



[Click here for
Explanatory Memorandum](#)

**AN BILLE UM CHEARTA ÍOSPARTACH 2008
VICTIMS' RIGHTS BILL 2008**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY PROVISIONS

Section

1. Short title and commencement.
2. Definitions.
3. Directions about members of immediate family.
4. Repeals.

PART 2

PROVISIONS RELATING TO TREATMENT AND RIGHTS OF VICTIMS
GENERALLY

CHAPTER 1

Principles guiding treatment of victims

5. Treatment of victims.
6. Access to services.

CHAPTER 2

Information to be given to victims

7. Information from state agencies about services and remedies.
8. Information about investigation and court proceedings.
9. Limits on duties to give information under *sections 7 and 8*.
10. Information may be given to victim's support person.
11. Withholding victim's address from accused or offender or in evidence or information provided to court.
12. Victim Impact Statements in sentencing of offenders.

[No. 1 of 2008]

13. Procedure before ascertaining information from victim.
14. Form and verification of information ascertained.
15. Statements by others disadvantaged by offence.
16. Obligation on court to take account of impact on victim in determining sentence.
17. Victim Impact Statement defined.
18. Disclosure of Victim Impact Statement.
19. Withholding information relating to victim's address from Victim Impact Statement.
20. Directions or conditions on disclosure or distribution of Victim Impact Statement.
21. Victim's views on application for order prohibiting publication of name of accused or offender.

PART 3

PROVISIONS RELATING TO RIGHTS OF VICTIMS OF CERTAIN OFFENCES

CHAPTER 1

Sections 22 to 41 apply only to victims of certain offences

22. Application of *sections 23 to 41*.
23. Victim's views about release on bail of accused or offender.
24. Application of *sections 25 to 32*.

CHAPTER 2

Duties of an Garda Síochána in relation to notices under sections 27 to 32

25. Garda Síochána to give information about right to ask for notice and appointment of representative.
26. Victim's address to be forwarded in certain cases.

CHAPTER 3

Notice of certain matters to be given to victims of certain offences

27. Notice of release on bail of accused or offender.
28. Notice of offender being considered for parole.
29. Notice of release or escape by accused or offender.
30. Notice of prosecutions for breach of conditions of release.
31. Notice of discharge, leave of absence or escape of accused or offender contained in hospital.
32. Notice of proposal to consider making deportation order and of any hearing of appeal as to deportation order or any proceedings seeking a judicial review in relation thereto.

33. Appointment of representatives to receive notice.
34. Effect of appointment of representative.
35. Victim's support person may be appointed or may appoint representative.
36. Method of appointment of representative.
37. Termination of appointment.
38. When notice takes effect.

CHAPTER 4

Compliance with requirements to give notice

39. Ways in which notice required may be given.
40. Victim may make submissions to Parole Board.
41. Victim may make submissions on making of deportation order or offender's appeal against deportation order.

PART 4

ESTABLISHMENT OF THE COMMISSION FOR THE SUPPORT OF VICTIMS OF CRIME

42. Establishment Order.
43. Establishment of the Commission for the Support of Victims of Crime.
44. Corporate name and perpetual succession.
45. Membership of the Commission.
46. Term of office.
47. Functions of the Commission.
48. Adoption of Victims' Charter.
49. Annual review of Commission.
50. Research and consultation by Commission.
51. Report of Commission.
52. Advisory function of Commission.
53. Limitations on Commission.
54. Ministerial consultation with Commission.
55. Payment of grants by Commission.
56. Independence of Commission.
57. Resignations, casual vacancies and removal from office.
58. Seal of the Commission.

59. Meetings and Procedures.
60. Officers of the Commission.
61. Funding of the Commission.
62. Accounting practices of Commission.
63. Commission and Committee of Public Accounts.
64. The Commission and Oireachtas Committees.
65. The remuneration and expenses of members of Commission.
66. Standards of integrity.

PART 5

VIOLATION OF VICTIM'S RIGHTS

67. Violation of victim's rights.
68. Effect of breach of Charter.

PART 6

MISCELLANEOUS

69. Return of property held as evidence.
70. Secretary General of Department of Justice, Equality and Law Reform may delegate duties.
71. Secretary General of the Department of Health and Children may delegate duties.
72. Insertion of new Section 26A into the Criminal Justice Act 2007.

SCHEDULE

APPOINTMENT TO COMMISSION OF PERSONS HOLDING JUDICIAL OFFICE

ACTS REFERRED TO

Child Care Acts 1991 to 2007	
Child Care (Amendment) Act 2007	2007, No. 26
Child Trafficking and Pornography Act 1998	1998, No. 22
Children Act 2001	2001, No. 24
Civil Service Commissioners Act 1956	1956, No. 45
Civil Service Legislation Acts 1956 to 1996	
Companies Act 1990	1990, No. 33
Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
Courts (No. 2) Act 1997	1997, No. 43
Courts (Supplemental Provisions) Act 1961	1961, No. 39
Criminal Damage Act 1991	1991, No. 31
Criminal Evidence Act 1992	1992, No. 12
Criminal Justice Act 1993	1993, No. 6
Criminal Justice Act 1999	1999, No. 10
Criminal Justice Act 2006	2006, No. 26
Criminal Justice Act 2007	2007, No. 27
Criminal Justice (Temporary Release of Prisoners) Act 2003	2003, No. 34
Criminal Law Amendment Act 1885	48 & 49 Vic. c.69
Criminal Law (Amendment) Act 1935	1935, No. 6
Criminal Law (Incest Proceedings) Act 1995	1995, No. 12
Criminal Law (Rape) Acts 1981 and 1990	
Criminal Law (Rape) (Amendment) Act 1990	1990, No. 32
Criminal Law (Sexual Offences) Act 1993	1993, No. 20
Criminal Law (Sexual Offences) Act 2006	2006, No. 15
Criminal Law (Sexual Offences) Acts 2006 and 2007	
Criminal Law (Sexual Offences) (Amendment) Act 2007	2007, No. 6
Domestic Violence Acts 1996 to 2002	
Ethics in Public Office Act 1995	1995, No. 22
European Parliament (Elections) Act 1997	1997, No. 2
Garda Síochána Act 2005	2005, No. 20
Guardianship of Infants Act 1964	1964, No. 7
Health Act 2004	2004, No. 42
Health Acts 1947 to 2007	
Law Reform Commission Act 1975	1975, No. 3
Ombudsman Act 1980	1980, No. 26
Ombudsman for Children Act 2002	2002, No. 22
Punishment of Incest Act 1908	8 Edw. 7, c. 7
Standards in Public Office Act 2001	2001, No. 31



AN BILLE UM CHEARTA ÍOSPARTACH 2008
VICTIMS' RIGHTS BILL 2008

BILL

entitled

5 AN ACT TO MAKE PROVISION FOR THE RIGHTS OF VIC-
TIMS OF CRIME AND ANTI-SOCIAL BEHAVIOUR; TO
GIVE EFFECT TO THE EUROPEAN UNION COUNCIL
FRAMEWORK DECISION OF THE 15TH MARCH 2001
10 ON THE STANDING OF VICTIMS IN CRIMINAL PRO-
CEEDINGS; TO SPECIFY INFORMATION TO BE GIVEN
TO VICTIMS; TO PROVIDE FOR THE PROPER TREAT-
MENT OF VICTIMS; MAKING PROVISION FOR THE
FURNISHING TO THE COURTS OF VICTIM IMPACT
15 STATEMENTS; PROVIDING FOR SPECIFIC NOTICES TO
BE FURNISHED TO VICTIMS RELATING TO ALLEGED
AND CONVICTED OFFENDERS; PROVIDING FOR THE
ESTABLISHMENT OF THE COMMISSION FOR THE SUP-
PORT OF VICTIMS OF CRIME; PROVIDING FOR THE
20 ADOPTION OF A VICTIMS' CHARTER; MAKING PRO-
VISION FOR THE PROCEDURES APPLICABLE TO
ADDRESS THE VIOLATION OF VICTIMS' RIGHTS; PRO-
VIDING FOR THE MAKING OF PROTECTION OF PER-
SON'S ORDERS TO PROHIBIT THE INTIMIDATION BY
25 AN ALLEGED OFFENDER OF VICTIMS OF ALLEGED
OFFENCES; AND TO PROVIDE FOR MATTERS CON-
NECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY PROVISIONS

- 30 **1.**—(1) This Act shall be cited as the Victims' Rights Act 2008. Short title and commencement.
- (2) This Act shall come into operation three months after the date of its passing.
- 2.**—In this Act, unless the context otherwise requires— Definitions.
- 35 “accused” or “person accused of the offence” in relation to a victim, means a person charged (whether as a principal or party or accessory

after the fact or otherwise) with the commission of the crime or offence that affected the victim;

“Act of 1935” means the Criminal Law (Amendment) Act 1935;

“anti-social behaviour in relation to a victim” means behaviour to which Part 11 of the Criminal Justice Act 2006 may apply; 5

“child” means a person who is under 18 years of age;

“crime or offence”, in relation to a victim—

(a) means an offence—

(i) in relation to which the victim is a complainant,

(ii) through or by means of which the victim suffered 10
physical or psychological injury, emotional harm or
economic loss including loss of, or damage to, prop-
erty, or

(iii) that resulted in the death of a member of the immedi- 15
ate family of the victim or in a member of the
immediate family of the victim being in a state of
continuing unconsciousness or suffering serious
intellectual disability,

and

(b) includes an alleged offence (whether or not a person is 20
convicted of the offence) for which the victim is a com-
plainant or that has affected the victim in one or both of
the ways referred to in *paragraph (a)(ii)* or *(iii)*;

“the Garda Ombudsman Commission” means the body as so estab- 25
lished by the Garda Síochána Act 2005;

“guardian” means a guardian as defined by the Guardianship of
Infants Act 1964 as amended;

“the Health Service Executive” means the body so established by
the Health Act 2004;

“immediate family”, in relation to a victim— 30

(a) means a member of the victims family who is in a close
relationship with the victim at the time of the crime or
offence, and

(b) for the avoidance of doubt includes persons whose 35
relationship to the victim at that time is close through a
relationship that is, or one or more relationships that are,
that of spouse or *de facto* partner (whether the partner
and victim are the same sex or different sexes) child or
step-child, brother or step-brother, sister or step-sister,
parent or step-parent, foster child or foster parent and 40
grandparent and may, where deemed appropriate by a
court, include any person acting *in loco parentis*;

“lawyer” means a barrister or solicitor;

“the Minister” means the Minister for Justice, Equality and Law 45
Reform;

“offender” in relation to a victim—

(a) means a person convicted of the crime or offence that affected the victim, and

(b) in sections 15 to 21 (which relate to Victim Impact Statements) includes a person found guilty of or who pleads guilty to that crime or offence;

“the Ombudsman” means the body as so established by the Ombudsman Act 1980;

“the Ombudsman for Children” means the body as so established by the Ombudsman for Children Act 2002;

“release” includes early release;

“sexual offence” means rape, an offence under—

(a) section 2, 3 or 4 of the Criminal Law (Rape) (Amendment) Act 1990,

(b) section 3 (as amended by section 8 of the Criminal Law Amendment Act 1935) or section 6 (as amended by section 9 of the aforesaid Act of 1935) of the Criminal Law Amendment Act 1885,

(c) section 3, 4 or 5 of the Criminal Law (Sexual Offences) Act 1993 and section 6 (as inserted by section 2 of the Criminal Law (Sexual Offences) (Amendment) Act 2007) of the aforesaid Act of 1993,

