

Sexual offences, sexual activity, the ability to consent and older people

Submissions on section 5 of the Criminal Law (Sexual Offences) Act 1993

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25th August 2014

Section 5 of the Criminal Law (Sexual Offences) Act 1993 makes it an offence to have sexual relations with a person who is mentally impaired. It inadvertently criminalises consensual sexual activity between adults who may be suffering from dementia or intellectual disabilities while sanctioning marital rape. The Act does not criminalise sexual activities other than rape, buggery and gross indecency, so fails to protect those with dementia or intellectual disabilities from other sexual offences. The Ministry of Justice has called for submissions on the repeal of section 5.

Sexual offences, sexual activity, consent and older people

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1. Introduction

Age Action Ireland is the largest older person's charity in Ireland. It promotes positive ageing and better policies and services for older people. We work with older people to change attitudes as well as providing key services. Our aim is to make Ireland the best place in the world in which to grow old.

Age Action welcomes the opportunity to comment on the Department of Justice and Equality's discussion paper on sexual offences and vulnerable people. Age Action would also like to comment on the issue of sexual relationships for older people in relation to principles of equality, privacy, dignity and family life embodied in the Constitution and in Ireland's international treaty obligations, especially the International Convention on the Rights of Persons with Disabilities.

Dementia

There are approximately 40,000 people with dementia in Ireland. Dementia is a chronic progressive syndrome in which there is deterioration in cognitive function, and for which there is no cure or treatment to halt dementia's progressive course.¹ Dementia may be caused by a wide variety of conditions, most commonly Alzheimer's disease, but small strokes (vascular dementia), infections such as HIV, genetic conditions such as Huntington's disease and other illnesses may all cause dementia. As dementia progresses it affects the ability to make decisions, use language, learn, remember, calculate, and perform day to day activities.² It affects coordination, movement, speech and swallowing: the physical effects may eventually lead to death. Those with advanced dementia may be unable to make decisions regarding personal welfare, including the ability to consent to sexual activity.

Older People

There are about half a million people aged 65 or over in Ireland. Older people have sexual feelings and sexual needs which are often unacknowledged and unrecognised by others. These feelings do not always go away if the person suffers from dementia or other neurological disorder. Some older people with dementia exhibit sexually inappropriate behaviour and may be a danger to others; some people with dementia may want to continue their sexual relationships, or form new ones; some older people with dementia may become the victims of sexual abuse. Legislation may be required to protect those whose dementia is so severe that they may suffer exploitation and abuse by others, but a balance must be struck between protection and the unwarranted and intrusive regulation of sexual activities of those with disabilities.

This submission contains a section on sexual crimes against older people, in particular sexual crimes against older women. The subject is rarely discussed and there is only a small amount

¹ Fact sheet no. 232. World Health Organisation. April 2012

² See, for example the Alzheimer's Society website www.alzheimer.ie/about-dementia.aspx

of research available. It is nevertheless important to acknowledge the reality of such crimes, and their physical and psychological impact on older people. Protection of the right to enjoy sexual relationships on an equal basis with those who do not have disabilities must be balanced against the right not to be subjected to abuse or exploitation.

2. Legislative background

At present section 5 of the Criminal Law (Sexual Offences) Act 1993 criminalises sexual intercourse, buggery and gross indecency with a person who is mentally impaired.³ The Act defines those who are mentally impaired as people who are unable to live independently and those who are unable to guard against serious exploitation because of their mental disorder.⁴ The Act is intended to protect the vulnerable but it also criminalises sexual relations between two people who may be suffering from dementia or intellectual disability, yet fails to protect them from other forms of sexual offences. Being married to the mentally impaired person is a defence⁵, as is believing that the person is able to consent to the sexual activity and has consented.⁶

In 2011 the Law Reform Commission suggested repealing and modernising section 5⁷; earlier this year the Criminal Law (Sexual Offences) (Amendment) Bill 2014⁸ was introduced which contained safeguards for those who were vulnerable to exploitation but respected the rights of persons with disabilities to engage in consensual sexual activities; more recently the Department of Justice and Equality has asked for submissions on proposed changes to section 5 which will comply with the requirements of the Convention on the Rights of Persons with Disabilities, but offer protection to vulnerable people who may lack the ability to consent to sexual activity and may be exploited and abused.

