Number 2 *of* 2017

CRIMINAL LAW (SEXUAL OFFENCES) ACT 2017

REVISED

Updated to 31 August 2024

This Revised Act is an administrative consolidation of the *Criminal Law (Sexual Offences) Act 2017*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Criminal Justice (Amendment) Act 2024* (31/2024), enacted 4 October 2024, and all statutory instruments up to and including the *Employment Permits Regulations 2024* (S.I. No. 444 of 2024), made 28 August 2024, were considered in the preparation of this Revised Act.

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CRIMINAL LAW (SEXUAL OFFENCES) ACT 2017

REVISED

Updated to 31 August 2024

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Child Trafficking and Pornography Act 1998 (No. 22)
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Criminal Law (Incest Proceedings) Act 1995 (No. 12)
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Criminal Law (Sexual Offences) Act 1993 (No. 20)
Criminal Law (Sexual Offences) Act 2006 (No. 15)
Criminal Law Amendment Act 1885 (48 & 49 Vict., c. 69)

Criminal Procedure Act 2010 (No. 27)
Punishment of Incest Act 1908 (8 Edw., 7 c. 45)
Sex Offenders Act 2001 (No. 18)
Sexual Offences (Jurisdiction) Act 1996 (No. 38)
Taxi Regulation Act 2013 (No. 37)
Video Recordings Acts 1989 and 1992

Number 2 *of* 2017

CRIMINAL LAW (SEXUAL OFFENCES) ACT 2017

REVISED

Updated to 3 May 2023

An Act to give effect to Directive No. 2011/93/EU of the European Parliament and of the Council of 13 December 2011[1] on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, for that purpose to amend certain enactments; to amend the Punishment of Incest Act 1908; to amend the Criminal Evidence Act 1992; to repeal certain provisions of the Criminal Law (Sexual Offences) Act 1993; to repeal the Criminal Law (Incest Proceedings) Act 1995; to amend the Criminal Law (Sexual Offences) Act 2006; to provide for offences relating to sexual acts with protected persons and relating to payment for sexual activity with prostitutes, offensive conduct of a sexual nature and harassment of victims of sexual offences; and to provide for related matters.

[22*nd February*, 2017]

Be it enacted by the Oireachtas as follows:

PART 1

Preliminary and General

Short title and commencement

1. (1) This Act may be cited as the Criminal Law (Sexual Offences) Act 2017.

(2) This Act shall come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders whether generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation

2. In this Act—

"Act of 1908" means the Punishment of Incest Act 1908;

"Act of 1981" means the Criminal Law (Rape) Act 1981;

"Act of 1990" means the Criminal Law (Rape) (Amendment) Act 1990;

"Act of 1992" means the Criminal Evidence Act 1992;

"Act of 1993" means the Criminal Law (Sexual Offences) Act 1993;

[1] OJ No. L 335, 17.12.2011, p.1.

"Act of 1995" means the Criminal Law (Incest Proceedings) Act 1995;

"Act of 1998" means the Child Trafficking and Pornography Act 1998;

"Act of 2001" means the Sex Offenders Act 2001;

"Act of 2006" means the Criminal Law (Sexual Offences) Act 2006;

"Act of 2008" means the Criminal Law (Human Trafficking) Act 2008;

"image" means any photographic, film or video representation or any other form of visual representation, and any accompanying sound or any documents;

"sexual activity" means any activity where a reasonable person would consider that—

(a) whatever its circumstances or the purpose of any person in relation to it, the activity is because of its nature sexual, or

(b) because of its nature the activity may be sexual and because of its circumstances or the purposes of any person in relation to it (or both) the activity is sexual;

"sexual exploitation" means, in relation to a child—

(a) inviting, inducing or coercing the child to engage in prostitution or the production of child pornography,

(b) the prostitution of the child or the use of the child for the production of child pornography,

(c) the commission of an offence specified in the Schedule to the Act of 2001 against the child, causing another person to commit such an offence against the child, or inviting, inducing or coercing the child to commit such an offence against another person,

(d) inducing or coercing the child to engage or participate in any sexual, indecent or obscene act,

(e) inviting the child to engage or participate in any sexual, indecent or obscene act which, if done, would involve the commission of an offence against the child, or

(f) inviting, inducing or coercing the child to observe any sexual, indecent or obscene act, for the purpose of corrupting or depraving the child.

PART 2

Sexual Exploitation of Children

Obtaining, providing etc. a child for purpose of sexual exploitation

3. (1) A person who for the purposes of the sexual exploitation of a child—

(a) pays, gives, offers or promises to pay or give a child or another person money or any other form of remuneration or consideration,

(b) provides or offers or offers or promises to provide, a child to another person, or

(c) obtains a child for himself or herself or for another person,

shall be guilty of an offence.

(2) A person (other than the child) who accepts or agrees to accept money or any other form of remuneration or consideration in the circumstances referred to in *subsection (1)(a)* or accepts or agrees to accept a child in the circumstances referred to in *subsection (1)(b)* or *(1)(c)* shall be guilty of an offence.

(3) A person who causes an offence under *subsection (1)* or *(2)* to be committed shall be guilty of an offence.

(4) A person who attempts to commit an offence under *subsection (1)*, *(2)* or *(3)* shall be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a class A fine, or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 10 years, or both.

(6) In this section "child" means a person under the age of 18 years.

Invitation etc. to sexual touching

4. (1) A person who, for sexual purposes, invites, induces, counsels or incites a child to touch, with a part of the body or with an object, the body of any person, including the body of the person who so invites, induces, counsels or incites and the body of the child, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(2) In this section "child" means a person under the age of 15 years.

Sexual activity in presence of child

5. (1) A person who, for the purpose of obtaining sexual gratification from the presence of a child or corrupting or depraving a child, intentionally engages in sexual activity whether or not with another person—

(a) when the child is present or in a place from which the person can be observed by the child, and

(b) knowing or believing that the child is aware, or intending that the child should be aware, that the person is engaging in sexual activity,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

(2) In this section "child" means a person under the age of 17 years.

Causing child to watch sexual activity

6. (1) A person who, for the purpose of obtaining sexual gratification or corrupting or depraving a child, intentionally causes a child—

(a) to watch another person engaging in sexual activity, or

(b) to look at an image of that person or another person engaging in sexual activity,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

(2) In this section "child" means a person under the age of 17 years.

