

# GENERAL SCHEME

## CRIMINAL LAW (SEXUAL OFFENCES) BILL 2014

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## **Part 1**

### **Preliminary**

#### **Head 1**

#### **Short title and commencement**

Provide that -

- (1) This Act may be cited as the Criminal Law (Sexual Offences) Act 2014.
- (2) This Act shall, with the exception of Part 5 (criminal evidence), come into operation three months after the day of its passing.
- (3) Part 5 shall come into operation on such day or days as, by order or orders, the Minister for Justice and Equality may appoint.

## **Head 2**      **Interpretation**

Provide that -

In this Act, except where the context otherwise requires –

“Act of 1908” means the Punishment of Incest Act 1908;

“Act of 1935” means the Criminal Law Amendment Act 1935;

“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;

“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 2007” means the Criminal Law (Sexual Offences) (Amendment) Act 2007;

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

“child” means a person who has not attained 18 years of age, unless otherwise indicated;

“sexual activity” means an activity that a reasonable person would, in all the circumstances, consider to be sexual;

“sexual exploitation” means, in relation to a child or a vulnerable person -

- (a) inviting, inducing or coercing the child or vulnerable person to engage in prostitution or the production of child pornography,
- (b) the prostitution of the child or vulnerable person 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 or vulnerable person; causing another person to commit such an offence against the child or vulnerable person; or inviting, inducing or coercing the child or vulnerable person to commit such an offence against another person,
- (d) inviting, inducing or coercing the child or vulnerable person to engage or participate in any sexual, indecent or obscene act, or
- (e) inviting, inducing or coercing the child or vulnerable person to observe any sexual, indecent or obscene act, for the purpose of corrupting or depraving the child or vulnerable person,

"vulnerable person" means a person -

who –

- (i) is suffering from a disorder of the mind, whether as a result of mental illness or dementia, or
- (ii) has an intellectual disability,

which is of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person.



## PART 2

### **Head 3**     **Soliciting or paying for purpose of sexually exploiting a child**

Provide that -

(1) A person who, by any means, for the purpose of the sexual exploitation of a child by that person or any other person -

- (a) solicits or importunes a child,
- (b) pays, gives, offers or promises to pay or give, a child or another person money or any other form of remuneration or consideration,
- (c) provides, offers or promises to provide, a child to another person,
- (d) obtains a child for him or her self or for another person,

shall be guilty of an offence.

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

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

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

(5) A person guilty of an offence under this head 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 term of imprisonment not exceeding 10 years.

(6) The provisions of section 7 of the Act of 1993 shall not apply to the offence of soliciting or importuning a person for the purpose of prostitution where that person is a child.

(7) Repeal section 6 of the Act of 1993 (as inserted by section 250 of the Children Act 2001 and substituted by section 2 of the Criminal Law (Sexual Offences) (Amendment) Act 2007).

**Head 4**      **Invitation etc. to sexual touching**

Provide that -

(1)      A person who, for a sexual purpose, 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.

(2)      A person guilty of an offence under *subhead (1)* shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

**Head 5    Sexual activity in presence of child**

Provide that -

(1) Any person who, for the purpose of -

(a) obtaining sexual gratification, or

(b) corrupting or depraving a child,

intentionally engages in sexual activity, whether or not with another person -

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

(ii) 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.

(2) Any person guilty of an offence under this head shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

(3) In this head –

“child” means a person under 17 years of age.

**Head 6**      **Causing a child to watch sexual activity**

Provide that –

- (1) Any person who, for the purpose of –
  - (a) obtaining sexual gratification, or
  - (b) corrupting or depraving a child,

intentionally causes a child -

- (i) to watch another person engaging in any sexual activity, or
- (ii) to look at an image of that person or another person engaging in any sexual activity,

shall be guilty of an offence.

(2) Any person guilty of an offence under this head shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

(3) In this head –

“child” means a person under 17 years of age.

**Head 7**      **Meeting a child for the purpose of sexual exploitation**

Provide that –

- (1) Any person who within the State -
- (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) Any person, being a citizen of the State or being ordinarily resident in the State, who outside the State –

- (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, 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.

(3) A person guilty of an offence under subhead (1) or (2) shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(4) In this head –

“child” means a person under 17 years of age;

“ordinarily resident in the State” means having a principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence.

(5) Repeal subsections (2A) and (2B) of section 3 of the Child Trafficking and Pornography Act 1998 (inserted by section 6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007).

**Head 8**      **Use of information and communication technology to facilitate sexual exploitation of child**

Provide that –

- (1) A person aged 18 years or over (“the sender”) who –
- (a) by means of information and communication technology communicates with another person (“the recipient”) and the purpose of the communication is to facilitate the sexual exploitation of the recipient by the sender or another person aged 18 years or over, and
  - (b) does not reasonably believe that the recipient is aged 17 years or over,

shall be guilty of an offence and liable on conviction on indictment to a term of imprisonment of not more than 14 years.

(2) Evidence that the recipient was represented to the sender as being under 17 years of age is, in the absence of evidence to the contrary, proof that the sender reasonably believed that the recipient was under that age.

(3) A person who by means of information and communication technology sends sexually explicit material to a child under the age of 17 years shall be guilty of an offence and liable -

- (a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment to a term of imprisonment not exceeding 5 years.

(4) In this head -

“sexually explicit material” means any indecent or obscene images or words.



**Head 9        **Soliciting or paying for purpose of sexually exploiting a vulnerable person****

Provide that -

(1)     A person who, by any means, for the purpose of the sexual exploitation of a vulnerable person by that person or any other person -

- (a)     solicits or importunes the vulnerable person,
- (b)     pays, gives, offers or promises to pay or give, a vulnerable person or another person money or any other form of remuneration or consideration,
- (c)     provides, offers or promises to provide, a vulnerable person to another person, or
- (d)     obtains a vulnerable person for him or her self or for another person,

shall be guilty of an offence.

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

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

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

(5)     A person guilty of an offence under this head 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 term of imprisonment not exceeding 10 years.

**Head 10**      **New section 5A in Act of 1993**  
**(offence of purchasing sexual services)**

Provide that –

The following section is inserted after section 5 of the Act of 1993

**“Offence of purchasing sexual services**

5A(1) For the purposes of this head, the term “sexual service” shall have the same meaning as the term “sexual activity.”

(2) Where, in the context of prostitution, any person who purchases a sexual service from another person, in any place, he or she shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable on summary conviction to:

(a) a class E fine, in the case of a first conviction, or

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

(4) Any person who attempts to purchase a sexual service from another person, in any place, he or she shall be guilty of an offence and shall be liable on summary conviction to a class E fine.”

**Head 11**      **New section 5B in Act of 1993**  
**(offence of purchasing sexual services from a trafficked person)**

Provide that –

The following section is inserted after section 5 of the Act of 1993

**Offence of purchasing sexual services from a trafficked person**

5B(1) For the purposes of this head, the term “sexual service” shall have the same meaning as the term “sexual activity.”

(2) For the purposes of this head, the term “trafficked person” shall have the same meaning as in section 5 of the Criminal Law (Human Trafficking) Act 2008.

(3) Where, for the purposes of the prostitution of a trafficked person, a person knowingly purchases a sexual service from that person, in any place, he or she shall be guilty of an offence.

(4) A person guilty of an offence under this section shall be liable:

- (a) on summary conviction to a class A fine, or a term of imprisonment not exceeding 12 months, or both; or
- (b) on conviction on indictment to a fine or a term of imprisonment not exceeding 5 years, or both.

(5) Any person who attempts to purchase a sexual service from a trafficked person, in any place, he or she shall be guilty of an offence and shall be liable on summary conviction to a class E fine.

**Head 12**      **Substitution of section 5 of Act of 1993**  
**(Protection of mentally impaired persons)**

*This head is not yet finalised. It will replace section 5 of the Criminal Law (Sexual Offences) Act 1993 and will address sexual offences committed against vulnerable persons. "Vulnerable person" will be defined along the lines of that contained in head 2 of this Scheme. The policy objective pursued by this head has been the subject of consultation which has recently concluded. A head is being prepared following consideration of the issues raised in the context of that consultation.*

**Head 13      Amendment of section 2 of Act of 1998**

**(Interpretation)**

(1) The Child Trafficking and Pornography Act 1998 is amended in section 2(1) by the substitution of ““child” means a person under the age of 17 years” with ““child” means a person under the age of 18 years”,

(2) In the definition of “child pornography”, delete paragraph (a) and substitute:

“(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 a person depicted as being a child,”.

