

GENERAL SCHEME

Criminal Law (Sexual Offences) (Amendment) Bill 2018

Head

1. Short title and commencement
2. Interpretation
3. Amendment of Section 1 of Act of 1908 (Incest by males)
4. Amendment of Section 2 of Act of 1908 (Incest by females of or over 17)
5. Insertion of new Section 58 into Act of 2017 (Offences for the purpose of Schedule 1 of Act of 2017)
6. Insertion of Schedule 1 into Act of 2017 (Offences for the purpose of part 3)

Head 1 Short title and commencement

Provide that -

(1) This Act may be cited as the Criminal Justice (Sexual Offences) (Amendment) Act, 2018.

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

Head 2 Interpretation

Provide that -

In this Bill

"Act of 1908" means the Punishment of Incest Act, 1908;

"Act of 2017" means the Criminal Law (Sexual Offences) Act, 2017;

"imprisonment" includes—

(a) detention in a place provided under section 2 of the Prisons Act 1970 , and

(b) detention in a place specified under section 3 of the Prisons Act 1972 ,

and "prison" and "sentence of imprisonment" shall be construed accordingly;

"remission from the sentence" means, in relation to the sentence imposed on a person, the remission which he or she may earn from that sentence under the rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct;

References to an offence specified in Schedule 1 shall include—

(a) references to participation as an accomplice of a person who commits such an offence, and

(b) references to an offence of attempting or conspiring to commit, or inciting the commission of, such an offence.

Head 3 Amendment of Section 1 of Act of 1908

(Incest by males)

Provide that –

Delete section 1(1) and substitute:

“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 10 years or a lesser term of imprisonment.”

Head 4 Amendment of Section 2 of Act of 1908

(Incest by females of or over 17)

Provide that –

Delete section 2 and substitute:

“2 – Any female person of or above 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 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 10 years or to a lesser term of imprisonment.”

Head 5 Amendment of the Act of 2017

(Sentencing for repeat sexual offenders)

Provide that –

The Act of 2017 is amended by the insertion of the following section after section 57.

“58

(1) Subject to subsections (2) and (3), where a person (other than a person under the age of 18 years)—

(a) has been convicted on indictment of an offence specified in Schedule 1 (in this section referred to as “the first offence”),

(b) has been sentenced to imprisonment for a term of not less than 5 years in respect of that offence, and

(c) who is convicted on indictment of an offence specified in Schedule 1 (in this section referred to as “the subsequent offence”) that is committed—

(i) during the period of 10 years from the date of conviction of the first offence and, for the purpose of determining that period, there shall be disregarded any period of imprisonment in respect of the first offence or the subsequent offence, or

(ii) during any such period of imprisonment,

(in this section the total period comprising the periods referred to in subparagraphs (i) and

(ii) is referred to as “the specified period”),

the court shall, in imposing sentence on the person in respect of the subsequent offence, specify as the minimum term of imprisonment to be served by the person, a term of not less than three quarters of the maximum term of imprisonment prescribed by law in respect of such an offence and, if the maximum term so prescribed is life imprisonment, the court shall specify a term of imprisonment of not less than 10 years.

(2) Subsection (1) shall not apply where the court is satisfied that it would be disproportionate in all the circumstances of the case to specify as the minimum term of imprisonment to be served by the person concerned the term of imprisonment referred to in that subsection in respect of the subsequent offence.

(3) Subsection (1) shall apply to a person in respect of the subsequent offence only if that offence is committed after the commencement of this section and that subsection shall apply to a person whether the first offence is committed before or after such commencement.

(4) If, in relation to a sentence of a term of imprisonment imposed on a person in respect of the first offence—

(a) the operation of the whole term is suspended, then subsection (1) shall not apply to that offence, or

(b) the operation of a part of the term is suspended, the part of that term the operation of which is not suspended shall be regarded as the term of imprisonment imposed on the person in respect of the first offence for the purposes of subsection (1).

(5) Subsection (1) shall not apply to a person if the conviction in respect of the first offence is quashed on appeal or otherwise.

(6) A reference in this section to a sentence imposed on a person in respect of the first offence shall—

(a) if the sentence is varied on appeal, be construed as a reference to the sentence as so varied, or

(b) if, on the application of the Director of Public Prosecutions under section 2 of the Criminal Justice Act 1993, the sentence is quashed by the Court of Criminal Appeal and another sentence is imposed in place of it by that Court on the person, be construed as a reference to that other sentence.

(7) For the purposes of subsections (1)(c) and (10), a period of imprisonment means any time when the person concerned is—

- (a) remanded in custody,
- (b) serving a sentence in prison, or
- (c) temporarily released under section 2 of the Criminal Justice Act 1960 .

(8) References in this section to the subsequent offence shall include references to a second or subsequent offence specified in Schedule 1 of which a person (other than a person under the age of 18 years) is convicted on indictment during the specified period.

(9) The specified period in relation to a person to whom subsection (1) applies shall expire only when the person has not been convicted of an offence specified in Schedule 1 —

- (a) during the period of 10 years from the date of conviction of the subsequent offence and, for the purpose of determining that period, there shall be disregarded any period of imprisonment in respect of the first offence or the subsequent offence, or
- (b) during any such period of imprisonment.