Meeting child for purpose of sexual exploitation

7. (1) A person who—

(a) intentionally meets, or travels with the intention of meeting a child or makes arrangements with the intention of meeting a child or for a child to travel, whether or not from within the State, having communicated by any means with that child on at least one previous occasion, and

(b) does so for the purpose of doing anything that would constitute sexual exploitation of the child,

shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(3) In this section "child" means a person under the age of 17 years.

Use of information and communication technology to facilitate sexual exploitation of child

8. (1) A person who by means of information and communication technology communicates with another person (including a child) for the purpose of facilitating the sexual exploitation of a child by that person or any other person shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(2) A person who by means of information and communication technology sends sexually explicit material to a child shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

(3) No proceedings for an offence under this section against a child under the age of 17 years shall be brought except by, or with the consent of, the Director of Public Prosecutions.

(4) In this section "sexually explicit material" means any indecent or obscene images or words.

(5) In this section "child" means a person under the age of 17 years.

Amendment of section 2 of Act of 1998

9. Section 2(1) of the Act of 1998 is amended—

(a) by the substitution of the following definition for the definition of "child":

" 'child' means a person under the age of 18 years;",

and

(b) by the substitution of the following paragraph for *paragraph (a)* of the definition of "child pornography":

"(a) any visual representation—

(i) that shows, or in the case of a document relates to, a person who is or is depicted as being a child and who is engaged in or is depicted as being engaged in real or simulated sexually explicit activity,

(ii) that shows, or in the case of a document relates to, a person who is or is depicted as being a child and who is or is depicted as witnessing any such activity by any person or persons, or

(iii) that shows, for a sexual purpose, the genital or anal region of a child or of a person depicted as being a child,".

Amendment of section 3 of Act of 1998

10. 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":

" 'sexual exploitation' means, in relation to a child—

(a) inviting, inducing or coercing the child to engage in prostitution or the production of child pornography,

(b) the prostitution of the child or the use of the child for the production of child pornography,

(c) the commission of an offence specified in the Schedule to the Sex Offenders Act 2001 against the child, causing another person to commit such an offence against the child, or inviting, inducing or coercing the child to commit such an offence against another person,

(d) inducing or coercing the child to engage or participate in any sexual, indecent or obscene act,

(e) inviting the child to engage or participate in any sexual, indecent or obscene act which, if done, would involve the commission of an offence against the child, or

(f) inviting, inducing or coercing the child to observe any sexual, indecent or obscene act, for the purpose of corrupting or depraving the child,

and 'sexually exploits' shall be construed accordingly;".

Organising etc. child prostitution or production of child pornography

11. The Act of 1998 is amended by the insertion of the following section after section 4:

"**4A.** (1) A person who—

(a) controls or directs the activities of a child for the purposes of the prostitution of the child or the use of the child for the production of child pornography,

(b) organises the prostitution of children or the production of child pornography by controlling or directing the activities of more than one child for those purposes,

(c) compels, coerces or recruits a child to engage or participate in child prostitution or the production of child pornography,

(d) knowingly gains from the prostitution of a child or the production of child pornography, or

(e) incites or causes a child to become involved in child prostitution or production of child pornography,

shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 14 years or both.".

Producing, distributing, etc. child pornography

12. The Act of 1998 is amended by the substitution of the following section for section 5:

"**5.** (1) Subject to subsections (3) and (4) of section 6, a person who—

(a) knowingly produces any child pornography,

(b) knowingly distributes, transmits, disseminates, prints or publishes any child pornography,

(c) knowingly imports, exports, sells or shows any child pornography,

(d) knowingly supplies or makes available any child pornography to another person,

(e) knowingly publishes, distributes, transmits or disseminates any advertisement likely to be understood as conveying that the advertiser or any other person produces, distributes, transmits, disseminates, prints, publishes, imports, exports, sells, shows, supplies or makes available any child pornography,

(f) encourages, knowingly causes or facilitates any activity mentioned in paragraphs (a) to (e), or

(g) knowingly possesses any child pornography for the purpose of distributing, transmitting, disseminating, publishing, exporting, selling or showing it,

shall be guilty of an offence and shall be liable—

(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 14 years or both.

(2) A person who attempts to commit an offence under subsection (1) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years or both.

(3) In this section 'distributes', 'transmits' or 'disseminates', in relation to child pornography, includes parting with possession of it to, or exposing or offering it for acquisition by, another person, and the references to 'distributing', 'transmitting' and 'disseminating' in that context shall be construed accordingly.".

Participation of child in pornographic performance

13. The Act of 1998 is amended by the insertion of the following section after section 5:

"**5A.** (1) A person who—

(a) causes, incites, compels or coerces, or

(b) recruits, invites or induces,

a child to participate in a pornographic performance, or gains from such participation, shall be guilty of an offence.

(2) A person who attempts to commit an offence under subsection (1) shall be guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

(4) A person who knowingly attends a pornographic performance shall be guilty of an offence.

(5) A person guilty of an offence under subsection (4) shall be liable—

(a) on summary conviction, to a class A fine, or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 10 years, or both.

(6) In this section—

'attends a pornographic performance' includes viewing the performance by means of information and communication technology,

'pornographic performance' means a live exhibition aimed at an audience, including by means of information and communication technology, of—

(a) a child engaged in real or simulated sexually explicit activity, or

(b) the sexual organs of a child for primarily sexual purposes.".

Possession of child pornography

14. The Act of 1998 is amended by the substitution of the following for section 6:

"**6.** (1) Without prejudice to section 5(1)(g) and subject to subsections (3) and (4), any person who—

(a) knowingly acquires or possesses child pornography, or

(b) knowingly obtains access to child pornography by means of information and communication technology,

shall be guilty of an offence and shall be liable—

(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 5 years or both.

(2) Any person who attempts to commit an offence under subsection (1) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(3) Subsections (1) and (2) of section 5 and subsections (1) and (2) shall not apply to a person who possesses or obtains access to child pornography—

(a) in the exercise of functions under the Censorship of Films Acts 1923 to 1992, the Censorship of Publications Acts 1929 to 1967, or the Video Recordings Acts 1989 and 1992, or

(b) for the purpose of the prevention, investigation or prosecution of offences under this Act.

(4) Without prejudice to subsection (3), it shall be a defence in a prosecution for an offence under section 5(1) or (2) or this section for the accused to prove that he or she possessed or obtained access to the child pornography concerned for the purposes of *bona fide* research.".