**Head 14**      **New section 4A of Act of 1998**  
**(Organisation etc. of child prostitution or the production of child pornography)**

Provide that –

- (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 in 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 prostitution or the production of child pornography,

is guilty of an offence.

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

(3) The offences in subheads (1) and (2) relating to child prostitution shall also apply to a vulnerable person who is an adult.

(4) 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.

(5) The provisions of section 9 of the Act of 1993 shall not apply to the organisation of prostitution where the person prostituted is a child.



**Head 15**      **New section 4B of Act of 1998**  
**(Participation of child in pornographic performance)**

Provide that -

(1) A person who -

- (a) causes, incites, compels or coerces,
- (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 subhead (1) shall be guilty of an offence.

(3) A person guilty of an offence under subhead (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 subhead (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 not exceeding €10,000, or imprisonment for a term not exceeding 10 years, or both.

(6) In this head -

“pornographic performance” means the 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 conduct,

or

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

**Head 16**      **Substitution of section 5 of Act of 1998**  
**(Producing, distributing, etc., child pornography)**

Provide that –

Delete section 5 and substitute:

“5.-(1) Subject to sections 6(2) and 6(3), any person who –

- (a) produces, distributes, transmits, disseminates, prints or publishes any child pornography,
- (b) imports, exports, sells or shows any child pornography,
- (c) supplies or makes available any child pornography to another person,
- (d) 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, [offers,] supplies or makes available any child pornography,
- (e) encourages, causes or facilitates any activity mentioned in paragraphs (a) to (d),
- (f) 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 to imprisonment for a term not exceeding 12 months or both, or
- (ii) on conviction on indictment to a fine or to imprisonment for a term not exceeding 14 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 C 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 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.

**Head 17**

**Amendment of section 6 of Act of 1998**

**(Possession of child pornography)**

Provide that –

(i) subsection (1) is deleted and substituted by the following:

(1) Without prejudice to section 5(1)(f) and subject to subsections (2) and (3), any person who acquires or possesses child pornography or who knowingly obtains access to child pornography by means of information and communication technology 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 a fine not exceeding €10,000 or to imprisonment for a term not exceeding 5 years or both.

(ii) the following subsection is inserted after subsection 1:

(1A) 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 to imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 5 years or both.

**Head 18**      **Amendment of section 1 of Act of 2006**  
**(Definitions)**

Provide that -

The Act of 2006 is amended by the substitution of the following definition for the definition of "person in authority" in section 1:

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

(1)

(a) a parent, grandparent, uncle or aunt of the child,

(b) a current or former guardian, foster parent, or adoptive parent,

(c) a current or former step-parent,

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

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

(3) any person whose relationship to the child is or has been as -

(a) teacher or other academic, religious or music instructor,

(b) employer,

(c) youth worker,

(d) sports coach,

(e) counsellor,

(f) health professional,

(g) member of the Garda Síochána or member of the defence forces,

(h) prison officer or other person caring for a child detained in or referred to an institution by virtue of a court order,

(i) probation officer,

(j) school transport driver, or

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

(4) Any person on whom the child has developed a dependent relationship."

"aunt" means the sister or half-sister of the child's parent;

"foster parent" means a person other than a relative of a child who is caring for the child on behalf of the Health Service Executive in accordance with regulations provided for under the Child Care Act 1991;

"uncle" means the brother or half-brother of the child's parent.

**Head 19**            **Amendment of section 2 of Act of 2006**  
**(Defilement of child under 15 years of age)**

Provide that -

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, at the time of the alleged commission of the offence, that 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 15 years of age shall be that applicable to civil proceedings.

(6) It shall not be a defence in 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."



**Head 20**      **Amendment of section 3 of Act of 2006**  
**Defilement of a child under 17 years of age**

Provide that -

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 to imprisonment for a term not exceeding 7 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 to imprisonment for a term not exceeding 7 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 17 years of age 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.

(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 an accused is charged with an offence against a complainant who is 15 but under the age of 17 or, it shall be a defence that the complainant consented to the activity that forms the subject matter of the charge where the accused:

- (a) is less than 2 years older than the complainant;
- (b) is not in a position of trust or authority in respect of the complainant and is not a person with whom the complainant is in a relationship of dependency; and
- (c) is in a relationship with the complainant that is not intimidatory or exploitative of the complainant.

**Head 21**      **Insertion of section 3A into Act of 2006**  
**(Offences by persons in authority)**

Provide that -

Insert the following section after section 3 in the Act of 2006 -

"3A.-(1) A person who engages in a sexual act with a child where,

- (a) the person is a person in authority in relation to the child,
- (b) the person abuses a position of trust or influence over the child,
- (c) use is made of coercion, force or threats by the person, or
- (d) abuse is made of the vulnerability of a child with a physical disability by the person,

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) Subject to *subsection (6)*, 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, at the time of the alleged commission of the offence, that the person against whom the offence is alleged to have been committed was aged 18 years or over.

(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 the said age.

(5) The standard of proof required to prove that the defendant was reasonably mistaken that the person against whom the offence is alleged to have been committed was aged 18 years or over shall be that applicable to civil proceedings.

(6) In proceedings for an offence under *paragraph (a) or (b) of subsection (1)*, it shall be a defence for the defendant to establish that he or she had reasonable grounds for believing that he or she was not a person in authority in relation to the child or that he or she did not abuse a position of trust or influence over the child against whom the offence is alleged to have been committed and, if the defendant fails to so establish, it shall not be open to him or her to avail of the defence at *subsection (3)*.

(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) Any person guilty of an offence under this section shall be liable on conviction on indictment to a term of imprisonment not exceeding -

(a) 15 years, where the child is under 17 years of age,

(b) 10 years, where the child is under 18 years of age.

(9) In this section -

"child" means a child aged 15 years or more but under the age of 18 years."

**Head 22      Amendment of section 8 of the Criminal Law (Rape) (Amendment) Act 1990 (Alternative verdicts)**

Provide that -

(1) Section 8 of the Criminal Law (Rape) (Amendment) Act 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 said section 2 or 3, 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

#### Amendment of Sex Offenders Act 2001

**Head 23**      **Amendment of section 2 of Act of 2001**  
**(Interpretation)**

Provide that

(1) Subsection (1) is amended by inserting the following definition:

“photograph” includes any process by means of which an image may be produced.

(2) After the definition of “sexual offence” but before subsection (2), insert the following subsection:

“(1A) This Act applies to children detained in a children detention school within the meaning of Part 10 of the Children Act 2001 and references to “imprisonment” shall have effect accordingly, with any necessary modifications.”.

**Head 24**      **Amendment of section 9 of Act of 2001**  
**(Supply of information to facilitate compliance with this Part)**

Provide that –

Delete paragraph (b) and substitute the following:

“(b) at least 10 days before the date of the release, the Commissioner of the Garda Síochána of the fact that that expiry or remission will occur in relation to the person and the notification shall include a recent photograph of that person.”.

**Head 25**      **Substitution of section 10 of Act of 2001**  
**(Notification requirements)**

Provide that –

Delete section 10 and substitute:

“10. - (1) A person who is subject to the requirements of this Part shall, before the end of the period of 3 days beginning with the relevant date, or, if that date is prior to the commencement of this section, that commencement, notify to the Garda Síochána -

- (a) his or her name on the date that notification is given and, where he or she also uses one or more other names on that date, each of those names,
- (b) his or her home address on the date on which notification is given, and
- (c) the address of any other place in the State at which, on the date on which notification is given, he or she regularly resides or stays,

and, if requested by a member of the Garda Síochána, shall allow any of the following to be taken: his or her fingerprints, palm-prints, or one or more photographs of the person.

(2) A person who is subject to those requirements shall also, before the end of the period of 3 days beginning with –

- (a) the person's using a name which is not the name, or one of the names, last previously notified by him or her to the Garda Síochána under this section,
- (b) any change of his or her home address or the address of any other place in the State at which he or she regularly resides or stays,
- (c) the person's having resided or stayed, for a qualifying period, at any place in the State, the address of which has not been notified to the



Garda Síochána under this section as being his or her current address, or

- (d) the person's returning to an address in the State, having, immediately prior to such return, been outside the State for a continuous period of 3 days or more,

notify that name, the effect of that change, the address of that place or, as the case may be, the fact of that return to the Garda Síochána.

(3) If a person who is subject to the requirements of this Part intends to leave the State for a continuous period of 3 days or more he or she shall notify the Garda Síochána of that intention and, if known, the address of the place outside the State at which he or she intends to reside or stay.

