

Opening Statement to the Joint Oireachtas Committee on Justice on the General Scheme of the Criminal Justice (Legal Aid) Bill October 2023

Safe Ireland would like to thank the Committee for this opportunity to address it on the General Scheme of the Criminal Justice (Legal Aid) Bill 2023.

Key Points

1. Extension of the right to legal advice to victims of domestic violence-related offences generally:

- This is a good opportunity to extend the right to legal advice to victims of specified domestic violence-related offences. Victims of domestic violence often cannot afford to pay a private solicitor and cannot always access legal advice from a pro-bono source. Throughout the lengthy criminal justice process the victim needs to be able to get answers to her legal concerns as they arise. This need is particularly acute for victims of domestic violence related offences, where issues such as witness intimidation and retaliation may well arise and need to be addressed swiftly and effectively.
 - In practical terms, there is no doubt that the creation of a list of domestic violence-related offences does pose a drafting challenge. However, we suggest that this challenge might be addressed by adopting and adapting the formula used in Section 40 of the Domestic Violence Act 2018¹ to define a “relevant offence”, for instance using the wording set out below at Appendix 2.
2. **Additional inclusions:** In Safe Ireland’s view, there are a number of recently created offences which are sexual in nature and are capable of causing intense alarm, distress and harm. The behaviours criminalised by these offences are all common in the context of a more widespread pattern of domestic violence and abuse of an intimate partner. They are:
- Offences contrary to Sections 2 and 3 of the Harassment, Harmful Communications and Related Offences Act 2020² (distributing, publishing and recording intimate images without consent); and
 - Offences contrary to Section 45 Criminal Law (Sexual Offences) Act 2017³ (exposure, offensive conduct of a sexual nature – especially Section 45 (3)), which might be used to cover a wide range of unwanted sexual behaviours, e.g. “upskirting” or “downblousing”.
3. **Clarity of Drafting:** The proposed new Section 26 (3A) of the Civil Legal Aid Act 1995 as amended should spell out clearly and unambiguously that the right to legal advice is not subject to a means test within the proposed new subsection (3A) itself, without any need to look at other parts of Section 26.

¹ Accessible online in consolidated form via this web-link: [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie)

² Accessible online in original form via this web-link: [Harassment, Harmful Communications and Related Offences Act 2020 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie)

³ Accessible online in consolidated form via this web-link: [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie)

- Head 47 as drafted does convey that legal advice is available regardless of whether a formal complaint is ever made and at any stage of the criminal justice process. Safe Ireland suggests it might be clearer to separate out these two aspects, for instance by stating first that legal advice is available to victims of the listed offences at any time after the offence, and then by qualifying that statement by saying that this right obtains even if there is no criminal investigation or prosecution in being at the time the advice is sought.

4. Right of the Accused Person to Legal Representation in Criminal Justice Proceedings:

- Personal cross-examinations of victims of domestic violence related offences and other relevant offences should never be allowed to proceed simply because the defendant has failed to comply with any administrative requirements in respect of the grant of criminal legal aid to him.

We thank the Committee for their kind attention and look forward to answering any questions.

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Appendix 1 : Text of Head 47 of the General Scheme of the Criminal Justice (Legal Aid) Bill 2023

Amendment of section 26 (3A) of the Act of 1995 as drafted

“To provide that :

- (a) Section 26 (3A) of the Act of 1995, inserted by the Civil Law (Miscellaneous Provisions) Act 2008 is substituted by the following

“3A Legal advice under this subsection may be provided to a victim of the following offences at any time before, subsequent to , or whether or not a complaint or a decision to prosecute in the matter is made –

- (a) the offence of rape under the common law
- (b) the offence of rape under section 2 of the Criminal Law (Rape) Act 1981
- (c) the offence of aggravated sexual assault under section 3 of the Criminal Law (Rape) (Amendment) Act 1990
- (d) the offence of rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990

(e) an offence under section 6 (inserted by section 2 of the Criminal Law (Sexual Offences) (Amendment) Act 2007 of the Criminal Law (Sexual Offences) Act 1993

(f) an offence under the Criminal Law (Sexual Offences) Act 2006

(g) an offence of incest under section 1 or 2 of the Punishment of Incest Act 1908

(h) the offence of sexual assault under section 2 of the Criminal Law (Rape) (Amendment) Act 1990

(i) the offences created by sections 3 to 8 of the Criminal Law (Sexual Offence) Act 2017 ,

(j) section 18 of the Criminal Law (Sexual Offence) Act 2017

(k) sections 21 and 22 of the Criminal Law (Sexual Offence) Act 2017 ,

(b). Section 26 of the Act of 1995, as amended, is amended by the insertion of the following subsection

3B. Nothing in this Act shall operate in such a manner as to prevent the Board providing advice

(a) where the victim is a child, to a parent or guardian or an adult relative of that child [including a suitable adult within the meaning of the Sexual Offences Act 2001] or

(b) where the victim is a person (with a mental illness or intellectual disability) that lacks capacity within the meaning of section 3 of the Assisted Decision Making (Capacity) Act 2015 or is a relevant person for the purposes of the Act of 2015, to a decision making assistant or co-decision maker within the meaning of that Act in respect of the matters set out in subsection (3) that the Board would otherwise provide under this Act to a person.

(c) advice under this section shall not be provided to a person who is under suspicion or investigation in any respect for committing the offence or a related offence against the victim”.

Appendix 2: Our proposed changes to the existing wording of extracted text from Section 40 are in pink type for easy reference:

[insert the text below after Head 47 (a) above, to continue the list of offences covered after [Section 26] 3A, (a) to (k):

- (l) an offence under sections 2 to 15 of the Non-Fatal Offences against the Person Act 1997⁴;
- (m) an offence under section 2 or 3 of the Harassment, Harmful Communications and Related Offences Act 2020,
- (n) any offence which involves violence or a threat of violence to a person **other than one referred to in paragraphs (a) to (k) above;**
- (o) any offence contrary to Section 45 of the Criminal Law (Sexual Offences) Act 2017;
- (p) any offence contrary to Sections 33, 38 or 39 of the Domestic Violence Act 2018; and
- (q) any offence contrary to Sections 21, 22, 23 or 44 of the Criminal Justice (Miscellaneous Provisions) Act 2023⁵

⁴ Accessible online in consolidated form via this web-link: [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie)

⁵ Relevant sections are not yet in force as at 29/08/23 but the text is accessible online in its original form at: [Criminal Justice \(Miscellaneous Provisions\) Act 2023 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie)