLÍ COIRIÚIL (IMEACHTAÍ CIORRAI-
THE COIL) (UIMH. 2), 1995**

CRIMINAL LAW (INCEST PROCEEDINGS) (NO. 2) BILL, 1995

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

The purpose of the Bill is to address the immediate problems arising from the rulings of 1st and 17th February 1995 of the Central Criminal Court and in particular the ruling that section 5 of the Punishment of Incest Act, 1908 precludes the revelation of the verdict and sentence (if any) in a case of incest.

Section 1

Section 1 is a drafting provision which allows for an abbreviated reference to the Punishment of Incest Act, 1908.

Section 2

Section 2 (1) ensures that in every case of incest the verdict and sentence (if any) has to be announced in public. This will ensure that the fact that an incest case has taken place and the outcome of the case will be a matter of public record. It will also ensure that persons with a legitimate interest in the outcome of a particular case will be able to establish whether or not the accused has been convicted and sentenced. However *section 2 (1)* will not entitle the identities of the persons involved to be published generally.

The recent rulings could be interpreted as meaning that no report of incest proceedings (including an appeal against conviction) can be published even in the form of law reports. A total ban on all forms of reporting could prevent important legal and social issues being brought into the public domain. *Subsection (2)* is intended to make it clear that incest proceedings may be reported in due course either in the form of law reports or otherwise provided the identity of the parties are protected and confidential information is not revealed.

Section 3

Section 2 will only be of relevance in cases where the sole charge is incest or where it is joined with an offence other than rape or aggravated sexual assault. In cases of incest where there has been no consent it would be normal to charge the accused with rape and incest. The practice to date has been to apply the provisions of the Criminal Law (Rape) Acts 1981 and 1990 rather than section 5 (proceedings to be held in camera) of the Punishment of Incest Act, 1908 to proceedings where rape and incest are joined on the same indictment. This means the trial takes place in the Central Criminal Court, the public are excluded but the Press and certain other persons may attend and the verdict and sentence if any must be announced in public.

The recent rulings give rise to two issues which are addressed by this section. There is a direct conflict between the provisions of section 5 of the Punishment of Incest Act, 1908 as interpreted by the recent rulings and section 6 of the Criminal Law (Rape) Act, 1981 (as substituted by section 11 of the Criminal Law (Rape) (Amendment) Act, 1990). There is a possibility that in the light of this conflict and the recent rulings, it might be decided that charges of rape and incest should be tried separately even though they arise from the same set of facts. This would give rise to a number of difficulties. To remove any potential conflict and to ensure that a person may be tried for both rape and incest, section 3 provides that where incest and rape are charged jointly section 5 of the 1908 Act will not apply and the normal provisions of the Rape Acts will apply.

The second issue arising from the recent rulings is what should the situation be where a person is charged with both rape and incest and at a later stage the rape charge is not proceeded with. It would appear that the approach taken in the recent rulings is that if at any stage a rape charge is not proceeded with, section 6 of the 1981 Act as substituted by section 11 of the 1990 Act ceases to apply so that the proceedings must be *in camera* by virtue of section 5 of the Punishment of Incest Act, 1908. The effect of section 3 will be that even though the rape charges are not being proceeded with, section 6 of the 1981 Act will continue to apply so that the Press may continue to attend.

The section refers to section 6 of the Criminal Law (Rape) Act, 1981. This reference is necessary to maintain the provisions providing for the exclusion of the public but allowing the Press to attend once a decision is made not to proceed with a rape charge.

There are other provisions of the Rape Acts which will continue to apply in cases where the original rape charge is subsequently not proceeded with. These apply automatically and do not require a specific reference. In particular section 7 of the 1981 Act (which provides for the anonymity of the complainant) continues to apply even if the rape charge is subsequently dropped and therefore will serve to protect the anonymity of the victim in cases where both rape and incest were charged originally.

Section 4

Section 4 provides for the short title.

Financial and Staffing Implications

The Bill has no financial or staffing implications. It will not involve any additional charge on the Exchequer.

An Roinn Dlí agus Cirt,
Márta, 1995.

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