



SEANAD ÉIREANN

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

CRIMINAL LAW (SEXUAL OFFENCES) BILL 2015

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

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

CRIMINAL LAW (SEXUAL OFFENCES) BILL 2015 —COMMITTEE STAGE

*Leasuithe
Amendments*

**Government amendments are denoted by an asterisk*

SECTION 2

1. In page 6, line 14, to delete “child pornography” and substitute “child sexual abuse material”.
—Senator Jillian van Turnhout.
2. In page 6, lines 15 and 16, to delete “child pornography” and substitute “child sexual abuse material”.
—Senator Jillian van Turnhout.

SECTION 3

- *3. In page 7, line 12, to delete “to imprisonment for a term not exceeding 10 years” and substitute “to a fine or imprisonment for a term not exceeding 10 years, or both”.

SECTION 8

- *4. In page 8, line 18, after “person” to insert “(including a child)”.

SECTION 9

5. In page 9, line 2, to delete “child pornography” and substitute “child sexual abuse material”.
—Senator Jillian van Turnhout.

SECTION 10

6. In page 9, line 18, to delete “child pornography” and substitute “child sexual abuse material”.
—Senator Jillian van Turnhout.
7. In page 9, line 20, to delete “child pornography” and substitute “child sexual abuse material”.
—Senator Jillian van Turnhout.

SECTION 11

8. In page 10, line 3, to delete “child pornography” and substitute “child sexual abuse material”.
—Senator Jillian van Turnhout.
9. In page 10, lines 4 and 5, to delete “child pornography” and substitute “child sexual abuse material”.
—Senator Jillian van Turnhout.

[SECTION 11]

10. In page 10, line 8, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*
11. In page 10, line 10, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*
12. In page 10, line 12, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*

SECTION 12

13. In page 10, line 20, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*
14. In page 10, line 22, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*
15. In page 10, line 23, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*
16. In page 10, line 24, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*
17. In page 10, line 30, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*
18. In page 10, line 33, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*
19. In page 11, line 10, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*

SECTION 14

20. In page 12, line 7, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*
21. In page 12, line 8, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*
22. In page 12, line 32, to delete “child pornography” and substitute “child sexual abuse material”.
—*Senator Jillian van Turnhout.*

SECTION 15

23. In page 13, to delete line 5 and substitute the following:
“(c) a current or former step-parent of the child (‘step-parent’ shall include, for this purpose, a spouse, a civil partner (as defined by section 3 of the Civil Partnership and Certain Rights and

[SECTION 15]

Obligations of Cohabitants Act 2010) or a cohabitant (as defined by section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) of the child’s parent),”.

—*Senator Jillian van Turnhout.*

SECTION 17

- *24. In page 15, line 4, to delete “Where a defendant is charged with” and substitute “Where, in proceedings for”.

SECTION 20

25. In page 16, between lines 21 and 22, to insert the following:

“20. (1) The Act of 1998 (as amended, in particular, by this Act) and any enactment (including but not limited to the Bail Act 1997 and the Sex Offenders Act 2001) that refers to the provisions of the Act of 1998 are amended by substituting the words “child sexual abuse material” for “child pornography” in each place those words appear such that any offence involving, related to or connected with child pornography shall henceforth be known as an offence of the same name save that the words “child sexual abuse material” shall replace the words “child pornography” in that name.

- (2) Notwithstanding *subsection (1)*, no objection may be made or raised in respect of the use of the words “child pornography” in respect of an offence relating to or involving child sexual abuse material.”.

—*Senator Jillian van Turnhout.*

- *26. In page 16, line 25, to delete “The Act of 1993 is amended by the insertion of the following section after section 7:” and substitute the following:

“The Act of 1993 is amended—

- (a) in subsection (2) of section 1, by the deletion of paragraph (a), and
(b) by the insertion of the following section after section 7:”.

27. In page 16, line 25, to delete “insertion of the following section after section 7” and substitute “deletion of section 7 and to insert the following section”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

28. In page 16, line 26, to delete “7A. (1) A person” and substitute “7. (1) A person”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

29. In page 17, between lines 3 and 4, to insert the following:

“(3) The Minister shall collect data to review the operation of this offence and report to the Houses of the Oireachtas after this offence has been in effect for two years. In particular the report shall set out—

- (a) information on the nature and extent of prostitution connected to human trafficking including numbers of arrests and convictions during the period covered by the report in connection with an offence under this section or section 2, 4 or 5 of the Criminal Law

[SECTION 20]

(Human Trafficking) Act 2008,

- (b) the extent to which, in the opinion of the Minister, this section has operated to reduce human trafficking, and
- (c) the impact of this section on the safety and well-being of prostitutes”.”.

