



**SEANAD ÉIREANN**

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

**CRIMINAL LAW (SEXUAL OFFENCES) BILL 2015**

**LEASUITHE A RINNE AN DÁIL  
AMENDMENTS MADE BY THE DÁIL**

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# SEANAD ÉIREANN

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## AN BILLE UM AN DLÍ COIRIÚIL (CIONTA GNÉASACHA), 2015 *[BILLE SEANAID ARNA LEASÚ AG AN DÁIL]*

### CRIMINAL LAW (SEXUAL OFFENCES) BILL 2015 *[SEANAD BILL AMENDED BY THE DÁIL]*

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*Leasuithe a rinne an Dáil  
Amendments made by the Dáil*

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*[The page and line references in this list of amendments  
are to the text of the Bill as passed by Seanad Éireann.]*

#### SECTION 10

1. In page 9, lines 17 and 18, all words from and including “Section” in line 17 down to and including line 18 deleted and the following substituted:

“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”:

#### SECTION 11

2. In page 10, line 19, “14 years” deleted and “14 years or both” substituted.

#### SECTION 20

3. In page 16, between lines 25 and 26, the following inserted:

#### “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
- (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.”.

*[This amendment involved the deletion of section 20 of the Bill.]*

[SECTION 22]

SECTION 22

4. In page 17, between lines 28 and 29, the following inserted:

**“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;

“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.”.

[SECTION 24]

SECTION 24

5. In page 18, lines 27 to 30 deleted and the following substituted:

“(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.””.

SECTION 25

*Section deleted*

SECTION 27

6. In page 19, between lines 18 and 19, the following inserted:

**“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.”.

SECTION 28

*Section deleted*

SECTION 33

7. In page 21, between lines 27 and 28, the following inserted:

**“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)”.”.

SECTION 35

8. In page 23, line 1, “14 years” deleted and “18 years” substituted.

9. In page 23, lines 6 to 11 deleted and the following substituted:

“(2) Where—

(a) a person is accused of a sexual offence, and

[SECTION 35]

(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,

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.”.

SECTION 38

10. In page 24, line 36, “relevant record” deleted and “counselling record” substituted.
11. In page 25, line 4, “shall be construed in accordance with section 3 of” deleted and “means an offence referred to in the Schedule to” substituted.
12. In page 25, line 7, “relevant record” deleted and “counselling record” substituted.
13. In page 25, line 10, “relevant record” deleted and “counselling record” substituted.
14. In page 25, lines 16 and 17, “or to the competence of the complainant or a witness to testify” deleted.
15. In page 25, lines 18 to 40 deleted, and in page 26, lines 1 to 3 deleted.
16. In page 26, line 4, “(5) An” deleted and “(4) An” substituted.
17. In page 26, lines 6 and 7, “relevant record” deleted and “counselling record” substituted.
18. In page 26, line 7, “the complainant” deleted and “the complainant, the prosecutor” substituted.
19. In page 26, line 8, “relevant record” deleted and “counselling record” substituted.
20. In page 26, between lines 9 and 10, the following inserted:
  - “(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.”.

[SECTION 38]

21. In page 26, line 10, “(6) The” deleted and “(7) The” substituted.
22. In page 26, line 11, “relevant record” deleted and “counselling record” substituted.
23. In page 26, line 13, “(7) The” deleted and “(8) The” substituted.
24. In page 26, line 14, “relevant record” deleted and “counselling record” substituted.
25. In page 26, line 15, “relevant record” deleted and “counselling record” substituted.
26. In page 26, line 16, “relevant record” deleted and “counselling record” substituted.
27. In page 26, line 17, “(8) The” deleted and “(9) The” substituted.
28. In page 26, line 17, “relevant record” deleted and “counselling record” substituted.
29. In page 26, line 18, “relevant records” deleted and “counselling record” substituted.
30. In page 26, line 20, “subsection (7)” deleted and “subsection (8)” substituted.
31. In page 26, line 21, “(9) In” deleted and “(10) In” substituted.
32. In page 26, line 21, “subsection (7)” deleted and “subsection (8)” substituted.
33. In page 26, line 22, “relevant record” deleted and “counselling record” substituted.
34. In page 26, line 23, “subsection (10)” deleted and “subsection (11)” substituted.
35. In page 26, line 34, “process.” deleted and “process;” substituted.
36. In page 26, between lines 34 and 35, the following inserted:

“(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.”.
37. In page 26, lines 35 to 39 deleted, and in page 27, lines 1 to 4 deleted and the following substituted:

“(11) (a) Subject to paragraph (b) and subsection (12), after the hearing referred to in subsection (8), 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.”.