(4) If a person who is subject to the requirements of this Part is outside the State for a continuous period of 3 days or more and did not intend, on leaving the State, to be outside the State for such a continuous period, the person shall, subject to subsection (5), notify the Garda Síochána, before the expiry of a further period of 3 days, reckoned from the 3rd day that he or she is so outside the State, of that fact and the address of the place at which he or she is residing or staying outside the State.

(5) Subsection (4) shall not apply if the person concerned has returned to the State before the expiry of the further period of 3 days mentioned in that subsection.

(6) A notification given to the Garda Síochána by any person shall not be regarded as complying with *subsection (1), (2), (3) or (4)* unless it also states the person's –

- (a) date of birth,
- (b) name on the relevant date and, where he or she used one or more other names on that date, each of those names, and
- (c) home address on the relevant date.

(7) For the purpose of determining any period for the purposes of *subsection (1), (2), (3) or (4)*, there shall be disregarded any time when the person concerned is –

- (a) remanded in custody,
- (b) serving a sentence in prison,
- (c) detained in a children detention school within the meaning of Part 10 of the Children Act 2001, or
- (d) temporarily released under section 2 or 3 of the Criminal Justice Act 1960.

(8) A person subject to the requirements of this Part who is a person mentioned in *paragraph (a) or (b) of subsection 7* shall allow a member of the Garda Síochána, who may enter the place of custody for the purpose of this subsection, or a Prison Officer, to take any of the following in the place of custody: the person's fingerprints, palm-prints, or one or more photographs of the person.

(9) A person subject to the requirements of this Part who is a person mentioned in *paragraph (c) of subsection 7* shall allow a member of the Garda Síochána, who may enter the place of detention for the purpose of this subsection, to take any of the following in the place of detention: the person's fingerprints, palm-prints, or one or more photographs of the person.

(10) A person who is subject to the requirements of this Part shall notify to the Garda Síochána the particulars referred to in subsection (6) at the end of each 12 month period following the notification under subsection (1), where no notification under this section has been made during any such period or, as the case may be, at the end of each 12 month period following a notification under subsection (2), (3) or (4).

(11) A person required to give notification under this section (other than subsection (4)) shall do so by attending in person at the Garda Síochána station which is the divisional or district headquarters for the Garda division or district in which is situated the person's home address on the date of notification and such notification shall be made orally to a member of the Garda Síochána at that station.

(12) Where a person gives a notification in accordance with subsection (11) and the member of the Garda Síochána to whom the notification is given is not satisfied that the person has a home address, that person shall comply with the requirements of this section by notifying the place in the State where he or she intends to reside or stay the following night and shall continue to notify the Garda Síochána on every following third day, or at such other intervals as may, in the interest of the safety of the public or a particular member of the public, be specified by a member of the Garda Síochána not below the rank of Inspector, of where he or she intends to reside or stay the night following notification until such time as the Garda Síochána are satisfied that the person has acquired a home address in the State.

(13) The provisions of subsection (12) with regard to notification intervals shall apply where a person who has notified the Garda Síochána under subsection (10) subsequently leaves his or her home address for more than 3 days but does not acquire an alternative home address.

(14) A notification under subsection (12) or (13) shall be made orally, in person, at the Garda Síochána station which is the divisional or district headquarters for the Garda division or district in which the person is residing or staying.

(15) Where a person notifies the Garda Síochána under subsection (2), (3), (10), (12) or (13) that person shall, if requested to do so by a member of the Garda Síochána, allow the member or another member to take any of the following: the person's fingerprints, palm-prints, or one or more photographs of the person.

(16) The power in subsections (1), (8) (9) and (15) to take fingerprints, palm-prints, and photographs is exercisable for the purpose of identification of the person notifying the Garda Síochána under this section.

(17) A notification under this section shall be acknowledged in writing and that acknowledgement shall be in such form as may be prescribed.

(18) In this section –

“home address”, in relation to any person, means the address of his or her sole or main residence or, if he or she has no such residence, his or her most usual place of abode or, if he or she has no such abode, the place which he or she regularly visits;

“qualifying period” means -

- (a) a period of 3 days, or
- (b) 2 or more periods, in any period of 12 months, which (taken together) amount to 3 days.

**Head 26**      **Substitution of section 12 of Act of 2001**  
**(Offences in connection with notification requirements)**

Provide that –

Delete section 12 and substitute:

12.- (1) A person who –

- (a) fails, without reasonable excuse, to comply with subsection (1), (2), (3), (4), (8), (9), (10), (12), (13) or (15) of section 10,
- (b) notifies to the Garda Síochána, in purported compliance with that subsection (1), (2), (3), (4), (8), (9), (10), (12), (13) or (15), any information which he or she knows to be false or misleading in any respect,

shall be guilty of an offence.

(2) A person is guilty of an offence under subsection (1)(a) on the day on which he or she first fails, without reasonable excuse, to comply with subsection (1), (2), (3), (4), (8), (9), (10), (12), (13) or (15), as the case may be, of section 10 and continues to be guilty of it throughout any period during which the failure continues; but a person shall not be prosecuted under that provision more than once in respect of the same failure.

(3) 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 not exceeding €10,000, or imprisonment for a term not exceeding 5 years, or both.

(4) In proceedings for an offence under subsection (1)(a) a statement on oath by a member of the Garda Síochána referred to in subsection (5) that no notification of the matters concerned was given by the defendant to the Garda Síochána by the

means referred to in section 10(11) shall, until the contrary is shown, be evidence that no such notification was given by the defendant.

(5) The member of the Garda Síochána referred to in subsection (4) is a member not below the rank of sergeant who, from his or her evidence to the court, the court is satisfied –

(a) is familiar with the systems operated by the Garda Síochána for recording the fact that particular information has been received by them, and

(b) has made all proper inquiries in ascertaining whether a notification by the defendant of the matters concerned was made to the Garda Síochána.

**Head 27**      **Amendment of section 13 of Act of 2001**  
**(Application of this Part to persons convicted outside State)**

Provide that –

Delete subsection (2) and substitute:

“For the purposes of such application, section 10 shall have effect as if for subsection (1) there was substituted the following subsection:

“(1) A person who is subject to the requirements of this Part shall, before the end of the period of 3 days beginning with –

- (a) in case the person is already resident in the State upon his or her so first returning and paragraph (c) does not apply, the date on which the person first returns to the State after being convicted of the offence concerned,
- (b) in case the person is not so resident and paragraph (c) does not apply, the date on which the person first becomes resident in the State after being convicted of the offence concerned, or
- (c) in case the date on which the person so first returns to, or becomes resident in, the State is prior to the commencement of this Part,

notify to the Garda Síochána –

- (i) his or her name on the date notification is given and, where he or she also uses one or more other names, each of those names,
- (ii) his or her home address on the date on which notification is given,
- (iii) the address of any other place in the State at which, on the date on which notification is given, he or she regularly resides or stays, and

- (iv) his or her home address, and any other address at which he or she regularly resides or stays, in the place other than the State, of the conviction for the offence referred to in subsection (1),

and if requested by a member of the Garda Síochána, shall allow any of the following to be taken: the person's fingerprints, palm-prints, or one or more photographs of the person.



**Head 28**      **New section 14A in Act of 2001**  
**(Assessment of risk posed by sex offenders)**

Provide that –

The following section is inserted in Part 2, after section 14, of the Act of 2001:

**Assessment of risk posed by sex offenders**

14A(1)(i). - In this head –

“assessment team” means the responsible persons and shall include all or any of the following: the Chief Executive of the Health Service Executive, the Governor or other person in charge of a place of custody in which an offender was detained or remanded, the Director of a Children Detention School within the meaning of Part 10 of the Children Act 2001 in which an offender was detained, and the Director of Services for Housing in a housing authority;

“Commissioner” means the Commissioner of the Garda Síochána;

“Director” means the Director of the Probation Service;

“housing authority” has the meaning assigned to it by section 1 of the Housing (Miscellaneous Provisions) Act 1992;

“relevant information” may include personal information and any other information concerning a relevant offender that –

- (a) is necessary to carry out a proper assessment of risk, and
- (b) is appropriate and proportionate for the purposes of that assessment;

“relevant offender” means a person who is subject to the requirements of this Part or whose behaviour in the commission of an offence included a significant sexual aspect;

(ii) The Commissioner and Director acting together under this head shall be known as the “Responsible Persons”.

(2) The purpose of this head is –

- (a) to provide for the exchange of relevant information between members of an assessment team so that an assessment can be carried out by the team of the risk of harm posed by a relevant offender to the public or any member of the public and how that risk might be reduced, and
- (b) to ensure that members of the assessment team discharge their responsibilities and duties (in accordance with their statutory functions, and the level of risk posed by the relevant offender, as agreed by the team) to protect the public, or any member of the public, from the risk of harm posed by any such offender.

