



DÁIL ÉIREANN

**AN BILLE UM AN DLÍ COIRIÚIL (CIONTA GNÉASACHA),
2015**

CRIMINAL LAW (SEXUAL OFFENCES) BILL 2015

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

DÁIL ÉIREANN

AN BILLE UM AN DLÍ COIRIÚIL (CIONTA GNÉASACHA), 2015 —ROGHCHOISTE

CRIMINAL LAW (SEXUAL OFFENCES) BILL 2015 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 2

1. In page 6, between lines 6 and 7, to insert the following:

“ “consent” in reference to sexual activity, means voluntary agreement to engage in the sexual activity in question, unless otherwise stated in this Act. Allowing sexual activity does not amount to consent in some circumstances—

- (a) a person does not consent to sexual activity just because he or she does not protest and/or offer physical resistance to the activity,
- (b) a person does not consent to sexual activity if he or she allows the activity because of—
 - (i) force applied to him/her and/or to some other person(s),
 - (ii) the threat (express or implied) of force being applied to him/her and/or some other person(s), or
 - (iii) the fear of the application of force to him or her or some other person(s),and
- (c) in any of the cases in *paragraph (a)* above, it is immaterial whether it is the accused who applies force and/or threats of force against the complainant and/or other(s), or not,
- (d) a person does not consent to sexual activity if the activity occurs while he/she is asleep or otherwise unconscious,
- (e) a person does not consent to sexual activity if the activity occurs while he/she is so affected by alcohol and/or some other drugs(s) that he/she cannot consent or refuse to consent to the activity, whether or not that person took alcohol and/or some other drugs voluntarily,
- (f) a person does not consent to sexual activity if the activity occurs while he/she is so affected by a physical condition or impairment of such a nature and degree that he/she cannot consent or refuse to consent to the activity,
- (g) a person does not consent to sexual activity with another person if he/she allows the sexual activity because he/she is mistaken about the identity of that person,

[SECTION 2]

- (h) a person does not consent to sexual activity if he or she allows the activity because he or she is mistaken about its nature and quality,
- (i) a person does not consent to sexual activity if that consent is expressed by the words and/or conduct of someone other than themselves,
- (j) a person does not consent to sexual activity if he/she expresses by word and/or conduct, a lack of agreement to engage in that activity,
- (k) a person does not consent to sexual activity if, having first consented to sexual activity, he/she expresses by words or conduct a lack of agreement to continue to engage in that activity,
- (l) this section does not limit the circumstances in which a person does not consent to sexual activity.”.

—Ruth Coppinger, Mick Barry, Paul Murphy.

SECTION 10

2. In page 9, lines 17 and 18, to delete all words from and including “Section” in line 17 down to and including line 18 and substitute the following:

“Section 3 of the Act of 1998 is amended—

- (a) by the repeal of subsections (2A) and (2B), and
- (b) in subsection (5), by the substitution of the following definition for the definition of “sexual exploitation”:

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

SECTION 11

3. In page 10, line 19, to delete “14 years” and substitute “14 years or both”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

SECTION 15

4. In page 13, line 13, after “education,”, to insert “faith formation,”.

—Róisín Shortall, Catherine Murphy.

SECTION 20

5. In page 16, between lines 25 and 26, to insert the following:

“Definitions

20. In this Part—

“sexual act” means—

- (a) an act consisting of—
 - (i) sexual intercourse, or
 - (ii) buggery,
- (b) an act described in section 3(1) or 4(1) of the Act of 1990, or

[SECTION 20]

(c) an act which if done without consent would constitute a sexual assault;

“sexual intercourse” shall be construed in accordance with section 1(2) of the Act of 1981.”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 20 of the Bill.*]

Section opposed.

—Clare Daly, Mick Wallace, Catherine Martin.

SECTION 21

6. In page 17, before line 1, to insert the following:

“Sexual act with relevant person

21. (1) A person who engages in a sexual act with a relevant person knowing that that person is a relevant person or being reckless as to whether that person is a relevant person shall be guilty of an offence.
- (2) A person who invites, induces, counsels or incites a relevant person to engage in a sexual act knowing that that person is a relevant person or being reckless as to whether that person is a relevant person shall be guilty of an offence.
- (3) A person guilty of an offence under *subsection (1)* where the sexual act consisted of sexual intercourse, buggery or an act described in section 3(1) or 4(1) of the Act of 1990 shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment.
- (4) A person guilty of an offence under *subsection (1)* where the sexual act consisted of an act which if done without consent would constitute a sexual assault shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.
- (5) A person guilty of an offence under *subsection (2)* shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 10 years.
- (6) For the purposes of this section, a person lacks the capacity to consent to a sexual act if he or she is, by reason of a mental or intellectual disability or a mental illness, incapable of—
- (a) understanding the nature, or the reasonably foreseeable consequences, of that act,
- (b) evaluating relevant information for the purposes of deciding whether or not to engage in that act, or
- (c) communicating his or her consent to that act by speech, sign language or otherwise,

and, in this section, such a person is referred to as a “relevant person”.”.

