CRIMINAL LAW (SEXUAL OFFENCES, DOMESTIC VIOLENCE AND INTERNATIONAL INSTRUMENTS) BILL 2025

GENERAL SCHEME

TABLE OF CONTENTS

PART 1

Preliminary and General

1. Short title and commencement
2. Interpretation

PART 2

Sexual Offences

3. Amendment of Criminal Law (Rape) (Amendment) Act 1990: Sexual [Indecent] Assault
4. Amendment of Criminal Law (Rape) Act 1981: Rape

PART 3

Domestic Violence

Chapter 1

Domestic Violence Register

5. Insertion of new Part 5 in the Domestic Violence Act 2018

Chapter 2

Information sharing with schools

6. Insertion of new section 58 in the Domestic Violence Act 2018

PART 4

International Instruments

Chapter 1

Directive 2024/1712/EU amending Directive 2011/36/EU (Human Trafficking)

7. Amendment of Criminal Law (Human Trafficking) Act 2008
8. Offence of knowingly using the services of a victim of trafficking

Chapter 2

Directive 2024/1385/EU (Violence Against Women) and Istanbul Convention

9. Amendment of Criminal Justice (Female Genital Mutilation) Act 2012
10. Amendment of the Domestic Violence Act 2018
11. Amendment of Criminal Law (Extraterritorial Jurisdiction) Act 2019

PART 5

Miscellaneous

"Child pornography" to be construed as "child sexual exploitation material"

12. Amendment of Child Trafficking and Pornography Act 1998

PART 1

Preliminary and General

Head 1 Short Title and commencement

Provide that:

(1) This Act may be cited as the Criminal Law (Sexual Offences, Domestic Violence and International Instruments) Act 2025.

(2) This Act comes into operation on such day or days as the Minister may, by order or orders, appoint either generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Note

Head 1 is a standard provision concerning the Short Title of the Bill and commencement arrangements.

Head 2 Interpretation

Provide that:

In this Act -

– "Act of 1981" means the Criminal Law (Rape) Act 1981.

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

– "Act of 1995" means the Civil Legal Aid Act 1995.

– "Act of 1998" means the Child Trafficking and Pornography Act 1998.

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

– "Act of 2012" means the Criminal Justice (Female Genital Mutilation) Act 2012.

– "Act of 2018" means the Domestic Violence Act 2018.

– "Act of 2019" means the Criminal Law (Extraterritorial Jurisdiction) Act 2019 .

Note

Head 2 is a standard provision which defines the Acts in the Bill.

PART 2

Sexual Offences

Head 3 Amendment to section 2 of the Criminal Law (Rape) (Amendment) Act 1990 (Sexual assault)

Delete subsection 2(1) and provide for the following:

> ***"2(1)*** *A person commits sexual assault if, without consent, he or she intentionally*
>
> *(a) directly or indirectly applies force to [or causes an impact on] the body of another, or causes another to believe on reasonable grounds that he or she is likely immediately to be subjected to any such force [or impact],*
>
> *(b) in circumstances of indecency,*
>
> *and he or she does not reasonably believe that the other person consents to the sexual assault.*
>
> *(2) In this section, "circumstances of indecency" means circumstances which are objectively indecent according to the contemporary standards of right-minded people.*
>
> *(3) In this section, "consent" has the meaning set out in section 9 of the 1990 Act."*
>
> *(4) For the avoidance of doubt, this provision does not alter the behaviours heretofore encompassed in the offence of indecent assault, it merely alters the requisite mental state.*

Note

Head 3 will put the offence of sexual assault on a statutory footing. Currently, section 2 of the Criminal Law (Rape)(Amendment) Act 1990 provides that the offence of indecent assault be known as sexual assault. However, the elements which comprise the offence of sexual assault are contained in common law.

In November 2019 the Law Reform Commission (LRC) published its report *Knowledge or Belief Concerning Consent in Rape Law* on foot of a request by the then-Attorney General. The Report recommended that the law should be reformed so that the accused's belief in consent should be objectively reasonable, and that juries should have regard to the steps, if any, that the accused takes to ascertain whether the woman is consenting.