(d) the Criminal Law (Sexual Offences) Act 2006,

(e) section 1 (as amended by section 12 of the Criminal Justice Act 1993 and section 5 of the Criminal Law (Incest Proceedings) Act 1995) or section 2 (as amended by section 12 of the Criminal Law Amendment Act 1935) of the Punishment of Incest Act 1908,

(f) section 249 of the Children Act 2001;

“support person” in relation to a victim, means—

(a) a spouse of the victim or *de facto* partner of the victim (whether the partner and victim are of different sexes or of the same sex),

(b) a parent or another close relative or legal guardian of the victim,

(c) a social worker as so designated by the Health Service Executive where—

(i) the victim is a child who is in the care of the Health Service Executive under the Child Care Acts 1991 to 2007 and the Child Care (Amendment) Act 2007, or

(ii) the victim is in the care of the Health Service Executive as ordered pursuant to the Wards of Court jurisdiction exercised by the Circuit or High Court;

“victim”

(a) means—

- (i) every complainant in relation to a crime or offence, and
- (ii) every person who, through or by means of a crime or offence committed by another person, suffers—
 - (I) physical or psychological injury or emotional harm, or 5
 - (II) economic loss, including loss of, or damage to, property, and
 - (III) if a crime or offence committed by a person results in another person's death or in another person being in a state of continuing unconsciousness or suffering serious intellectual disability, every member of the immediate family of the other person, 10
- (b) for the purpose of sections 5, 6, 7 and 8, includes every person who suffers physical or psychological injury, emotional harm, or economic loss, including loss of, or damage to, property as a consequence of anti-social behaviour by a child or another person, 15
- (c) a guardian, parent or another person acting *in loco parentis* in respect of any child who is a victim within the meaning of this Act, save where the guardian, parent or the person who is acting, is the person against whom the complaint has been made or is the alleged offender or the person allegedly engaging in anti-social behaviour. 20 25

Directions about members of immediate family.

3.—(1) This section applies when a crime or offence committed by a person results in the death of another person or that other person being in a state of continuing unconsciousness or suffering serious intellectual disability.

(2) On an application for the purpose by or on behalf of a person who is not a member of the immediate family of the victim for the purpose of this Act, a court may give a direction that the person must be treated as if he or she were a member of the victim's immediate family for the purposes of this Act. 30

(3) On an application for the purpose by a prosecutor, and in the circumstances stated in subsection (4), a court may— 35

- (a) give a direction that a person who is a member of the victim's immediate family as referred to in this Act must be treated as if the person were not a member of the victim's immediate family for the purposes of this Act, or 40
- (b) revoke a direction given under subsection (2) that required a person to be treated as a member of a victim's immediate family for the purpose of this Act.

(4) The circumstances are that the court is satisfied—

- (a) that one or more persons of a victim's immediate family, being members of that kind closer to the victim than the person concerned, consider it improper that the latter person be treated as a member of the victim's immediate family for the purpose of this Act, or 45

(b) that the interests of justice require that the person not be treated as a member of the victim's immediate family for the purpose of this Act.

5 (5) A person who is the subject of a direction given and not later revoked under this section must be treated in accordance with the direction.

10 4.—Section 5 of the Criminal Justice Act 1993 is hereby repealed Repeals. save insofar as it shall continue to apply to any criminal proceedings to which it relates in respect of which charges have been laid prior to the coming into operation of this Act.

PART 2

PROVISIONS RELATING TO TREATMENT AND RIGHTS OF VICTIMS GENERALLY

CHAPTER 1

15 *Principles guiding treatment of victims*

5.—(1) Any person who deals with a victim (for example, a Treatment of member of the judiciary, lawyer, member of court staff, member of victims. an Garda Síochána or other official) shall—

(a) treat the victim with courtesy and compassion, and

20 (b) respect the victim's dignity and privacy,

save that nothing contained herein shall in any way infringe the constitutional rights of an alleged offender or of an offender.

(2) A victim has the right to be informed as fully as possible—

25 (a) of his or her rights and of the remedies available to the victim,

(b) of his or her role in the criminal justice process and with regard to criminal proceedings and of the progress made in investigating his or her complaint and in the processing of any criminal prosecution arising from such complaint,

30 (c) of the availability of health services and social services or other appropriate assistance or prevention services through which he or she may obtain such medical, psychological, social care or help as he or she may require.

35 (3) A victim has the right, insofar as resources are available—

(a) to such medical, psychological and social care or help as he or she may require and to such other assistance or services capable of meeting his or her needs for shelter and support or for referral to other services better suited to provide him or her with assistance,

40 (b) to protection against intimidation and retaliation.

(4) A victim has a duty to cooperate, to such extent as is possible, with an Garda Síochána and any other relevant law enforcement authority.

Access to services. 6.—A victim or member of a victim’s immediate family who has welfare, counselling, medical or legal needs arising from the commission of an offence or as a result of anti-social behaviour shall have access to services that are responsive to those needs insofar as resources are available. 5

CHAPTER 2

Information to be given to victims 10

Information from state agencies about services and remedies. 7.—(1) A victim shall, as soon as practicable after the victim comes in contact with a state agency, be given information by the personnel of the agency about services or remedies available to the victim by such agency and by any other state agency and by any local accessible voluntary agency. 15

(2) In this section, “state agency” means—

- (a) an Garda Síochána,
- (b) the Courts Services Board,
- (c) the Criminal Injuries Compensation Tribunal,
- (d) Department of Health and Children, 20
- (e) Department of Justice, Equality and Law Reform,
- (f) the Health Service Executive.

(3) Nothing in this section prevents information required to be given under this section from being given otherwise than is required under this section. 25

Information about investigation and court proceedings. 8.—(1) A victim shall as soon as practicable, be given information by an Garda Síochána or, as the case requires, by the Court Services Board or the Director of Public Prosecutions about the following matters:

- (a) the name of the member of an Garda Síochána who has the primary responsibility to investigate the reported offence and/or anti-social behaviour and relevant Garda station; 30
- (b) the telephone number where the Garda referred to in *paragraph (a)* may be contacted for information relating to the investigation or resulting prosecution; 35
- (c) an outline of the investigation and prosecution process;
- (d) the progress of the investigation of the offence;
- (e) the charges (if any) laid together with an explanation of the nature of the charges or any final decision made not to charge an alleged offender; 40

- (f) the progress of the prosecution, if any, taken against any alleged offender or alleged offenders and, in particular, the date, time and location of each event listed in *subsection (2)*;
- 5 (g) whether or not the accused or offender is granted bail and the terms and conditions of any bail granted;
- (h) the victim's role as a witness in the prosecution of the offence;
- 10 (i) the victim's entitlement to make a Victim Impact Statement and the role of such Statement;
- (j) every final disposition of all proceedings at first instance or on appeal (if any) relating to the offence, to include—
- 15 (i) any convictions or pleas of guilty entered and sentences imposed, in relation to the offence,
- (ii) any acquittal or deemed acquittal or finding that the charge was not proved,
- 20 (iii) any decision of the prosecution to modify or not to proceed with charges laid, including any decision to accept a plea of guilty to a lesser offence than the original offence or offences charged,
- (iv) any application made to the High Court by way of judicial review in connection with charges laid in relation to the offence, the prosecution brought or the trial resulting from the offence or any resulting conviction or sentence and any resulting court order made;
- 25 (k) where applicable, the courts' jurisdiction to make orders pursuant to the Domestic Violence Acts 1996 to 2002 and the type of orders that can be made under the said Acts;
- 30 (l) the courts' jurisdiction to order that information identifying the address of the place where the victim lives or works be not given to an accused or an offender, or in evidence or in information provided to a court;
- 35 (m) where applicable, the circumstances in which a victim may give evidence through a television link or through an intermediary under the Criminal Evidence Act 1992 as amended by the Criminal Law (Sexual Offences) Acts 2006 and 2007 or the Criminal Justice Act 1999;
- 40 (n) where applicable, the court's jurisdiction pursuant to section 181 of the Criminal Justice Act 2006 to order that a victim's medical condition be a matter of anonymity should the victim give evidence as a witness;
- 45 (o) the circumstances in which a compensation order may be made or reparations obtained by a victim pursuant to the Criminal Damage Act 1991, the Criminal Justice Act 1993, the Children Act 2001 or pursuant to any non-statutory scheme established by the State;
- (p) the circumstances in which a victim's anonymity may be protected pursuant to the Criminal Law Rape Acts 1981

and 1990 as amended by the Criminal Law (Sexual Offences) (Amendment) Act 2007;

- (q) the jurisdiction of the courts pursuant to section 26 of the Criminal Justice Act 2007 and *section 72* of this Act to make a Protection of Person's Order to protect the victim of specified indictable offences or of an alleged such offence or any other person from harassment by an offender or a person charged with such offence by prohibiting the offender or the person so charged from engaging in behaviour that would be likely to cause the victim or other named person fear, distress or harm or would be likely to amount to intimidation; 5 10
- (r) where applicable, the availability of a restorative justice scheme in operation of relevance should an alleged offender be convicted, the objectives of such scheme, the procedure applicable and the opportunity, if any, available to the victim to participate in such scheme; 15
- (s) where applicable, in relation to anti-social behaviour, the remedies available pursuant to Parts 11 and 13 of the Criminal Justice Act 2006, the steps intended to be taken, the resolution, if any, achieved and, where required, details of any court application made and of any court orders granted and the role where relevant of the victim. 20

(2) The events referred to in *subsection (1)(f)* are:

- (a) the first and any subsequent appearance in court, in connection with the offence, of the person accused of the offence; 25
- (b) any preliminary hearing relating to the offence;
- (c) any defending hearing, or trial relating to the offence;
- (d) any hearing set down for sentencing for the offence; 30
- (e) any hearings of appeal (if any) against conviction of the offence or against the sentence to be imposed or to be imposed for the offence or both;
- (f) any hearings to review any sentence imposed on the application of the Director of Public Prosecutions where it appears to the Director of Public Prosecutions that a sentence imposed by a court on indictment was unduly lenient. 35

(3) Nothing in this section prevents information required to be given under this section from being given otherwise than as required under this section. 40

Limits on duties to give information under *sections 7* and *8*.

9.—Nothing in *sections 7* or *8* requires any person to give information if good reason for withholding the information exists, such as where the giving of the information would be likely to prejudice the maintenance of law and order, including the prevention, investigation and detection of offences and the right to a fair trial. 45

Information may be given to victim's support person.

10.—Information required to be given under *sections 7* or *8* may be given to a support person of a victim if the victim—

(a) cannot receive it, or

(b) is not or may not be capable alone of understanding it.

5 **11.—**(1) This section applies to information (“the information”) that identifies, or that may lead to the identification of, the address of the place where the victim lives or works (for example, his or her postal address, electronic mail address, fax number or telephone number).

Withholding victim’s address from accused or offender or in evidence or information provided to court.

10 (2) On an application for the purpose by a prosecutor and in the circumstances stated in *subsection (3)*, a court may direct that the information must not be given to an accused or an offender, or in evidence or in information provided to a court.

(3) The circumstances are that the court is satisfied—

15 (a) that the giving of the information in evidence or in information provided to a court is likely to cause prejudice to the victim’s interest, or harm to the victim, and

(b) that the likely prejudice or harm referred to in *paragraph (a)* outweighs the evidential value of the information or any assistance it may provide in enabling the court or a jury to reach a fair determination.

20 (4) As soon as practicable after becoming responsible for a prosecution of an offence, a prosecutor must consider whether he or she should apply for direction under this section.

25 (5) The provisions of this section are additional to provisions contained in the Criminal Law (Rape) Acts 1981 and 1990 to safeguard the identity of a victim.