³ See Appendix 1

⁴ Section 5(5) Criminal Law (Sexual Offences) Act 1993

⁵ Section 5(1) Criminal Law (Sexual Offences) Act 1993

⁶ Section 5(3) Criminal Law (Sexual Offences) Act 1993

⁷ LRC Consultation paper: Sexual Offences and capacity to consent. LRC CP63-2011

⁸ See Appendix 2: Private Member's Bill, Senator Katherine Zappone

3. Sex and older people

There is a very common and widespread assumption that older people live lives of unimpeachable chastity, because they no longer have sexual desire, or are unattractive, or are incapable of sexual activity.⁹ As a result very little consideration is given to their need for intimacy and ongoing or new sexual relationships. Drugs like Viagra are available for male erectile dysfunction for men living in the community, but are not frequently prescribed for those living in residential care facilities. HIQA acknowledges that older people have such needs and issues guidance for residential care facilities for older people and those with disabilities.¹⁰ People with dementia continue to have sexual needs and may express this in different ways:

One psychiatrist whose patient wished to hire prostitutes and was thwarted by the nursing home he resided in, reports that carers were allocated to follow him and intervene if he behaved inappropriately.¹¹ In Ireland, under current law:

- A prostitute hired by a patient in a residential care facility could face charges under section 5.
- A person who continues a long term sexual relationship after their partner has been admitted to a residential care facility could also be charged under section 5 if they were not married or in a civil partnership. Fear of prosecution (while not very realistic) or pressure from family members, may lead residential care staff to try to stop these relationships.

Some people with dementia (2-17%) may exhibit disinhibited behaviour which ranges from inappropriate comments or language to sexual assaults on others.¹² They may pose a risk to others in the community, or to other patients in residential care or hospital settings. If they enter the criminal justice system they may be considered unfit to plead or not guilty by reason of insanity due to their dementia. A variety of drugs are used off label¹³ to try to control this behaviour, but sometimes some patients need to be confined to secure facilities because of the danger they pose to others who have not consented to their advances. This may be particularly problematic in nursing homes and acute settings such as hospital wards.

Older people may meet partners while in residential care facilities and wish to pursue sexual relationships. A few may wish to marry. In theory section 5 of the Act criminalises both

⁹ Taylor A, Gosney M. Sexuality in older age: essential considerations for healthcare professionals. *Age Ageing* 2011; 40(5): 538-543

¹⁰ Guidance for designated centres: Intimacy and Sexual Relationships. HIQA. November 2013.

¹¹ Barret J. Personal services or dangerous liaisons: should we help patients hire prostitutes? *BMJ* October 23 2004;329 (7472): 985

¹² Seies H, Degano P. Hypersexuality in Dementia. *Advances in Psychiatric Treatment* (2005) 11: 424-431

¹³ A drug is used off label when it is used for a purpose it does not have a licence for; when, for example its side effects are the desirable attribute. Drugs like haloperidol used to treat psychoses, have powerful sedative effects and diminish libido.

partners prior to marriage. Fear of prosecution and social disapproval may lead residential care staff to try to end these relationships, depriving older people of comfort and solace.

Some older people may suffer sexual abuse by carers and family members, including spouses. Section 5 provides a defence to those who are married to a person with dementia who may not be able to consent to sex.