The Criminal Law (Sexual Offences & Human Trafficking) Bill 2023, as published, amended the *mens rea* or mental state for rape in line with the LRC's 2019 recommendation. However, the LRC did not examine the *mens rea* for sexual assault offences. During the drafting process, it was observed that the proposed reform to knowledge of consent in rape would remove the commonality in relation to

consent for rape offences and for sexual assault offences which is generally held to be the same. This risked creating issues where the accused is on trial for multiple charges. For example, where an accused is charged with rape and sexual assault on an indictment, the jury would need to be told that they are required to assess whether the belief is honest in relation to the sexual assault offences and reasonable in relation to the rape offences.

As a result, the consent provisions related to rape offences were removed from the 2023 Bill, with the intention of progressing them in tandem with legislative proposals to put sexual assault offences on a statutory footing, which is being done herein. The commonality between the offences is maintained by providing for a *mens rea* in relation to reasonable belief for rape offences as well as for sexual assault offences. It is important to note that the Head does not alter the behaviours comprising sexual assault under common law, merely the *mens rea* for the offence.

Head 4 Amendment to section 2 of the Criminal Law (Rape) Act 1981

Provide that:

Delete section 2 and substitute the following:

(1) A man commits rape if—

(a) he has sexual intercourse with a woman who at the time of the intercourse does not consent to it, and
(b) at that time he does not reasonably believe that she consents to the intercourse,

and references to rape in this Act and any other enactment shall be construed accordingly.

(2) If at a trial for a rape offence the jury has to consider whether a man reasonably believed that a woman was consenting to sexual intercourse, the jury shall, in its consideration, have regard to all the circumstances, including the steps (if any) taken by the man to ascertain whether the woman was consenting to the intercourse.

(3) The amendment [of section 2 of the Act of 1981] effected by subsection (1) shall not apply in relation to a rape offence committed, or alleged to have been committed, before the coming into operation of this section and the said section 2 shall have effect as respects such a rape offence as if the amendment effected by subsection (1) had not been made.

Note

Head 4 reforms the law on rape to provide that an accused's belief in consent should be objectively reasonable.

In November 2019 the Law Reform Commission (LRC) published its report *Knowledge or Belief Concerning Consent in Rape Law* on foot of a request by the then-Attorney General. The Report recommended that the law should be reformed so that the accused's belief in consent should be objectively reasonable, and that juries should have regard to the accused's relevant decision-making capacity and the steps, if any, that the accused takes to ascertain whether the woman is consenting.

The Criminal Law (Sexual Offences & Human Trafficking) Bill 2023, as published, amended the *mens rea* or mental state for rape in line with the LRC's 2019 recommendation. However, the LRC did not examine the *mens rea* for sexual assault offences. During the drafting process, it was observed that the proposed reform to knowledge of consent in rape would remove the commonality in relation to consent for rape offences and for sexual assault offences which is generally held to be the same. This risked creating issues where the accused is on trial for multiple charges. For example, where an accused is charged with rape and sexual assault on an indictment, the jury would need to be told that they are required to assess whether the belief is honest in relation to the sexual assault offences and reasonable in relation to the rape offences.

As a result, the consent provisions related to rape offences were removed from the 2023 Bill, with the intention of progressing them in tandem with legislative proposals to put sexual assault offences on a statutory footing, which is being done herein. The commonality between the offences is maintained by providing for a *mens rea* in relation to reasonable belief for rape offences as well as for sexual assault offences.

PART 3

Domestic Violence

Chapter 1

Domestic Violence Register

Head 5: Insertion of new Part 5 into the Domestic Violence Act 2018

Provide that:

The Domestic Violence Act 2018 is amended by the insertion of the following Part after section 56:

"Part 5

Miscellaneous

"57. ***Creation of a Register of Judgments in relation to Domestic Violence***

(1) Where a person is convicted on indictment of an offence contained within subsection 6 as against a relevant person, the Court may, at its discretion, and with the consent of the victim, publish a judgment outlining the sentence imposed on the convicted person to include such information as the Court deems necessary;

(2) Where the relevant person is deceased or unable to confirm their consent, it shall be within the discretion of the Court as to whether it will publish a judgment under this provision;

(3) A judgment published under this section shall be published by the Court Service as a judgment online under the heading entitled "Domestic Violence Register Judgments" ("the Register");

(4) A convicted person, may, after three years from the date of conviction of a relevant offence, and where a judgment has been published under this section, make an application to a Court of the same jurisdiction as the sentencing Court on notice to the Director of Public Prosecutions, to have their judgment removed from the Register. The Court shall have regard to any subsequent convictions of the applicant and or any actions of rehabilitation undertaken by the applicant when considering such an application. The Court shall also have regard to the position and views of the victim in relation to such an application.