—Brendan Howlin, Jan O’Sullivan.

[*Acceptance of this amendment involves the deletion of section 21 of the Bill.*]

[SECTION 21]

7. In page 17, before line 1, to insert the following:

“Sexual act with relevant person

- 21 (1) A person who engages in a sexual act with a relevant person knowing that that person is a relevant person or being reckless as to whether that person is a relevant person shall be guilty of an offence.
- (2) A person who invites, induces, counsels or incites a relevant person to engage in a sexual act knowing that that person is a relevant person or being reckless as to whether that person is a relevant person shall be guilty of an offence.
- (3) In proceedings for an offence under this section, it shall be presumed, unless the contrary is shown, that the defendant knew or was reckless as to whether the person against whom the offence is alleged to have been committed was a relevant person.
- (4) A person guilty of an offence under *subsection (1)* where the sexual act consisted of sexual intercourse, buggery or an act described in section 3(1) or 4(1) of the Act of 1990 shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment.
- (5) A person guilty of an offence under *subsection (1)* where the sexual act consisted of an act which if done without consent would constitute a sexual assault shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.
- (6) A person guilty of an offence under *subsection (2)* shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 10 years.
- (7) For the purposes of this section, a person lacks the capacity to consent to a sexual act if he or she is not able to understand, at the time that the sexual act occurred, the nature and consequences of the sexual act and the available choices at that time.”.”.

—Jonathan O’Brien.

[Acceptance of this amendment involves the deletion of section 21 of the Bill.]

8. In page 17, before line 1, to insert the following:

“Abuse of a Position of Dependence and Trust

21. The Criminal Law (Sexual Offences) Act 1993 is amended by substituting the following for section 5:

“Offence of abuse of position of dependence and trust

5. (1) Any person who being in a position of dependence and trust—
- (a) takes advantage of his or her position, or
 - (b) aids, abets, counsels or procures another person to take advantage of his or her position,
- and—

[SECTION 21]

- (i) induces or seduces a person to have sexual intercourse with him or her, or
 - (ii) commits any other sexual offence involving a person,
shall be guilty of an offence of abuse of position of trust and shall be liable upon conviction on indictment to imprisonment for a term of not less than ten years.
- (2) Where a person charged with an offence under this section can establish that, in respect of the sexual act which had been engaged in, no offence would have been committed had the consent of the victim been granted prior to the act, it shall in those circumstances be a defense for a person who is charged with an offence under this section to prove that—
- (a) the victim consented to the sexual act which had been engaged in, and
 - (b) that such consent was granted freely and in the absence of duress or coercion.
- (3) In this section—
- ‘position of dependence and trust’ includes, but is not limited to, a person who—
- (a) provides care,
 - (b) is responsible for welfare,
 - (c) occupies a position of authority,
 - (d) provides education, or
 - (e) provides support services including therapy or counselling, to the victim;
- ‘sexual offence’ includes—
- (a) a sexual offence within the meaning of section 3 of the Sex Offenders Act 2001,
 - (b) an offence under section 2, 3 or 4 of the Criminal Law (Rape) (Amendment) Act 1990,
 - (c) an offence under section 6 or 7 of the Criminal Law (Sexual Offences) Act 1993,
 - (d) an offence under section 4 or 5 of the Criminal Law (Human Trafficking) Act 2008, or
 - (e) any other offence of a sexual nature contained in any other enactment and which has been so prescribed in regulations made by the Minister for Justice and Equality under this section.”.”.

[SECTION 21]

—Clare Daly, Mick Wallace, Catherine Martin.

[Acceptance of this amendment involves the deletion of section 21 of the Bill.]

9. In page 17, between lines 28 and 29, to insert the following:

“(8) It shall be presumed that a relevant person has capacity in respect of the matter concerned unless the contrary is shown in accordance with the provisions of this Act.”.

—Jonathan O’Brien.

SECTION 22

10. In page 17, between lines 28 and 29, to insert the following:

“Offence against relevant person by person in authority

22. (1) A person in authority who engages in a sexual act with a relevant person shall be guilty of an offence.

(2) A person in authority who invites, induces, counsels or incites a relevant person to engage in a sexual act shall be guilty of an offence.

(3) It shall be a defence to proceedings for an offence under this section for the defendant to prove that he or she was reasonably mistaken that, at the time of the alleged commission of the offence, the person against whom the offence is alleged to have been committed was not a relevant person.

(4) It shall not be a defence to proceedings for an offence under this section for the defendant to prove that the person against whom the offence is alleged to have been committed consented to the sexual act of which the offence consisted.

(5) The standard of proof required to prove that the defendant was reasonably mistaken that the person against whom the offence is alleged to have been committed was not a relevant person shall be that applicable to civil proceedings.