Amendment of section 1 of Act of 2006

15. Section 1 of the Act of 2006 is amended—

(a) by the substitution of the following definition for the definition of "person in authority":

" 'person in authority', in relation to a child against whom an offence is alleged to have been committed, means—

(a) a parent, grandparent, uncle or aunt whether of the whole blood, of the half blood or by affinity of the child,

(b) a current or former guardian or foster parent of the child,

(c) a current or former step-parent of the child,

(d) a current or former partner of a parent of the child who lives or has lived in an enduring family relationship with the parent,

(e) any person who is for the time being, or has been, *in loco parentis* to the child, or

(f) any other person who is or has been responsible for the education, supervision, training, care or welfare of the child;",

and

(b) by the insertion of the following definition:

" 'foster parent' means a person other than a relative of a child who is caring for the child on behalf of the Child and Family Agency in accordance with regulations made under the Child Care Act 1991;".

Sexual act with child under 15 years of age

16. The Act of 2006 is amended by the substitution of the following section for section 2:

"**2.** (1) A person who engages in a sexual act with a child who is under the age of 15 years shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment.

(2) A person who attempts to engage in a sexual act with a child who is under the age of 15 years shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment.

(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 child against whom the offence is alleged to have been committed had attained the age of 15 years.

(4) Where, in proceedings for an offence under this section, it falls to the court to consider whether the defendant was reasonably mistaken that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 15 years, the court shall consider whether, in all the circumstances of the case, a reasonable person would have concluded that the child had attained the said age.

(5) The standard of proof required to prove that the defendant was reasonably mistaken that the child had attained the age of 15 years shall be that applicable to civil proceedings.

(6) It shall not be a defence to proceedings for an offence under this section for the defendant to prove that the child against whom the offence is alleged to have been committed consented to the sexual act of which the offence consisted.".

Sexual act with child under 17 years of age

17. The Act of 2006 is amended by the substitution of the following section for section 3:

"**3.** (1) A person who engages in a sexual act with a child who is under the age of 17 years shall be guilty of an offence and shall be liable on conviction on indictment—

(a) to imprisonment for a term not exceeding 7 years, or

(b) if he or she is a person in authority, to imprisonment for a term not exceeding 15 years.

(2) A person who attempts to engage in a sexual act with a child who is under the age of 17 years shall be guilty of an offence and shall be liable on conviction on indictment—

(a) to imprisonment for a term not exceeding 7 years, or

(b) if he or she is a person in authority, to imprisonment for a term not exceeding 15 years.

(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 child against whom the offence is alleged to have been committed had attained the age of 17 years.

(4) Where, in proceedings for an offence under this section, it falls to the court to consider whether the defendant was reasonably mistaken that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 17 years, the court shall consider whether, in all the circumstances of the case, a reasonable person would have concluded that the child had attained the said age.

(5) The standard of proof required to prove that the defendant was reasonably mistaken that the child had attained the age of 17 years shall be that applicable to civil proceedings.

(6) Subject to subsection (8), it shall not be a defence to proceedings for an offence under this section for the defendant to prove that the child against whom the offence is alleged to have been committed consented to the sexual act of which the offence consisted.

(7) No proceedings for an offence under this section against a child under the age of 17 years shall be brought except by, or with the consent of, the Director of Public Prosecutions.

(8) Where, in proceedings for an offence under this section against a child who at the time of the alleged commission of the offence had attained the age of 15 years but was under the age of 17 years, it shall be a defence that the child consented to the sexual act of which the offence consisted where the defendant—

(a) is younger or less than 2 years older than the child,

(b) was not, at the time of the alleged commission of the offence, a person in authority in respect of the child, and

(c) was not, at the time of the alleged commission of the offence, in a relationship with the child that was intimidatory or exploitative of the child.".

Offence by person in authority

18. The Act of 2006 is amended by the insertion of the following section after section 3:

"**3A.** (1) A person in authority who engages in a sexual act with a child who has attained the age of 17 years but is under the age of 18 years shall be guilty of an offence.

(2) A person who attempts to commit an offence under subsection (1) 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 child against whom the offence is alleged to have been committed had attained the age of 18 years.

(4) Where, in proceedings for an offence under this section, it falls to the court to consider whether the defendant was reasonably mistaken that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 18 years, the court shall consider whether, in all the circumstances of the case, a reasonable person would have concluded that the child had attained that age.

(5) The standard of proof required to prove that the defendant was reasonably mistaken that the child had attained the age of 18 years shall be that applicable to civil proceedings.

(6) It shall be a defence to proceedings for an offence under this section for the defendant to prove that he or she has reasonable grounds for believing that he or she was not a person in authority in relation to the child against whom the offence is alleged to have been committed.

(7) It shall not be a defence to proceedings for an offence under this section for the defendant to prove that the child against whom the offence is alleged to have been committed consented to the sexual act of which the offence consisted.

(8) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years.".

Amendment of section 8 of Act of 1990

19. Section 8 of the Act of 1990 is amended—

(a) in subsection (2), by—

(i) the substitution of "section 2, 3 or 3A of the Criminal Law (Sexual Offences) Act 2006" for "section 2 or 3 of the Criminal Law (Sexual Offences) Act 2006", and

(ii) the substitution of "the said section 3 or section 2, 3 or 3A of the Criminal Law (Sexual Offences) Act 2006" for the "the said section 1, 2 or 3",

and

(b) in subsection (5), by—

(i) the substitution of "section 3 or 3A of the Criminal Law (Sexual Offences) Act 2006" for "section 3 of the Criminal Law (Sexual Offences) Act 2006", and

(ii) the substitution of "the said section 3 or section 3 or 3A of the Criminal Law (Sexual Offences) Act 2006," for "the said section 3 or section 3 of the Criminal Law (Sexual Offences) Act 2006,".

PART 3

Sexual Act with Protected Persons

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.

Sexual act with protected person

21. (1) A person who engages in a sexual act with a protected person knowing that that person is a protected person or being reckless as to whether that person is a protected person shall be guilty of an offence.

(2) A person who invites, induces, counsels or incites a protected person to engage in a sexual act knowing that that person is a protected person or being reckless as to whether that person is a protected 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 protected 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, 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 "protected person".

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) F1**[**...**]**

(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.