(5) In this section, a person is a "relevant person" in respect of another person if he or she—

(a) is the spouse or civil partner of that other person, or

(b) is not the spouse or civil partner of that other person and is not related to that other person within a prohibited degree of relationship but is or was in an intimate relationship with that other person.

(6) The relevant offences under this section are:

- *Murder.*
- *Manslaughter.*
- *Rape.*
- *Rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990.*
- *Sexual assault.*

- *Aggravated sexual assault within the meaning of section 3 of the Criminal Law (Rape) (Amendment) Act 1990.*
- *Coercive control under section 39 of the Domestic Violence Act 2018.*
- *An offence under any of the following provisions of the Non-Fatal Offences against the Person Act 1997—*
    - *section 3 (assault causing harm),*
    - *section 3A (non-fatal strangulation or non-fatal suffocation),*
    - *section 4 (causing serious harm),*
    - *section 4A (non-fatal strangulation or non-fatal suffocation causing serious harm),*
    - *section 5 (threats to kill or cause serious harm),*
    - *section 13 (endangerment),*
    - *section 15 (false imprisonment).*

Note

Head 5 inserts a new section 57 into the Domestic Violence Act 2018 to create a Domestic Violence Register of Judgments. The Head facilitates the publication of Court judgments with regard to sentencing where a person is convicted on indictment of a scheduled offence as defined under that Head. The Court will retain discretion as to whether such judgment shall be published. Further, the victim's consent is required for such a judgment to be published. The Court shall include such information within the judgment as it deems necessary. After three years, a convicted person can make an application to remove the judgment. The Court shall have regard to any subsequent offences of the applicant, any efforts of rehabilitation and the views of the victim when determining the application.

The proposal falls primarily within the prosecution pillar of the Zero Tolerance strategy, as well as the Istanbul Convention, supplementing other protection and prevention initiatives currently being advanced by ensuring that relevant convictions for serious domestic violence offences are effectively publicised as part of the trial process. This will in turn assist people who are in or considering entering into a relationship with a person to ascertain whether they have a history of domestic violence convictions.

Chapter 2

Information sharing with schools

Head 6: Insertion of new section 58 in the Domestic Violence Act 2018

Provide that:

The Domestic Violence Act 2018 is amended by the insertion of the following section after section 57:

> ***"58. Disclosure of information to a school relating to a domestic violence incident involving a child***
>
> *(1) A member of the Garda Síochána may share with a school:*
>
> *(a) the name of the child concerned, and*
>
> *(b) that a domestic violence incident may have occurred in the child's household,*
>
> *for the purpose of protecting the rights and welfare of children.*
>
> *(2) For the purposes of this section "school" has the same meaning as in section 2 of the Education Act 1998.*

Note

The purpose of this Head is to provide the statutory footing allowing An Garda Síochána to operate Operation Encompass. Operation Encompass is an early intervention strategy already in place in the UK and Northern Ireland, which aims to provide immediate support for children impacted by domestic abuse. It involves An Garda Síochána notifying a designated contact person at the school the child attends that there was a domestic violence incident in the home so that the teacher will be aware of the situation in order to provide support. Teachers are not expected to take any action, other than being sensitive to the fact that the child may have witnessed a distressing incident of domestic abuse. The support will be based on the needs and wishes of the child. An Garda Síochána will only be allowed to share with the school that a domestic violence incident occurred in the household. No other details will be given.

Operation Encompass is one of the actions contained in the Third National Strategy on Domestic Sexual and Gender-Based Violence. Specifically, action 2.5.2 commits to a "complete examination of the potential application of an approach on the lines of Operation Encompass in an Irish context".