(3) The responsible persons shall establish arrangements to assess the risks posed by any relevant offender.

(4) Where either of the responsible persons is satisfied that a full and proper assessment in a particular case requires the establishment of an assessment team, the responsible person shall request such member or members of the assessment team, as are required, to attend an assessment meeting and any re-assessment meetings the responsible person deems necessary for the protection of the public, or any member of the public, from the relevant offender.

(5) The members of the assessment team shall share with one another all the relevant information within their possession and knowledge necessary to accurately assess the risk posed by an offender referred to in subhead (3).

(6) Information shared by members of the assessment team under this head shall not be disclosed to any other person or body except in so far as information can be disclosed in accordance with subhead (8) or (11).

(7) The members of an assessment team shall comply with a request under subhead (4).

(8) Information shared under this head may also be shared with another person or body where such sharing is deemed necessary by the responsible persons, or an assessment team, for the preparation of an assessment of the risk posed by a relevant offender to the public or any member of the public.

(9) A person or body referred to in subhead (8) shall co-operate with the responsible persons and regard as confidential any information shared under that subhead.

(10) The confidentiality requirement in subhead (9) shall not apply where the responsible persons specify particular circumstances in which the information concerned need not, in the public interest, be regarded as confidential and the circumstances in which, and to whom, it can be disclosed.

(11) Information which has been shared under this head in respect of an offender who travels or intends to travel to another jurisdiction may be disclosed by the relevant authority in the State to a relevant authority in another jurisdiction in accordance with the terms of any written agreement or understanding for the reciprocal exchange of such information and the information disclosed can only be used in accordance with such terms.

(12) The relevant authority in the State shall be a member of the Garda Síochána not below the rank of Chief Superintendent nominated for that purpose by the Commissioner.

(13) The responsible persons may conduct, or assist other persons in conducting, research into any matter relevant to protecting the public from harm from relevant offenders and any such research shall not identify any particular offender, or victim, or other person affected by the offender's behaviour.

**Head 29**      **New section 14B in Act of 2001**  
**(Delegation of functions under section 14A)**

Provide that –

The following section is inserted into Part 2 after section 14A (inserted by this Act) of the Act of 2001.

**Delegation of functions under section 14A**

14B.- The members of an assessment team established under section 14A may delegate their duties and responsibilities under that section as follows:

- (a) the Commissioner of the Garda Síochána to a member of the Garda Síochána not below the rank of Inspector,
- (b) the Director of the Probation Service to a senior Probation Officer,
- (c) the Chief Executive of the Health Service Executive to an employee of the Executive specified by name, position or otherwise,
- (d) the Governor or other person in charge of a place of custody to a senior Prison Officer,
- (e) the Director of a Children Detention School within the meaning of Part 10 of the Children Act 2001 to an employee of the children detention school specified by name, position or otherwise, and
- (f) the Director of Services for Housing in a housing authority to an employee of the authority specified by name, position or otherwise.

**Head 30**      **New section 14C in Act of 2001**  
**(Disclosure of information in certain circumstances)**

Provide that –

The following section is inserted in Part 2 after section 14B (inserted by this Act) in the Act of 2001.

**Disclosure of information in certain circumstances**

14C.- (1) Subject to the provisions of this head, a member of the Garda Síochána not below the rank of Inspector may, in the interests of the protection of the public, or a member of the public, authorise the disclosure of the name and address and, where known, the level of risk posed to the public or a member of the public, of a person who has notified the Garda Síochána in accordance with the requirements of this Part.

(2) Save in exceptional circumstances, a disclosure under this section may only be authorised where the member referred to in subhead (1) forms an opinion, on the basis of information available to him or her, that such disclosure is unlikely to result in public disorder, or

- (a) physical harm to,
- (b) damage to property of, or
- (c) intimidation of or threats to,

any person.

(3) Before a disclosure is authorised under this head, a member of the Garda Síochána shall, where practicable, inform the person in respect of whom it is intended to make the disclosure of such intention but that the disclosure will not be authorised if that person agrees to act so that the threat outlined in subhead (4) no longer exists and so acts.

(4) A disclosure under this head may only be authorised where the person in respect of whom it is made poses a threat of committing a sexual offence against a person, and shall only be made to the minimum number of persons necessary to avoid such threat.

(5) Where a convicted sex offender who has an obligation to notify the Garda Síochána in accordance with this Part fails to do so or otherwise breaches notification requirements and the offender's whereabouts are unknown to the Garda Síochána, a member not below the rank of Inspector may authorise publication of the name, address, description, age, photograph, and details of any distinguishing features of the offender, the fact that the offender is a sex offender and, where an assessment of the offender under section 14A has been conducted, information concerning the risk posed by the offender.

(6) No member of the Garda Síochána acting in accordance with the provisions of this section shall be liable in any criminal or civil proceedings arising from any subsequent injury or threats to, or intimidation of, any person or damage to any property.

(7) The Garda Commissioner shall publish information concerning the circumstances in which information may be disclosed in accordance with this section.

**Head 31**      **New section 14D in Act of 2001**  
**(Powers of Garda Síochána under Part 2)**

Provide that –

The following section is inserted in Part 2 after section 14C (inserted by this Act) of the Act of 2001:

**“Powers of Garda Síochána under Part 2**

14D.- (1) A relevant offender, within the meaning of section 14A, shall make himself or herself available for interview by an assessment team for the purpose of facilitating an assessment of the harm he or she may pose to the public or a member of the public.

(2) A member of the assessment team shall notify the offender in writing of the time and date of the proposed assessment.

(3) In this head –

“assessment” includes any re-assessment;

“assessment team” has the same meaning it has in section 14A.

**Head 32**      **Amendment of section 16 of Act of 2001**  
**(Sex offenders orders)**

Provide that –

(1) In subsection (1), delete “Chief Superintendent” and substitute “Inspector”.

(2) Delete subsection (2) and substitute the following:

“(2) The conditions mentioned in subsection (1) are that -

(a) the respondent has been convicted, before or after the commencement of this section, either -

(i) in the State of a sexual offence or an offence in which there was a significant sexual aspect, or

(ii) in a place outside the State of an offence and the act constituting that offence or a significant part of the said act would, if done in the State, constitute a sexual offence (within the meaning of this Act) under the law of the State,

and

(b) the respondent has, at a time referred to in subsection (3), acted on one or more occasions in such a way as to give reasonable grounds for believing that an order under this section is necessary to protect the public from serious harm from him or her”.

(3) Delete subsection (5) and substitute the following:

“(5) References in this section to protecting the public from serious harm from the respondent shall be construed as references to protecting the public or any particular member or members of the public from death or serious personal injury, whether physical or psychological, which would be occasioned if the respondent were to commit a sexual offence at a time subsequent to the making of the application under this section.”.



**Head 33**      **Amendment of section 19 of Act of 2001**  
**(Discharge or variation of sex offender order)**

Provide that –

Delete subsection (1) of section 19 and substitute:

“(1) Where a sex offender order is in force, the court, on application to it in that behalf at any time by -

(a) the respondent, may if it is shown to the satisfaction of the court that –

(i) the protection of the public from serious harm from the respondent does not require that the order should continue in force, or

(ii) the order’s effect for the time being is the cause of injustice,

discharge or, as may be appropriate, vary the order, or

(b) a member of the Garda Síochána not below the rank of Inspector, may if it is shown to the satisfaction of the court that -

(i) a prohibition or prohibitions on the sex offender no longer protect(s) the public, or a member of the public, from serious harm from the respondent, and

(ii) to vary the order would not be a cause of injustice,

vary the order to the extent it deems necessary to so protect the public or a member of the public from serious harm.”.

**Head 34**      **Amendment of section 27 of Act of 2001**  
**(Interpretation, Part 5)**

Provide that -

Section 27 of the Sex Offenders Act 2001 is amended by the insertion of the following definition before the definition of “probation [and welfare] officer”:

“authorised person” means a person appointed by the Minister to be responsible for monitoring a sex offender’s movements electronically

"post-release supervision" means the offender on whom the court has imposed a sentence involving post-release supervision -

(a) attending all supervision appointments with the supervising probation officer or any other probation officer as directed to do so by a probation officer,

(b) on release from prison, advising the supervising probation officer of his/her address for receipt of correspondence regarding supervision appointments,

(c) immediately advising the supervising probation officer of any change of such address,

(d) residing at an address agreed with the supervising probation officer,

(e) complying with the directions of the supervising probation officer or any probation officer in relation to substance abuse,

(f) attending for assessment and treatment as directed by the supervising probation officer or any probation officer, and

(g) co-operating with any other reasonable directions from a supervising probation officer for securing the post-release supervision,

and failure to comply with *paragraph (a), (b), (c), (d), (e), (f), or (g)*, without reasonable excuse, shall be treated as a failure to comply with a condition for securing the supervision."