[SECTION 38]

38. In page 27, line 5, “(11) (a) Where” deleted and “(12) (a) Where” substituted.
39. In page 27, line 5, “subsection (10)” deleted and “subsection (11)” substituted.
40. In page 27, line 7, “relevant record” deleted and “counselling record” substituted.
41. In page 27, line 11, “subsection (10)” deleted and “subsection (11)” substituted.
42. In page 27, line 12, “relevant record” deleted and “counselling record” substituted.
43. In page 27, line 13, “relevant record” deleted and “counselling record” substituted.
44. In page 27, line 16, “relevant record” deleted and “counselling record” substituted.
45. In page 27, line 18, “relevant record” deleted and “counselling record” substituted.
46. In page 27, line 21, “relevant record” deleted and “counselling record” substituted.
47. In page 27, line 23, “relevant record” deleted and “counselling record” substituted.
48. In page 27, line 25, “relevant record” deleted and “counselling record” substituted.
49. In page 27, line 26, “record.” deleted and “record,” substituted.
50. In page 27, between lines 26 and 27, the following inserted:

“(viii) that the counselling record is used solely for the purposes of the criminal proceedings for which the record has been disclosed.”.

51. In page 27, lines 27 and 28 deleted.
52. In page 27, line 30, “relevant record” deleted and “counselling record” substituted.
53. In page 27, lines 30 and 31, “subsection (10)” deleted and “subsection (12)” substituted
54. In page 27, line 38, “subsection (7)” deleted and “subsection (8)” substituted.
55. In page 28, line 7, “relevant record” deleted and “counselling record” substituted.

SECTION 40

56. In page 28, line 36, “*Act 2016.*” deleted and “*Act 2017.*” substituted.
57. In page 28, after line 36, the following inserted:

“19. *Section 21 of the Criminal Law (Sexual Offences) Act 2017.*

20. *Section 22# of the Criminal Law (Sexual Offences) Act 2017.*”.

[# *This is a reference to the section inserted by amendment no .4.*]

SECTION 41

58. In page 29, line 6, “an offence” deleted and “that offence” substituted.
59. In page 29, line 18, “*subection (1),*” deleted and “*subsection*” substituted.

[SECTION 47]

SECTION 47

60. In page 32, between lines 31 and 32, the following inserted:

**“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

[SECTION 47]

(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.”.”.

SECTION 48

61. In page 33, line 17, “child).” deleted and “child);” substituted.

62. In page 33, between lines 17 and 18, the following inserted:

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

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

[# *This is a reference to the section inserted by amendment no .4.*]

SECTION 49

63. In page 33, lines 18 to 34 deleted and on page 35, lines 1 and 2 deleted and the following substituted:

**“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

[SECTION 49]

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).”

[# This is a reference to the section inserted by amendment no .4.]

[SECTION 50]

SECTION 50

64. In page 34, between lines 2 and 3, the following inserted:

**“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:

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

SECTION 51

65. In page 34, between lines 2 and 3, the following inserted:

**“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 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),

[SECTION 51]

- (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

- (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 2017*—

- (a) *section 21* (sexual act with protected person),
- (b) *section 22#* (offence against relevant person by person in authority).”.

[# *This is a reference to the section inserted by amendment no .4.*]

SECTION 52

66. In page 34, between lines 2 and 3, the following inserted:

**“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 2017*.”,

- (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*

[SECTION 52]

*Offences) Act 2017.”.”.*

SECTION 53

67. In page 34, between lines 2 and 3, the following inserted:

**“Amendment of Children First Act 2015**

53. The Children First Act 2015 is amended—

(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 2017*:

(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).”.

SECTION 54

68. In page 34, between lines 2 and 3, the following inserted:

**“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—

[SECTION 54]

- (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 2017* shall not be a sexual offence for the purposes of Part 2 of this Act if the person who is convicted of the 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 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).”.

[# This is a reference to the section inserted by amendment no .4.]

[TITLE]

TITLE

- 69.** In page 5, line 9, after “Act 1992;”, “to repeal certain provisions of the Criminal Law (Sexual Offences) Act 1993;” inserted.
- 70.** In page 5, line 11, after “offences”, “relating to sexual acts with protected persons and” inserted.