(10) If, following the application of subsection (1) to a person in respect of a conviction on indictment of an offence specified in Schedule 1 —

- (a) his or her conviction in respect of the first offence is quashed on appeal or otherwise, or
- (b) the sentence imposed on the person in respect of the first offence is varied on appeal so that it no longer falls under subsection (1)(b),

the person may apply to the court that imposed the sentence on him or her in respect of the subsequent offence to review it and the court may, if it considers it appropriate to do so, vary that sentence.

(11) (a) If a sentence imposed on a person in respect of a conviction on indictment of an offence specified in Schedule 1 does not fall under subsection (1)(b) but the sentence is—

(i) varied on appeal, or

(ii) on the application of the Director of Public Prosecutions under section 2 of the Criminal Justice Act 1993, quashed by the Court of Criminal Appeal and another sentence is imposed in place of it by that Court on the person,

so that the sentence then falls under subsection (1)(b), subsection (1) shall apply in respect of an offence specified in Schedule 1 (“the subsequent offence”) committed by the person within the specified period.

(b) If, in the circumstances referred to in paragraph (a), a sentence has, at the time of the appeal referred to in subparagraph (i) of that paragraph concerned or, as the case may be, the application referred to in subparagraph (ii) of that paragraph concerned, been imposed on the person concerned in respect of the subsequent offence, the Director of Public Prosecutions may apply to the court that imposed the sentence to review it and the court shall apply subsection (1) to that person in respect of the subsequent offence and, if appropriate, vary the sentence accordingly.

(12) The power conferred by section 23 of the Criminal Justice Act 1951 to commute or remit a punishment shall not, in the case of a person serving a sentence of imprisonment imposed in accordance with subsection (1) in respect of the subsequent offence, be exercised before the expiry of the minimum term of imprisonment specified by the court in accordance with that subsection less any reduction of that term arising under subsection (13).

(13) The rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence imposed in accordance with subsection (1) in respect of the subsequent offence and the minimum term of imprisonment specified by the court in accordance with that subsection shall be reduced by the amount of any remission so earned by the person.

(14) Any powers conferred by rules made under section 2 of the Criminal Justice Act 1960 to release temporarily a person serving a sentence of imprisonment shall not, in the case of a person serving a

sentence imposed in accordance with subsection (1) in respect of the subsequent offence, be exercised during the period for which the commutation or remission of his or her punishment is prohibited by subsection (12) unless for grave reason of a humanitarian nature, and any release so granted shall be only of such limited duration as is justified by that reason.

(15) The reference in subsection (15) to section 2 of the Criminal Justice Act 1960 shall be construed to include that section as applied by section 4 of the Prisons Act 1970.

Head 6 Insertion of new Schedule 1 into the Act of 2017

Provide that –

The Act of 2017 is amended by the insertion of the following section after section 58

“Schedule 1

Sexual Offences

1. An offence under section 1 of the Punishment of Incest Act 1908 (incest by males).
2. An offence under section 2 of the Punishment of Incest Act 1908 (incest by females of or above the age of 17 years).
3. A rape offences within the meaning of section 2 of the Criminal Law (Rape) Act 1981.
4. An offence under any of the following provisions of the Criminal Law (Rape)(Amendment) Act 1990:
 - (a) section 2 (sexual assault);
 - (b) section 3 (aggravated sexual assault);
 - (c) section 4 (rape under section 4);
5. An offence under any of the following provisions of the Sexual Offences (Jurisdiction) Act 1996:
 - (a) section 2 (sexual offences committed outside the State);
 - (b) section 3 (transporting person to facilitate offence etc.);
 - (c) section 4 (publication of information likely to promote offence etc.);
6. An offence under any of the following provisions of the Child Trafficking and Pornography Act 1998:
 - (a) section 3 (child trafficking and taking, etc., child for sexual exploitation);
 - (b) section 4 (allowing a child to be used for child pornography);

(c) section 4A (organising etc. child prostitution or production of child pornography);

(d) section 5 (producing, distributing, etc., child pornography);

(e) section 5A (participation of a child in pornographic performance);

(f) section 6 (possession of child pornography).

7. An offence under section 249 of the Children Act 2001 (causing or encouraging sexual offence upon a child).

8. An offence under any of the following provisions of the Criminal Law (Sexual Offences) Act 2006:

(a) section 2 (sexual act with a child under 15 years of age);

(b) section 3 (sexual act with a child under 17 years of age);

(c) section 3A (offence by person in authority);

9. An offence under section 5 of the Criminal Law (Human Trafficking) Act 2008 (soliciting or importuning for purposes of prostitution of trafficked person).

10. An offence under any of the following provisions of the Criminal Law (Sexual Offences) Act 2017:

(a) section 3 (obtaining, providing etc. a child for purpose of sexual exploitation);

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

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

(g) section 21 (sexual act with a protected person);

(h) section 22 (offence against relevant person by person in authority).”