**Head 35**      **New section 30A in Act of 2001**  
**(Power of court to amend conditions or include new conditions)**

Provide that –

The following section is inserted after section 30 of the Act of 2001:

**Power of court to amend conditions or include new conditions**

“30A(1).- In any case where a court has imposed on a sex offender a sentence involving post-release supervision, a probation officer may apply to the court not more than one month before the date of the offender’s intended release from prison for an amendment of any condition or additional condition for securing that supervision referred to in section 29(1)(b) or 30 or the inclusion of one or more further conditions pursuant to either of the aforesaid sections.

(2) An application under subsection (1) shall only be made following an assessment under section 14A of the risk posed by the sex offender and before requiring the offender to comply with any amended or new conditions, the court shall be satisfied that they are necessary in order to protect the public or any member of the public from serious harm from the offender.

(3) Any condition referred to in subsection (2), whether an amended condition or a new condition, shall for all intents and purposes have the same effect as a condition included in a sentence involving post-release supervision.

**Drafting Note**

*This head clarifies the practical application of the existing power of the court to amend conditions or include new conditions*

**Head 36**      **New section 30B in Act of 2001**  
**(Monitoring compliance with condition)**

Provide that –

The following section is inserted after section 30A (inserted by this Act) of the Act of 2001:

**Monitoring compliance with condition**

“30B(1). – Where an application is made under section 30A(1), and the court has amended any condition or included a new condition for securing the post-release supervision imposed on the offender, the probation officer making the application may request the court to direct that the offender be subject to electronic monitoring following his or her release from prison.

(2) Before giving a direction under subsection (1), the court shall be satisfied that -

- (a) it is necessary for the probation service to be aware of the movements of the offender in order to protect the public or any member or members of the public from serious harm from the offender, and
- (b) the most appropriate way of giving effect to paragraph (a) is to monitor the movements of the offender by electronic means.

(3) A direction under this section requires that –

- (a) the offender’s movements are monitored electronically to ascertain whether those movements indicate a threat or potential threat of serious harm to the public or any member or members of the public,
- (b) for that purpose, the offender has an electronic monitoring device attached to his or her person, either continuously or for such periods as may be specified, for a period of not more than 6 months, and
- (c) an authorised person is responsible for monitoring the offender’s compliance or non-compliance with paragraph (b).

(4) Where an offender is subject to electronic monitoring under this section, evidence of his or her -

- (a) compliance or non-compliance with a condition specified in a sentence involving post-release supervision, or
- (b) compliance or non-compliance with subsection (3)(b)

may, subject to this section, be given in any proceedings by the production of the following documents:

- (i) a statement purporting to be generated automatically or otherwise by a prescribed device by which the offender's whereabouts were electronically monitored;
- (ii) a certificate –
  - (I) that the statement relates to the whereabouts of the offender at the dates and time shown in it, and
  - (II) purporting to be signed by an authorised person who is responsible for monitoring electronically the offender's compliance with subsection (3)(b).

(5) Subject to subsection (6), in any proceedings the statement and certificate mentioned in paragraphs (i) and (ii) of subsection (4) are admissible as evidence of the facts contained in them, unless the contrary is shown.

(6) Neither the aforementioned statement nor certificate is so admissible unless a copy of it has been served on the offender concerned before the proceedings concerned.

(7) The maximum period of 6 months for which a monitoring device may be attached to an offender shall not affect the period specified as the supervision period.

(8) The reference in this section to the offender's release from prison shall be construed in accordance with section 29(5).

(9) The Minister may, with the consent of the Minister for Public Expenditure and Reform, make such arrangements, including contractual arrangements, as he or she considers appropriate with such persons as he or she thinks fit for monitoring the compliance or non-compliance of persons in respect of whom the court has given a direction under this section.”.

**Head 37**      **New section 30C in Act of 2001**  
**(Notification of direction under section 30B)**

Provide that –

The following section is inserted after section 30B (inserted by this Act) of the Act of 2001.

**Notification of direction under section 30B**

“Where a direction has been given under section 30B, a copy shall be given to –

- (a) the sex offender concerned,
- (b) the probation officer who made the request under section 30A(1), and
- (c) the authorised person.”.

**Head 38**      **New Part 7 in Act of 2001**  
**(Prohibition against working with children and vulnerable persons)**

Provide that -

The Act of 2001 is amended by the insertion of the following Part after section 37:

**Part 7**

**PROHIBITION AGAINST WORKING WITH CHILDREN AND VULNERABLE PERSONS**

**Interpretation (Part 7)**

38. In this Part –

(1) “sex offender” has the meaning assigned to it in Part 5;

“State work or a service” has the meaning assigned to it by section 25 (as amended by section 75 of and Schedule 6 to the Health Act 2004).

(2) The reference in this Part to protecting a child or children or vulnerable person or persons from serious harm from a sex offender shall be construed as a reference to protecting any such child or person from death or serious injury, whether physical or psychological, which would be occasioned if the offender were to commit a sexual offence after he or she has been released into the community, whether or not the offender is subject to a sentence involving post-release supervision.

**Duty of court to consider imposition of sentence involving a prohibition**

39. (1) In determining the sentence to be imposed on a sex offender in respect of the sexual offence concerned, the court shall consider whether to impose a sentence that includes a prohibition on the offender engaging in work (including State work or a service) a necessary and regular part of which consists, mainly, of the offender having access to, or contact with, a child or children or a vulnerable person or persons.

(2) In considering that matter, the court shall have regard to –



- (a) the need to protect children and vulnerable persons from serious harm from the offender, and
- (b) the need to prevent the commission by the offender of further sexual offences.

(3) For the purposes of this section, the court may, if it thinks it necessary to do so, receive evidence or submissions from any person concerned.

**Power of court to impose prohibition**

40. (1) A court may impose on a sex offender in respect of the sexual offence concerned a sentence including a prohibition, that is to say a sentence which consists of –

- (a) the imposition of a sentence of imprisonment for a specified term (whether in addition to the imposition of a fine or not), and
- (b) a provision that during a specified period (“the prohibition period”) commencing on the date of the offender’s release from prison, the offender shall be subject to the prohibition referred to in subsection (1) of section 40.

(2) The aggregate of the sentence of imprisonment referred to in *subsection (1)(a)* and the prohibition period shall not exceed the duration of the maximum term of imprisonment that may be imposed in respect of the sexual offence concerned.

(3) The term of the sentence of imprisonment referred to in *subsection (1)(a)* shall not be less than the court would have imposed if it had considered the matter apart from the provisions of this Part.

(4) In determining the period to be specified as the period of prohibition, the matters to which the court shall have regard shall include the matters referred to in *paragraphs (a) and (b) of section 40(2)*.

(5) The reference in this section to the date of the offender’s release from prison is a reference to the date on which the offender’s sentence of imprisonment referred to in *subsection (1)(a)* expires, or as the case may be, the offender’s remission from the sentence begins.

(6) When applying *subsection (1)(b)*, the court may specify a particular work or service to which the prohibition relates.

(7) In considering applying *subsection (1)(b)*, the court shall have regard to the need to protect children and vulnerable persons from serious harm from the offender.

(8) The court may apply *subsection (1)(b)* in addition to imposing a sentence involving post-release supervision under Part 5.

#### **Duty of court to explain effect of sentence to offender**

41. In imposing a sentence including a prohibition on a sex offender, the court shall explain to him or her –

- (a) the effect of the sentence, and
- (b) the consequences provided for under *section 43* if he or she fails to comply with the prohibition.

#### **Discharge from obligation to comply with requirements of this Part**

42. (1) A person who is subject to a prohibition under this Part may apply to the court for an order discharging the person from the obligation to comply with all or part of the prohibition on the grounds that -

- (a) it would be in the interests of justice to so do, and
- (b) the protection of children or vulnerable persons from serious harm from the offender no longer requires that the prohibition or a part of the prohibition, as the case may be, should continue in force.

(2) The applicant shall, not later than the beginning of such period before the making of the application as may be prescribed, notify the Superintendent of the Garda Síochána of the district in which he or she ordinarily resides or has his or her most usual place of abode of his or her intention to make an application under this section.