12.—The prosecutor must make all reasonable efforts to ensure that information is ascertained from the victim for submission under *section 16* to the court sentencing the offender about the following matters:

Victim Impact Statements in sentencing of offenders.

30 (a) any physical or psychological injury or emotional harm suffered by the victim through, or by means of, the offence;

35 (b) any economic loss, including loss of or damage to property suffered by the victim through, or by means of, the offence; and

(c) any other effects (whether long-term or otherwise) of the offence on the victim.

13.—The prosecutor must make all reasonable efforts to ensure before information is ascertained from a victim under *section 12*—

Procedure before ascertaining information from victim.

40 (a) that the victim is informed—

(i) that the information is being ascertained for submission to the court sentencing the offender,

- (ii) that the victim could be prosecuted for giving information if it is known by the victim to be false and is intended by the victim to mislead, and
 - (iii) that the information may be recorded and may be verified in the way stated in *section 14(3)* or *(4)*, 5
- and

- (b) that the victim is informed about who may properly receive copies of the information ascertained and about the orders, directions and conditions relating to disclosure and distribution of it that may be made under *sections 17 to 19* and that any views the victim has on whether the prosecutor should apply for any orders, directions or conditions of that kind are ascertained. 10

Form and verification of information ascertained.

14.—(1) Information ascertained from the victim under *section 12* must be put into writing and may be recorded in another way (for example, on audio tape or video tape) unless the victim objects to it being submitted to the court sentencing the offender. 15

(2) Information recorded under *subsection (1)* may be verified—

- (a) in the way stated in *subsection (3)*, if practicable, or
- (b) if it is not practicable, to verify it in the way stated in *subsection (3)*, in the way stated in *subsection (4)*. 20

(3) The information may be verified by being submitted to the victim for signature or other approval, and signed or otherwise approved by the victim, after the prosecutor or some other person on behalf of the prosecutor has added to it statements— 25

- (a) that the victim gave the information knowing that it was for submission to the court sentencing the offender and knowing the victim could be prosecuted for giving information that is known by the victim to be false and intended by the victim to mislead, 30
- (b) that the information is true to the best of the victim's knowledge and belief.

(4) The information may also be verified by being signed or otherwise approved by the prosecutor or some other person on behalf of the prosecutor, after the prosecutor or other person has added to it statements that he or she— 35

- (a) advised the victim that it was for submission to the court sentencing the offender and that the victim could be prosecuted for giving information that is known by the victim to be false and intended by the victim to mislead, and 40
- (b) read it or replayed it or submitted it in another way to the victim and is satisfied the victim approves of it.

Statements by others disadvantaged by offence.

15.—(1) The prosecutor may, if he or she considers it appropriate to do so, decide to treat as a victim, for the purposes of *sections 12 to 14* and *sections 16 to 20*, a person— 45

- (a) who was disadvantaged by an offence,

(b) from whom information on the effects of the offence has been, or could be, ascertained by or on behalf of the prosecutor, and

5 (c) was not a victim of the offence, a person accused of the offence or the offender.

(2) If the prosecutor decides under *subsection (1)* to treat a person as a victim of an offence, the person must be treated for the purposes of *sections 12 to 14* and *sections 16 to 20* as if he or she were a victim of the offence.

10 **16.—(1)** In determining the sentence to be imposed on an offender, the court shall take into account and may, where necessary, receive evidence or submissions concerning any effect (whether long-term or otherwise) of the offence on the victim or victims. Obligation on court to take account of impact on victim in determining sentence.

15 (2) Information ascertained from a victim shall be submitted to the court sentencing the offender save where the information was ascertained from a person treated as a victim under *section 15*, it may be submitted only with the leave of the court.

(3) The information shall be submitted by the prosecutor and in the form in which it was ascertained under *section 14(1)*.

20 (4) In determining the weight, if any, to give to the information, the court must have regard to whether or not it was verified in the way stated in *section 14(2), (3) or (4)*.

25 (5) Where a court is determining the sentence to be imposed on an offender for an offence to which this subsection applies, the court shall, upon application by the victim of the offence, hear the evidence of the victim as to the effect of the offence on the victim upon being requested to do so where the victim has made a Victim Impact Statement under *sections 12 to 16*.

(6) *Subsection (5)* applies to—

- 30 (a) a sexual offence,
- (b) an offence involving violence or the threat of violence to a person,
- 35 (c) any other kind of offence that has led to the victim having ongoing fears on reasonable grounds for his or her physical safety or security or for the physical safety or security of one or more members of his or her immediate family,
- (d) an offence consisting of attempting or conspiring to commit or aiding or abetting, counselling, procuring or inciting the commission of, an offence mentioned in *paragraphs (a) to (c)*.
- 40

17.—In *sections 18 to 20*, “Victim Impact Statement” means— Victim Impact Statement defined.

- (a) information prepared under *sections 12 to 16* for submission to a court, and
- 45 (b) includes any recording, summary, transcript or other copy of information of that kind.

Disclosure of
Victim Impact
Statement.

18.—(1) The Victim Impact Statement relating to an offender who has been convicted of an offence shall be furnished by the prosecutor to the offender’s lawyer, or where the offender is unrepresented, to the offender following conviction and prior to the imposition of any sentence or penalty, in good time to enable the offender consider the contents of such statement, subject to such orders as may be made pursuant to *section 11* of this Act and as referred to in *sections 19* and *20* hereunder. 5

(2) Nothing in this section requires or permits a prosecutor or lawyer for an offender or any other person to furnish to or show part or all of a Victim Impact Statement to an offender or a lawyer representing an offender contrary to an order made under *section 11* of this Act. 10

Withholding
information relating
to victim’s address
from Victim Impact
Statement.

19.—Where a court has previously made an order, pursuant to *section 11*, that information that identifies or that may lead to the identification of the address of the place where the victim lives not be given to an accused or to an offender, or in evidence or in information provided to a court, such information shall not be given in any Victim Impact Statement, save that where such information is relevant to enable a judicial officer truly assess the impact of the offence on the victim, it may be given in a general way (for example, where the victim required or still requires hospitalisation or permanent care as a consequence of the offence committed) without the address of the place in which such hospitalisation or care was or is being provided being disclosed. 15
20
25

Directions or
conditions on
disclosure or
distribution of
Victim Impact
Statement.

20.—(1) The court may, on its own initiative or on an application for the purpose by the prosecutor, give directions or impose conditions that relate to the disclosure and distribution of a Victim Impact Statement, where doing so—

(a) may be necessary to protect the victim’s physical safety, psychological or emotional welfare, security or privacy, and 30

(b) any directions given or conditions imposed are not inconsistent with the constitutional rights of an offender.

(2) The court may, on its own initiative or on an application for the purpose by an offender, give directions or impose conditions that relate to the disclosure and distribution of a Victim Impact Statement, where doing so— 35

(a) may be necessary in the interests of justice, and

(b) any directions given or conditions imposed are not inconsistent with the victim informing the court of the matters detailed in *section 12* and the accurate publication of such matters. 40

(3) Under *subsections (1)* and *(2)*, the court may, in relation to a Victim Impact Statement— 45

(a) give directions or impose conditions about the copying of the statement, including the number of copies that may be made,

(b) give directions to or impose conditions on the people to whom the statement may be disclosed or distributed, 50

- (c) direct that all or any part of the statement not be disclosed or distributed, either generally or to a specified person,
- (d) impose conditions on the disclosure or distribution of all or any part of the statement,
- 5 (e) direct that all or any part of the statement shall not be published, either generally or by a specified person,
- (f) impose conditions on the publication of all or any part of the statement,
- 10 (g) give directions or impose conditions about any other matters to do with the disclosure and distribution of the statement that the court considers necessary or appropriate in the circumstances.

21.—(1) This section applies to a victim of a sexual offence after a person accused of such offence has been convicted of the offence.

Victim's views on application for order prohibiting publication of name of accused or offender.

- 15 (2) No court shall order that the anonymity of the person convicted of a sexual offence shall be protected where a victim to whom this section applies informs the court that it is the victim's wish that the identity of the offender be publicly disclosed, even where disclosing the identity of the offender may result in the identity of the victim
- 20 also being publicly disclosed and where the victim confirms to the court an awareness of such risk.

PART 3

PROVISIONS RELATING TO RIGHTS OF VICTIMS OF CERTAIN OFFENCES

CHAPTER 1

25 *Sections 22 to 41 apply only to victims of certain offences*

22.—(1) *Sections 23 to 41* each apply to a victim only if the offence is one of—

Application of *sections 23 to 41*.

- (a) a sexual offence,
- 30 (b) an offence involving violence or the threat of violence to a person,
- (c) an offence under section 3, 4, 5 or 6 of the Child Trafficking and Pornography Act 1998,
- 35 (d) an offence consisting of attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, an offence mentioned in *paragraphs (a), (b) or (c)*.

(2) In respect of an offence to which this section applies, the Director of Public Prosecutions shall not accept a plea of guilty by the accused to a less serious charge in substitution for the original charge or charges laid, without first informing the victim and explaining to the victim the reason for accepting such plea unless—

- (a) the victim has confirmed in writing that he or she does not wish to be so informed, or

- (b) the whereabouts of the victim cannot be ascertained after reasonable enquiry.

Victim's views about release on bail of accused or offender.

23.—If a person accused of the offence or, as the case requires, the offender, applies to a court for release on bail, the prosecutor must determine whether or not this section applies to a victim in accordance with *section 22* and, if it does, must make all reasonable efforts to ensure— 5

- (a) that any views the victim has about the release on bail of the person accused of the offence or, as the case requires, the offender, are ascertained, 10
- (b) if the victim is a child, that any views each parent or legal guardian of the victim has about the release on bail of the person accused of the offence, or as the case requires, the offender, are ascertained,

and must inform the court of any views ascertained under *paragraph (a)*. 15

Application of sections 25 to 32.

24.—*Sections 25 to 32* each applies to a victim to whom this Part applies only if the victim has—

- (a) asked an Garda Síochána to ensure that he or she is given notice under *sections 25 to 31*, and 20
- (b) given his or her current residential address and any available additional communication contact details (for example, other postal address, electronic mail address, fax number or telephone number) to an Garda Síochána at the same time as asking for that notice under *paragraph (a)*, and where applicable any subsequent residential address or new communication contact details, or 25
- (c) in the alternative, identified a person and furnished that persons' contact details to who the aforesaid notice may be given as the representative of the victim by way of appointment under *section 33* of this Act. 30

CHAPTER 2

Duties of an Garda Síochána in relation to notices under sections 27 to 32

Garda Síochána to give information about right to ask for notice and appointment of representative.

25.—(1) As soon as practicable after a victim comes into contact with an Garda Síochána, an Garda Síochána must determine whether or not this Part applies to the victim in accordance with *section 22* and if it does— 35

- (a) must make all reasonable efforts to inform the victim that he or she has the right to ask to be given notice under *sections 27 to 32* and that if he or she asks to be given notice of that kind and gives an Garda Síochána his or her current address then he or she is entitled to receive such notice, and 40

(b) must in the circumstances stated in *subsection (2)* make all reasonable efforts to inform a support person of the victim that a representative of the victim may be appointed under *section 33*.

5 (2) The circumstances referred to in *subsection (1)(b)* are that an Garda Síochána know, or ought reasonably to know, that the victim is not, or may not be capable alone of—

(a) asking for, receiving or understanding, notice under any of the sections contained in this Part, and

10 (b) appointing a representative under *section 33*.

(3) *Subsection (1)(b)* does not delimit the application of *subsection (1)(a)*.

26.—(1) If a victim to whom this section applies has asked for notice under *section 24(a)* and has given an Garda Síochána his or
15 her current address under *section 24(b)* and (c), an Garda Síochána must forward a copy of that address—

Victim's address to be forwarded in certain cases.