(6) A person guilty of an offence under *subsection (1)* where the sexual act consisted of sexual intercourse, buggery or an act described in section 3(1) or 4(1) of the Act of 1990 shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

(7) A person guilty of an offence under *subsection (1)* where the sexual act consisted of an act which if done without consent would constitute a sexual assault, or an offence under *subsection (2)* shall be liable on conviction on indictment to imprisonment for a term not exceeding 5 years.

(8) In this section—

“person in authority”, in relation to a relevant person against whom an offence is alleged to have been committed, means any person who as part of a contract of service or a contract for services is, for the time being, responsible for the education, supervision, training, treatment, care or welfare of the relevant person;

[SECTION 22]

“relevant person” means a person who has—

- (a) a mental or intellectual disability, or
- (b) a mental illness,

which is of such a nature or degree as to severely restrict the ability of the person to guard himself or herself against serious exploitation.”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

SECTION 24

11. In page 18, line 21, to delete “sexual.” and substitute the following:

“sexual.

- (3) Money or any other form of remuneration or consideration that is paid or given for the purposes referred to in subsection (1) shall not, by reason only of that subsection, be the proceeds of crime for the purposes of the Proceeds of Crime Acts 1996 to 2016.”.

—Brendan Howlin, Jan O’Sullivan.

12. In page 18, to delete lines 22 to 26.

—Jonathan O’Brien.

13. In page 18, to delete lines 27 to 30 and substitute the following:

“(d) in section 9, by the substitution of the following subparagraphs for subparagraphs (i) and (ii):

- “(i) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both, or,
- (ii) on conviction on indictment to a fine not exceeding €1,000,000 or to imprisonment for a term not exceeding 10 years or to both.”.

—Ruth Coppinger, Mick Barry, Paul Murphy.

14. In page 19, between lines 1 and 2, to insert the following:

“(g) in section 11—

- (i) by designating the existing section as subsection (1), and
- (ii) by inserting the following subsection—

“(2) No person shall be prosecuted for an offence under this section where—

- (a) the premises is used by that person to provide his or her own sexual services,
- (b) that person is deemed not to be profiting from the sexual services of any other person, and
- (c) section 10(1) does not apply to that person.”.

—Róisín Shortall, Catherine Murphy.

15. In page 19, between lines 1 and 2, to insert the following:

“(g) in section 11—

(a) by designating the existing section as subsection (1), and

(b) by inserting the following subsection—

“(2) No person shall be prosecuted for an offence under this section where—

(a) the premises is used by that person to provide his or her own sexual services, and

(b) section 10(1) does not apply to that person.”.”.

—Jonathan O’Brien, Clare Daly, Mick Wallace, Catherine Martin.

16. In page 19, between lines 1 and 2, to insert the following:

“(g) in section 11—

(i) by designating the existing section as subsection (1), and

(ii) by inserting the following subsection—

“(2) It shall be a defence to proceedings for an offence under this section that—

(a) the brothel is used by that person to provide his or her own sexual services, and

(b) section 10(1) does not apply to that person.”.”.

—Ruth Coppinger, Mick Barry, Paul Murphy.

17. In page 19, between lines 1 and 2, to insert the following:

“(g) in section 11—

(i) by designating the existing section as subsection (1), and

(ii) by inserting the following subsection—

“(2) No person shall be prosecuted for an offence under this section where—

(a) the brothel is used by that person to provide his or her own sexual services,

(b) section 10(1) does not apply to that person.”.”.

—Bríd Smith, Richard Boyd Barrett, Gino Kenny.

[SECTION 24]

Section opposed.

—Clare Daly, Mick Wallace, Catherine Martin, Bríd Smith, Richard Boyd Barrett,
Gino Kenny.

SECTION 25

Section opposed.

—Brendan Howlin, Jan O'Sullivan, Róisín Shortall, Catherine Murphy, Jonathan O'Brien,
Clare Daly, Mick Wallace, Catherine Martin, Bríd Smith,
Richard Boyd Barrett, Gino Kenny, Ruth Coppinger, Mick Barry, Paul Murphy.

SECTION 27

18. In page 19, between lines 18 and 19, to insert the following:

“Review of operation of this Part

27. The Minister for Justice and Equality shall, not later than two years after the commencement of this Part, review its operation and report thereon to both Houses of the Oireachtas, setting out in particular—

- (a) information on the nature and extent of prostitution connected to human trafficking, including numbers of arrests, prosecutions and convictions for offences under *section 24* and sections 2, 4 and 5 of the Criminal Law (Human Trafficking) Act 2008, and
- (b) the extent to which, in the Minister’s opinion, the operation of this Part has reduced human trafficking and the impact of this Part on the safety and well-being of sex workers.”.

—Brendan Howlin, Jan O'Sullivan.

19. In page 19, between lines 18 and 19, to insert the following:

“27. (1) The Minister shall—

- (a) not later than 2 years after this section comes into operation, commission an independent review of this Part 4, and
- (b) not later than 12 months after its commencement make a report to each of House of the Oireachtas of the findings made on the review and of the conclusions drawn from the findings.