PART 4

International Instruments

Chapter 1

Directive 2024/1712/EU amending Directive 2011/36/EU (Human Trafficking)

Head 7: Amendment to the Criminal Law (Human Trafficking) Act 2008

Provide that:

Section 1 of the Criminal Law (Human Trafficking) Act 2008 is amended as follows:

"'exploitation' means –

[…]

(e) exploitation of surrogacy;

(f) exploitation of forced marriage;

(g) exploitation of illegal adoption."

Note

Head 7 gives effect to Article 2 of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. Article 2 specifies:

Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs, or the ***exploitation of surrogacy, of forced marriage, or of illegal adoption****.*

The corresponding Recital specifies:

The exploitation of surrogacy, of forced marriage or of illegal adoption can already fall within the scope of offences concerning trafficking in human beings as defined in Directive 2011/36/EU, to the extent that all the criteria constituting those offences are fulfilled. However, in view of the gravity of those practices, and in order to tackle the steady increase in the number and relevance of offences concerning trafficking in human beings committed for purposes other than sexual or labour exploitation, the exploitation of surrogacy, of forced marriage or of illegal adoption should be included as forms of exploitation in that Directive, in so far as they fulfil the constitutive elements of trafficking in human beings, including the means criterion. More specifically, as regards trafficking for the exploitation of surrogacy, this Directive targets those who coerce or deceive women into acting as surrogate mothers. The amendments to Directive 2011/36/EU made by this Directive are without prejudice to the definitions of marriage, adoption, forced marriage and illegal adoption, or to those of offences related thereto other than trafficking, where provided for in national or international law. Those rules are also without prejudice to the national rules on surrogacy, including criminal law or family law.

It is therefore necessary to amend the definition of 'exploitation' set out in the Criminal Law (Human Trafficking) Act 2008 to encompass the exploitation of surrogacy, of forced marriage or of illegal adoption.

Head 8: Amendment to the Criminal Law (Human Trafficking) Act 2008

Provide that:

The Criminal Law (Human Trafficking) Act 2008 is amended by the insertion of the following section after section 5:

> ***"5A Offence of knowingly using the services of a victim of trafficking***
>
> *A person who knowingly uses the services of a victim of trafficking, where the victim of trafficking is exploited to render such services, shall be guilty of an offence.*
>
> *A person guilty of an offence under this section shall be liable—*
>
> *(a) on summary conviction to a fine not exceeding €5,000 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."*

Note

Head 8 gives effect to Article 18a of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. Article 18a specifies

Member States shall take the necessary measures to ensure that, when it is an intentional act, the use of services provided by a victim of an offence referred to in Article 2 constitutes a criminal offence, where the victim is exploited to render such services and the user of the services knows that the person providing the service is a victim of an offence referred to in Article 2.

Chapter 2

Directive 2024/1385/EU (Violence Against Women) and Istanbul Convention

Head 9: Amendment of Criminal Justice (Female Genital Mutilation) Act 2012

Provide that:

Section 4 of the Criminal Justice (Female Genital Mutilation) Act 2012 is amended in subsection (1)(c) by the substitution of *"by a person who is a citizen of Ireland or is ordinarily resident in the State"* for *"by a person who is a citizen of Ireland or is ordinarily resident in the State, and would constitute an offence in the place in which it is done".*

Note

Directive 2024/1385/EU on combating violence against women and domestic violence mandates the criminalisation of female genital mutilation (FGM). Article 12 of the Directive specifies that Member States shall establish jurisdiction over this crime where it is committed by one of its nationals. It further specifies that this jurisdiction must not be subject to the condition that the conduct is punishable as a criminal offence in the State where it was carried out.

Head 9 therefore amends section 4 of the 2012 Female Genital Mutilation Act to remove the requirement for dual criminality in respect of this offence. This will ensure compliance with the requirements of the Directive.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) also specifies that dual criminality ought not to be required in respect of specific offences, namely sexual violence including rape, forced marriage, female genital mutilation and forced abortion and forced sterilisation. The provisions of Head 9 are thus in line with the requirements of the Convention.