(3) That Superintendent or any other member of the Garda Síochána shall be entitled to appear and be heard at the hearing of that application.

(4) On the hearing of an application under this section, the court shall, if satisfied that -

- (a) it would be in the interests of justice to so do, and
- (b) the protection of children or vulnerable persons from serious harm from the offender no longer requires that the prohibition or a part of the prohibition, as the case may be, should continue in force,

make an order discharging the applicant from the obligation to comply with all or part of the prohibition.

(5) In considering an application under this section, the court may require to be adduced, in such form as it thinks appropriate, evidence (including expert evidence) with regard to whether or not –

- (a) the interests of justice; or
- (b) the protection of children or vulnerable persons from serious harm from the offender

would any longer be served by the applicant's continuing to be subject or partially subject, as the case may be, to the prohibition.

(6) If the court makes an order discharging the applicant from the obligation to comply with all or part of the prohibition, the court shall cause the Garda Síochána to be notified, in writing, of that discharge.

(7) The jurisdiction of the court in respect of an application under this section may be exercised by the judge of the circuit where the applicant ordinarily resides or has his or her most usual place of abode.

(8) Where a prohibition is partially discharged following an application under subsection (1), the applicant may, at any time after the expiry of a further 2 years following that application, make a further application for discharge of the prohibition and any such further application shall be in accordance with the provisions of this section.

(9) In this section-

“applicant” means the person referred to in subsection 1;

“court” means the Circuit Court:

“date of the applicant’s release from prison” means the date on which the applicant’s sentence of imprisonment referred to in section 41 (1) (a) expires or, as the case may be, his or her remission from the sentence begins.

### **Non-compliance with prohibition**

43. (1) A sex offender who fails to comply with a prohibition shall be guilty of an offence.

(2) A sex offender who –

(i) applies to another person to be employed by that person to do work or a service;

(ii) enters into a contract of employment to do work or a service;

(iii) applies to another person to do work or a service on that other person’s behalf (whether in return for payment or for any other consideration or not); or

(iv) enters into a contract for services to perform work or services,

shall be guilty of an offence.

(3) A person guilty of an offence shall be liable –

(a) on summary conviction, to a class C 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 more.

(4) Subject to subsection (5), the conviction of a sex offender for an offence under this section shall not prevent the prohibition period continuing to have effect.

(5) If a sentence of imprisonment is imposed on a sex offender for an offence under this section, that sentence shall, for the period the person spends in prison on foot of that sentence, operate to suspend the prohibition and the period for which the prohibition is so suspended shall not be reckoned in calculating the date on which the prohibition period expires.

**Head 39**      **Amendment of Schedule to Act of 2001**

Provide that –

(1) Insert the following in paragraph 16:

- (bb) section 4A (organisation etc. of child prostitution or production of child pornography),
  
- (bc) section 4B (participation of child in pornographic performance).

(2) Insert the following paragraph after paragraph 17:

17A. An offence under any of the following provisions of the Criminal Law (Sexual Offences) Act 2014:

- (a) section 3 (soliciting or paying for purpose of sexually exploiting a child or vulnerable person),
  
- (b) section 4 (invitation etc. to sexual touching),
  
- (c) section 5 (sexual activity in presence of child),
  
- (d) section 6 (causing a child to watch sexual activity),
  
- (e) section 7 (meeting a child for the purpose of sexual exploitation),
  
- (f) section 8 (use of information and communication technology to facilitate sexual exploitation of child),
  
- (g) subsection (1) of section 54 (exposure).

**PART 4**  
**Amendment of Punishment of Incest Act 1908**

**Head 40**      **Amendment of section 1 of the Act of 1908**  
**(Incest by a male)**

Provide that -

The act of 1908, as amended by the 1995 Act, 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 prove that the carnal knowledge was had with the consent of the female person."

**Head 41      Amendment of section 2 of the Act of 1908**  
**(Incest by a female)**

Provide that -

The act of 1908, as amended by the 1935 Act, is amended by the substitution of the following section for section 2:

"2. Any female person of or over the age of 17 years who with consent permits her grandfather, father, brother, or son to have carnal knowledge of her (knowing him to be her grandfather, father, brother, or son, as the case may be) shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment."



**Head 42**      **Exclusion of public from hearings**

Provide that -

1.- (1) In any proceedings for an offence under this Part, 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) In any proceedings to which *subsection (1)* applies the verdict or decision and the sentence (if any) shall be announced in public.

**Head 43**      **Anonymity of persons charged with offence under this Part**

Provide that -

(1) Subject to *subhead (4)*, after a person is charged with an offence under this Part, 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 written publication available to the public or broadcast.

(2) If any matter is published or broadcast in contravention of *subhead (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 written 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 head 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 this Part, or

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

(4) (a) Notwithstanding the provisions of *subhead (1)*, where a person is charged with both an offence under this part and a sexual assault offence and the charge under this part is not proceeded with or there is no finding of guilt on any charge

under this part, the law governing the anonymity of complainants provided for at section 7 of the Act of 1981, as amended by section 17 of the Act of 1990, shall apply.

(b) Where the circumstances provided for in paragraph (a) arise and the court lifts the anonymity requirements relating to the complainant, the anonymity provisions applying to the person charged with an offence under this part shall be lifted when that person has been found guilty of a sexual assault offence.

(5) In this section –

" a sexual assault offence" has the meaning assigned to it by section 1(1) of the Criminal Law (Rape) Act 1981, as substituted by section 12 of the Criminal Law (Rape) (Amendment) Act 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;

"written publication" includes a film, sound track and 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.

**Head 44**

**Penalties for offences under head 43**

Provide that –

(1) A person guilty of an offence under *head 43* shall be liable-

(a) on conviction on indictment, to a fine not exceeding €20,000 or to imprisonment for a term not exceeding 3 years or to both, or

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

(2) (a) Where an offence under *head 43* has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a 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 as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(b) Where the affairs of a body corporate are managed by its members, *paragraph (a)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(3) It shall be a defence for a person who is charged with an offence under *head 43* 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 *head 43*.

**Head 45**

**Repeals**

Provide that –

The following are repealed

Punishment of Incest Act 1908, sections 1 and 2;

Criminal Justice Act 1993, section 12; and

Criminal Law (Incest Proceedings) Act 1995.

**Part 5**  
**Criminal Evidence**

**Head 46**      **Amendment of section 2 of Act of 1992**  
**(Interpretation)**

Provide that -

Section 2 of the Act of 1992 (as amended) 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 Act of 1990), aggravated sexual assault (within the meaning of section 3 of the Act of 1990), rape under section 4 of the Act of 1990 or an offence under –

- (a) section 3 (as amended by section 8 of the Act of 1935) or 6 (as amended by section 9 of the Act of 1935) of the Criminal Law Amendment Act 1885,
- (b) section 5 of the Criminal Law (Sexual Offences) Act 1993,
- (c) section 1 (as amended by section 12 of the Criminal Justice Act 1993 and section 5 of the Criminal Law (Incest Proceedings) Act 1995) or 2 (as amended by section 12 of the Act of 1935) of the Punishment of Incest Act 1908,
- (d) sections 4A or 4B of the Act of 1998 (as inserted by sections 11 and 12 of the Criminal Law (Sexual Offences) Act 2014)
- (e) section 249 of the Children Act 2001,
- (f) the Criminal Law (Sexual Offences) Act 2006, or
- (g) section 3, 4, 5, 6, 7, 8, 14, 15, 58 or 59 of the Criminal Law (Sexual Offences) Act 2014,

excluding an attempt to commit any such offence.”.

**Head 47**      **New section 14A in Act of 1992**  
**(Giving evidence from behind a screen)**

Provide that –

The following section is inserted after section 14:

**“Giving evidence from behind a screen etc.**

14A. – (1) Where –

- (a) a person is accused of an offence to which this Part applies, and
- (b) a person under 18 years of age/a child is to give evidence in circumstances where, for any reason, a live television link is not used,

the judge may direct that the evidence be given in the courtroom from behind a screen or other device that allows the witness not to see the accused, provided the judge is satisfied that such a direction is necessary in the interests of justice.

(2) A direction under subsection (1) shall ensure that the witness can see and hear, and be seen and heard by,

- (a) the judge and the jury, where there is a jury,
- (b) legal representatives acting in the proceedings, and
- (c) any interpreter, intermediary appointed under section 14, or other person appointed to assist the witness,

and can be seen and heard by the accused.”