Prosecutions

23. No proceedings for an offence under this Part shall be brought except by, or with the consent of, the Director of Public Prosecutions.

Repeals

24. Sections 5 and 6(2) of the Act of 1993 are repealed.

PART 4

Purchase of Sexual Services

Amendment of Act of 1993

25. The Act of 1993 is amended—

(a) in subsection (2) of section 1, by the deletion of paragraph (a),

(b) by the insertion of the following section after section 7:

"**Payment etc. for sexual activity with prostitute**

7A. (1) A person who pays, gives, offers or promises to pay or give a person (including a prostitute) money or any other form of remuneration or consideration for the purpose of engaging in sexual activity with a prostitute shall be guilty of an offence and shall be liable on summary conviction—

(a) in the case of a first offence, to a class E fine, and

(b) in the case of a second or subsequent offence, to a class D fine.

(2) In this section 'sexual activity' means any activity where a reasonable person would consider that—

(a) whatever its circumstances or the purpose of any person in relation to it, the activity is because of its nature sexual, or

(b) because of its nature the activity may be sexual and because of its circumstances or the purposes of any person in relation to it (or both) the activity is sexual.",

(c) in section 8, by the substitution of the following subsection for subsection (2):

"(2) A person who without lawful authority or reasonable excuse fails to comply with a direction under subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a class D fine or imprisonment for a term not exceeding 6 months or both.",

(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.",

(e) in subsection (1) of section 10, by the substitution of "to a class A fine or imprisonment for a term not exceeding 12 months or both" for "to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both",

(f) in section 11, by the substitution of the following subparagraph for subparagraph (i):

"(i) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both, or",

and

(g) in subsection (1) of section 13, by the insertion of "7A," after "7,".

Amendment of section 5 of Act of 2008

26. Section 5 of the Act of 2008 is amended by—

(a) the insertion of the following subsection:

"(2A) A person who pays, gives, offers or promises to pay or give a person (including the trafficked person) money or any other form of remuneration or consideration for the purposes of the prostitution of a trafficked person shall be guilty of an offence.",

and

(b) in subsection (5), by the substitution of "sections 7 and 7A of the Act of 1993 in so far as an offence under those sections" for "section 7 of the Act of 1993 in so far as an offence under that section".

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.

PART 5

Incest

Incest by males

28. The Act of 1908 is amended by the substitution of the following section for section 1:

"1. (1) Any male person who has carnal knowledge of a female person, who is to his knowledge his grand-daughter, daughter, sister or mother, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment.

(2) It shall not be a defence to proceedings for an offence under this section for the defendant to show that the carnal knowledge was had with the consent of the female person.".

Exclusion of public from hearings of proceedings under Act of 1908

29. (1) In any proceedings for an offence under the Act of 1908, the judge or the court, as the case may be, shall exclude from the court during the hearing all persons except officers of the court, persons directly concerned in the proceedings, *bona fide* representatives of the press and such other

persons (if any) as the judge or the court, as the case may be, may, in his, her or its discretion, permit to remain.

(2) F2**[**...**]**

Anonymity of person charged with offence under Act of 1908 and person to whom offence relates

30. (1) Subject to *subsection (4)*, after a person is charged with an offence under the Act of 1908 no matter likely to lead members of the public to identify that person as the person charged or to identify any other person as a person in relation to whom the offence is alleged to have been committed shall be published in a publication available to the public or broadcast.

(2) If any matter is published or broadcast in contravention of *subsection (1)*, the following persons shall be guilty of an offence namely:

(a) in the case of matter published in a newspaper or periodical publication, the proprietor, the editor and the publisher thereof;

(b) in the case of matter published in any other publication, the publisher thereof; and

(c) in the case of matter broadcast, any person who transmits or provides the programme in which the broadcast is made and any person who performs functions in relation to the programme corresponding to those of the editor of a newspaper.

(3) Nothing in this section shall be construed as—

(a) prohibiting the publication or broadcast of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or an appeal arising out of, a trial of a person for an offence under the Act of 1908, or

(b) affecting any prohibition or restriction imposed by virtue of any other enactment upon the publication or broadcasting of any matter.

(4) Notwithstanding the provisions of *subsection (1)*, where a person is charged with both an offence under the Act of 1908 and a sexual assault offence and the charge relating to an offence under the Act of 1908 is not proceeded with or the person is acquitted of the charge under the Act of 1908 and no appeal is taken under section 23 of the Criminal Procedure Act 2010, the provisions of sections 7 and 8 of the Act of 1981 shall apply as if the charge under the Act of 1908 had not been brought.

(5) In this section—

"a sexual assault offence" has the meaning assigned to it by section 1(1) of the Act of 1981 (amended by section 12 of the Act of 1990);

"broadcast" means the transmission, relaying or distribution by wireless telegraphy or by any other means or by wireless telegraphy in conjunction with any other means of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

"published" means published to any person, and includes published on the internet;

"publication" includes a film, sound track or any other record in permanent form (including a record that is not in a legible form but which is capable

of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings.

Provisions in relation to offences under *section 30*

31. (1) A person guilty of an offence under *section 30* shall be liable—

(a) on summary conviction, to a class B fine or to imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 3 years or both.

(2) It shall be a defence for a person who is charged with an offence under *section 30* to prove that at the time of the alleged offence the person was not aware, and neither suspected nor had reason to suspect, that the matter alleged to have been published or broadcast was a matter specified in the said *section 30*.

Repeal

32. The Criminal Law (Incest Proceedings) Act 1995 is repealed.

PART 6

Criminal Evidence

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)".

Amendment of section 2 of Act of 1992

34. Section 2(1) of the Act of 1992 is amended by the substitution of the following for the definition of "sexual offence":

" 'sexual offence' means rape, sexual assault (within the meaning of section 2 of the Criminal Law (Rape) (Amendment) Act 1990), aggravated sexual assault (within the meaning of section 3 of that Act), rape under section 4 of that Act or an offence under—

(a) section 3 or 6 of the Criminal Law Amendment Act 1885,

(b) section 5 of the Criminal Law (Sexual Offences) Act 1993,

(c) section 6 of the Criminal Law (Sexual Offences) Act 1993,

(d) section 1 or 2 of the Punishment of Incest Act 1908,

(e) section 4A or 5A of the Child Trafficking and Pornography Act 1998,

(f) section 249 of the Children Act 2001,

(g) the Criminal Law (Sexual Offences) Act 2006, or

(h) *section 3*, *4*, *5*, *6*, *7* or *8* of the *Criminal Law (Sexual Offences) Act 2017*,

excluding an attempt to commit any such offence;".

