



DÁIL ÉIREANN

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

CRIMINAL LAW (SEXUAL OFFENCES) BILL 2015

**LEASUITHE TUARASCÁLA
REPORT AMENDMENTS**

DÁIL ÉIREANN

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

CRIMINAL LAW (SEXUAL OFFENCES) BILL 2015 —REPORT

Leasuithe Amendments

1. In page 6, between lines 8 and 9, 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),
- (c) in any of the cases in *paragraph (b)* 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 drug(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,
- (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.

2. In page 13, line 17, after “education,” to insert “faith formation,”.

—Róisín Shortall, Catherine Murphy.

3. In page 17, to delete lines 7 to 34 and substitute the following:

“Sexual act with a 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.

4. In page 17, to delete lines 7 to 34 and substitute the following:

“Sexual act with a 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.

5. In page 17, to delete lines 7 to 34 and substitute 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

(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 defence for a person who is charged with an offence under this section to prove that—

(a) he 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,

(e) provides support services including therapy or counselling, to the victim, or

(f) is responsible for faith formation;

‘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.”.”.

—Clare Daly, Mick Wallace, Catherine Connolly.

6. In page 17, to delete lines 7 to 34 and substitute 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
 - (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 defence 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.”.”.

—Thomas Pringle.

7. In page 17, between lines 34 and 35, 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.

8. In page 18, to delete lines 26 to 30 and substitute the following:

“ “relevant person” means—

- (a) a person whose capacity to consent to a sexual act is called into question, or
- (b) a person who lacks capacity to consent to a sexual act,

and it states that a relevant person’s lack of capacity to consent for the purposes of this Act may arise because of—

- (i) a disability,
- (ii) ill health, or
- (iii) any other reason.”.

—Clare Daly, Mick Wallace, Catherine Connolly, Thomas Pringle.

9. In page 18, to delete lines 34 and 35.

—Bríd Smith, Gino Kenny, Richard Boyd Barrett.

10. In page 19, to delete lines 3 to 38, and in page 20, to delete lines 1 and 2.

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

11. In page 19, 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 19, 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 or imprisonment for a term not exceeding 10 years or both.””.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

13. In page 19, 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 an unlimited fine or to imprisonment for a term not exceeding 10 years or to both.””.

—Ruth Coppinger, Mick Barry, Paul Murphy.

14. In page 20, 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.

15. In page 20, 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.

16. In page 20, between lines 2 and 3, to insert the following:

“Amendment of Act of 1993

26. Section 11 of the Act of 1993 is amended—

(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 the brothel is used by that person to provide his or her own sexual services.”.”.

—Brid Smith, Gino Kenny, Richard Boyd Barrett.

17. In page 20, between lines 13 and 14, to insert the following:

“Report on operation of Act

27. (1) The Minister for Justice and Equality shall, not later than 3 years after the commencement of this Part, cause a report to be prepared on the operation of section 7A of the Act of 1993 and shall cause copies of the report to be laid before each House of the Oireachtas.

(2) The report shall include—

(a) information as to the number of arrests and convictions in respect of offences under section 7A of the Act of 1993 during the period from the commencement of that section, and

(b) an assessment of the impact of the operation of that section on the safety and well-being of persons who engage in sexual activity for payment.”.”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

Amendment to Amendment No. 17.

I. To delete the proposed amendment no. 17 and substitute the following:

“Review of operation of this Part

27. (1) 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.

(2) The report shall include—

- (a) information disaggregated by gender and nature of offences on the number of arrests and convictions in respect of offences under this Part, under sections 6, 7, 8, 9, 10, 11 of the Act of 1993 and under the Act of 2008 during the period from the commencement of this Part,
- (b) information on the nature and extent of prostitution connected to human trafficking, and
- (c) an assessment of the impact of the operation of this Part, sections 6, 7, 8, 9, 10, 11 of the Act of 1993 and the Act of 2008 on the safety and well-being of persons who engage in sexual activity for payment.”.

—Ruth Coppinger, Mick Barry, Paul Murphy.

18. In page 20, between lines 13 and 14, 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.”.

—Brid Smith, Gino Kenny, Richard Boyd Barrett.

19. In page 20, between lines 13 and 14, 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, review on the impact and the operation of this Part, and
- (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.

20. In page 20, between lines 13 and 14, 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 7A of the Act of 1993 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.

21. In page 20, between lines 13 and 14, 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 Act. 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.

22. In page 20, between lines 13 and 14, 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 Act.”.

—Ruth Coppinger, Mick Barry, Paul Murphy.