**Head 48**      **New section 14B in Act of 1992**  
**(Removal of wigs and gowns)**

Provide that –

The following section is inserted after section 14A (inserted by this Act):

**“Removal of wigs and gowns**

14B.- (1) Where a person under 18 years of age/a child is giving evidence in respect of an offence to which this Part applies, neither the judge nor the barrister or solicitor concerned in the examination of the witness shall wear a wig or gown.

(2) Repeal subsection (3) of section 13.”



**Head 49**      **New section 14C in Act of 1992**  
**(Protection against cross-examination by accused)**

Provide that –

The following section is inserted after section 14B (inserted by this Act):

**“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 14 years of age is to give evidence,

the judge shall direct that the accused may not personally cross-examine the witness unless the judge is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination.

(2) Where-

- (a) a person is accused of an offence to which this Part applies, and
- (b) a person under 18 years of age is to give evidence,

the judge may direct that the accused shall not personally cross-examine the witness.

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

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

(4) If by the end of the period mentioned 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.

(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 qualified 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 judge shall give the jury such warning (if any) as s/he 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 accused person's own legal representative.

(7) Section 28 of the Civil Legal Aid Act 1995 is amended by the insertion of the following subsection after subsection (5A) (inserted by section 35 of the Sex Offenders Act 2001):

“(5B) Notwithstanding any other provision of this Act, where an accused person is prevented from conducting a cross-examination as mentioned in section 14C of the Criminal Evidence Act 1992 (protection against cross-examination by accused) 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.

**Head 50**      **Amendment of section 16 of Act of 1992**  
**(Video recording as evidence at trial)**

Provide that –

Paragraph (b) of subsection (1) (as substituted by section 4 of the Criminal Law (Human Trafficking) (Amendment) Act 2013) is substituted by the following:

“(b) a videorecording of any statement made during an interview with a a member of the Garda Siochana 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) section 2, 4 or 7 of the Criminal Law (Human Trafficking) (Amendment) Act 2008,”.

**Head 51**      **Amendment of section 17 of Act of 1992**  
**(Transfer of proceedings)**

Provide that -

Delete “through a live television link or by means of a videorecording” and substitute “through a live television link, by means of a videorecording or from behind a screen or other device”.

**Head 52**      **Disclosure of Third Party Counselling/Therapy Records in Sexual Offence Trials**

*Drafting Note: The provisions of this head will be required to be reconsidered following publication of the Law Reform Commission Report on disclosure and discovery in criminal cases. The following proposed head is subject to the consideration of any recommendations arising from that report.*

Provide that -

(1) For the purposes of this head –

“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);

“court” means the Circuit Court or the Central Criminal Court;

“relevant 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 for which there is a reasonable expectation of privacy;

“sexual offence” shall be construed in accordance with section 3 of the Sex Offenders Act 2001;

“witness” means witness for the complainant.

(2) In criminal proceedings for a sexual offence the prosecutor shall notify the accused of the existence of any relevant record but shall not disclose the content of the record without the leave of a judge of the court concerned.

(3) An accused who seeks disclosure of the content of a relevant record must make an application (“disclosure application”), in writing, to the court stating –

(a) particulars identifying the record sought; and

(b) the reasons grounding the application, including grounds relied on to establish that the record is likely to be relevant to an issue at trial or to the competence of the complainant or a witness to testify.

(4) Where an accused makes a disclosure application, none of the following assertions shall be sufficient, on its own, to establish that the relevant record sought is likely to be relevant to an issue at trial or to the competence of a complainant or witness to testify:

- (a) that the record exists;
  - (b) that the record relates to counselling the complainant has received or is receiving;
  - (c) that the record relates to the incident which is the subject matter of the proceedings;
  - (d) that the record may disclose a prior inconsistent statement of the complainant or witness;
  - (e) that the record may relate to the credibility of the complainant or witness;
  - (f) that the record may relate to the reliability of the testimony of the complainant only for the reason that the complainant has received or is receiving counselling;
  - (g) that the record may disclose allegations of sexual abuse of the complainant by a person other than the accused;
  - (h) that the record relates to the sexual activity of the complainant with any person, including the accused;
  - (i) that the record relates to the presence or absence of a recent complaint;
  - (j) that the record relates to the complainant's sexual reputation; or
  - (k) that the record was made close in time to a complaint or to the incident that forms the subject matter of a charge against the accused.
- (5) 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 relevant record, the complainant and any other person to whom the accused believes the relevant record relates of his or her intention to make the application.
- (6) The judge may, at any time, order that a disclosure application be notified to any person to whom he or she believes the relevant record may relate.
- (7) The judge shall hold a hearing to determine whether the content of the relevant record should be disclosed to the accused and the person who has possession or control of the relevant record shall produce the relevant record at the hearing for examination by the judge.
- (8) The person who has possession or control of the relevant record, the complainant and any other person to whom the relevant record relates shall be entitled to appear and be heard at the hearing referred to in subhead (7).
- (9) In determining, at the hearing referred to in subhead (7), whether the content of the relevant record should be disclosed to the accused the judge 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; and
  - (g) the effect of the determination on the integrity of the trial process.
- (10) Subject to subhead (11), after the hearing referred to in subsection (7), the judge may order disclosure of the content of the record to the accused, if satisfied that
- (a) the disclosure application was made in accordance with subheads (3), (4) and (5);
  - (b) the accused has established that the record is likely to be relevant to an issue at trial or to the competence of the complainant or a witness to testify; and
  - (c) the production of the record is necessary in the interests of justice.
- (11) (a) Where an order is made pursuant to subhead (10), in the interests of justice and to protect the right to privacy of any person to whom the relevant record relates, the judge may impose any condition he or she considers necessary.
- (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 subhead (10) –
- (i) that a part of the content of the relevant record be redacted;
  - (ii) that a copy of the relevant record and not the original be disclosed;
  - (iii) that the accused and any legal representative for the accused not disclose the content of the relevant record to any person without leave of the court;
  - (iv) that the relevant record be viewed only at the offices of the court;
  - (v) that no copies, or only a limited number of copies of the relevant record, be made;
  - (vi) that information concerning the address, telephone number or place of employment of any person named in the relevant record be redacted from the record; or

- (vii) that the relevant record be returned to the person who owns or controls the said record.
- (12) Where an order is made pursuant to subhead (10), the relevant record shall not be used in any other proceedings.
- (13) The judge shall provide reasons for ordering, or refusing to order, disclosure of the content of a relevant record to the accused pursuant to subhead (10).
- (14) (a) Subject to paragraph (b), an application under subhead (3) shall be made before the commencement of the trial of the accused.  
  
(b) Where, upon application by the accused, the trial judge considers there are exceptional circumstances which warrant the making of a disclosure application after the commencement of the trial, he or she may direct that such an application may be made.

For the purposes of a hearing pursuant to subhead (7), all persons, other than officers of the court, persons directly concerned in the hearing and such other persons (if any) as the judge may determine, shall be excluded from the court during the hearing.

- (15) (a) In addition to the meaning assigned to that expression by the Act of 1995, “legal aid” in the Act of 1995 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 an application under subhead (3) of this head, that concerns the complainant or witness.  
  
(b) Section 28 of the Act of 1995 is hereby amended by the insertion of the following subsection after subsection 5A:  
  
“(5B) 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 her being represented in relation to an application referred to in subhead (3) of this head, that concerns him or her.”.
- (15) This head does not apply where a complainant or witness has expressly waived his or her right to non-disclosure of a relevant record without leave of the court.



**Part 6**  
**Jurisdiction**

**Head 53**      **Amendment of Sexual Offences (Jurisdiction) Act 1996**

Provide that -

The Sexual Offences (Jurisdiction) Act 1996 is amended -

- (a) in section 1, subsection (1) by the substitution of:

““a child” means a person under the age of 17 years” with ““a child means a person under the age of 18 years”, and

- (b) in section 8 by the substitution of:

“under the age of 17 years” with “under the age of 18 years” in each place it appears.

## **Head 54      Jurisdiction (Extra-Territorial)**

Provide that-

(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 head 3, 5, 6, 7 or 8, section 4A or 4B (as inserted by heads 14 and 15 of this Scheme) or 5 or 6 of the Act of 1998, or section 2 or 3 of the Act of 2006, he or she shall be guilty of an 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 head 3, 5, 6, 7 or 8, section 4A or 4B (as inserted by heads 14 and 15 of this Scheme) or 5 or 6 of the Act of 1998, or section 2 or 3 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 head 3, 5, 6, 7 or 8, section 4A or 4B (as inserted by heads 14 and 15 of this Scheme) or 5 or 6 of the Act of 1998, or section 2 or 3 of the Act of 2006, he or she shall be guilty of an offence..