Amendment of section 13 of Act of 1992

35. Section 13 of the Act of 1992 is amended by the deletion of subsection (3).

Amendment of Act of 1992

36. The Act of 1992 is amended by the insertion of the following sections after section 14:

F3**[**...**]**

Protection against cross-examination by accused

14C. (1) Where—

(a) a person is accused of an offence to which this Part applies, and

(b) a person under the age of 18 years is to give evidence,

the court shall 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.

(2) Where—

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

(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.

(3) Where an accused person is prevented from cross-examining a witness by virtue of subsection (1) or (2), the court shall—

(a) invite the accused person to arrange for a legal representative to act for him or her for the purpose of cross-examining the witness, and

(b) require the accused person to notify the court, by the end of such period as it may specify, as to whether a legal representative is to act for the accused for that purpose.

(4) If by the end of the period referred to in subsection (3)(b), the accused has notified the court that no legal representative is to act for him or her for the purpose of cross-examining the witness or no notification has been received by the court and it appears to the court that no legal representative is to so act, the court shall consider whether it is necessary, in the interests of justice, for the witness to be cross-examined by a legal representative appointed to represent the interests of the accused person.

(5) If the court decides it is necessary, in the interests of justice, for the witness to be so cross-examined, the court shall appoint a

legal representative (chosen by the court) to cross-examine the witness on behalf of the accused.

(6) Where, in a jury trial, an accused person is prevented from cross-examining a witness in person by virtue of this section, the court shall give the jury such warning (if any) as it considers necessary to ensure that the accused person is not prejudiced—

(a) by any inferences that might be drawn from the fact that the accused has been prevented from cross-examining the witness in person, or

(b) where the witness has been cross-examined by a legal representative appointed under subsection (5), by the fact that the cross-examination was carried out by such a legal representative and not by a person acting as the legal representative of the accused.

(7) In addition to the meaning assigned to that expression by section 27 of the Civil Legal Aid Act 1995, 'legal aid' in that Act means representation by a solicitor or barrister, engaged by the Legal Aid Board under section 11 of that Act on behalf of the accused in relation to the cross-examination of a witness under subsection (3).".

Amendment of section 16 of Act of 1992

37. Section 16 of the Act of 1992 is amended in subsection (1) by the substitution of the following paragraph for paragraph (b):

"(b) a video recording of any statement made during an interview with a member of the Garda Síochána or any other person who is competent for the purpose—

(i) by a person under 14 years of age (being a person in respect of whom such an offence is alleged to have been committed), or

(ii) by a person under 18 years of age (being a person other than the accused) in relation to—

(I) a sexual offence, or

(II) an offence under section 3(1), (2) or (3) of the Child Trafficking and Pornography Act 1998, or

(III) an offence under section 2, 4 or 7 of the Criminal Law (Human Trafficking) Act 2008,".

Amendment of section 17 of Act of 1992

38.— F4**[...]**

Disclosure of third party records in certain trials

39. The Act of 1992 is amended by the insertion of the following section after section 19:

"**19A.** (1) In this section—

'Act of 1995' means the Civil Legal Aid Act 1995;

'competent person' means a person who has undertaken training or study or has experience relevant to the process of counselling;

'counselling' means listening to and giving verbal or other support or encouragement to a person, or advising or providing therapy or other treatment to a person (whether or not for remuneration);

'counselling record' 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 in respect of whom a sexual offence is alleged to have been committed ('the complainant'), 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;

'court' means the Circuit Criminal Court or the Central Criminal Court;

'sexual offence' means an offence referred to in the Schedule to the Sex Offenders Act 2001.

(2) In criminal proceedings for a sexual offence the prosecutor shall notify the accused of the existence of any counselling record but shall not disclose the content of the record without the leave of the court given in accordance with this section.

(3) An accused who seeks disclosure of the content of a counselling record may make an application ('disclosure application'), in writing, to the court—

(a) providing particulars identifying the record sought, and

(b) stating the reasons grounding the application, including grounds relied on to establish that the record is likely to be relevant to an issue at trial.

(4) An accused who intends to make a disclosure application 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 counselling record, the complainant, the prosecutor and any other person to whom the accused believes the counselling record relates of his or her intention to make the application.

(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.

(7) The court may, at any time, order that a disclosure application be notified to any person to whom it believes the counselling record may relate.

(8) The court shall hold a hearing to determine whether the content of the counselling record should be disclosed to the accused and the person who has possession or control of the counselling record

shall produce the counselling record at the hearing for examination by the court.

(9) The person who has possession or control of the counselling record, the complainant and any other person to whom the counselling records relates shall be entitled to appear and be heard at the hearing referred to in subsection (8).

(10) In determining, at the hearing referred to in subsection (8), whether the content of the counselling record should be disclosed to the accused under subsection (11), the court shall take the following factors, in particular, into account:

(a) the extent to which the record is necessary for the accused to defend the charges against him;

(b) the probative value of the record;

(c) the reasonable expectation of privacy with respect to the record;

(d) the potential prejudice to the right to privacy of any person to whom the record relates;

(e) the public interest in encouraging the reporting of sexual offences;

(f) the public interest in encouraging complainants of sexual offences to seek counselling;

(g) the effect of the determination on the integrity of the trial process;

(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.

(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.

(12) (a) Where an order is made pursuant to subsection (11), in the interests of justice and to protect the right to privacy of any person to whom the counselling record relates, the court may impose any condition it considers necessary on the disclosure of the record.

(b) Without prejudice to the generality of paragraph (a), one or more of the following conditions may be included in an order made pursuant to subsection (11)—

(i) that a part of the content of the counselling record be redacted,

(ii) that a copy of the counselling record and not the original be disclosed,

(iii) that the accused and any legal representative for the accused not disclose the content of the counselling record to any person without leave of the court,

(iv) that the counselling record be viewed only at the offices of the court,

(v) that no copies, or only a limited number of copies, of the counselling record, be made,

(vi) that information concerning the address, telephone number or place of employment of any person named in the counselling record be redacted from the record,

(vii) that the counselling record be returned to the person who owns or controls the said record,

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

(13) The court shall provide reasons for ordering, or refusing to order, disclosure of the content of a counselling record pursuant to subsection (12).