(a) to the Secretary General of the Department of Justice, Equality and Law Reform if the person accused of the offence, or as the case requires, the offender, is or becomes liable to be detained in prison in connection with the offence and the Commissioner has not already
20 forwarded a copy of the address under *paragraph (b)*,

(b) to the Secretary General of the Department of Health and Children if the person accused of the offence or, as the case requires the offender, is or becomes liable to be
25 detained in a hospital in connection with the offence.

(2) The Secretary General of the Department of Justice, Equality and Law Reform must forward the current address of a victim to whom this section applies to the Secretary General of the Department of Health and Children if—
30

(a) the address has been given or forwarded to the Secretary General of the Department of Justice, Equality and Law Reform, and

(b) the offender, having been liable to be detained in prison in connection with the offence, becomes liable to be
35 detained in a hospital.

CHAPTER 3

Notice of certain matters to be given to victims of certain offences

27.—(1) An Garda Síochána shall give a victim to whom this
40 section applies notice, as soon as practicable of—

Notice of release on bail of accused or offender.

(a) every release on bail (if any) of the person accused of the offence or, as the case requires, the offender, and

(b) any terms or conditions of a release of that kind—

- (i) that relate to the safety and security of the victim or of one or more members of his or her immediate family or of both, or
- (ii) that require the accused or offender not to associate or not to contact the victim or one or more members of his or her immediate family, or both. 5

(2) In this section, release on bail includes a release on bail—

- (a) until the hearing of proceedings,
- (b) during an adjournment of proceedings,
- (c) until sentencing, and 10
- (d) until determination of an appeal against conviction or sentence.

Notice of offender being considered for parole.

28.—(1) The Secretary General of the Department of Justice, Equality and Law Reform shall give a victim to whom this section applies reasonable prior notice of the intention of the Parole Board or the Minister for Justice, Equality and Law Reform to review the cases of eligible prisoners for parole or for early release, as the case may be, and shall afford such victim a reasonable opportunity to furnish a submission in writing to the Parole Board or the Minister as appropriate for consideration. 15 20

(2) Any submission made to the Parole Board pursuant to *subsection (1)* shall, subject to *subsection (4)* of this section, be furnished to the prisoner seeking parole to whom it relates and such prisoner shall be entitled to make such reply in writing to the Parole Board as he or she deems appropriate, within ten days of receipt of such submission. 25

(3) When informing a victim of the intention of the Parole Board to review the case of an eligible prisoner or prisoners for parole and of the right of the victim to make a submission to the Parole Board in accordance with *subsection (1)*, the victim shall be informed by the Parole Board that any such submission received by it will be furnished to the prisoner or prisoners to whom it relates seeking parole for reply, subject to the exclusion from the submission of information as provided for in *subsection (4)*. 30

(4) There shall be excluded from any submission furnished to a prisoner under this section any information that identifies or may identify or lead to the identification of the address of the victim as provided for in *section 11* where an order has previously been made by a court under that section. 35

Notice of release or escape by accused or offender.

29.—(1) The Secretary General of the Department of Justice, Equality and Law Reform shall give a victim to whom this section applies— 40

- (a) reasonable prior notice of the offender's impending release from prison or release to or from detention,
- (b) if a release of that kind is on parole, reasonable prior notice of any terms or conditions of that release— 45

(i) that relate to the safety and security of the victim, or of one or more members of his or her immediate family, or of both, or

(ii) that require the offender not to associate with, or not to contact, the victim, or one or more members of his or her immediate family, or both,

and

(c) notice, as soon as practicable, of an escape from prison or detention by the person accused of the offence or the offender.

(2) In *subsection (1)(a)*, release from prison includes a temporary or early release from custody and a part-time release to engage in employment.

30.—(1) The Secretary General of the Department of Justice, Equality and Law Reform must give a victim to whom this section applies notice, as soon as practicable of—

Notice of prosecutions for breach of conditions of release.

(a) every prosecution of the offender for an offence committed when on parole (temporary or early release),

(b) every application made for an order that the offender, being subject to a sentence of imprisonment and having been released, be recalled to prison to continue serving his or her sentence for failure to comply with the condition of his or her release, and

(c) every final disposition of all proceedings (at first instance or, if any, on appeal) relating to a prosecution of that kind.

(2) Nothing in *subsection (1)* prevents notice being given of other matters relating to the offender's compliance with conditions of his or her release.

31.—(1) Where a person accused of an offence or, as the case requires, the offender is required to be detained in a hospital the Secretary General of the Department of Health and Children shall give a victim—

Notice of discharge, leave of absence or escape of accused or offender contained in hospital.

(a) reasonable prior notice of an impending discharge of the person or offender,

(b) reasonable prior notice of the first unescorted leave of absence (if any) granted to the person or offender, and

(c) notice, as soon as practicable, of every escape by the person or offender.

Notice of proposal to consider making deportation order and of any hearing of appeal as to deportation order or any proceedings seeking a judicial review in relation thereto.

32.—(1) If the Minister for Justice, Equality and Law Reform proposes making a deportation order in respect of an offender whose liability to deportation arises out of a conviction for an offence to which this Part applies, the Secretary General of the Department of Justice, Equality and Law Reform shall—

5

(a) if practicable, give the victim notice that the Minister proposes to consider making a deportation order in respect of the offender,

(b) as soon as practicable if an order of that kind is made and the offender concerned appeals against the order or seeks a judicial review, give the victim prior notice of the hearing of the appeal or judicial review,

10

(c) where the court proceedings as referred to in *paragraph (b)* take place, as soon as practicable give the victim notice of the outcome of the proceedings, and

15

(d) as soon as practicable give to the victim notice of the date when the deportation is effected.

(2) Failure to comply with *subsection (1)* does not invalidate any deportation order made or any decision on an appeal against the making of a deportation order.

20

Appointment of representatives to receive notice.

33.—A victim to whom this Part applies may for any reason he or she thinks fit, appoint any other person (in *sections 33 to 37* called “the representative”) to receive on the victim’s behalf, and ensure the victim is given and understands any notice to be given to the victim under *sections 27 to 32* (in *sections 34 to 38* called “the information”).

25

Effect of appointment of representative.

34.—If a representative of a victim is appointed then unless the appointment is terminated under *section 37*—

(a) the reference to the victim’s current address in this part must be read as references to the representative’s current address,

30

(b) information to which the appointment relates must be given to the representative rather than to the victim, and

(c) the representative must make all reasonable efforts to receive on the victim’s behalf, and ensure that the victim is given and understands the information to which the appointment relates.

35

Victim’s support person may be appointed or may appoint representative.

35.—A victim’s support person (person A) may appoint himself or herself, or another support person of the victim, as representative of the victim, on behalf of the victim, if—

40

(a) the victim is not, or may not be, capable alone of appointing a representative,

(b) no representative of the victim has been appointed (whether in reliance on this section or not), and

(c) by sending it by fax machine to a fax number given by the victim as part of his or her current address;

(d) by sending it by electronic mail to the victim at the electronic mail address he or she gave as part of his or her current address.

5

(2) Nothing in *subsection (1)* prevents notice from being given by a means not stated in that subsection.

Victim may make submissions to Parole Board.

40.—(1) Upon receiving a notice pursuant to *section 28* of the intention of the Parole Board to consider an offender for parole, a victim may make a written submission to the Parole Board within the time specified in such notice.

10

(2) In considering any application for parole, the Parole Board shall have regard to the Victim Impact Statement, if any, made following the conviction of the offender seeking parole in addition to any written submission received pursuant to *subsection (1)* of this section.

15

Victim may make submissions on making of deportation order or offender's appeal against deportation order.

41.—Upon receiving a notice pursuant to *section 32* or a proposal by the Minister for Justice, Equality and Law Reform to make a deportation order in respect of an offender, the victim in receipt of such notice may make a written submission to the Minister for Justice, Equality and Law Reform within the time specified in the notice.

20

PART 4

ESTABLISHMENT OF THE COMMISSION FOR THE SUPPORT OF VICTIMS OF CRIME

25

Establishment Order.

42.—The Minister shall, by order, appoint a day to be the establishment day for the purpose of this Part.

Establishment of the Commission for the Support of Victims of Crime.

43.—On the establishment day, a body corporate (to be known as the Commission for the Support of Victims of Crime) hereinafter referred to as “the Commission” stands established to perform the functions assigned to it by this Act.

30

Corporate name and perpetual succession.

44.—The Commission has, under its corporate name, perpetual succession and an official seal and may—

(a) sue and be sued in its corporate name,

(b) acquire, hold and dispose of land or an interest in land, and

35

(c) acquire, hold and dispose of any other property.

Membership of the Commission.

45.—(1) The Commission shall consist of five members, all of whom are to be appointed by the President on—

(a) the nomination of the Government, and

40

(b) the passage of resolutions by Dáil Éireann and Seanad Éireann recommending their appointment.

(2) One of the members shall be appointed as Chairperson.

5 (3) At least two of the five members shall be women and at least two of them shall be men.

10 (4) In considering the nomination of a person to be appointed to be a member of the Commission, the Government shall satisfy itself that the person has the appropriate experience, qualifications, training or expertise for appointment to a body having the functions of the Commission.

15 (5) A person who holds judicial office of a Superior Court may, without relinquishing that office, be appointed, with his or her consent as the Chairperson of the Commission but, unless otherwise provided by the terms of the appointment, he or she shall not, while a member, be required to carry out duties under statute as the holder of that judicial office.

(6) The *Schedule* has effect if a person who holds judicial office of a Superior Court is appointed as the Chairperson of the Commission.

20 (7) A person is not eligible to be nominated or appointed under the section if he or she—

(a) is a member of either House of the Oireachtas,

(b) is entitled under the Rules of Procedure of the European Parliament to sit in that Parliament, or

(c) is a member of a local authority.

25 (8) The first appointment to the Commission becomes effective on the establishment day.

30 (9) If the Chairperson is temporarily unable to carry out the duties of office, the other members shall determine which of them is to act, for all or part of the period of inability in the Chairperson's place.

(10) For as long as a member is acting in place of the Chairperson under *subsection (9)*, references in the Act to the Chairperson of the Commission are to be read as references to that member.

35 **46.—(1)** Subject to *subsection (6)*, a member of the Commission Term of office. holds office for a period of five years.

(2) A member is eligible for re-appointment for a second time.

40 (3) A member holds office on the terms and conditions relating to remuneration (including allowances for expenses, benefits-in-kind and superannuation) or other matters that may be determined by the Government at the time of appointment or re-appointment.

(4) The Commission may act notwithstanding one or more than one vacancy among the members, including a vacancy that results in *section 45(3)* not being complied with.

(5) Whenever a vacancy occurs, as a result of the resignation, removal from office or death of a member, the vacancy is to be filled by an appointment in the manner specified in *section 45*.

(6) A member who is appointed to fill a vacancy caused by the resignation or removal from office, or the death of a member, holds office for the remainder of the term of office of the replaced member. 5

Functions of the Commission.