(2) The report of the review made under *subsection (1)* shall set out information on, *inter alia*:

- (a) the nature and extent of prostitution, its connection to human trafficking,
- (b) evidence of the extent to which this Section has operated to reduce human trafficking and prostitution, and
- (c) the impact of this legislation on the safety and well-being and human rights of sex workers.”.

—Róisín Shortall, Catherine Murphy.

[SECTION 27]

20. In page 19, between lines 18 and 19, to insert the following:

“27. (1) The Minister for Justice and Equality shall—

- (a) collect data disaggregated by gender and nature of offences under this Part,
 - (b) not later than 2 years after this section comes into operation, and every 2 years thereafter, commission an independent review on the impact and the operation of this Part 4,
 - (c) not later than 12 months after its commencement, make a report to each House of the Oireachtas of the findings made on the review and of the conclusions drawn from the findings.
- (2) The report of the review made under *subsection (1)* shall set out information on the nature and extent of prostitution connected to human trafficking including, *inter alia*:
- (a) the number, during the period covered by the review, of arrests, cautions, fines and convictions in connection with an offence under this Part and under sections 6, 7, 8, 9, 10 and 11 of the Criminal Law (Sexual Offences) 1993 Act and sections 2, 4 and 5 of the Criminal Law (Human Trafficking) Act 2008;
 - (b) evidence of the extent to which this section has operated to reduce human trafficking and prostitution; and
 - (c) the impact of this legislation on the safety and well-being and human rights of sex workers.””.

—Jonathan O’Brien, Clare Daly, Mick Wallace, Catherine Martin.

21. In page 19, between lines 18 and 19, to insert the following:

“27. The Minister shall commission a report on the impact of Part 4 within two years of the passing of this Act to ascertain if this Act has seen a reduction in human trafficking and to see its impact on the human rights, safety and well being of sex workers.””.

—Bríd Smith, Richard Boyd Barrett, Gino Kenny.

22. In page 19, between lines 18 and 19, to insert the following:

“Review of supports and exit services for sex workers in prostitution

27. The Minister for Justice and Equality is to report on the education, language, training, financial, housing, healthcare, social welfare and rehabilitation services that should be provided by the State to support sex workers and assist them in overcoming the barriers and forms of exploitation that prevent them from exiting prostitution, within six months of the enactment of this Bill. The needs of migrants, in particular the need to regularise their immigration status in order to afford them full employment rights and full access to legal employment and social welfare services, must be central to this review.””.

—Ruth Coppinger, Mick Barry, Paul Murphy.

[SECTION 27]

23. In page 19, between lines 18 and 19, to insert the following:

“Review of supports and exit services for sex workers that report traffickers or organisers of prostitution to the Gardaí and/or them in prosecutions

27. The Minister for Justice and Equality is to report on the additional procedures and supports that should be available for the protection and assistance of sex workers who report traffickers, organisers of prostitution, and pimps and brothel-owners to the Gardaí, particularly in relation to Garda protection, regularisation of immigration status, financial compensation, access to employment, training and other exit services, within six months of the enactment of this Bill.”.

—Ruth Coppinger, Mick Barry, Paul Murphy.

SECTION 28

Section opposed.

—Jonathan O’Brien.

SECTION 30

24. In page 20, after line 40, to insert the following:

“(5) In criminal proceedings for a sexual offence, the court shall have regard to the following factors:

- (a) the public interest in encouraging the reporting of sexual offences;
- (b) the public interest in encouraging the obtaining of treatment by complainants of sexual offences; and
- (c) the public interest in ensuring that adequate records are kept of counselling communications.”.

—Jim O’Callaghan.

SECTION 35

25. In page 22, line 17, to delete “under the age of 18 years”.

—Róisín Shortall, Catherine Murphy.

26. In page 23, line 1, to delete “under the age of 14 years”.

—Róisín Shortall, Catherine Murphy.

27. In page 23, line 1, to delete “14 years” and substitute “18 years”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

28. In page 23, to delete lines 6 to 11 and substitute the following:

“(2) Where—

- (a) a person is accused of a sexual offence, and
- (b) a person who has attained the age of 18 years (being a person in respect of whom a sexual offence is alleged to have been committed) is to give evidence,

[SECTION 35]

the court may direct that the accused may not personally cross examine the witness unless the court is of the opinion that the interests of justice require the accused to conduct the cross-examination personally.”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

29. In page 23, lines 8 and 9, to delete “who has attained the age of 14 years but is under the age of 18 years”.

—Róisín Shortall, Catherine Murphy.

SECTION 36

30. In page 24, line 12, to delete “under 14 years of age”.

—Róisín Shortall, Catherine Murphy.

31. In page 24, line 14, to delete “under 18 years of age”.

—Róisín Shortall, Catherine Murphy.