23. In page 20, between lines 13 and 14, to insert the following:

“27. The Minister shall—

- (a) not later than two years after this section comes into operation commence a review of the operation of this Act inviting submissions from relevant parties including—
 - (i) sex workers and their representative organisation,
 - (ii) frontline social workers engaged with harm reduction work relevant to the

sex industry, and

(iii) An Garda Síochana,

and

(b) 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 the conclusions drawn from the findings.”.

—Clare Daly, Mick Wallace, Catherine Connolly.

24. In page 20, between lines 13 and 14, to insert the following:

“27. The Minister shall—

(a) not later than two years after this section comes into operation commence a review of the operation of this Act inviting submissions from relevant parties including—

(i) sex workers and their representatives,

(ii) frontline social workers engaged with harm reduction work relevant to the sex industry,

(iii) An Garda Síochana,

and

(b) not later than 12 months after the commencement of the review, make a report to each House of the Oireachtas of the findings made on the review and the conclusions drawn from the findings.”.

—Thomas Pringle.

25. In page 20, to delete lines 25 to 32.

—Jonathan O'Brien.

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

“Amendment of section 1 of Act of 1992

33. Section 1(4) of the Act of 1992 is amended in paragraph (a) by the substitution of “(except sections 14A, 15, 16(1)(b), 18 and 19A)” for “(except sections 15, 16(1)(b) and 18)”.”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

27. In page 23, line 12, to delete “under the age of 18 years”.

—Róisín Shortall, Catherine Murphy.

28. In page 26, between lines 19 and 20, to insert the following:

“(5) Where no disclosure application has been made by the accused in respect of a counselling record under subsection (3) and the prosecutor believes that it is in the interests of justice that the record should be

disclosed, the prosecutor may make a disclosure application in writing to the court.

- (6) Where the prosecutor intends to make a disclosure application under subsection (5), he or she shall, not later than the beginning of such period as may be prescribed in rules of court, notify the person who has possession or control of the relevant record, the complainant, the accused and any other person to whom the prosecutor believes the counselling record relates of his or her intention to make the application.”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

Amendment to Amendment No. 28.

1. To insert the following new subsection after subsection (6):

“(7) The Minister for Justice and Equality shall, not later than two years after the commencement of this section, review its operation and report thereon to both Houses of the Oireachtas.”.

—Ruth Coppinger, Mick Barry, Paul Murphy.

29. In page 26, line 20, to delete “(5) The” and substitute “(7) The”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

30. In page 26, line 23, to delete “(6) The” and substitute “(8) The”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

31. In page 26, line 27, to delete “(7) The” and substitute “(9) The”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

32. In page 26, line 30, to delete “subsection (6)” and substitute “subsection (8)”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

33. In page 26, line 31, to delete “(8) In” and substitute “(10) In”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

34. In page 26, line 31, to delete “subsection (6)” and substitute “subsection (8)”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

35. In page 26, line 33, to delete “subsection (9)” and substitute “subsection (11)”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

36. In page 27, line 7, to delete “(9)(a) Subject” and substitute “(11)(a) Subject”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

37. In page 27, line 7, to delete “subsection (10)” and substitute “subsection (12)”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

38. In page 27, line 8, to delete “subsection (6)” and substitute “subsection (8)”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
39. In page 27, line 14, to delete “(10)(a) Where” and substitute “(12)(a) Where”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
40. In page 27, line 14, to delete “subsection (9)” and substitute “subsection (11)”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
41. In page 27, line 20, to delete “subsection (9)” and substitute “subsection (11)”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
42. In page 27, line 37, to delete “trial” and substitute “criminal proceedings for which the record has been disclosed”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
43. In page 27, line 38, to delete “(11) The” and substitute “(13) The”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
44. In page 27, line 40, to delete “subsection (10)” and substitute “subsection (12)”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
45. In page 28, line 1, to delete “(12)(a) Subject” and substitute “(14)(a) Subject”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
46. In page 28, line 7, to delete “(13) For” and substitute “(15) For”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
47. In page 28, line 7, to delete “subsection (6)” and substitute “subsection (8)”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
48. In page 28, line 11, to delete “(14) In” and substitute “(16) In”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
49. In page 28, line 16, to delete “(15) This” and substitute “(17) This”.
- An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.
50. In page 28, to delete lines 16 to 18 and substitute the following:
- “(15) (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 counselling 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 counselling record without leave of the court.

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

19B. (1) In this section ‘counselling record relating to a child’ means any record or part of a record, made by any means, by a competent person in connection with the provision of counselling to a person whom a sexual offence is alleged to have been committed who was, at the time of the offence, under the age of 18, which the prosecutor has had sight of, or about which the prosecutor has knowledge, and in relation to which there is a reasonable expectation of privacy.

(2) Without prejudice to the generality of section 19A, the content of a counselling 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 counselling record relating to a child, subject to the rules of the relevant court and in addition to the criteria set out in section 19A(8), 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.