47.—(1) The functions of the Commission are—

- (a) to promote the interests of victims,
- (b) to take such steps as it considers appropriate to encourage good practice in the treatment of victims, 10
- (c) to devise, periodically review and where required, to update an appropriate support framework for victims,
- (d) to disburse funding for victim support and assistance measures, 15
- (e) to draft a Code of Practice as to the rights of victims and the services to be provided to them to be known as the “Victims Charter and Guide to the Criminal Justice System” hereinafter referred to as “The Charter”,
- (f) prior to publishing the draft Charter referred to in *paragraph (e)*, to comprehensively review and evaluate any existing such Code of Procedure or Charter in the context of the provisions of this Act and in so doing, to undertake such consultations with Government Departments, state agencies, voluntary groups and individuals as it deems appropriate, 20 25
- (g) to publish an annual report detailing all services provided to victims by the State, state agencies and non-government organisations to whom the Commission has disbursed funds together with an evaluation of the effectiveness of such service and to detail gaps in the services provided that need to be addressed. 30

(2) Following preparing the draft Charter, the Commission shall—

- (a) publish the draft, 35
- (b) specify a period during which representations may be made to it with regard to the draft,
- (c) consider all representations received and make such modification to the draft as it deems appropriate in the light of such representations, 40
- (d) furnish the Charter as thereafter adopted by the Commission to the Minister,
- (e) publish the Charter as furnished to the Minister and lodge a copy of it in the library of the Houses of the Oireachtas.

5 **48.**—(1) The Minister shall, within three months of receipt of the Charter from the Commission, lay before each House of the Oireachtas the Charter to be adopted and where the contents of same differ from that furnished by the Commission, the Minister shall by way of Explanatory Memorandum detail the reason or reasons for any such difference.

Adoption of
Victims' Charter.

(2) The Charter laid by the Minister before both Houses of the Oireachtas shall come into operation immediately following its approval by each House of the Oireachtas.

10 **49.**—(1) The Commission shall keep under review the operation of the Charter and the application of this Act and shall annually publish the details and outcome of such review.

Annual review of
Commission.

15 (2) The Commission may make proposals for amending the Charter or this Act in the interests of victims on its own initiative or at the request of the Minister.

50.—(1) The Commission in carrying out its functions may undertake or arrange for or support (financially or otherwise) the carrying out of research.

Research and
consultation by
Commission.

20 (2) For the purpose of carrying out its functions, the Commission may consult with any state agency, non-governmental organisation or person it deems appropriate.

25 **51.**—All reports of the Commission and proposals made by it for amending the Charter or this Act shall be published and laid before each House of the Oireachtas by the Minister no later than three months after their receipt by the Minister.

Report of
Commission.

52.—(1) If requested to do so, the Commission shall give advice to the Minister or to an appropriate Select or Joint Committee of the Houses of the Oireachtas in connection with any matter which—

Advisory function
of Commission.

30 (a) is specified by the Minister or such Committee, and

(b) relates to victims.

(2) If requested to do so by a state agency that has dealings with victims, the Commission must give advice in connection with the information provided or to be provided to victims by or on behalf of the agency.

35 **53.**—The Commission shall not exercise any functions in relation to—

Limitations on
Commission.

(a) a particular victim, or

(b) the bringing or conduct of particular proceedings,

40 save that this provision shall not prevent the Commission undertaking or arranging for or supporting research into the experiences of victims in general, or carrying out its duties and powers assigned to it under this Act.

Ministerial
consultation with
Commission.

54.—(1) The Minister may consult the Commission at such times and in such manner as he deems appropriate on matters relating to victims of crime or anti-social behaviour.

(2) If the Minister consults the Commission under *subsection (1)*, any report of the Commission to the Minister made in response shall— 5

- (a) be published by the Commission, and
- (b) be laid before both Houses of the Oireachtas.

Payment of grants
by Commission.

55.—The Commission may pay such grants to non-government organisations providing services to victims as it considers appropriate in connection with services provided to victims. 10

Independence of
Commission.

56.—(1) The Commission shall have all powers that are necessary for, or incidental to, the performance of its functions under this Act.

(2) Subject to this Act, the Commission shall be independent in the performance of its functions. 15

(3) The Chairperson of the Commission shall manage and control generally the officers, administration and business of the Commission.

Resignations, casual
vacancies and
removal from
office.

57.—(1) A member of the Commission may resign from office at any time by letter addressed to the President and copied to the Minister and the resignation takes effect on the date the President receives the letter. 20

(2) The Minister may, at any time, remove a member of the Commission from office, if, in the Minister's opinion—

- (a) the member has become incapable through ill-health of performing the functions of the office, 25
- (b) the member has committed stated misbehaviour,
- (c) the member has contravened a provision of the Ethics in Public Office Act 1995 that by a Regulation made under section 3 of that Act applies to that member, or 30
- (d) in performing functions under this Act, the member has not complied with the Code of Conduct under section 10(3) of the Standards in Public Office Act 2001,

and the Minister shall inform the President of the removal of a member of the Commission from office and shall inform each House of the Oireachtas. 35

(3) A member of the Commission ceases to hold office if the member—

- (a) is adjudicated to be a bankrupt,
- (b) makes a composition or arrangement with creditors, 40
- (c) is convicted of an indictable offence,

- (d) is convicted of an offence involving fraud or dishonesty,
- (e) is subject of an order under section 160 of the Companies Act 1990,
- (f) is sentenced to a term of imprisonment by a court of competent jurisdiction, or
- (g) is removed by competent authority for any reason (other than failure to pay a fee) from any register established for the purpose of registering members of a profession.

5

10 (4) A member of the Commission, who does not for a consecutive period of six months attend a meeting of the Commission, ceases at the end of that period to hold office unless the member demonstrates to the Minister's satisfaction that the non-attendance was due to illness.

15 (5) A person ceases to be a member of the Commission as soon as he or she—

- (a) is nominated as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or European Parliament,
- (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament (Elections) Act 1997 as having been elected to the European Parliament to fill a vacancy, or
- (d) becomes a member of a local authority.

20

25 **58.—**(1) The Commission, shall, as soon as practicable after its establishment, provide itself with a seal.

Seal of the Commission.

(2) The seal of the Commission must be authenticated by the signature of—

- (a) a member of the Commission, and
- (b) an officer of the Commission authorised by it to act in that behalf.

30

35 (3) Judicial notice is to be taken of the seal of the Commission and every document purporting to be an instrument made by the Commission and to be sealed with its seal (purporting to be authenticated in accordance with this section) is to be received in evidence and is deemed to be such instrument without proof unless the contrary is shown.

59.—(1) The quorum for a meeting of the Commission is three members.

Meetings and Procedures.

40 (2) Each question at a meeting of the Commission shall be determined by a majority of the votes of the members present and voting on the question.

(3) In the case of an equal division of votes, the Chairperson or other member presiding at the meeting has a second or casting vote.

(4) Subject to this Act, the Commission may regulate its own procedures.

Officers of the Commission.

60.—(1) The Commission may appoint such numbers of persons as its officers as may be approved by the Minister with the consent of the Minister for Finance.

5

(2) The Commission shall determine the grades of its officers and the numbers of officers in each grade as may be approved by the Minister with the consent of the Minister for Finance.

(3) Officers of the Commission are civil servants in the Civil Service of the State.

10

(4) The Commission is the appropriate authority (within the meaning of the Civil Service Commissioners Act 1956 and the Civil Service Regulation Acts 1956 to 1996) in relation to its officers.

Funding of the Commission.

61.—The Minister may, in each financial year, pay to the Commission, out of money provided by the Oireachtas, a grant of such amount as he or she with the consent of the Minister for Finance determines towards the expenses of the Commission in performing its functions.

15

Accounting practices of Commission.

62.—(1) The Commission shall keep in such form and in respect of such accounting periods as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of money received or expended by it, including an income and expenditure account and a balance sheet.

20

(2) Not later than three months after the end of the accounting period to which the accounts relate, the Commission shall submit accounts kept under this section to the Comptroller and Auditor General for audit.

25

(3) Immediately after the audit, the Commission shall present to the Minister copies of—

(a) the audited accounts, including the income and expenditure account, the balance sheet and such other (if any) accounts kept under this section as the Minister, after consulting with the Minister for Finance may direct, and

30

(b) the Comptroller and Auditor General's report on the accounts.

35

(4) As soon as practicable after presentation of the audited accounts and the Comptroller and Auditor General's report, the Minister shall cause copies of them to be laid before each House of the Oireachtas.

Commission and Committee of Public Accounts.

63.—(1) A member of the Commission nominated by it for the purpose shall, whenever required to do so by the Committee of Public Accounts, give evidence to that Committee on—

40

(a) the regularity and propriety of the transactions recorded, or required to be recorded, in any book or other record

of account subject to audit by the Comptroller and Auditor General that the Commission is required by this Act to prepare,

5 (b) the economy and efficiency of the Commission in the use of its resources,

(c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Commission referred to in—

10 (i) a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or

15 (ii) any other report of the Comptroller and Auditor General that is laid before Dáil Éireann in so far as the report relates to a matter specified in any of *paragraphs (a) to (c)*.

(2) A member of the Commission who gives evidence under this section shall not provide information that might facilitate the commission of an offence, prejudice a criminal investigation or prosecution or jeopardise the safety of a person.

64.—(1) In this section, “committee” means—

The Commission and Oireachtas Committees.

25 (a) a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee of Public Accounts, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann), or

(b) a sub-committee of a committee as defined in *paragraph (a)*.

30 (2) Subject to *subsection (3)*, a member of the Commission nominated by it for the purpose shall, at the written request of a committee, attend before it to give account for the general work of the Commission.

35 (3) The member of the Commission shall not be required to give account before a committee for any matter that is or is likely to be, the subject of proceedings before a court or tribunal in the State.

(4) The member of the Commission shall, if of the opinion that *subsection (3)* applies to a matter about which he or she is requested to give an account before a committee, inform the committee of that opinion and the reasons for the opinion.

40 (5) The information required under *subsection (4)* must be given to the committee in writing unless it is given when the member of the Commission is before the committee.

45 (6) If, on being informed of the member of the Commission’s opinion about the matter, the committee decides not to withdraw its request relating to the matter, the High Court may, on application under *subsection (7)*, determine whether *subsection (3)* applies to the matter.

(7) Either the Commission or the committee may apply in a summary manner to the High Court for a determination under *subsection (6)*, but only if the application is made within 21 days after the date on which the member of the Commission is informed of the committee's decision not to withdraw its request. 5

(8) Pending the determination of an application under *subsection (7)*, the member of the Commission shall not attend before the committee to give account for the matter that is the subject of the application.

(9) If the High Court determines that *subsection (3)* applies to the matter, the committee shall withdraw its request in so far as it relates to the matter, but if the Court determines that *subsection (3)* does not apply, the member of the Commission shall attend before the committee to give account for the matter. 10

(10) In carrying out duties under this section, a member of the Commission shall not provide information that might facilitate the commission of an offence, prejudice a criminal investigation or prosecution or jeopardise the safety of a person. 15

The remuneration and expenses of members of Commission.

65.—(1) Remuneration and allowances for expenses, if any, are payable by the Minister out of money provided by the Oireachtas in accordance with *subsection (2)*. 20

(2) With the consent of the Minister of Finance, the Minister may determine the remuneration and allowances for expenses payable under this section.

Standards of integrity.

66.—(1) In performing functions under this or any other enactment— 25

- (a) a member of the Commission, or
- (b) a person engaged by the Commission as an Advisor, or
- (c) an employee of the Commission,

shall maintain proper standards of integrity, conduct and concern for the public interest. 30

(2) *Subsection (1)* applies to an employee of the person referred to in *subsection (1)(b)* in respect only of duties of employment relating to the purpose for which the Commission has engaged that person. 35

(3) For the purpose of this section “the public interest” includes the interest of victims of crime.

PART 5

VIOLATION OF VICTIM'S RIGHTS

Violation of victim's rights.