(4) Where a person conspires with, or incites, in a place other than the State, a person who is an Irish citizen or person ordinarily resident in the State 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 head 3, 5, 6, 7 or 8, section 4A or 4B (as inserted by heads 14 and 15 of this Scheme) or 5 or 6 of the Act of 1998, or section 2 or 3 of the Act of 2006, he or she shall be guilty of an offence.

(5) Where a person attempts to commit an offence under subhead (1), (2), (3) or (4) he or she shall be guilty of an offence.

(6) A person found guilty of an offence under this head shall be liable to the same penalty as if the offence was committed in the State.

- (7) For the purposes of this head 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 registered under the Companies Acts, or
  - (c) in the case of any other body corporate, it is established under the law of the State.
- (8) For ease of reference, a child is defined as the following:
- (i) 15 years of age in respect of an offence under section 3 of the Criminal Law (Sexual Offences) Act 2006;
  - (ii) 17 years of age in respect of offences under sections 5, 6, 7, and 8 of the Criminal Law (Sexual Offences) Act 2014 and section 2 of the Criminal Law (Sexual Offences) Act 2006, and
  - (iii) 18 years of age in respect of offences under section 3 of the Criminal Law (Sexual Offences) Act 2014 and sections 4A, 4B, 5 and 6 of the Child Trafficking and Pornography Act 1998.

**Head 55**      **Proceedings relating to offences committed outside the State**

Provide that -

Proceedings for an offence under head 54 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.

**Head 56**

**Double jeopardy**

Provide that-

(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 7**  
**Miscellaneous Amendments**

**Head 57**      **Exposure, sexual behaviour in public, etc.**

Provide that -

- (1) A person who exposes his or her genital region is guilty of an offence, if he or she does so to cause fear, distress or alarm to another person or intends such, or, having regard to all the circumstances, fear, distress or alarm is likely to be caused to another person.
- (2) A person who intentionally engages in sexual activity, whether or not such activity is with another person, in a public place, is guilty of an offence.
- (3) Where a member of the Garda Síochána finds a person committing an offence under this section or suspects that a person has committed an offence under this section, the member may arrest such person without warrant.
- (4) A person found guilty of an offence under this head 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.
- (5) Section 18 of the 1935 Act is repealed.

**Head 58**      **Harassment order**

Provide that –

(1) A court may,

(a) when imposing sentence on a person convicted of a sexual offence or an offence in which there was a significant sexual aspect, or

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

in addition to whatever sentence it may impose or, as the case may be, has been imposed on the person, and without prejudice to any other order the court may make or, as the case may be, has been made, make an order (in this Part referred to as a "harassment order") under this head.

(2) The court may make a harassment order under subhead (1)(a) on its own motion or following an application from a member of the Garda Síochána not below the rank of Inspector or the victim of the offence, or under subhead (1)(b), following an application from a probation officer or the victim of the offence.

(3) An order made under this head may, for the purpose of protecting the victim of the offence or any other person named in the order from harassment, prohibit a person convicted of an offence referred to in subsection (1)(a) from doing one or more things specified in the order, any of which the court is satisfied would cause the victim or the first mentioned person fear, distress or alarm, or amount to intimidation.

(4) A harassment order may contain only such prohibitions on the offender's doing a thing or things as the court considers necessary for the purpose of protecting the victim or another person from harassment by the offender.

(5) In making a harassment order, the court need only be satisfied, on the basis of evidence given by the victim or, as the case may be, the applicant, that there is a reasonable expectation that the victim or another person –

(a) may be subjected to harassment by the offender, or

- (b) has a genuine fear of unwanted contact from or intimidation by the offender,

such as would cause the victim or that other person fear, distress or alarm.

(6) The harassment order shall have effect for the period the offender is in prison and an additional period of no more than 12 months or until such time as a further order, if any, is made under head 56.

(7) The court shall cause certified copies of a harassment order to be sent to—

- (a) the offender in respect of whom the order is made,
- (b) the applicant (if any) for the order,
- (c) any other person named in the order, and
- (d) in the case of an order made under subhead (1)(a), an Inspector of the Garda Síochána for the district in which the offender resided at the time the order was made.

(8) 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 a term of imprisonment not exceeding 12 months or both, or

- (b) on conviction on indictment, to a fine not exceeding €10,000 or to a term of imprisonment not exceeding 5 years or both.

(9) The reference in this head to “the date of that person’s release from prison” is a reference to the date on which the offender’s sentence of imprisonment referred to in subhead (1)(b) expires or, as the case may be, his or her remission from the sentence begins.

(10) In this section –

“sexual offence” and “offence in which there was a significant sexual aspect” shall be construed in accordance with section 3 of the Act of 2001.



**Head 59**      **Variation, discharge or renewal of harassment order**

Provide that –

(1) At any time after an order under head 58 has been made, any of the following persons may apply to the court that made the harassment order for an order varying, discharging or renewing that order –

- (a) the applicant for the harassment order,
- (b) the victim or any other person (other than the applicant) named in the harassment order,
- (c) the offender in respect of whom the harassment order was made,
- (d) a member of the Garda Síochána not below the rank of Inspector, or
- (e) where the offender is in prison, a probation officer.

(2) Where an application is made by a person under subhead (1), the court shall, as far as practicable, cause the other persons named in, or to whom, the harassment order was copied, to be informed of the application.

(3) Subject to subheads (4), (5), (6) and (7), the court, on hearing the applicant and any other persons referred to in subhead (2), may make an order varying, discharging or renewing the harassment order, as the court deems appropriate.

(4) A harassment order may be varied so as to impose a new or additional prohibition(s) on the offender, if the court is satisfied that it is necessary to do so for the purpose of protecting the victim or another person from harassment by the offender.

(5) Where the court varies the harassment order, the varied order may contain only such prohibitions as are necessary for the purpose of protecting the victim or another person from harassment by the offender.

(6) A harassment order may be discharged where the court is satisfied that the order is no longer necessary to protect the victim or another person from harassment by the offender or that that victim or other person no longer has any reason to be in fear of, or feel intimidated by, the offender.

(7) A harassment order may be renewed where the period for which it had effect under head 58(6) has lapsed and the court is satisfied that the conditions which gave rise to the making of the order have not significantly changed.

(8) The court shall cause certified copies of a harassment order varied, discharged or renewed under this head to be sent to –

- (a) the offender in respect of whom the order is made,
- (b) the applicant for the order,
- (c) any other person named in the order,
- (d) an Inspector of the Garda Síochána for the district in which the offender resided at the time the order was made or, if appropriate, an Inspector of the Garda Síochána for the district in which the offender resides at the time of the application, and
- (e) where a probation officer has applied for the order, that officer.

(9) A person who, without reasonable excuse, contravenes an order made pursuant to this head shall be guilty of an offence and shall be liable -

- (a) on summary conviction to a class B fine or a term of imprisonment not exceeding 12 months or both, or
- (b) on conviction on indictment to a fine not exceeding €10,000 or to a term of imprisonment not exceeding 5 years or both.

**Head 60**      **Liability for offences by bodies corporate**

Provide that -

(1) 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 or to be attributable to any neglect on the part of any person who, when the offence was committed -

(a) was a director, manager, secretary or other officer of that body, or

(b) purported to act in any such capacity,

that person, as well as the body corporate, shall 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.

**Head 61**      **Amendment of section 249 of Children Act 2001**  
**(Causing or encouraging sexual offence upon a child)**

Provide that -

The Children Act 2001 is amended in section 249, subsection 4, by the deletion of  
““child” means a child under 17 years of age;”.

**Head 62**      **Amendment of Schedule to Bail Act 1997**

Provide that -

The Bail Act 1997 is amended in the Schedule thereto by

(1) the insertion of the following after 12A(a):

(aa) section 4A (organisation etc. of child prostitution or production of child pornography);

(ab) section 4B (participation of child in pornographic performance);

(2) the insertion of the following paragraphs after paragraph 12B:

“12C. An offence under section 43 of the Sex Offenders Act 2001 (as inserted by section 38 of the Criminal Law (Sexual Offences) Act 2014)

12D. Any offence under the following provisions of the Criminal Law (Sexual Offences) Act 2014 -

(a) section 3 (soliciting or paying for purpose of sexually exploiting a child);

(b) section 4 (invitation etc. to sexual touching);

(c) section 5 (sexual activity in presence of child);

(d) section 6 (causing a child to watch sexual activity);

(e) section 7 (meeting a child for the purpose of sexual exploitation);

(f) section 8 (use of information and communication technology to facilitate sexual exploitation of child);

(g) section 58 (harassment order).”.