51. In page 28, between lines 18 and 19, to insert the following:

“(16) 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.

52. In page 30, between lines 13 and 14, to insert the following:

“PART 8*

CONSENT

Choice of individual to consent

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

—Róisín Shortall, Catherine Murphy.

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

53. In page 30, between lines 13 and 14, to insert the following:

“Non-consent to sexual activity

44. 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.”.

—Róisín Shortall, Catherine Murphy.

54. In page 30, between lines 13 and 14, to insert the following:

“Amendment of section 2 of Act of 1981

44. 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.”.

—Róisín Shortall, Catherine Murphy.

55. In page 33, between lines 6 and 7, to insert the following:

“Amendment of Act of 1990

47. The Act of 1990 is amended by the substitution of the following section for section 9:

“9. (1) A person consents to a sexual act if he or she freely and voluntarily agrees to engage in that act.

(2) A person does not consent to a sexual act if—

(a) he or she permits the act to take place or submits to it because of the application of force to him or her or to some other person, or because of the threat of the application of force to him or her or to some other person, or because of a well-founded fear that force may be applied to him or her or to some other person,

(b) he or she is asleep or unconscious,

(c) he or she is incapable of consenting because of the effect of alcohol or some other drug,

(d) he or she is suffering from a physical disability which prevents him or her from communicating whether he or she agrees to the act,

(e) he or she is mistaken as to the nature and purpose of the act,

(f) he or she is mistaken as to the identity of any other person involved in the act,

(g) he or she is being unlawfully detained at the time at which the act takes place,

(h) the only expression or indication of consent or agreement to the act comes from somebody other than the person himself or herself.

- (3) This section does not limit the circumstances in which it may be established that a person did not consent to a sexual act.
- (4) Consent to a sexual act may be withdrawn at any time before the act begins, or in the case of a continuing act, while the act is taking place.
- (5) Any failure or omission on the part of a person to offer resistance to an act does not of itself constitute consent to that act.
- (6) In this section—
 - ‘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 this Act, or
 - (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 Principal Act.”.”.

—An Tánaiste agus Aire Dlí agus Cirt agus Comhionannais.

56. In page 34, to delete lines 1 to 22 and substitute the following:

“Amendment of Act of 2001

49. The Act of 2001 is amended—

(a) in section 29, by the insertion of the following subsection:

“(6) In addition to the conditions referred to in subsection (1)(b), a sentence involving post-release supervision imposed after the commencement of this subsection shall include a condition requiring the sex offender to attend all appointments with the probation officer whose supervision he or she is under and to comply with the lawful instructions of that officer.”,

(b) by the insertion of the following section after section 30:

“Power of court to amend conditions or include new conditions

30A. (1) In any case where a court has imposed on a sex offender, for an offence committed after the commencement of this section, a sentence involving post-release supervision, the court may, on the application of a probation officer not more than one month before the date of the offender’s intended release from prison or any time during the supervision period, amend any condition for securing that supervision referred to in section 29(1)(b) or additional condition referred to under section 30 or include one or more further conditions pursuant to either

of the aforesaid sections.

- (2) In any case where a court has imposed on a sex offender, for an offence committed before the commencement of this section, a sentence involving post-release supervision, the court may, on the application of a probation officer not more than one month before the date of the offender's intended release from prison or any time during the supervision period, amend any condition or include one or more further conditions pursuant to section 29(1)(b) where such conditions are necessary for securing that supervision.
- (3) Subsection (2) shall apply in respect of post-release supervision orders extant at the time of the commencement of this section.
- (4) Any condition referred to in subsection (1) or (2), whether an amended condition or a new condition, shall have the same effect as a condition included in a sentence involving post-release supervision.
- (5) In this section "the date of the sex offender's release from prison" means the date on which the sentence of imprisonment imposed on the sex offender expires, or as the case may be, his or her remission from the sentence begins."

(c) in the Schedule to the Act of 2001—

(i) in paragraph 16 by—

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

“(ba) section 4A (child prostitution and child pornography);”,

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

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

and

(ii) the insertion of the following paragraph after paragraph 17:

“17A. An offence under the following provisions of the *Criminal Law (Sexual Offences) Act 2017*:

(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.

57. In page 38, after line 12, to insert the following:

“Abuse of a position of dependence and trust

56. 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,
- (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.

58. In page 38, after line 12, to insert the following:

“PART 9

CHANGING SEXIST AND ANTI-LGBTQ ATTITUDES

- 56.** 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 Act.”.

—Ruth Coppinger, Mick Barry, Paul Murphy.

59. In page 38, after line 12, to insert the following:

“PART 9

VICTIMS’ RIGHTS

- 56.** 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 Act.”.

—Ruth Coppinger, Mick Barry, Paul Murphy.