67.—(1) This section applies if a victim or person considers that he or she is entitled to be accorded a right under any of the provisions of this Act or the Charter as adopted pursuant to *Part 4* of this Act and that he or she has not been accorded such right. 40

- (2) The victim or person may complain to—
- (a) the person who, under the relevant provision or provisions appears to be required to accord to the victim or person the right,
 - 5 (b) the Ombudsman in accordance with the Ombudsman Act 1980 if the person who, under the relevant specified provisions appears to be required to accord the victim or person the right, may be the subject of a complaint to the Ombudsman under that Act,
 - 10 (c) the Garda Síochána Ombudsman Commission in accordance with the Garda Síochána Act 2005, if the person who, under the relevant provision of this Act, appears to be required to accord the victim or person the right, is a member of an Garda Síochána,
 - 15 (d) the Ombudsman for Children in accordance with the Ombudsman for Children Act 2002, if the victim or person concerned was under eighteen years of age at the date of the commission of an alleged offence or anti-social behaviour.
- 20 (3) A complaint to the Ombudsman for Children shall first be made by or on behalf of a victim or a person to whom this section applies where the victim or person was under eighteen years of age as prescribed in *subsection (2)(d)*.
- (4) A failure to respect a victim's rights in accordance with the
25 provisions of this Act shall not, of itself, entitle a victim to claim compensation in any civil court, save that this provision shall not affect the rights under existing law vested in a victim to bring any form of court action as a consequence of any negligence or wrongdoing.
- 30 (5) The Ombudsman, the Garda Síochána Ombudsman Commission and the Ombudsman for Children shall inform the Commission established under this Act of any complaint pursuant to *subsection (2)(b), (c) or (d)* and of any action taken and conclusions reached following receipt of such complaint and shall furnish to the
35 Commission any information sought relating to the steps taken subsequent to the receipt of any such complaint.
- (6) The Commission established under this Act may refer any complaint received by it, as it determines appropriate, to the Ombudsman, the Garda Síochána Ombudsman Commission or the
40 Ombudsman for Children, and shall be informed of any action taken and conclusions reached by such body following receipt by it of such complaint, and the victim shall be similarly informed.
- (7) The Ombudsman for Children may refer any complaint under
45 this Part which falls outside its statutory powers, as appropriate, to the Ombudsman or the Garda Síochána Ombudsman Commission.
- (8) The Ombudsman, an Garda Síochána Ombudsman Commission and the Ombudsman for Children shall investigate and report on the complaints received by such body pursuant to this Part of this Act in accordance with the powers conferred on each in the
50 legislation by which each was established and any amending legislation relating thereof.

Effect of breach of Charter.

68.—Failure to comply with this Act or the Charter shall not of itself entitle a victim to claim compensation in any civil court save that this provision shall not affect the rights under existing law vested in a victim to bring any form of court action as a consequence of negligence or wrong-doing.

5

PART 6

MISCELLANEOUS

Return of property held as evidence.

69.—Law enforcement agencies that hold property of a person (other than an offender) for evidentiary purposes must, to the extent it is possible to do so, return it to the person as soon as practicable after they no longer need to hold it for those purposes.

10

Secretary General of Department of Justice, Equality and Law Reform may delegate duties.

70.—(1) The Secretary General of the Department of Justice, Equality and Law Reform may delegate any of his or her duties under this Act to an appropriate designated officer within the Department of Justice, Equality and Law Reform.

15

(2) The delegation—

- (a) must be in writing and signed by the Secretary General,
- (b) must specify the duties delegated and the person or persons to whom they are delegated (“the delegates”),
- (c) does not prevent the Secretary General from performing the duties delegated or affect his or her responsibility for actions of the delegates,
- (d) is revocable at will by written notice to the delegates,
- (e) may be made subject to any terms or conditions stated in it the Secretary General thinks fit,
- (f) may permit some or all of the delegates to delegate further the duties delegated, subject to any terms and conditions stated as the Secretary General deems fit.

20

25

(3) A delegate—

- (a) may perform the duties delegated in the same manner and with the same effect as if they had been conferred or imposed on the delegate directly by this Act,
- (b) must perform them (and may further delegate them to the extent that the delegation permits) only in accordance with any terms and conditions stated in the delegation.

30

35

Secretary General of the Department of Health and Children may delegate duties.

71.—(1) The Secretary General of the Department of Health and Children may delegate any of his or her duties under this Act to an appropriate designated officer within the Department of Health and Children or, in the alternative, an appropriate designated employee or employees of the Health Service Executive.

40

(2) The delegation—

- (a) must be in writing and signed by the Secretary General,

- (b) must specify the duties delegated and the person or persons to whom they are delegated (“the delegates”),
- (c) does not prevent the Secretary General from performing the duties delegated or affect his or her responsibility for actions of the delegates,
- (d) is revocable at will by written notice to the delegates,
- (e) may be made subject to any terms or conditions stated in it the Secretary General thinks fit,
- (f) may permit some or all of the delegates to delegate further the duties delegated, subject to any terms and conditions stated as the Secretary General deems fit.

- (3) A delegate—
- (a) may perform the duties delegated in the same manner and with the same effect as if they had been conferred or imposed on the delegate directly by this Act,
 - (b) must perform them (and may further delegate them to the extent that the delegation permits) only in accordance with any terms and conditions stated in the delegation.

72.—The Criminal Justice Act 2007 is amended by the insertion of the following section after section 26:

Insertion of new Section 26A into the Criminal Justice Act 2007.

“26A.—(1) Where a person (in this section referred to as ‘the alleged offender’) is charged with an offence, the court may make an order (referred to hereinafter as a ‘Protection of Person’s Order’) in relation to the alleged offender for the purpose of protecting the alleged victim of the offence concerned or any other person named in the order from harassment by the alleged offender while the order is in force.

(2) The court may provide in a Protection of Person’s Order that the alleged offender is prohibited from engaging in any behaviour that, in the opinion of the court, will be likely to cause the alleged victim of the alleged offence concerned, or any other person named in the order fear, distress or alarm, or would be likely to amount to intimidation of any such person.

(4) A Protection of Person’s Order may be made under this section from the date when charges are laid against an alleged offender and may continue to apply up to the conclusion of any trial in which the charges laid are determined and a verdict delivered.

(5) Where a Protection of Person’s Order is made, the court that made the order may, if it so sees proper, on the application of the alleged offender, vary or revoke the order, if satisfied that by reason of such matters or circumstances, specified in the application, that have arisen or occurred since the making of the order, that it should be varied or revoked.

(6) An application under *subsection (5)* shall be made on notice to an Inspector of an Garda Síochána of the District in which the alleged offender ordinarily resided at the time that the order was made or, if appropriate, the Inspector of an Garda

Station in the District in which the home of the offender is located at the time of the application.

(7) Any person who fails to comply with a Protection of Person's Order shall be guilty of an offence and shall—

(a) where charged with a summary offence on summary conviction be liable to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months, or both, 5

(b) where charged with an indictable offence be liable on conviction to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both. 10

(8) Nothing in this section shall affect any other order, restriction or obligation or any condition attaching thereto to which the offender is subject whether made or imposed under statute or otherwise apart from this section while a Protection of Person's Order is in force. 15

(9) In this section 'home' in relation to the offender, means his or her sole or main residence or, if he or she has no such residence, his or her most usual place of abode or, if he or she has no such abode, the place which he or she regularly visits." 20

Section 45.

SCHEDULE

APPOINTMENT TO COMMISSION OF PERSONS HOLDING JUDICIAL OFFICE

If Supreme Court judge or former Supreme Court judge is appointed member of Commission 25

1. (1) If a person appointed as the chairperson of the Commission is, when so appointed, an ordinary judge of the Supreme Court, then, for so long as he or she continues to hold that judicial office, the number of ordinary judges of the Supreme Court otherwise provided for under any enactment for the time being in force may be exceeded by one. 30

(2) If the person so appointed is a former Chief Justice of the Supreme Court, the proviso to paragraph (a) (inserted by the Courts (No. 2) Act 1997) of section 14(1) of the Law Reform Commission Act 1975 applies to him or her in respect of his or her appointment as a member of the Commission to the like extent as it applies to a former Chief Justice who is appointed to be the President of the Law Reform Commission. 35

If High Court judge or President or former President of High Court is appointed member of Ombudsman Commission 40

2. (1) If a person appointed as the chairperson of the Commission is the President of the High Court or an ordinary judge of the High Court, then, for so long as he or she continues to hold the judicial office held by him or her on being so appointed, the number of ordinary judges of the High Court otherwise provided for under any enactment for the time being in force may be exceeded by one. 45

(2) If the person so appointed is a former President of the High Court, the proviso to paragraph (b) (inserted by the Courts (No. 2)

Act 1997) of section 14(1) of the Law Reform Commission Act 1975
applies to him or her in respect of his or her appointment as a
member of the Commission to the like extent as it applies to a former
President of the High Court who is appointed to be a member of the
5 Law Reform Commission.

(3) If the person so appointed is the President of the High Court,
he or she may, for so long as he or she continues to be a member of
the Commission, from time to time appoint an ordinary judge of the
High Court to exercise on his or her behalf (and which judge is
10 hereby empowered to exercise) all jurisdiction exercisable by the
President of the High Court under section 10(5) of the Courts
(Supplemental Provisions) Act 1961.



[Click here for Bill](#)

**AN BILLE UM CHEARTA ÍOSPARTACH 2008
VICTIMS' RIGHTS BILL 2008**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of the Bill is to make provision for the treatment of and rights of victims of criminal offences and anti-social behaviour and of their immediate family. At present, otherwise than as witnesses in the prosecution of offences, victims of crime play a limited role in the criminal justice process. Section 5 of the Criminal Justice Act 1993 prescribes that for certain types of serious offences, for example, sexual and serious violent crimes, a judge when determining the penalty or sentence to be imposed on a convicted offender must take into account the effect of the crime on the victim and, may, where necessary, receive evidence or submissions concerning the effect on the victim of the offence committed. In practice, this is usually done by the victim in writing by way of a Victim Impact Statement. Moreover, the court is required to hear the evidence of the victim if he or she wishes to testify. This right has been extended by the judiciary to the family of homicide victims and the procedure applicable has been prescribed in court judgments. In respect of other offences, Victim Impact Statements currently have no role. The Sex Offenders Act 2001 provides separate legal representations for complainants in rape and other serious sexual assault trials where an application is made to the court in the course of a trial to adduce evidence or cross examine on the subject of a complainants past sexual history. Such legal representation is provided by the Legal Aid Board and is not subject to a means test. Legal advice, as opposed to representation is also available through the Board to complainants in rape and certain sexual assault cases. This service is subject to a means test and persons who satisfy the financial eligibility criteria are provided with free legal advice.

The Bill makes more extensive provision for the victims of crime and details the principles applicable to their treatment. It reflects the standards prescribed by the European Union Council Framework Decision of 15th March 2001 on the Standing of Victims in Criminal Proceedings. (2001/220 JHA)

It provides for a more comprehensive use of Victim Impact Statements in the sentencing of offenders and prescribes specific information and assistance that must be furnished to all victims of crime. In doing so, it imposes specific new obligations on the Garda

Síochána, the Court Services Board, the Department of Health and Children, the Department of Justice, Equality and Law Reform and the Health Service Executive. Following the conviction of a sexual offender, the Bill prohibits the courts from preserving the anonymity of the offender where his or her victim informs the court that he/she wishes the offender's identity to be publicly disclosed.

In relation to crimes of physical or sexual violence, child trafficking and the sexual exploitation of children, various new rights are afforded to victims. These include the right of the victim to furnish to the court his or her view of any bail application made by the alleged offender; to be informed of any release on bail of an alleged offender; to be given reasonable prior notice of the intention of the Parole Board to review the case of a convicted offender for parole and to make submissions to the Parole Board; to be given reasonable notice of a convicted offender's escape or early release and any proposal of the Minister for Justice and Law Reform to grant early release to or make a deportation order in respect of an offender and to make a submission thereon to the Minister.