—*Senator Mary M. White.*

Section opposed.

—*Senator David Norris.*

SECTION 21

*30. In page 17, between lines 3 and 4, to insert the following:

“Amendment of section 8 of the Criminal Justice (Public Order) Act 1994

21. Section 8 of the Criminal Justice (Public Order) Act 1994 is amended, in subsection (1), by the insertion of the following paragraph after paragraph (b):

“(c) is acting in a manner which consists of loitering in a public place for the purpose of offering his or her services as a prostitute.”.”.

31. In page 17, between lines 3 and 4, to insert the following:

“21. Section 9 of the Act of 1993 is amended—

- (a) in subparagraph (i) by the substitution of “€10,000” for “£1,000”,
- (b) in subparagraph (ii) by the substitution of “€50,000” for “£10,000”.”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

32. In page 17, between lines 3 and 4, to insert the following:

“Amendment of section 11 of the Act of 1993

21. Section 11 of the Act of 1993 is amended by—

- (a) the designation of the existing section as subsection (1), and
- (b) the insertion of the following subsection after subsection (1):

“(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, and
- (b) section 10(1) does not apply to that person.”.”.

—*Senator Mary M. White.*

Section opposed.

—*Senator David Norris.*

[SECTION 22]

SECTION 22

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

“22. The Act of 1908 is amended by the substitution of the following section for section 1 and 2:

“1. Any person of or above the age of 17 years who has carnal knowledge of a person, who to his or her knowledge is his or her parent, child, brother, sister, grandparent or grandchild shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment.”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 23

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 30

34. In page 22, between lines 5 and 6, to insert the following:

“(8) 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.”.

—*Senator Denis O'Donovan.*

SECTION 33

35. In page 22, line 27, after “in this section” to insert “and in section 19B”.

—*Senator Jillian van Turnhout.*

36. In page 22, 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 23, 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;”.

—*Senators Denis O'Donovan, David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

37. In page 23, to delete lines 18 to 40, and in page 24, to delete lines 1 to 3.

—*Senator Denis O'Donovan.*

[SECTION 33]

38. In page 23, to delete lines 23 and 24.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

39. In page 24, 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.”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

40. In page 24, 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”.

—*Senator Denis O'Donovan.*

41. In page 24, between lines 34 and 35, to insert the following:

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

—*Senators Denis O'Donovan, David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

42. In page 25, 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.”.

—*Senator Denis O'Donovan.*

43. In page 26, to delete lines 6 to 8 and substitute the following:

“(17) 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.

(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 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

[SECTION 33]

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.”.

—*Senator Jillian van Turnhout.*

SECTION 39

44. In page 27, after line 41, to insert the following:

“PART 7

CONSENT

Choice of Individual to Consent

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

—*Senator Denis O'Donovan.*

45. In page 27, after line 41, to insert the following:

“Non-Consent to sexual activity

39. 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;

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- (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.”.

—*Senator Denis O'Donovan.*

SECTION 43

46. In page 30, lines 33 and 34, to delete “child pornography” and substitute “child sexual abuse material”.

—*Senator Jillian van Turnhout.*

SECTION 44

47. In page 31, line 17, to delete “child pornography” and substitute “child sexual abuse material”.

—*Senator Jillian van Turnhout.*

NEW SECTION

48. In page 32, after line 4, to insert the following:

“PART 8

Abuse of a position of dependence and trust

46. 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

[NEW SECTION]

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.

Consent

- 5A.** (1) It is hereby declared that in relation to an offence that consists of or includes the doing of an act to a person without the consent of that person, the existence of consent in respect of that act shall be determined in accordance with this section.
- (2) In determining the existence of consent, an agreement between the parties to engage in the specific act must be established.

[NEW SECTION]

- (3) In determining the existence of an agreement between the parties to engage in the specific act—
 - (a) an examination of the communication between the parties immediately prior to the act shall be conducted, and
 - (b) each person must be shown at that time to have understood the nature of the act.
- (4) An understanding of the nature of the act shall only require the person to understand the physical nature of the act and shall not require the person to understand possible physiological consequences of the act.
- (5) (a) In determining whether a person has consented to engage in a sexual act, no higher standard of understanding shall apply to persons with disabilities than that which applies to persons without disabilities.
 - (b) In determining whether a person understood the nature of the act, the presence of a mental impairment shall not be a determinative factor.””.

—*Senator Katherine Zappone.*