(14) (a) Subject to paragraph (b), a disclosure application shall be made before the commencement of the trial of the accused.

(b) Where, upon application by the accused, the court considers that the interests of justice require the making of a disclosure application after the commencement of the trial, the court may direct that such an application may be made.

(15) For the purposes of a hearing pursuant to subsection (8), all persons, other than officers of the court, persons directly concerned in the hearing and such other persons (if any) as the court may determine, shall be excluded from the court during the hearing.

(16) In addition to the meaning assigned to that expression by section 27 of the Act of 1995, 'legal aid' in that Act means representation by a solicitor or barrister, engaged by the Legal Aid Board under section 11 of that Act, on behalf of a complainant or witness in relation to a disclosure application that concerns the complainant or witness.

(17) This section does 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.".

Amendment of section 28 of Civil Legal Aid Act 1995

40. Section 28 of the Civil Legal Aid Act 1995 is amended by the insertion of the following subsections after subsection (5A):

"(5B) Notwithstanding any other provision of this Act, where an accused person is prevented from conducting a cross-examination referred to in section 14C of the Criminal Evidence Act 1992, the Board shall grant a legal aid certificate to the accused for the purpose of his or her being represented in relation to such a cross-examination.

(5C) Notwithstanding any other provision of this Act, the Board shall grant a legal aid certificate to a complainant or witness for the purpose of his or her being represented in relation to an application referred to in subsection (3) of section 19A of the Criminal Evidence Act 1992, that concerns him or her.".

PART 7

Jurisdiction

Amendment of Sexual Offences (Jurisdiction) Act 1996

41. The Sexual Offences (Jurisdiction) Act 1996 is amended—

(a) in section 1, by the substitution of "18 years" for "17 years",

(b) in section 8, by the substitution of "18 years" for "17 years" in each place that it occurs, and

(c) in the Schedule, in paragraph 1, by the insertion of the following:

"(12) Section 5 of the Child Trafficking and Pornography Act 1998.

(13) Section 5A(4) of the Child Trafficking and Pornography Act 1998.

(14) Section 6 of the Child Trafficking and Pornography Act 1998.

(15) *Section 5* of the *Criminal Law (Sexual Offences) Act 2017*.

(16) *Section 6* of the *Criminal Law (Sexual Offences) Act 2017*.

(17) *Section 7* of the *Criminal Law (Sexual Offences) Act 2017*.

(18) *Section 8* of the *Criminal Law (Sexual Offences) Act 2017*.

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

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

Jurisdiction

42. (1) Where a person who is an Irish citizen or ordinarily resident in the State does an act against a child in a place other than the State that, if done in the State, would constitute rape, sexual assault, an offence under section 4A, 5(1)(a) or 5A(1) of the Act of 1998, or an offence under section 2, 3 or 3A of the Act of 2006, he or she shall be guilty of that offence.

(2) Where a person conspires with, or incites, in the State, another person to do an act against a child in a place other than the State that, if done in the State, would constitute rape, sexual assault, an offence under section 4A, 5(1)(a) or 5A(1) of the Act of 1998, or an offence under section 2, 3 or 3A of the Act of 2006, he or she shall be guilty of an offence.

(3) Where a person who is an Irish citizen or ordinarily resident in the State conspires with, or incites, in a place other than the State, another person to do an act against a child in a place other than the State that, if done in the State, would constitute rape, sexual assault, an offence under section 4A, 5(1)(a) or 5A(1) of the Act of 1998, or an offence under section 2, 3 or 3A of the Act of 2006, he or she shall be guilty of an offence.

(4) Where a person attempts to commit an offence under *subsection (2)* or *(3)*, he or she shall be guilty of an offence.

(5) A person found guilty of an offence under this section shall be liable on conviction to the penalty to which he or she would have been liable had the act that constituted the offence been done in the State.

(6) For the purposes of this section a person shall be deemed to be ordinarily resident in the State if—

(a) he or she has had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence,

(b) it is a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act, or

(c) in the case of any other body corporate, it is established under the law of the State.

Proceedings relating to offences committed outside State

43. Proceedings for an offence under *section 42* may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

Double jeopardy

44. (1) Where a person has been acquitted of an offence in a place other than the State, he or she shall not be proceeded against for an offence under this Act consisting of the alleged act or acts constituting the first-mentioned offence.

(2) Where a person has been convicted of an offence in a place other than the State, he or she shall not be proceeded against for an offence under this Act consisting of the act or acts constituting the first-mentioned offence.

PART 8

Miscellaneous

Exposure, offensive conduct of sexual nature

45. (1) A person who exposes his or her genitals intending to cause fear, distress or alarm to another person is guilty of an offence.

(2) A person who, in a public place, engages in—

(a) sexual intercourse,

(b) an act of buggery, or

(c) an act of masturbation,

is guilty of an offence.

(3) A person who intentionally engages in offensive conduct of a sexual nature is guilty of an offence.

(4) Where a member of the Garda Síochána, with reasonable cause, suspects that a person is committing or has committed an offence under this section, the member may arrest such person without warrant.

(5) A person found guilty of an offence under this section shall be liable—

(a) on summary conviction, to a class D fine or imprisonment for a term not exceeding 6 months, or both, or

(b) on conviction on indictment, to a class C fine or imprisonment for a term not exceeding 2 years, or both.

(6) In this section—

"offensive conduct of a sexual nature" means any behaviour of a sexual nature which, having regard to all the circumstances, is likely to cause fear, distress or alarm to any person who is, or might reasonably be expected to be, aware of any such behaviour;

"public place" means any place to which the public have access whether as of right or by permission and whether subject to or free of charge;

"sexual intercourse" shall be construed in accordance with section 1(2) of the Criminal Law (Rape) Act 1981.

Harassment order

46. (1) On application made in accordance with this section, a court may—

(a) when imposing a sentence of imprisonment on a person convicted of a sexual offence (referred to in this section as the "respondent"), or

(b) at any time before the date of the respondent's release from prison,

in addition to whatever sentence it may impose or, as the case may be, has been imposed on the person, make an order (in this section referred to as a "harassment order") under this section.

(2) An application for a harassment order may be made by a member of the Garda Síochána not below the rank of Inspector, by a probation officer or by the victim of the offence (referred to in this section as the "applicant") and shall be made on notice to the respondent.

(3) An application under *subsection (1)(b)* shall be made to the District Court.