Should there be a failure to accord to a victim rights prescribed by the Act, such failure may be the subject of a complaint to the Ombudsman appointed under the Ombudsman Act 1980. Where it is alleged a failure to accord a victim's rights is by a member of An Garda Síochána, the Act provides for a complaint about such failure to be made to the Garda Síochána Ombudsman Commission. Where such alleged failure relates to a child, i.e. a person under eighteen years, at the date of the alleged offence, the complaint must first be made to the Ombudsman for Children. Each of the aforesaid Bodies is required to investigate and report on any such complaint made to them that falls within their statutory remit.

The Bill makes statutory provision for the Commission for the Support of Victims of Crime which was established on a non statutory basis by the Minister for Justice in March 2005. It details the specific functions of the Commission and requires it to publish a Victims' Charter which ultimately is to be furnished in draft form to the Minister to be laid before both Houses of the Oireachtas. The Charter becomes operative following a vote of approval in both Houses.

There is a common perception that criminals have more rights than victims. The Bill will give to victims of crime for the first time comprehensive statutory rights under Irish law. State and State agencies will be required to inform victims of crime of the appropriate and necessary services available to them. Victims will be kept fully informed of progress made in the investigation of a crime reported by them; of the progress before the courts of any prosecution initiated; of the outcome of any court proceedings relating to an alleged or convicted offender in respect of the offence of which they are a victim. Moreover, following conviction, victims for the first time will be entitled to make representation on convicted offender's applications for parole and release. For the first time in Irish law, all victims of crime will be given a voice and the recognition that they deserve. They will also for the first time be entitled to have any violation of their rights investigated and reported upon, introducing greater transparency and accountability into our criminal justice system.

Part 1 contains the Bill's preliminary provisions.

Section 1 provides for the Bill to become operative three months after the date of its enactment.

Section 2 is the definition section and includes the definition of a victim of crime. The definition includes every person who is a victim of a crime and makes particular reference to those who have suffered physical or psychological injury, emotional harm or economic loss including loss of or damage to property. Particular rights are prescribed in the Bill for such victims. There is a wider class of victims who are also given recognition by being included in specific provisions contained in the Bill concerning treatment and access to services for victims. These include victims of anti-social behaviour which could result in the making of an Anti-Social Behaviour Order (ASBO) pursuant to the Criminal Justice Act 2006. This is to ensure that where the provisions of Part 11 of that Act are invoked, instead of a prosecution being initiated, the rights of victims are still recognised and protected.

If a crime or an offence results in a person's death or in a person being in a state of continuing unconsciousness or suffering serious intellectual disability members of such person's immediate family are victims to whom specific provisions of the Bill apply. Thus if an offender is convicted of the murder or manslaughter of a child or an adult the provision made for Victim Impact Statements and the requirement that the court on sentence hears evidence of the victim applies to members of the deceased victim's immediate family.

"Immediate family" is defined as including a member of the victim's family who is in a close relationship with the victim at the time of the crime or offence and extends to persons whose relationship to the victim at that time is a close *de facto* non marital partner (whether of the same sex or different sexes). Where the victim of an offence is a child, the child's guardians, parents or a person acting *in loco parentis* is regarded as a victim, save where such person is the alleged offender or person convicted of the relevant offence.

Section 3 applies when a crime or offence committed by a person results in the death of another or that other being in a state of continuing unconsciousness or suffering serious intellectual disability. Under this section, the courts may by court order prescribe that a person who is not a member of a victim's immediate family but who is or was close to the victim be treated as if he or she were a family member. Provision is also made for the courts determining in appropriate circumstances that a person who is a member of a victim's immediate family be not so treated for the purpose of the Bill.

Section 4 repeals existing provisions of the Criminal Justice Act 1993 for the provision of Victim Impact Statements save in relation to criminal proceedings in which charges have been laid prior to the coming into operation of the Act. Later provisions in the Bill make more extensive provision for Victim Impact Statements than are contained in existing law.

Part 2 of the Bill contains provisions relating to treatment and rights of victims generally and prescribes guiding principles.

Section 5 subsection 1 of the Bill requires that victims be treated with courtesy and compassion and that their dignity and privacy be respected. These principles are subject to the *proviso* that nothing be done in their application to in any way infringe the constitutional rights of an alleged offender or of a convicted offender. *Subsection 2* details the victim's right to be as fully informed as is possible about the rights and remedies available to him; of his role in the criminal justice process with regard to any criminal proceedings taken and of the general availability of health and social services or other appropriate assistance that he may require.

Section 6 of the Bill prescribes that a victim or a member of a victim's family who has welfare, counselling, medical or legal needs as a result of an offence shall have access to services that are responsive to those needs.

Section 7 prescribes the mandatory right of victims to information about services and remedies available to them and lists the agencies responsible for providing information about services and remedies. These are:

- (a) an Garda Síochána;
- (b) the Court Services Board;
- (c) the Criminal Injuries Compensation Tribunal;
- (d) Department of Health and Children;
- (e) Department of Justice, Equality and Law Reform;
- (f) the Health Service Executive.

The obligation imposed on each of the agencies named to furnish to victims services or remedies available to victims through such agency includes an obligation to advise of any national or local accessible voluntary agency which provides help to victims, such as the National Crime Victims Helpline, ADVIC (which provides specialist support for families of homicide victims) and the Tourist Assistance Service which provides support for tourist victims of crime. In this context, it should be noted that presently an Garda Síochána provides information to victims through the Garda Victim Liaison Officer in the Community Relations section of an Garda Síochána in Harcourt Square, Dublin 2 as well as through local members of the force.

Section 8 requires that victims be kept informed of the progress made in an investigation of the offence of which the person is a victim and of the progress in processing any criminal prosecution. It also requires that the victim's role as a witness in court be explained and that there be detailed for the victim any protections available to him or her where matters are dealt with in the courts. For example, the circumstances in which a victim may give evidence through a television link or through an intermediary must be explained where relevant to the particular offence or the age of the victim as must existing legal provisions which protect a victim's anonymity where prosecutions are initiated for an alleged sexual offence. Provision is also made in the Bill in certain circumstances for the home address of a victim to be withheld from the alleged offender and this section requires that the rights of the victim in this regard also be explained. In addition, where relevant it requires that a victim be informed of any steps that might be taken in respect of alleged anti-social behaviour to serve a notice on an alleged offender pursuant to the Criminal Justice Act 2006 or to seek an Anti-Social Behaviour Order (ASBO) and where applicable, the availability of a Restorative Justice Scheme in operation of relevance to the alleged offenders committed and the workings of such Scheme must also be explained to a victim. The section also requires, where applicable, that information be furnished to a victim about the remedies available pursuant to the Domestic Violence Acts 1996 and 2002 and of circumstances in which the courts can make a Protection of Person's Order with regard to criminal proceedings and in which a compensation order may be made or reparations obtained by a victim.

Section 9 proposes limits on the duty to give information pursuant to *sections 7* and *8*. It allows for information to be withheld from a victim for “good reason” such as where the giving of information would be likely to prejudice the maintenance of law and order, including the prevention, investigation and detection of offences and the right to a fair trial.

Section 10 provision is made in certain circumstances for a person to be designated as a support person of the victim. This section provides for the giving of information as required under *sections 7* and *8* to such support person if the victim either cannot receive the information or is not or may not be capable alone of understanding it.

Section 11 of the Bill provides that a victim’s residential or home address may not be disclosed in court where upon application to it, a court is satisfied—

- (a) the giving of the information in evidence provided to a court is likely to cause prejudice to the victim’s interests or harm to the victim, and
- (b) the likely prejudice or harm outweighs the evidential value of the information or any assistance it may provide in enabling the court or a jury to reach a fair determination.

The provisions contained in this section are additional to provisions contained in the Criminal Law Rape Acts 1981 and 1990 to safeguard the identity of a victim.

Section 12 requires a prosecutor to make all reasonable efforts to ensure that a Victim Impact Statement is available to a court when sentencing an offender. Such Statement must detail:

- (a) any physical or psychological injury or emotional harm suffered by the victim as a consequence of the offence;
- (b) any economic loss, including loss of or damage to property suffered by the victim as a consequence of the offence; and
- (c) any other effects (whether long-term or otherwise) of the offence on the victim.

Section 13 provides that a victim must be fully informed of the purpose of a Victim Impact Statement, of the procedure applicable to obtaining one and of the persons to whom copies will be furnished.

Section 14 details the procedure applicable in preparing a Victim Impact Statement for the court and verification procedures.

Section 15 allows for the treatment as a victim of an offence a person who was disadvantaged by the offence and was not the immediate victim and was not either a person accused of the offence or the offender.

Section 16 imposes an obligation on the courts to take into account and “where necessary” receive oral evidence or submissions concerning the effect of an offence on the victim or victims prior to the imposition of sentencing. In many cases it will be sufficient for the court to receive a written Victim Impact Statement. There is a general discretion conferred on the courts to hear oral evidence from the victim. In respect of certain offences, a court is obliged to hear oral evidence of the victim upon being requested to do so. This obligation arises in respect of:

- (a) sexual offences;
- (b) offences involving violence or the threat of violence;
- (c) any other kind of offence which results in a victim on reasonable grounds having ongoing fears for his or her physical safety or security or for the physical safety or security of one or more members of his or her immediate family;
- (d) an offence consisting of attempting or conspiring to commit or aiding or abetting, counselling, procuring or inciting the commission of an offence such as the offences mentioned in *paragraphs (a) to (c)*.

Existing law (Criminal Justice Act 1993), section 5 only provides for Victim Impact Statements to be furnished to the court where a person is convicted of a sexual offence or an offence involving violence or a threat of violence. In practice, the use of Victim Impact Statements has also been extended to the immediate family of homicide victims by the judiciary. Under the Bill, the courts are required to have regard to the impact on victims of other offences committed prior to sentencing. Such offences would, for example, include drug offences, burglary, theft, road traffic offences, offences relating to damage to or destruction of property and various offences chargeable as a result of anti-social behaviour.

Section 17 defines the meaning of a Victim Impact Statement.

Section 18 provides for the disclosure of the contents of Victim Impact Statements to offenders save that where an order has been made under *section 13* of the Act to exclude information identifying the alleged victim from being furnished to the court, such information can be excluded from any Victim Impact Statement furnished to an offender.

Section 19 provides for the withholding of information relating to a victim's address from a Victim Impact Statement.

Section 20 prescribes particular directions that can be given or conditions imposed by a court on the disclosure or distribution of victim impact statements. Such directions or conditions may be necessary to protect the victim's physical safety, security or emotional welfare or privacy and can be given provided they are not inconsistent with the constitutional rights of an offender. Alternatively, it may be necessary in the interests of justice to protect an offender from unfounded allegations extraneous to the offence for which the offender was convicted. Where such allegations are contained in a Victim Impact Statement, the court will be empowered to prevent disclosure, dissemination or publication of such allegations. In doing so, the court cannot prevent the disclosure, dissemination and publication of information concerning the impact on the victim of the offence for which an offender is convicted. Provisions contained in this section address an issue of general concern that arose following the delivery of a Victim Impact Statement in a homicide case determined in the recent past in the Central Criminal Court.

Section 21 applies to a victim of a sexual offence after a person accused of such an offence has been convicted. It prohibits the courts from ordering that the anonymity of the person convicted of such offence is to be protected where a victim informs the court that it is his or her wish that the identity of the offender be publicly disclosed.

Part 3 of the Bill applies only to victims of certain offences.