Head 10: Amendment of the Domestic Violence Act 2018

Provide that:

Section 38 of the Domestic Violence Act 2018 is amended in subsection (3)(a) by the substitution of *"an Irish citizen or ordinarily resident in the State"* for *"an Irish citizen or ordinarily resident in the State and that conduct for that purpose would constitute an offence in the place in which that conduct occurs".*

Note

Directive 2024/1385/EU on combating violence against women and domestic violence mandates the criminalisation of forced marriage. Article 12 of the Directive specifies that Member States shall establish jurisdiction over this crime where it is committed by one of its nationals. It further specifies that this jurisdiction must not be subject to the condition that the conduct is punishable as a criminal offence in the State where it was carried out.

Head 10 therefore amends section 38 of the 2018 Domestic Violence Act to remove the requirement for dual criminality in respect of this offence. This will ensure compliance with the requirements of the Directive.

The Istanbul Convention also specifies that dual criminality ought not to be required in respect of specific offences, namely sexual violence including rape, forced marriage, female genital mutilation and forced abortion and forced sterilisation. The provisions of Head 10 are thus in line with the requirements of the Convention.

Head 11: Amendment of Criminal Law (Extraterritorial Jurisdiction) Act 2019

Provide that:

Section 3 of the Criminal Law (Extraterritorial Jurisdiction) Act 2019 is amended –

(a) by the deletion of subsection (3)(a); and

(b) by the deletion of subsection (4)(b).

Note

Article 44, paragraph 3 of the Istanbul Convention specifies that dual criminality ought not to be required in respect of specific offences, namely sexual violence including rape, forced marriage, female genital mutilation and forced abortion and forced sterilisation.

Ireland has entered a reservation on this sub-Article as our domestic legislation in respect of these offences requires that, where such offences occur outside the jurisdiction, the conduct must be an offence both in Ireland and in the place where the conduct occurs.

Head 11 amends section 3 of the Criminal Law (Extraterritorial Jurisdiction) Act 2019 to remove the requirement for dual criminality in relation to relevant offences. A "relevant offence" within the meaning of the 2019 Act is:

(a) an offence under section 3, 3A, 4, 4A, 5, 9 or 10 of the Non-Fatal Offences against the Person Act 1997 (*i.e. Assault causing harm; Non-fatal strangulation or non-fatal suffocation; Causing serious harm; Non-fatal strangulation or non-fatal suffocation causing serious harm; Threats to kill or cause serious harm; Coercion; Harassment*)
(b) sexual assault within the meaning of section 2 of the Act of 1990,
(c) aggravated sexual assault within the meaning of section 3 of the Act of 1990,
(d) rape,
(e) rape under section 4 of the Act of 1990.

Removing the requirement for dual criminality in relation to these offences will facilitate lifting Ireland's reservation in relation to Article 44 of the Istanbul Convention.

PART 5

Miscellaneous

Head 12: "Child pornography" to be construed as "child sexual abuse material"

Provide that:

References to "child pornography" shall be construed as references to "child sexual abuse material":

On and from the day specified —

a) references in any enactment, legal proceedings or other document to "child pornography" shall be construed as references to "child sexual abuse material",

b) the Child Trafficking and Pornography Act 1998 is amended by –

   i) the substitution of "child sexual abuse material" for "child pornography"
   ii) the substitution of "child sexual abuse performance" for "pornographic performance"

   in each place where it occurs.

For the avoidance of doubt, this provision does not entail any change to the substantive legislative provisions, other than altering the terminology used to describe the conduct in question.

Note

The Head provides that references to "child pornography" shall be construed as references to "child sexual abuse material". The rationale for this provision is that the term "child pornography" is outdated and fails to reflect the full horror of the sexual abuse involved in this type of material. The proposed provision "child sexual abuse material" also fully aligns with the terminology employed in the relevant international and European legal instruments, such as the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (also known as the Lanzarote Convention), and the most recent Commission proposals to combat child sexual abuse and child sexual exploitation at European level.

A sexual image of a child is "abuse" or "exploitation" and should not be described as "pornography". Pornography is a term used for adults engaging in consensual sexual acts distributed (mostly) legally to the general public for their sexual pleasure. Child abuse images or performances clearly do not fall into the same category. They involve children who are victims of a crime and are documentary evidence of a child being sexually abused.