SECTION 38

32. In page 24, line 36, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

33. In page 24, lines 36 to 38, to delete all words from and including “any record” in line 36 down to and including line 38 and in page 25, to delete lines 1 to 3 and substitute the following:

“a record that has some probative or evidential value to the alleged sexual offence(s) that is or are the subject of the criminal proceedings;”.

—Jim O’Callaghan.

34. In page 25, line 4, to delete “shall be construed in accordance with section 3 of” and substitute “means an offence referred to in the Schedule to”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

35. In page 25, line 7, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

36. In page 25, line 10, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

37. In page 25, lines 16 and 17, to delete “or to the competence of the complainant or a witness to testify”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

38. In page 25, to delete lines 18 to 40, and in page 26, to delete lines 1 to 3.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais, Jim O’Callaghan,
Jonathan O’Brien.

[SECTION 38]

39. In page 26, between lines 3 and 4 to insert the following:

“(l) records relating to therapy or counselling shall form no part, partial or otherwise, of any assessment regarding a relevant record likely to be relevant to an issue at trial or to the competence of a complainant or witness to testify.”.

—Jonathan O’Brien.

40. In page 26, line 4, to delete “(5) An” and substitute “(4) An”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

41. In page 26, lines 6 and 7, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

42. In page 26, line 7, to delete “the complainant” and substitute “the complainant, the prosecutor”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

43. In page 26, line 8, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

44. In page 26, line 10, to delete “(6) The” and substitute “(5) The”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

45. In page 26, line 11, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

46. In page 26, line 13, to delete “(7) The” and substitute “(6) The”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

47. In page 26, line 14, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

48. In page 26, line 15, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

49. In page 26, line 16, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

50. In page 26, line 17, to delete “(8) The” and substitute “(7) The”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

51. In page 26, line 17, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

52. In page 26, line 18, to delete “relevant records” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

[SECTION 38]

53. In page 26, line 20, to delete “subsection (7)” and substitute “subsection (6)”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

54. In page 26, line 21, to delete “(9) In” and substitute “(8) In”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

55. In page 26, line 21, to delete “subsection (7)” and substitute “subsection (6)”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

56. In page 26, line 22, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

57. In page 26, line 23, to delete “subsection (10)” and substitute “subsection (9)”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

58. In page 26, line 24, after “account” to insert the following:

“, while also taking into consideration that not one or more of the factors asserted shall be sufficient to establish whether the content of the relevant record should be disclosed”.

—Jim O’Callaghan.

59. In page 26, line 34, to delete “process.” and substitute “process;”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

60. In page 26, between lines 34 and 35, to insert the following:

“(h) the likelihood that disclosing, or requiring the disclosure of, the record will cause harm to the complainant including the nature and extent of that harm.”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

61. In page 26, between lines 34 and 35, to insert the following:

“(h) the risk of harm to the person to whom the record relates.”.

—Jim O’Callaghan, Jonathan O’Brien.

62. In page 26, to delete lines 35 to 39, and in page 27, to delete lines 1 to 4 and substitute the following:

“(9) (a) Subject to paragraph (b) and subsection (10), after the hearing referred to in subsection (6), the court may order disclosure of the content of the counselling record to the accused and the prosecutor where it is in the interests of justice to do so.

(b) The court shall order disclosure of the content of the counselling record to the accused where there would be a real risk of an unfair trial in the absence of such disclosure.”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

[SECTION 38]

63. In page 27, line 5, to delete “(11)(a) Where” and substitute “(10)(a) Where”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
64. In page 27, line 5, to delete “subsection (10)” and substitute “subsection (9)”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
65. In page 27, line 7, to delete “relevant record” and substitute “counselling record”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
66. In page 27, line 11, to delete “subsection (10)” and substitute “subsection (9)”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
67. In page 27, line 12, to delete “relevant record” and substitute “counselling record”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
68. In page 27, line 13, to delete “relevant record” and substitute “counselling record”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
69. In page 27, line 16, to delete “relevant record” and substitute “counselling record”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
70. In page 27, line 18, to delete “relevant record” and substitute “counselling record”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
71. In page 27, line 21, to delete “relevant record” and substitute “counselling record”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
72. In page 27, line 23, to delete “relevant record” and substitute “counselling record”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
73. In page 27, line 25, to delete “relevant record” and substitute “counselling record”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
74. In page 27, line 26, to delete “record.” and substitute “record.”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
75. In page 27, between lines 26 and 27, to insert the following:
“(viii) that the counselling record is used solely for the purposes of the trial.”.
—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
76. In page 27, between lines 26 and 27, to insert the following:
“(c) The breach of any condition on disclosure imposed by the court shall be a criminal offence.”.

—Jim O’Callaghan.

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77. In page 27, between lines 26 and 27, to insert the following:

“(c) Communicating his or her consent to that act (whether by talking, writing, using sign language, assistive technology, or any other means).”.

—Jonathan O’Brien.

