

Submission on General Scheme of Criminal Law (Sexual Offences, Domestic Violence and International Instruments) Bill 2025

January 2026

Introduction

Rape Crisis Ireland (RCI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCI's role includes the development and coordination of national projects such as using our expertise to influence national policy and social change and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

The RCI welcomes the opportunity to make a submission on the General Scheme of Criminal Law (Sexual Offences, Domestic Violence and International Instruments) Bill 2025. We support the amendments contained in Heads 7-12 and will focus our submission on the following:

- Part 2: Head 3 and 4 – Sexual Offences;
- Part 3: Head 5 and 6 – Domestic Violence;

PART 2: HEADS 3 and 4 SEXUAL OFFENCES

While RCI welcomes the amendments contained in these Heads, we nonetheless express concern as to why the provision directing juries to consider steps taken to ascertain consent, as set out in Head 4, Section 2(2), has been applied solely to the amendment of rape under Section 2 of the Criminal Law (Rape) Act 1981, and not extended to the offence of sexual assault.

The inclusion of 'steps taken to ascertain consent' as a matter for consideration by juries reflects an important recognition that consent must be actively ascertained rather than passively assumed. It also represents a welcome shift away from an approach that focuses on the actions of the complainant, toward one that centres on the actions of the accused. In doing so, it signals a commitment to a more balanced approach that alleviates the disproportionate burden currently placed on survivors to prove the absence of consent, operating instead from a presumption that consent was not present.

As was communicated to us at the time, and as is reiterated in the Note to the Heads, amendments to the definition of rape were previously delayed due to concerns regarding potential inconsistency across different sexual offences. The application of the 'steps to ascertain consent' provision solely to rape under Section 2, and not to other sexual offences,

is likely to reintroduce such inconsistency. This provision should apply to all sexual offences in which consent forms an element of the offence, and in particular to the definition of sexual assault as set out in Head 3.

The exclusion of the 'steps to ascertain consent' provision means that this requirement will not apply not only to sexual assault, but also to aggravated sexual assault and to Rape as defined under Section 4 of the Criminal Law (Rape) (Amendment) Act 1990. This results in an inconsistency whereby juries' consideration of the actions of the accused will vary depending on the specific charge, despite the shared centrality of consent across these offences.

Furthermore, we do not agree with the amendment contained in Head 4, Section 2(3). While we accept that retrospective application to prosecutions already before the courts would be inappropriate, offences committed or alleged to have been committed prior to the coming into operation of the amendment, but not yet charged, should not be excluded. The principle that consent must be actively ascertained rather than passively assumed is not a new cultural development. We submit that this has long been an established expectation; the amendment merely gives statutory expression to that principle by requiring juries to explicitly consider whether steps were taken to ascertain consent. It's inclusion neither creates a new element of the offence nor criminalises previously lawful conduct, it merely provides statutory guidance to juries on an assessment they were already both entitled and likely to undertake.

Recommendations:

RCI recommends that the following matters be considered in the drafting of the legislation:

1. **Consistent Application of the "Reasonable Steps" Requirement**
   The requirement for juries to consider whether the accused took reasonable steps to ascertain consent should be applied consistently across all sexual offences in which consent is an element of the offence. This would ensure coherence within the legislative framework and avoid unjustified distinctions between offences.

2. **Amendment of Head 3 to Incorporate the Provision**
   Head 3 should be amended to expressly include the "reasonable steps" provision within the definition of sexual assault, thereby aligning it with the amended

definition of rape and ensuring consistency and commonality in jury deliberations across related offences.

3. **Revision of Transitional Provisions**
   Head 4 Section 2(3) should be revised so that the "reasonable steps" provision applies to offences committed or alleged to have been committed prior to the commencement of the amendment where proceedings have not yet been instituted. This would avoid arbitrary exclusion.

PART 3: HEADS 5 AND 6 DOMESTIC VIOLENCE

While we welcome the amendments set out in Heads 5 and 6 and in particular the proposal for the establishment of a domestic violence register, we wish to express our concerns regarding the possibility of such a register being publicly accessible.

Our concerns primarily relate to potential impact on the dynamics between perpetrators and victims, and the risk of retaliatory behaviour directed towards victims. Furthermore, making the register publicly accessible could expose those named on it, as well as their families, to retribution and other forms of harm. We submit that these risks could be significantly reduced if access to the register where restricted and administered solely by An Garda Siochana.

We do not make any specific recommendations save to highlight our concerns above. The Domestic Violence NGOs will have a fuller analysis on the more specific provisions, and we would support their submissions in that regard.

We thank you for the opportunity to make a submission and confirm that we are available for any further engagement you may need.

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