



An Bille um Chiontuithe Gnéasacha (Leasú), 2019
Sexual Offences (Amendment) Bill 2019

Meabhrán Mínitheach
Explanatory Memorandum



**AN BILLE UM CHIONTUITHE GNÉASACHA (LEASÚ), 2019
SEXUAL OFFENCES (AMENDMENT) BILL 2019**

EXPLANATORY MEMORANDUM

Background

The Bill will amend the Criminal Law (Rape) Act 1981 to enable complainants to be heard and legally represented in relation to applications adduce evidence about clothing worn by a complainant at the time of the alleged offence; and amend provisions in respect of previous sexual history evidence.

Provisions of the Bill

Section 1 deals with the interpretation of terms relevant to the Bill.

Section 2 (previous sexual history evidence) deletes section 4A(1) of the Act of 1981, inserted by the Sex Offenders Act 2001, and replaces it with measures that strengthen legal protections and legal representation of the complainant in the hearing of all evidence adduced in accordance with section 3 of the Act of 1981. Section 2 also proposes the deletion of section 4A(6) of the Act of 1981, and ensures that the new section 4A(1) applies to rape offences, offences under both the Criminal Law (Sexual Offences) Act 2006 and the Criminal Law (Sexual Offences) Act 1993; while retaining the application of the section to the offences of aggravated sexual assault, attempted aggravated sexual assault, aiding, abetting, counselling and procuring aggravated sexual assault or attempted aggravated sexual assault, incitement to aggravated sexual assault and conspiring to commit any of the foregoing offences.

Section 3 (clothing worn by complainants) amends the Act of 1981 (inserted by the Sexual Offenders Act 2001) by inserting a new section, section 4B. Within this new section:

- *subsection (1)* seeks to prevent the adducing of evidence in respect of the clothing worn by the complainant or cross-examination of the complainant in a trial regarding the clothing worn by the complainant at the time of the alleged offence without leave of the trial judge.
- *subsection (2)* having regard to subsection (1), provides for the judge to have discretion to allow the consideration, as evidence, the clothing worn by the complainant at the time of the alleged offence if they are satisfied that not to do so may impinge on the accused's right to a fair trial.
- *subsection (3)* relates to the scope of questioning where clothing has been deemed appropriate to be adduced as evidence; and the discretion of the judge therein.

- *subsection (4)* states that nothing in section 4B as inserted by this Bill authorises evidence to be adduced or a question to be asked which cannot be adduced or asked apart from this section.
- *subsection (5)* relates to preliminary examinations of a charge which is conducted by a justice of the District Court, and seeks to prevent the cross-examination of the complainant in a trial regarding the clothing worn by the complainant at the time of the alleged offence
- *subsection (6)* deals with a justice's refusal or granting of leave for both evidence and questions.

Section 3 also proposes the insertion of another new section, section 4C, in which:

- *subsection (1)* provides for legal representation at all stages for the complainant where an application has been made under 4B on behalf of the accused.
- *subsection (2)* means that any intention to make an application on behalf of the accused under section 4B shall be notified to the prosecution at the earliest opportunity.
- *subsection (3)* provides that the prosecution notify the complainant of any application under 4C(2), and their right to be heard in relation to that application.
- *subsection (4)* ensures the judge will not hear any application made under section 4B without being satisfied that 4C (2) & (3) have been complied with.
- *subsection (5)* allows the judge to postpone any hearing of an application where they believe 4C(3) has not been complied with in order to afford the complainant a reasonable opportunity to consider in conjunction with their legal representatives.
- *subsection (6)* ensures section 4C applies to rape offences, offences under both the Criminal Law (Sexual Offences) Act 2006 and the Criminal Law (Sexual Offences) Act 1993; while retaining the application of the section to the offences of aggravated sexual assault, attempted aggravated sexual assault, aiding, abetting, counselling and procuring aggravated sexual assault or attempted aggravated sexual assault, incitement to aggravated sexual assault and conspiring to commit any of the foregoing offences.
- *subsection (7)* ensures the Minister shall introduce regulations to provide for time limits for the giving of notice intention to apply to the trial judge under section 4C, including the criteria to be considered by a trial judge upon a late application for leave to have such evidence admitted.

Section 4 contains standard provisions relating to the short title and commencement of this Bill upon passing through the Houses of the Oireachtas.

*Donnchadh Ó Laoghaire, TD, Martin Kenny, TD,
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