LAW SOCIETY
OF IRELAND

Opening Statement to Joint Committee on Justice, Home Affairs and Migration on General Scheme of the Criminal Law (Sexual Offences, Domestic Violence and International Instruments) Bill 2025 (20 January 2026)

Good afternoon. I thank the Cathaoirleach and Committee members for the invitation to address the Committee on the General Scheme of the Criminal Law (Sexual Offences, Domestic Violence and International Instruments) Bill 2025 on behalf the Law Society of Ireland; along with my colleague Brian Hunt, Director of Policy.

I am a solicitor who practised in criminal law defence for 15 years until my recent appointment in April last year to the position as State Solicitor for Kildare North & West. I have also been a member of the Law Society's Criminal Law Committee for the past 2 and a half years.

On a daily basis our members deal with sexual offences or domestic violence matters across the country, either by assisting victims or representing accused. Our observations today and our written Submission are informed by our experience in this difficult and sensitive area of law.

The main focus of our statement today will be on two key aspects of the General Scheme:

> firstly, Head 4, relating to the proposed reform of the mental element of the rape offence, and in particular the wording proposed in the General Scheme; and
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> secondly, Head 5, relating to the proposed Domestic Violence Register.

Head 4 – Mental Element of Rape

Over the past decade there has been a notable and welcome change in the approach to sexual offences and in particular around the concept of consent.

We welcome the inclusion, in the General Scheme, of the reasonable belief test when determining the mental aspect of a sexual offence.

By replacing the existing subjective test relying on the accused's own perception of consent to determine criminal liability we are taking a further step towards a justice system that is fairer.

The current *honest belief* test determines an accused's culpability by whether or not the accused had an honest belief that the woman was consenting to sexual intercourse.

This test contrasts with the proposed *reasonable belief* test which is a more objective form of test. It compares the accused's belief in the existence of consent with the belief of a hypothetical reasonable third party in the same scenario.

The proposed wording of Head 4 provides for the *reasonable belief test.* However, the reference to the requirement for the jury to have regard to "*all the circumstances*", when considering whether the accused did reasonably believe that a woman was consenting to the intercourse. This introduces an unwelcome degree of subjectivity.

In our view the phrase "all the circumstances" should be omitted from Head 4.

We believe that the element of subjectivity that features in the test must be limited to certain specific characteristics of the individual – such as age, maturity, physical or mental abilities.

In addition, the Law Society recommends revisiting the language used in the proposed new section 2(1)(b) of the Criminal Law (Rape) Act 1981 to ensure that the test that is to be applied to assess the reasonableness of the accused is objective. The current wording arguably results in a shift back to a subjective standard of proof.

In the General Scheme, the current proposal is to amend section 2(1)(b) of the 1981 Act so that it would state as follows:

> "(1) A man commits rape if—
>
> (a) (…)
>
> (b) at that time **he does not reasonably believe** that she consents to the intercourse, …" (emphasis added)

The Law Society is recommending that the words 'does not' be replaced with 'could not'. This amendment would provide for a clear objective test.

We expand on this in our Submission and mention also that our position on this is aligned with that of the Law Reform Commission.

Head 5 – Domestic Violence Register

Moving on to Head 5 – which relates to the creation of a domestic violence register - we refer the Committee to our Submission for a detailed analysis of what we see as being some shortcomings of the proposed approach.

In brief, the Domestic Violence Register that is proposed under Head 5 will list judgments against accused persons who have been convicted of certain sexual offences or violent physical offences against their partner. The register will be accessible to any member of the public whether they have a direct interest or not. It is proposed that the name of the victim and of the convicted person will be published.

We welcome the Government's commitment to improve the protection of people who suffer or are at risk of domestic violence. However, we would caution that greater care needs to be exercised in order to ensure that the proposed measures, including the register, are proportionate and in-line with Ireland's obligations towards the fundamental rights of individuals.

In our view, substantive amendments should be made to provide a safe, proportional and efficient register. For example, we suggest that the General Scheme should set out clear criteria for the judge to take into consideration in making their decision on publication. Doing so will help ensure that there is a consistent approach by the courts across the country.

In our view, the General Scheme is not clear on type of information to be included in the register. In our Submission we suggested that the General Scheme should specify

the exact elements of the judgment to be included in the register. We also believe that the register should not disclose the identity of any legal representatives.

Overall, the legislation creating the register must take into account proportionality and must adopt a balanced approach which is reflective of differing interests.

The coexistence of the Sex Offenders Register and the new Register that is proposed under the General Scheme could potentially lead to scenario where details relating to a convicted person could be included in the Sex Offenders Register for a period of 5 years, but remain available indefinitely in the Domestic Violence Register if the individual is not in position to afford the costs associated with making an application for deletion from the Register.

The Law Society recommends that consideration be given to setting a predetermined period of inscription in the Register with the duration varying depending on the sentence and or the nature of the offence.

We welcome the publication of the General Scheme, but as I have outlined here and as set out in a more detailed way in our Submission, we believe that certain aspects of the General Scheme require further consideration and re-framing.

Thank you.