Section 22 prescribes that sections 25 to 41 of the Bill apply to a victim only if the offence is one of:

- (a) sexual violation;*
- (b) an offence involving violence or the threat of violence to a person;*
- (c) an offence under the Child Trafficking and Pornography Act 1998 relating to child trafficking and the sexual exploitation of children;*
- (d) an offence consisting of attempting or conspiring to commit or aiding, abetting or counselling, procuring or inciting the commission of an offence such as those referred to in paragraphs (a) to (c).*

Upon the enactment of the Criminal Law (Human Trafficking) Bill 2007, offences under sections 3, 5 and 7 of the Bill as amended in Select Committee will be included in Part 3. This can be done at Committee Stage on the assumption the aforesaid Bill will by then have been enacted. These provisions apply to both the trafficking and exploitation of children and adults.

In respect of the above offences, the Bill directs that the Director of Public Prosecutions is not to accept a plea of guilty by an accused to a less serious charge in substitution for the original charge or charges laid without first informing the victim and explaining to the victim the reason for accepting such plea. However, the DPP is not obliged to so inform the victim where either the whereabouts of the victim cannot be ascertain or where the victim has previously confirmed in writing that he or she does not wish to be so informed.

Section 23 prescribes that victims of the offences detailed in section 22 must be asked their views about the release on bail of the person accused of such offence and the prosecutor must inform the court before which a bail application is made of such views. Where the victim is a child or young person, the court must be informed of the views of each parent or legal guardian of the victim when a bail application is made to the court.

Section 24 makes provision for a victim to furnish his or her address to An Garda Síochána to enable an Garda Síochána comply with the duties imposed on them by sections 27 to 32 of the Bill.

Section 25 requires that “as soon as practicable” after a victim to whom Part 3 of the Bill applies comes into contact with the Garda Síochána, the gardaí must inform the victim that he or she has the right to be given notice of particular matters detailed in sections 27 to 32 of the Bill.

Section 26 provides for the Garda Síochána to inform other persons subject to duties to the victim under Part 3 of the current address of the victim.

Section 27 requires the Garda Síochána to give a victim to whom Part 3 applies notice of the release on bail of persons accused of an offence or of an offender.

Section 28 requires the Secretary General of the Department of Justice, Equality and Law Reform to give a victim to whom Part 3 of the Bill applies reasonable prior notice of the intention of the

Parole Board to review the case of an offender eligible for parole and makes provision for the victim to furnish a submission to the Parole Board; for an offender to have sight of such submission and to respond to it. Provision is also made for any information that identifies or may identify the address of a victim to be excluded from any submission furnished to an offender where there is an already existing court order preventing the disclosure of the victim's address.

Section 29 imposes a duty on the Secretary General of the Department of Justice, Equality and Law Reform to notify a victim to whom *Part 3* applies of the release or escape of an accused or a convicted offender.

Section 30 requires the Secretary General of the Department of Justice, Equality and Law Reform to notify a victim to whom *Part 3* applies of any prosecution being brought against an offender for breach of conditions of release.

Section 31 imposes a duty on the Secretary General of the Department of Health and Children to inform a victim to whom *Part 3* applies, where an offender is in hospital, to give a victim notice of the offender's pending discharge from hospital; of any unescorted leave of absence from hospital and of an offender's escape from hospital.

Section 32 requires that victim to whom *Part 3* applies be informed of any possible deportation order the Minister for Justice is considering he or she may make in respect of an offender.

Section 33 makes provision for a victim to appoint a representative to receive on the victim's behalf notices that may be furnished to a victim to whom *Part 3* applies under *section 27* to *32* of the Bill.

Section 34 details the effect of the appointment of a representative of a victim.

Section 35 makes provision for a victim's support person to be appointed as his or her representative.

Section 36 details the method of appointment of a victim's representative.

Section 37 details how the representative's appointment may be terminated.

Section 38 details when a notice appointing or terminating the appointment of a representative takes effect.

Section 39 prescribes the ways in which notice may be given to a victim under *sections 27* to *32* of the matters in respect of which notice is required under those sections.

Section 40 provides for the making of submissions to a Parole Board by a victim and in considering any application for parole, requires the Board to have regard not only to any such written submission received but also to any Victim Impact Statement made following the conviction of the offender.

Section 41 provides for the making of submissions to the Minister for Justice, Equality and Law Reform by a victim where the Minister is considering the making of a deportation order in respect of an offender.

Part 4 provides for the establishment of the Commission for the Support of Victims of Crime

Section 42 provides for the making of an order by the Minister to establish the Commission. The Commission for the Support of Victims of Crime was originally established as a non statutory body in March 2005 by the Minister for Justice and Law Reform. The provisions contained in this part of the Bill and the sections hereafter make provision for its establishment as a statutory body.

Section 43 provides that upon its establishment, the Commission shall perform the functions assigned to it by the Bill.

Section 44 provides that the Commission has perpetual succession and an official seal. It makes provision for the Commission to sue and be sued; to acquire, hold and dispose of land and property.

Section 45 provides for the Commission to consist of five members. They are to be appointed by the President on the nomination of the government and the passage of resolutions by Dáil and Seanad Éireann recommending their appointment. The section provides for five members to be appointed to the Commission, at least two of whom must be women and two of whom must be men.

Section 46 provides that membership of the Commission is for a period of five years. It also deals with eligibility for reappointment and for the filling of vacancies.

Section 47 details the functions of the Commission. These are:

- (a) to promote the interests of victims,
- (b) to take such steps as it considers appropriate to encourage good practice in the treatment of victims,
- (c) to devise, periodically review and where required, to up-date an appropriate support framework for victims,
- (d) to disburse funding for victim support and assistance measures,
- (e) to draft a Code of Practice as to the rights of victims and the services to be provided to them to be known as the “Victims Charter and Guide to the Criminal Justice System” hereinafter referred to as “The Charter”.
- (f) prior to publishing the draft Charter referred to in (e), to comprehensively review and evaluate any existing such Code of Procedure or Charter in the context of the provisions of this Act and in so doing, to undertake such consultations with government Departments, State agencies, voluntary groups and individuals as it deems appropriate.
- (g) to publish an annual report detailing all services provided to victims by the State, State agencies and non-government organisations to whom the Commission has disbursed funds together with an evaluation of the effectiveness of such service and to detail gaps in the services provided that need to be addressed.

In addition, the section prescribes the procedure for the Commission completing work on the “Victims” Charter and for it being furnished to the Minister and the Houses of the Oireachtas.

Section 48 provides for consideration by the Minister of the Victims' Charter prepared by the Commission and for the Charter ultimately being laid before each House of the Oireachtas and being adopted.

Section 49 provides for the Commission keeping under review the operation of the Victims' Charter and for the annual publication by it of such review. In addition, the Commission is enabled to make proposals for amending the Charter in the interests of victims on its own initiative or at the request of the Minister.

Section 50 makes provision for research to be undertaken at the request of the Commission and provides for it having a consultative capacity.

Section 51 makes provision for all Reports of the Commission and proposals made by it for amending the Victims' Charter or the Act when adopted to be published and laid before each House of the Oireachtas.

Section 52 makes provision for the Commission furnishing advice to the Minister or an appropriate Select or Joint Committee of the Houses of the Oireachtas in respect of any matter which is (a) specified by the Minister or such Committee and (b) relates to victims.

Section 53 provides that the Commission shall not exercise any functions in relation to a particular victim or the bringing or conduct of particular proceedings. However, this provision is stated not to prevent the Commission being involved in research into the experience of victims in general nor can this provision prevent the Commission from carrying out its statutory duties.

Section 54 provides for the Minister to consult with the Commission on issues relating to victims of crime or anti-social behaviour.

Section 55 enables the Commission to pay grants to non governmental organisations providing services to victims. This gives statutory effect to a function presently being undertaken by the Commission established by the Minister in March 2005.

Section 56 provides for the Commission to be independent in the performance of its functions and for the Chairperson of the Commission to manage and control generally the offices, administration and business of the Commission.

Section 57 provides for the resignation and removal of members of the Commission. It also details those circumstances in which a member of the Commission ceases to hold office and excludes members of Dáil Éireann, Seanad Éireann, the European Parliament or local authorities from being members of the Commission.

Section 58 provides for the seal of the Commission.

Section 59 provides for a quorum at meetings of the Commission and the determination of issues at meetings by a majority of the votes of the members present.

Section 60 provides for the appointment of persons as officers to the Commission by the Minister for Justice with the consent of the Minister for Finance.

Section 61 makes provision for the funding of the Commission.

Section 62 provides for accountancy matters relating to the Commission.

Section 63 details the role of the Committee of Public Accounts with regard to the Commission.

Section 64 makes provision for the interaction between the Commission and Committee of either or both Houses of the Oireachtas.

Section 65 deals with remuneration and allowances for expenses in respect of members of and employees of the Commission.

Section 66 provides that in the performance of their functions members of the Commission or any person engaged by the person as an advisor or any employee of the Commission must maintain proper standards of integrity, conduct and concern for the public interest. The “public interest” is said in the section to include the interests of the victims of crime.

Part 5 prescribes the remedies applicable where a victim’s rights are violated.

Section 67 provides that a victim whose rights are violated may complain to the person who under the Bill is required to accord to the victim particular rights or may make a complaint to the Ombudsman in accordance with the Ombudsman Act 1980. Where such complaint relates to alleged violation of the rights of a victim by a member of An Garda Síochána, the Bill provides that such complaint is to be dealt with by the Garda Síochána Ombudsman Commission established under the Garda Síochána Act 2005. Where such complaint relates to the alleged violation of the rights of a child, i.e. a person under eighteen years of age, such complaint must first be made to the Ombudsman for Children. Where the complaint falls outside the latter’s statutory remit, it can be referred, as appropriate to either the Ombudsman established under the Ombudsmans Act 1980 or the Garda Síochána Ombudsman Commission, as appropriate. The relevant bodies are required to investigate and report on any complaint received in the manner prescribed in their governing legislation. Failure to respect a victim’s rights in accordance with the provisions of the Bill does not, of itself, entitle a victim to claim compensation in any civil court. However, the rights under existing law vested in a victim to bring any form of court action as a consequence of any negligence or wrongdoing on the part of the State or any State body or any civil servant or State employee are not affected.

Section 68 provides that failure to comply with the Act or the Victims’ Charter does not of itself entitle the victim to claim compensation. However, this provision does not affect a victim’s rights under any existing law vested in a victim to take court action to claim compensation as a consequence of negligence or wrongdoing.

Part 6 is concerned with a number of miscellaneous matters.

Section 69 requires that the property of a person (other than offender) held for evidentiary purposes must be returned to its owner as soon as practicable after it is no longer necessary to hold such property for the prosecution of an offence.

Section 70 makes provision for the Secretary General of the Department of Justice, Equality and Law Reform to delegate his duties under the Bill to an appropriate designated officer within such Department.

Section 71 makes provision for the Secretary General of the Department of Health and Children to delegate his duties under the Bill to an appropriate designated officer within such Department.

Section 72 makes provision for the courts, where appropriate, to make a Protection of Person's Order to prohibit an alleged offender from engaging in any behaviour that could cause fear, distress, or alarm to or intimidate an alleged victim of an offence or a witness in Criminal Proceedings. Breach of such order itself constitutes a criminal offence rendering an offender liable to a fine not exceeding €3,000 and/or a term of imprisonment not exceeding 12 months where the offence alleged is a summary offence and to a fine not exceeding €50,000 and/or to a term of imprisonment not exceeding 5 years where the offence alleged is an indictable offence.

*An Teachta Alan Shatter agus Charles Flanagan,
Eanáir, 2008.*