78. In page 27, to delete lines 27 and 28.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

79. In page 27, line 29, to delete “(13) The” and substitute “(11) The”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

80. In page 27, line 30, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

81. In page 27, line 32, to delete “(14)(a) Subject” and substitute “(12)(a) Subject”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

82. In page 27, line 38, to delete “(15) For” and substitute “(13) For”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

83. In page 27, line 38, to delete “subsection (7)” and substitute “subsection (6)”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

84. In page 28, line 1, to delete “(16) In” and substitute “(14) In”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

85. In page 28, line 6, to delete “(17) This” and substitute “(15) This”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

86. In page 28, to delete lines 6 to 8 and substitute the following:

“(17) (a) This section and section 19B do not apply where a complainant or witness has expressly waived his or her right to non-disclosure of a relevant record without leave of the court.

(b) No complainant or witness shall be deemed to have expressly waived his or her right to non-disclosure unless he or she has been offered a reasonable opportunity to obtain independent legal advice on the issue of disclosure rights before he or she is asked to sign any document purporting to waive his or her right to non-disclosure of a relevant record without leave of the court.

(18) In addition to the provisions of this section, section 19B shall apply to a relevant record relating to a child.

19B. (1) In this section and in section 19A(18), ‘relevant record relating to a child’ means a relevant record (or part of such record) relating to a

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sexual offence or sexual offences alleged to have been committed in respect of a person who was, at the time of the offence, under the age of 18.

- (2) Without prejudice to the generality of section 19A, the content of a relevant record relating to a child shall not be disclosed to the accused and shall not be admissible as evidence in criminal proceedings save by order of the court and in compliance with the provisions of this section and section 19A.
- (3) In determining an application for disclosure of a relevant record relating to a child, subject to the rules of the relevant court and in addition to the criteria set out in section 19A(9), the court shall take the following factors, in particular, into account.
 - (a) the extent to which the evidence contained in the relevant record relating to a child has substantial probative value;
 - (b) whether there is other evidence available to the accused that renders it substantially unnecessary to have regard to the relevant record relating to a child; and
 - (c) whether the public interest in disclosure or the constitutional and other rights of the accused person or both together outweigh the potential harm to the complainant.”.”.

—Róisín Shortall, Catherine Murphy.

87. In page 28, line 7, to delete “relevant record” and substitute “counselling record”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

SECTION 40

88. In page 28, between lines 21 and 22, to insert the following:

“PART 7*

CONSENT

“Choice of individual to consent

40. An individual consents if he or she agrees by choice and has the freedom and capacity to make that choice.”.

—Jim O’Callaghan, Róisín Shortall, Catherine Murphy.

[*The proposed new Part comprehends the inclusion of later amendments.]

89. In page 28, between lines 21 and 22, to insert the following:

“Non-consent to sexual activity

41. An individual is to be taken not to have consented to sexual activity where—

- (a) the defendant intentionally deceived the complainant as to the nature or purpose of sexual activity,
- (b) the defendant intentionally induced the complainant to consent to sexual activity by impersonating a person known personally to the complainant,
- (c) the complainant submits to sexual activity as a result of violence or threats of violence towards the complainant or towards a third party,
- (d) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act,
- (e) the complainant submits to sexual activity as a result of threats of serious harm or serious detriment of any type to the complainant or a third party,
- (f) the complainant was asleep or otherwise unconscious at the time of the relevant act,
- (g) the complainant was too affected by alcohol or drugs to freely agree to sexual activity,
- (h) agreement is expressed by a third party not the complainant,
- (i) the complainant having originally consented to engage in sexual activity expresses by words or conduct a lack of agreement to continue to engage in the activity,
- (j) the complainant submits to sexual activity because of the abuse of a position of authority or trust.”.

—Jim O’Callaghan, Róisín Shortall, Catherine Murphy.

90. In page 28, between lines 21 and 22, to insert the following:

“Amendment of section 2 of Act of 1981

42. Section 2 of the Act of 1981 is amended by substituting the following for subsection (2)—

- “(2) (a) It is hereby declared that if at a trial for a rape offence the jury is to consider whether the defendant believed that the complainant was consenting to sexual intercourse, this belief must be based on reasonable grounds.
- (b) Whether a belief in consent is reasonable is to be determined having regard to all the circumstances, including any steps the defendant took to ascertain whether the complainant was consenting.”.

[SECTION 40]

—Róisín Shortall, Catherine Murphy.