4. Sexual Offences and Consent

The concept of consent is central to prosecutions for sexual offences. Lack of consent turns consensual activity into a crime. The person may refuse to engage in the activity; or be coerced into the activity; or lack the ability to consent to it. Some older people suffering from dementia cannot consent to sexual activity because they no longer understand what it entails. Older people may be vulnerable to sexual abuse by carers, family members and strangers because of dementia or other disabilities. Unlike those with intellectual disabilities, education or information cannot change the inability of those with dementia to consent as their dementia affects their ability to learn and their cognitive abilities deteriorate as their dementia progresses. The position of such people is rarely considered in the disabilities discourse: sexual activity is regarded as the domain of younger people.

Section 5 makes it an offence to engage in certain sexual activities with those who are “mentally impaired”. A mentally impaired person is someone who is suffering from a disorder of the mind, whether through mental handicap or mental illness, which is of such a nature or degree as to render a person incapable of living an independent life or guarding against serious exploitation. In order to obtain a conviction under section 5 the prosecution must show that the victim was incapable of living independently or guarding against serious exploitation, which is NOT the same as being able to consent to sexual activity. If the person is shown to be unable to live an independent life or guard against serious exploitation they are presumed to be incapable of consent, whether they consented or not and whether or not they were able to consent. This would criminalise adults with dementia who lived in an institution such as a residential care home who either wished to continue their previous sexual relationships, or start new ones, regardless of their actual consent or ability to consent.

The Law Reform Commission suggested abandoning the term “mental impairment” and introducing a functional test of capacity to consent to sexual relations. Case law from England under the Mental Capacity Act 2005 would indicate that factors to be taken into consideration would include things like whether the person understood the nature of the act, and the consequences of the act such as pregnancy and sexually transmitted disease. Since older women cannot become pregnant, and may face a different set of physiological consequences (see below) this test would discriminate against older women. The Criminal Law (Sexual Offences) (Amendment) Bill 2014 suggests that the level of understanding required is to understand the physical nature of the act only, which would seem less discriminatory in its application.¹⁴ It also suggests that no higher standard of understanding be required of the disabled than the non-disabled in order to conform with the requirements of Articles 5 and 12 of the Convention on the Rights of Persons with Disabilities: the right to equality and non discrimination and the right to equal recognition before the law.

¹⁴ Section 5A(4) Criminal Law (Sexual Offences) (Amendment) Bill 2014

The Department of Justice and Equality proposes to use the term “able to consent”, instead of “mentally impaired”, but does not propose to introduce a new statutory definition of consent. Any definition of consent would have to be consistent with the Assisted Decision making (Capacity) Bill (which uses a functional test of capacity). The courts, therefore, would have to interpret “consent”¹⁵ and the level of understanding required if the prosecution is to show that the person was unable to consent or did not consent.

Recommendation: Repeal the section 5 term “mentally impaired” and use the term “able to consent” The level of understanding necessary to give consent is the understanding of the physical act consented to. The threshold is set quite low. Those who are able to consent are also able to refuse to consent. Some older adults would, by reason of their dementia, be unable to understand the physical act and therefore unable to give consent to it. The amendment should make it clear that silence or compliance is not the same as consent.

¹⁵ The People (DPP) v C [2001], unreported, CCA 31st July 2001. “Consent means voluntary agreement or acquiescence to sexual intercourse by a person of the age of consent with the requisite mental capacity. Knowledge or understanding of facts material to the act being consented to is necessary for the consent to be voluntary...”

5. Vulnerable Persons and those in a position of trust and authority

The Department of Justice and Equality proposes to use the term “vulnerable person” to describe an adult who may not be able to consent to sexual activity. A vulnerable person is a person who suffers from a disability or a disorder of the mind which is of such a nature or degree as it may cause the person the lack the necessary understanding to consent to sexual acts (in certain circumstances) or may severely restrict the capacity of the person to guard themselves against serious exploitation by another person. This is very similar to the definition of a vulnerable person in the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012. A person who is not a vulnerable adult and who engages in sexual activity with such a person should ensure that the person is able to understand and consents to the act. It is a defence to claim that they thought that the person was able to consent and had consented, and it is a defence to claim they did not know that the person was vulnerable person. The defence of consent is not available to a person in a position of trust and authority, and there is a reverse onus clause which means that the person must show that they were reasonably mistaken about the vulnerable status of the person.