(4) A court may only make a harassment order under *subsection (1)* where it is satisfied that the respondent has, without reasonable excuse, behaved in such a way as to give rise to a well-founded fear that the victim may be subjected to—

(a) harassment by the respondent, or

(b) unwanted contact from the respondent,

such as would cause him or her fear, distress or alarm or amount to intimidation and it is in the interests of justice to do so.

(5) An order under this section may prohibit the respondent from—

(a) communicating by any means with the victim, and

(b) approaching within such distance as the court shall specify of the place of residence or employment of the victim or any other place frequented by the victim as the court deems appropriate,

and shall be subject to such terms and conditions as the court may specify.

(6) A harassment order may contain only such prohibitions, referred to in *subsection (5)*, on the respondent as the court considers necessary for the purpose of protecting the victim from harassment by the respondent.

(7) A harassment order shall cease to have effect on—

(a) the date of the respondent's release from prison,

(b) such earlier date as the court may specify, or

(c) the expiration of such period not exceeding 12 months from the date of the respondent's release as the court may specify.

(8) Where an order under this section is in force, the court, on application to it in that behalf at any time by either the applicant for the order or the respondent in respect of whom that order was made, may, having regard to the matters set out in *subsection (4)*, discharge or, as may be appropriate, vary the order.

(9) A harassment order shall take effect on notification of its making being given to the respondent.

(10) Oral communication to the respondent by or on behalf of the applicant of the fact that a harassment order has been made, together with production of a copy of the order, shall, without prejudice to the sufficiency of any other form of notification, be taken to be sufficient notification to the respondent of the making of the order.

(11) If the respondent is present at the sitting of the court at which the harassment order is made, he or she shall be taken for the purposes of *subsection (9)* to have been notified of its making.

(12) An order varying a harassment order shall take effect on notification of its making being given to the respondent and for this purpose *subsections (10)* and *(11)* shall apply with any necessary modifications.

(13) A person who, without reasonable excuse, contravenes a harassment order shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class B fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(14) Proceedings for a harassment order shall be civil proceedings and shall be heard otherwise than in public.

(15) A harassment order shall cease to have effect if the conviction concerned is quashed on appeal or otherwise.

(16) The jurisdiction conferred on the District Court under *subsection (3)* may be exercised by a judge of the District Court for the time being assigned to the District Court district in which the victim resides at the time the application is made.

(17) In this section—

"date of the respondent's release from prison" means the date on which the sentence of imprisonment imposed on him or her in respect of the offence concerned expires or, as the case may be, his or her remission from the sentence begins;

"probation officer" means a person appointed by the Minister for Justice and Equality to be a probation officer;

"sentence of imprisonment" includes detention in Saint Patrick's Institution or in a children detention school but does not include a sentence of imprisonment or detention imposed on the person the execution of the whole of which is suspended;

"sexual offence" shall be construed in accordance with section 3 of the Act of 2001.

Effect of appeal from order

47. An appeal from an order under *section 46* shall, if the court that made the order or the court to which the appeal is brought so determines (but not otherwise), stay the operation of the order on such terms (if any) as may be imposed by the court making the determination.

Amendment of Act of 1990

48. 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.".

Amendment of section 249 of Children Act 2001

49. Section 249 of the Children Act 2001 is amended by the deletion of the definition of "child".

Amendment of Bail Act 1997

50. The Schedule to the Bail Act 1997 is amended by—

(a) the insertion of the following subparagraph after subparagraph (a) of paragraph 12A:

"(aa) section 4A (organising etc. child prostitution or production of child pornography);",

(b) the insertion of the following subparagraph after subparagraph (b) of paragraph 12A:

"(ba) section 5A (participation of child in pornographic performance);",

and

(c) the insertion of the following paragraph after paragraph 12B:

"12C. 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).".

Amendment of Act of 2001

51. 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).".

Amendment of Criminal Procedure Act 2010

52. 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).".

Amendment of Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012

53. 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),

(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).".

Amendment of Taxi Regulation Act 2013

54. 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 Offences) Act 2017*.".

Amendment of Children First Act 2015

55. 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).".

Amendment of Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016

56. 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—

(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).".

Offences by bodies corporate

57. Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

F5**[Commission of another offence specified in *Schedule* within specified period**

58. (1) Subject to *subsections (2)* and *(3)*, where a person (other than a person under the age of 18 years)—

(a) has been convicted on indictment of an offence specified in the *Schedule* (in this section referred to as "the first offence"),

(b) has been sentenced to imprisonment for a term of not less than 5 years in respect of that offence, and

(c) is convicted on indictment of an offence specified in the *Schedule* (in this section referred to as "the subsequent offence") that is committed—

(i) during the period of 10 years from the date of conviction of the first offence and, for the purpose of determining that period, there shall be disregarded any period of imprisonment in respect of the first offence or the subsequent offence, or

(ii) during any such period of imprisonment,

(in this section the total period comprising the periods referred to in *subparagraphs (i)* and *(ii)* is referred to as "the specified period"),

the court shall, in imposing sentence on the person in respect of the subsequent offence, specify as the minimum term of imprisonment to be served by the person a term of not less than three quarters of the maximum term of imprisonment prescribed by law in respect of such an offence and, if the maximum term so prescribed is life imprisonment, the court shall specify a term of imprisonment of not less than 10 years.

(2) *Subsection (1)* shall not apply where the court is satisfied that it would be disproportionate in all the circumstances of the case to specify as the minimum term of imprisonment to be served by the person concerned the term of imprisonment referred to in that subsection in respect of the subsequent offence.

(3) *Subsection (1)* shall apply to a person in respect of the subsequent offence only if that offence is committed after the commencement of this section and that subsection shall apply to a person whether the first offence is committed before or after such commencement.

(4) If, in relation to a sentence of a term of imprisonment imposed on a person in respect of the first offence—

(a) the operation of the whole term is suspended, then *subsection (1)* shall not apply to that offence, or

(b) the operation of a part of the term is suspended, the part of that term the operation of which is not suspended shall be regarded as the term of imprisonment imposed on the person in respect of the first offence for the purposes of *subsection (1)*.

(5) *Subsection (1)* shall not apply to a person if the conviction in respect of the first offence is quashed on appeal or otherwise.