91. In page 28, line 36, to delete “*Act 2016.*” and substitute “*Act 2016.*”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

92. In page 28, after line 36, to insert the following:

“19. *Section 21 of the Criminal Law (Sexual Offences) Act 2016.*

20. *Section 22 of the Criminal Law (Sexual Offences) Act 2016.*”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

SECTION 41

93. In page 29, line 6, to delete “an offence” and substitute “that offence”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

94. In page 29, line 18, to delete “*subection (1)*,” and substitute “*subsection*”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

SECTION 48

95. In page 33, line 17, to delete “child).” and substitute “child);”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

96. In page 33, between lines 17 and 18, to insert the following:

“(g) *section 21* (sexual act with protected person);

(h) *section 22* (offence against relevant person by person in authority).”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

SECTION 49

97. In page 34, line 2, to delete “child).” and substitute “child);”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

98. In page 34, between lines 2 and 3, to insert the following:

“(g) *section 21* (sexual act with protected person);

(h) *section 22* (offence against relevant person by person in authority).”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

99. In page 34, between lines 2 and 3, to insert the following:

“Amendment of Criminal Procedure Act 2010

50. The Schedule to the Criminal Procedure Act 2010 is amended by the insertion of the following paragraph after paragraph 9:

[SECTION 49]

“9A. An offence under section 2 of the Punishment of Incest Act 1908 (incest by females of or over seventeen).”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

100. In page 34, between lines 2 and 3, to insert the following:

“Amendment of Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012

51. The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 is amended—

(a) in Schedule 1—

(i) by the insertion of the following paragraph after paragraph 12:

“12A. An offence under section 3A of the Criminal Law (Sexual Offences) Act 2006 (offence by person in authority).”.

(ii) by the substitution of the following paragraph for paragraph 13:

“13. An offence under any of the following provisions of the Child Trafficking and Pornography Act 1998—

- (a) section 3 (child trafficking and taking, etc., child for sexual exploitation),
- (b) section 4 (allowing child to be used for child pornography),
- (c) section 4A (organising etc. child prostitution or production of child pornography),
- (d) section 5A (participation of child in pornographic performance).”.

and

(iii) by the insertion of the following paragraph after paragraph 20:

“21. An offence under any of the following provisions of the *Criminal Law (Sexual Offences) Act 2016*—

- (a) *section 3* (obtaining, providing etc. a child for purpose of sexual exploitation),
- (b) *section 4* (invitation etc. to sexual touching),
- (c) *section 5* (sexual activity in presence of child),
- (d) *section 6* (causing child to watch sexual activity),
- (e) *section 7* (meeting child for purpose of sexual exploitation),
- (f) *section 8* (use of information and communication technology to facilitate sexual exploitation of child).”.

and

[SECTION 49]

(b) in Schedule 2, by the insertion of the following paragraph after paragraph 11:

“12. An offence under any of the following provisions of the *Criminal Law (Sexual Offences) Act 2016*—

(a) *section 21* (sexual act with protected person),

(b) *section 22* (offence against relevant person by person in authority).”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

101. In page 34, between lines 2 and 3, to insert the following:

“Amendment of Taxi Regulation Act 2013

52. The Taxi Regulation Act 2013 is amended—

(a) in section 30, by the substitution of the following definition for the definition of “sexual offence”:

“ ‘sexual offence’ means an offence referred to in paragraphs 5 to 11A of Part 1, or paragraphs 4 to 7A of Part 2 of the Schedule;”;

(b) in the Schedule—

(i) in Part 1, by the insertion of the following paragraph after paragraph 11:

“11A. An offence under *section 21* of the *Criminal Law (Sexual Offences) Act 2016*.”,

(ii) in Part 2—

(I) by the substitution of the following paragraph for paragraph 5:

“5. An offence under section 4, 4A, 5 or 5A of the Child Trafficking and Pornography Act 1998.”,

(II) by the substitution of the following paragraph for paragraph 7:

“7. An offence under section 3 or 3A of the Criminal Law (Sexual Offences) Act 2006.”,

and

(III) by the insertion of the following paragraph after paragraph 7:

“7A. An offence under *section 3, 4, 5, 6, 7 or 8* of the *Criminal Law (Sexual Offences) Act 2016*.”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

102. In page 34, between lines 2 and 3, to insert the following:

“Amendment of Children First Act 2015

53. The Children First Act 2015 is amended—

[SECTION 49]

- (a) in section 2, by the deletion of paragraphs (b) and (c) of the definition of “sexual abuse”;
- (b) in Schedule 3—
 - (i) by the insertion of the following paragraph after paragraph 9:

“9A. An offence under section 3A of the Criminal Law (Sexual Offences) Act 2006 (offence by person in authority).”;
 - (ii) in paragraph 10, by the substitution of the following for subparagraph (b):
 - “(b) section 4 (allowing child to be used for child pornography);
 - (c) section 4A (organising etc. child prostitution or production of child pornography);
 - (d) section 5A (participation of child in pornographic performance).”;

and

- (iii) by the insertion of the following paragraph:

“14. An offence under any of the following provisions of the *Criminal Law (Sexual Offences) Act 2016*:

 - (a) *section 4* (invitation etc. to sexual touching);
 - (b) *section 5* (sexual activity in presence of child);
 - (c) *section 6* (causing child to watch sexual activity);
 - (d) *section 8* (use of information and communication technology to facilitate sexual exploitation of child).”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

103.In page 34, between lines 2 and 3, to insert the following:

“Amendment of Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016

54. Schedule 1 to the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 is amended—

- (a) in Part 1, by the substitution of the following paragraph for paragraph 4:

“4. An offence referred to in—

 - (a) paragraph 8 of Part 2 (defilement of child under the age of 17 years), or
 - (b) paragraph 23, 24 or 25 of Part 2 in so far as it relates to an offence referred to in subparagraph (a),

committed prior to the commencement of *section 17* of the *Criminal Law (Sexual Offences) Act 2016* shall not be a sexual offence for the purposes of Part 2 of this Act if the person who is convicted of the

[SECTION 49]

offence was at the date of the commission of the offence, not more than 24 months older than the child with whom he or she engaged or attempted to engage in a sexual act within the meaning of section 1 of the Criminal Law (Sexual Offences) Act 2006.”.