A person who is in a position of trust or authority is a person who as part of their employment or as part of a contract for services supervises or provides treatment to a vulnerable person and that the supervision or treatment directly relates to that person’s vulnerabilities. The Department of Justice and Equality does not propose to include family members or friends or other unpaid carers in that definition, although they would be in a position of trust and authority and unlikely to be unaware of the person’s condition.

Some people such as those suffering from severe dementia may be unable to understand the nature of the sexual acts proposed and therefore unable to consent to them. Those who care for them would be aware of their condition and could not claim that they had consented to the activity. There should, in any case, be considerable ethical and professional barriers to engaging in sexual activities with clients on the part of both paid and unpaid carers. Arguments that the person consented to the act should not be available to them: the gross imbalance of power between those giving and those receiving care should preclude this. A violation of the relationship of trust or authority should be seen as an aggravating factor during sentencing.

Many people with dementia are cared for by a circle of friends, family and paid carers, all of whom are in a position of trust and authority in relation to the person. All of them would be aware that the person suffers from serious dementia, and that it would be a gross violation of trust and of the person’s right to bodily integrity, security of person, privacy and dignity to engage in sexual activity with them. Being married to, or in a civil union with a person who cannot or does not consent to the sexual activity should not operate as a defence.

Recommendation: It is unnecessary to define a person unable to give consent to the act as a vulnerable person. The inability to consent is the only thing that matters and it applies whether the person has a disability, is unconscious, or under the influence of alcohol or drugs, or a combination of these factors. Persons in a position of trust and authority should not abuse their position to engage in sexual activities with those who cannot or do not consent. Persons in a position of trust and authority should include those who as part of their employment or contract for services supervises or provides treatment to the person, that directly relates to their vulnerabilities, or who are family members, spouses, friends or unpaid carers.

6. Sexual offences against older people

Older people may be subjected to a range of sexual abuse, not just the more serious offences of rape, buggery and gross indecency in section 5. The offences may be committed by strangers, by paid and unpaid carers and by family members including intimate partners. Offences include sexual assault (formerly known as indecent assault)¹⁶ which includes non consensual touching, up to but excluding acts of penetration, or forcing the person to watch or participate in sexual acts; aggravated sexual assault which involves the use or threat of violence¹⁷, the infliction of injury, or causes humiliation and degradation; rape (only by a man against a woman)¹⁸; and rape under section 4 which applies to both male and female victims.

Any of these offences may take place in the home, or in residential care settings. In a study of sexual abuse in the context of residential care facilities in America 83% of alleged abusers were either residents or carers.¹⁹ People who are unable to perform their own personal care are particularly vulnerable to sexual assault²⁰, and disabilities such as dementia or stroke may mean that they are unable to tell others of their experience, or may not be believed if they do.

Post-menopausal women experience a number of physiological changes as the influence of the hormone oestrogen wanes. These include shortening and narrowing of the vagina with thinning and loss of elasticity of the skin of the genital tract.²¹ General Practitioners and gynaecologists will be familiar with these physiological changes, often known as atrophic vaginitis. Older women may present to them because sexual intercourse is painful and difficult, and treatment with topical oestrogens often helps. There is very little literature internationally on the effects of consensual or non consensual sex on older women, but some things are very clear: Older women suffer a higher incidence of genital injury after rape than younger women. In Morgan's study, which was set in a sexual assault referral centre, rather than an emergency room, 57% of the older victims suffered a genital injury²² and 71% suffered extragenital injuries.²³ Older women may suffer bruising and lacerations to the genitalia. Some older women may require surgical repair of lacerations to the genitalia²⁴; occasionally there may be damage to the bladder and bowel, accompanied by haemorrhage and shock. Jones *et al* report a greater number and severity of anogenital injuries and greater