(6) A reference in this section to a sentence imposed on a person in respect of the first offence shall—

(a) if the sentence is varied on appeal, be construed as a reference to the sentence as so varied, or

(b) if, on the application of the Director of Public Prosecutions under section 2 of the Criminal Justice Act 1993, the sentence is quashed by the Court of Criminal Appeal or the Court of Appeal, as the case may be, and another sentence is imposed in place of it by that Court on the person, be construed as a reference to that other sentence.

(7) For the purposes of *subsections (1)(c)* and *(9)*, a period of imprisonment means any time when the person concerned is—

(a) remanded in custody,

(b) serving a sentence F6**[**in prison,**]**

(c) temporarily released under section 2 of the F7**[**Criminal Justice Act 1960,**]**

F8**[**(ca) conditionally released under section 2A of the Criminal Justice Act 1960, or**]**

F9**[**(d) released on parole within the meaning of the Parole Act 2019.**]**

(8) References in this section to the subsequent offence shall include references to a second or subsequent offence specified in the *Schedule* of which a person (other than a person under the age of 18 years) is convicted on indictment during the specified period.

(9) The specified period in relation to a person to whom *subsection (1)* applies shall expire only when the person has not been convicted of an offence specified in the *Schedule*—

(a) during the period of 10 years from the date of conviction of the subsequent offence and, for the purpose of determining that period, there shall be disregarded any period of imprisonment in respect of the first offence or the subsequent offence, or

(b) during any such period of imprisonment.

(10) If, following the application of *subsection (1)* to a person in respect of a conviction on indictment of an offence specified in the *Schedule*—

(a) his or her conviction in respect of the first offence is quashed on appeal or otherwise, or

(b) the sentence imposed on the person in respect of the first offence is varied on appeal so that it no longer falls under *subsection (1)(b)*,

the person may apply to the court that imposed the sentence on him or her in respect of the subsequent offence to review it and the court may, if it considers it appropriate to do so, vary that sentence.

(11) (a) If a sentence imposed on a person in respect of a conviction on indictment of an offence specified in the *Schedule* does not fall under *subsection (1)(b)* but the sentence is—

(i) varied on appeal, or

(ii) on the application of the Director of Public Prosecutions under section 2 of the Criminal Justice Act 1993, quashed by the Court of Criminal Appeal or the Court of Appeal, as the case may be, and another sentence is imposed in place of it by that Court on the person,

so that the sentence then falls under *subsection (1)(b)*, *subsection (1)* shall apply in respect of an offence specified in the *Schedule* ("the subsequent offence") committed by the person within the specified period.

(b) If, in the circumstances referred to in *paragraph (a)*, a sentence has, at the time of the appeal referred to in *subparagraph (i)* of that paragraph or, as the case may be, the application referred to in *subparagraph (ii)* of that paragraph, been imposed on the person concerned in respect of the subsequent offence, the Director of Public Prosecutions may apply to the court that imposed the sentence to review it and the court shall apply *subsection (1)* to that person in respect of the subsequent offence and, if appropriate, vary the sentence accordingly.

(12) The power conferred by section 23 of the Criminal Justice Act 1951 to commute or remit a punishment shall not, in the case of a person serving a sentence of imprisonment imposed in accordance with *subsection (1)* in respect of the subsequent offence, be exercised before the expiry of the

minimum term of imprisonment specified by the court in accordance with that subsection less any reduction of that term arising under *subsection (13)*.

(13) The rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence imposed in accordance with *subsection (1)* in respect of the subsequent offence and the minimum term of imprisonment specified by the court in accordance with that subsection shall be reduced by the amount of any remission so earned by the person.

(14) Any power conferred by section 2 of the Criminal Justice Act 1960 to release temporarily a person serving a sentence of imprisonment shall not, in the case of a person serving a sentence imposed in accordance with *subsection (1)* in respect of the subsequent offence, be exercised during the period for which the commutation or remission of his or her punishment is prohibited by *subsection (12)* unless for grave reason of a humanitarian nature, and any release so granted shall be only of such limited duration as is justified by that reason.

(15) The reference in *subsection (14)* to section 2 of the Criminal Justice Act 1960 shall be construed to include that section as applied by section 4 of the Prisons Act 1970.

(16) References in this section to an offence specified in the *Schedule* shall include—

(a) references to participation as an accomplice of a person who commits such an offence, and

(b) references to an offence of attempting or conspiring to commit, or inciting the commission of, such an offence.

(17) In this section "imprisonment" includes—

(a) detention in a place provided under section 2 of the Prisons Act 1970, and

(b) detention in a place specified under section 3 of the Prisons Act 1972,

and "prison" and "sentence of imprisonment" shall be construed accordingly.**]**

F10[SCHEDULE

Offences for the purposes of section 58

Section 58

1. An offence under section 1 of the Punishment of Incest Act 1908 (incest by males).

2. An offence under section 2 of the Punishment of Incest Act 1908 (incest by females of or over the age of 17 years).

3. A rape offence within the meaning of section 1 of the Criminal Law (Rape) Act 1981.

4. An offence under any of the following provisions of the Criminal Law (Rape) (Amendment) Act 1990:

(a) section 2 (sexual assault);

(b) section 3 (aggravated sexual assault);

(c) section 4 (rape under section 4 of that Act).

5. An offence under any of the following provisions of the Sexual Offences (Jurisdiction) Act 1996:

(a) section 2 (sexual offences committed outside the State);

(b) section 3 (offence of transporting person for purpose of enabling offence to which section 2(1) of that Act relates to be committed);

(c) section 4 (offence of publishing information likely to promote etc. commission of offence to which section 2(1) of that Act relates).

6. 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 5 (producing, distributing, etc. child pornography);

(e) section 5A (participation of child in pornographic performance);

(f) section 6 (possession of child pornography).

7. An offence under section 249 of the Children Act 2001 (causing or encouraging sexual offence upon a child).

8. An offence under any of the following provisions of the Criminal Law (Sexual Offences) Act 2006:

(a) section 2 (defilement of child under 15 years of age);

(b) section 3 (defilement of child under 17 years of age);

(c) section 3A (offence by person in authority).

9. An offence under section 5 of the Criminal Law (Human Trafficking) Act 2008 (soliciting or importuning for purposes of prostitution of trafficked person).

10. An offence under any of the following provisions of this Act:

(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).**]**

Number 2 *of* 2017

CRIMINAL LAW (SEXUAL OFFENCES) ACT 2017

REVISED

Updated to 31 August 2024

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.