(b) in Part 2—

(i) in paragraph 17—

(I) by the insertion of the following subparagraph after subparagraph (b):

“(ba) section 4A (organising etc. child prostitution or production of child pornography);”.

(II) by the insertion of the following subparagraph after subparagraph (c):

“(ca) section 5A (participation of child in pornographic performance);”.

and

(ii) by the insertion of the following paragraph after paragraph 22:

“22A. An offence under any of the following provisions of the *Criminal Law (Sexual Offences) Act 2016*:

- (a) *section 3* (obtaining, providing etc. a child for purpose of sexual exploitation),
- (b) *section 4* (invitation etc. to sexual touching),
- (c) *section 5* (sexual activity in presence of child),
- (d) *section 6* (causing child to watch sexual activity),
- (e) *section 7* (meeting child for purpose of sexual exploitation),
- (f) *section 8* (use of information and communication technology to facilitate sexual exploitation of child),
- (g) *section 21* (sexual act with protected person),
- (h) *section 22* (offence against relevant person by person in authority).”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

SECTION 50

104. In page 34, after line 9, to insert the following:

“Abuse of a position of dependence and trust

51. The Criminal Law (Sexual Offences) Act 1993 is amended by substituting the following

for section 5:

“Offence of abuse of position of dependence and trust

“5. (1) Any person who being in a position of dependence and trust—

- (a) takes advantage of his or her position, or
- (b) aids, abets, counsels or procures another person to take advantage of his or her position,

and—

- (i) induces or seduces a person to have sexual intercourse with him or her, or
- (ii) commits any other sexual offence involving a person,

shall be guilty of an offence of abuse of position of trust and shall be liable upon conviction on indictment to imprisonment for a term of not less than ten years.

(2) Where a person charged with an offence under this section can establish that, in respect of the sexual act which had been engaged in, no offence would have been committed had the consent of the victim been granted prior to the act, it shall in those circumstances be a defense for a person who is charged with an offence under this section to prove that—

- (a) the victim consented to the sexual act which had been engaged in, and
- (b) that such consent was granted freely and in the absence of duress or coercion.

(3) In this section—

(a) ‘position of dependence and trust’ includes, but is not limited to, a person who—

- (i) provides care,
- (ii) is responsible for welfare,
- (iii) occupies a position of authority,
- (iv) provides education, or
- (v) provides support services including therapy or counselling, to the victim;

(b) ‘sexual offence’ includes—

- (i) a sexual offence within the meaning of section 3 of the Sex Offenders Act 2001,
- (ii) an offence under section 2, 3 or 4 of the Criminal Law (Rape) (Amendment) Act 1990,

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- (iii) an offence under section 6 or 7 of the Criminal Law (Sexual Offences) Act 1993,
- (iv) an offence under section 4 or 5 of the Criminal Law (Human Trafficking) Act 2008, or
- (v) any other offence of a sexual nature contained in any other enactment and which has been so prescribed in regulations made by the Minister for Justice and Equality under this section.”.”.

—Jonathan O’Brien.

NEW SECTION

105.In page 34, after line 9, to insert the following:

“PART 9

CHANGING SEXIST AND ANTI-LGBTQ ATTITUDES

- 51.** The Minister for Justice and Equality is to report on measures that could be taken by the State to combat sexist and anti-LGBTQ attitudes in society, including: a review of sex education in schools and colleges; classes on consent, respect for women and LGBTQ people and the damaging effects and exploitative nature of the sex industry; and public awareness campaigns on consent and to discourage men from buying sex, within six months of the enactment of this Bill.”.

—Ruth Coppinger, Mick Barry, Paul Murphy.

106.In page 34, after line 9, to insert the following:

“PART 9

VICTIMS’ RIGHTS

- 51.** The Minister for Justice and Equality is to report to the Dáil on progress in developing a Victims’ Rights’ Bill and on additional measures necessary to fully support and protect victims’ rights, including guaranteed access to free counselling services and free, independent legal advice within three months of the enactment of this Bill.”.

—Ruth Coppinger, Mick Barry, Paul Murphy.

TITLE

107.In page 5, line 9, after “Act 1992;” to insert “to repeal certain provisions of the Criminal Law (Sexual Offences) Act 1993;”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

[TITLE]

108.In page 5, line 11, after “offences” to insert “relating to sexual acts with protected persons and”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.