¹⁶ Section 2 of the Criminal Law (Rape) (Amendment) Act 1990

¹⁷ Section 3 of the Criminal Law (Rape) (Amendment) Act 1990

¹⁸ Section 1 of the Criminal Law (Rape) (Amendment) Act 1990

¹⁹ Ramsey-Klawnsnik et al. Sexual predators who target elders: Findings from the first national study of sexual abuse in care facilities. *Journal of Elder Abuse and Neglect*. 2008; 20 (4): 353-376

²⁰ Casteel C et al. National study of physical and sexual assault among women with disabilities. *Inj Prev* 2008; 14 (92): 87-90

²¹ Morgan L et al. Sexual assault of post menopausal women: a retrospective study. *BJOG* 2011; 118(7): 832-843

²² *Ibid* at p.840

²³ *Ibid* at P.841

²⁴ Poulos C, Sheridan DJ. Genital injuries in Postmenopausal women after sexual assault. *Journal of Elder Abuse and Neglect*. 2008; 20(4): 323-335

number non genital injuries among older women who suffered sexual assault.²⁵ Older women were more likely to be assaulted in their own home (36%) or in a care facility (33%).²⁶ Some women may be assaulted during the course of a burglary, others by carers.²⁷ Visitors to residential care facilities may assault residents.²⁸

The age and vulnerability of the victim and issues of abuse of trust are already regarded as aggravating factors during sentencing in Ireland.²⁹

²⁵ Jones JS et al. Sexual assault in postmenopausal women: epidemiology and patterns of genital injury. *Am J Emerg Med* 2009;27(8): 922-9

²⁶ Eckert LO, Sugar NF. Older victims of sexual assault: an underrecognised population. *Am J Obstet Gynaecol.* 2008;198(6): 668

²⁷ For example Stephen Murray, a care home worker was convicted in the Glasgow High Court of the rape and sexual assault of elderly residents. *The Telegraph* 27th July 2012.

²⁸ See *R v Adcock* [2010] EWCA Crim 700 where a man visiting his wife in residential care sexually assaulted a patient with severe neurological disease on several occasions.

²⁹ See *DPP v Drought* [2007] IEHC 310 (Central Criminal Court)

7. Range of Offences

Everyone, regardless of their disability or capacity, is entitled to the protection of the law. The Department of Justice and Equality proposes that only serious sexual offences should be banned on the part of a person who has a professional relationship with the person with dementia. Minor sexual acts are excluded as they are said to be part of normal displays of affection, a frankly staggering assertion. Most people do not normally touch the breasts, buttocks or genitalia of their elderly relatives or neighbours as part of a normal display of affection: it would be regarded as offensive and degrading; why would that change because the person has dementia?

The range of proscribed sexual offences against those who cannot consent should be the same as the range of offences against those who can consent but do not consent.

Finally the Department of Justice and Equality recommendation that those who wish to engage in a loving relationship with a person with whom there is a relationship of trust and authority should resign their position does not necessarily confer any protection on a person who cannot consent. The carer/professional can easily get another job elsewhere and continue to abuse the person who cannot consent to their actions. A loving relationship is generally between equals and would include the ability to consent to sexual relations on the part of both people. Resignation will not confer the ability to consent, only to facilitate abuse.

Recommendation: Age Action recommends that since everyone should have the same legal rights and the same legal protections the range of offences against persons who cannot consent to them should include all sexual offences not just the most serious ones.

8. Summary

Age Action recommends:

- a) Section 5 of the Criminal Law (Sexual Offences) Act 1990 be repealed.
- b) That many people with dementia are able to understand the physical nature of sexual activity and are capable of giving and refusing consent, and that legislation should not be used to regulate or intrude into their sexual lives.
- c) That there is recognition that some people, for example those with severe dementia, are unable to consent to some or all forms of sexual activity because they do not understand the physical nature of the acts involved and that they should be protected against exploitation and abuse.
- d) That those who are unable to consent to sexual activity should enjoy the same level of protection as those who are able to consent, but do not. This should apply to all forms of sexual offending, not just the most serious.
- e) That marriage or civil union is not a defence to a sexual offence, just as marriage does not justify the rape of a person who is not disabled.
- f) That a person who is in a relationship of trust and authority with a person who cannot consent to a sexual act should not be able to use the defence that they thought the person was able consent: the nature of their relationship would mean that they would know whether or not the person was able to consent, and their ethical and professional responsibilities should preclude any form of sexual activity with the client person regardless of the ability to consent.
- g) That a relationship of trust and authority should be regarded as an aggravating factor in sentencing.
- h) That the inability to consent be regarded as an aggravating factor in sentencing.
- i) That (g) and (h) applies to all forms of sexual offences, not just the most serious

APPENDIX 1

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

Protection of mentally impaired persons.

5. (1) A person who-

- (a) has or attempts to have sexual intercourse, or
- (b) commits or attempts to commit an act of buggery,

With a person who is mentally impaired (other than a person to whom he is married or to whom he believes with reasonable cause he is married) shall be guilty of an offences and shall be liable on conviction on indictment to-

- (i) In the case of having sexual intercourse or committing an act of buggery, imprisonment for a term not exceeding 10 years, and
- (ii) In the case of an attempt to have sexual intercourse or an attempt to commit an act of buggery, imprisonment for a term not exceeding 3 years in the case of a first conviction, and in the case of a second or any subsequent conviction imprisonment for term not exceeding 5 years.

(2) A male person who commits or attempts to commit an act of gross indecency with another male person who is mentally impaired shall be guilty of an offence and shall be liable upon conviction for a term not exceeding 2 years.

(3) In any proceedings under this section it shall be a defence for the accused to show that at the time of the alleged commission of the offence he did not know and had no reason to suspect that the person in respect of whom he is charged was mentally impaired.

(4) Proceedings against a person charged with an offence under this section shall not be taken except by or with the consent of the Director of Public Prosecutions.

(5) In this section "*mentally impaired*" means suffering from a disorder of mind, whether through mental handicap or mental illness, which is of such a nature or degree as to render a person incapable of living an independent life or guarding against serious exploitation.

APPENDIX 2



An Bille um an Dlí Coiriúil (Cionta Gnéasacha) (Leasú), 2014
Criminal Law (Sexual Offences) (Amendment) Bill 2014

Mar a tionscnaíodh

As initiated



AN BILLE UM AN DLÍ COIRIÚIL (CIONTA GNÉASACHA) (LEASÚ), 2014
CRIMINAL LAW (SEXUAL OFFENCES) (AMENDMENT) BILL 2014

ACTS REFERRED TO



Criminal Law (Human Trafficking) Act 2008 (No. 8)

Criminal Law (Rape) (Amendment) Act 1990 (No. 32) _____

Criminal Law (Sexual Offences) Act 1993 (No. 20) _____

AN BILLLE UM AN DLI COIRIUL (CIONTA GNÉASACHA) (LEASÚ), 2014

CRIMINAL LAW (SEXUAL OFFENCES) (AMENDMENT) BILL 2014



AN BILLE UM AN DLÍ COIRIÚIL (CIONTA GNÉASACHA) (LEASÚ), 2014
CRIMINAL LAW (SEXUAL OFFENCES) (AMENDMENT) BILL 2014

Bill

entitled

An Act to make it an offence for a person to abuse a position of dependence and trust for 5

sexual purposes and to provide a statutory test for determining the existence of consent in respect of sexual acts and for that purpose to amend the Criminal Law (Sexual Offences) Act 1993 and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Substitution of section 5 of Act of 1993 10

1. The Criminal Law (Sexual Offences) Act 1993 is amended by substituting the following for section 5:

“Offence of abuse of position of dependence and trust

5. (1) Any person who being in a position of dependence and trust—

(a) takes advantage of his or her position, or 15

(b) aids, abets, counsels or procures another person to take advantage of his or her position,

and—

(i) induces or seduces a person to have sexual intercourse with him or her, or 20

(ii) commits any other sexual offence involving a person,

shall be guilty of an offence of abuse of position of trust and shall be liable upon conviction on indictment to imprisonment for a term of not less than ten years.

(2) Where a person charged with an offence under this section can establish that, in respect of the sexual act which had been engaged in, no offence would have been committed had the consent of the victim been granted prior to the act, it shall in those circumstances be a defence for a person who is charged with an offence under this section to prove that— 25

(a) the victim consented to the sexual act which had been engaged in, and 30

(b) that such consent was granted freely and in the absence of duress or coercion.



(3) In this section—

‘position of dependence and trust’ includes, but is not limited to, a person who—

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**AN BILLE UM AN DLÍ GOIRRE (CIONTA GNÉASACHA) (LEASÚ), 2014
CRIMINAL LAW (SEXUAL OFFENCES) (AMENDMENT) BILL 2014**

(b) is responsible for welfare,

(c) occupies a position of authority,

(d) provides education, or

(e) provides support services including therapy or counselling, to the victim;

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‘sexual offence’ includes—

(a) a sexual offence within the meaning of section 3 of the Sex Offenders Act 2001,

(b) an offence under section 2, 3 or 4 of the Criminal Law (Rape) (Amendment) Act 1990,

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(c) an offence under section 6 or 7 of the Criminal Law (Sexual Offences) Act 1993,

(d) an offence under section 4 or 5 of the Criminal Law (Human Trafficking) Act 2008, or

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(e) any other offence of a sexual nature contained in any other enactment and which has been so prescribed in regulations made by the Minister for Justice and Equality under this section.

Consent

5A. (1) It is hereby declared that in relation to an offence that consists of or includes the doing of an act to a person without the consent of that person, the existence of consent in respect of that act shall be determined in accordance with this section. 25

(2) In determining the existence of consent, an agreement between the parties to engage in the specific act must be established. 30

(3) In determining the existence of an agreement between the parties to engage in the specific act—

(a) an examination of the communication between the parties immediately prior to the act shall be conducted, and

(b) each person must be shown at that time to have understood the nature of the act. 35

(4) An understanding of the nature of the act shall only require the person to understand the physical nature of the act and shall not require the person to understand possible physiological consequences of the act.

(5) (a) In determining whether a person has consented to engage in a sexual act, no higher standard of understanding shall apply to persons with disabilities than that which applies to persons without disabilities.

(b) In determining whether a person understood the nature of the act, the presence of a mental impairment shall not be a determinative factor.”. 5

Short title, collective citation and commencement

2. (1) This Act may be cited as the Criminal Law (Sexual Offences) (Amendment) Act 2014.
- (2) This Act and the Criminal Law (Sexual Offences) Act 1993 may be cited together as the Criminal Law (Sexual Offences) Acts 1993 and 2014. 10
- (3) This Act comes into effect on 1 January 2015.

An Bille um an Dlí Coiriúil (Cionta
Gnéasacha) (Leasú), 2014

Criminal Law (Sexual Offences)
(Amendment) Bill 2014

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh cion de dhuine do bhaint mí-úsáid as caidreamh spleáchais agus iontaoibhe chun críocha gnéasacha agus do sholáthar tástáil reachtúil chun a chinneadh ar tugadh toiliú i leith gníomhartha gnéasacha agus chun na críche sin do leasú an Achta um an Dlí Coiriúil (Cionta Gnéasacha), 1993 agus do dhéanamh socrú i dtaobh nithe gaolmhara.

BILL

(as initiated)

entitled

An Act to make it an offence for a person to abuse a position of dependence and trust for sexual purposes and to provide a statutory test for determining the existence of consent in respect of sexual acts and for that purpose to amend the Criminal Law (Sexual Offences) Act 1993 and to provide for related matters.

An Seanadóir Katherine Zappone a thíolaic,

9 Bealtaine, 2014

Presented by Senator Katherine Zappone,

9th May, 2014

