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*Number 18 of 2001*

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**SEX OFFENDERS ACT, 2001**

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SEXUAL OFFENCES FOR PURPOSES OF ACT

[2001.]            *Sex Offenders Act, 2001.*

[No. 18.]

ACTS REFERRED TO

Child Trafficking and Pornography Act, 1998	1998, No. 22
Civil Legal Aid Act, 1995	1995, No. 32
Civil Service Regulation Act, 1956	1956, No. 46
Courts Act, 1964	1964, No. 11
Courts Act, 1971	1971, No. 36
Criminal Justice Act, 1960	1960, No. 27
Criminal Law Amendment Act, 1885	1885, c. 69
Criminal Law Amendment Act, 1935	1935, No. 6
Criminal Law (Rape) Act, 1981	1981, No. 10
Criminal Law (Rape) (Amendment) Act, 1990	1990, No. 32
Criminal Law (Sexual Offences) Act, 1993	1993, No. 20
Employment Agency Act, 1971	1971, No. 27
Interpretation Act, 1937	1937, No. 38
Local Government Act, 1941	1941, No. 23
Offences against the Person Act, 1861	1861, c. 100
Punishment of Incest Act, 1908	1908, c. 45
Sexual Offences (Jurisdiction) Act, 1996	1996, No. 38
Trial of Lunatics Act, 1883	1883, c. 38





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*Number 18 of 2001*

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**SEX OFFENDERS ACT, 2001**

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AN ACT TO REQUIRE, IN THE INTERESTS OF THE COMMON GOOD, THE NOTIFICATION OF INFORMATION TO THE GARDA SÍOCHÁNA BY PERSONS WHO HAVE COMMITTED CERTAIN SEXUAL OFFENCES; IN THOSE INTERESTS TO IMPOSE, OR ENABLE THE IMPOSITION OF, CERTAIN OTHER REQUIREMENTS ON SUCH PERSONS (INCLUDING REQUIREMENTS THE PURPOSE OF WHICH IS TO ASSIST IN THEIR REHABILITATION); TO ENABLE CERTAIN COMPLAINANTS TO BE HEARD AND LEGALLY REPRESENTED IN RELATION TO APPLICATIONS UNDER SECTION 3 OR 4 OF THE CRIMINAL LAW (RAPE) ACT, 1981, TO AMEND SECTION 2 OF THE CRIMINAL LAW (RAPE) (AMENDMENT) ACT, 1990, AND TO PROVIDE FOR RELATED MATTERS. [30th June, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Sex Offenders Act, 2001.

Short title and commencement.

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

2.—(1) In this Act, unless the context otherwise requires—

Interpretation (general).

“Act of 1861” means the Offences against the Person Act, 1861;

“Act of 1908” means the Punishment of Incest Act, 1908;

“Act of 1935” means the Criminal Law Amendment Act, 1935;

“Act of 1990” means the Criminal Law (Rape) (Amendment) Act, 1990;

“Act of 1993” means the Criminal Law (Sexual Offences) Act, 1993;

“conviction” (other than in *sections 12, 22, 26(8) and 33*) includes a finding of guilty but insane and “convicted” and cognate expressions shall be construed accordingly;

Pt.1 S.2

“court” means any court exercising criminal jurisdiction and includes court-martial;

“imprisonment” includes detention in Saint Patrick’s Institution or the Central Mental Hospital and “prison” shall be construed accordingly;

“Minister” means the Minister for Justice, Equality and Law Reform;

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

“sentence” includes a sentence of imprisonment and any other order made by a court in dealing with a convicted person, including—

- (a) an order under section 2(2) of the Trial of Lunatics Act, 1883, and
- (b) an order postponing sentence;

“sexual offence” shall be construed in accordance with *section 3*.

(2) In this Act—

- (a) a reference to a Part, section or Schedule is to a Part or section of, or a Schedule to, this Act, unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(3) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any enactment.

Sexual offences for purposes of Act.

**3.—**(1) Each of the offences referred to in the *Schedule* shall, subject to *subsections (2) and (3)*, be a sexual offence for the purposes of this Act.

(2) An offence referred to in—

- (a) *paragraph 2* of the *Schedule* (sexual assault or indecent assault),
- (b) *paragraph 5* of the *Schedule* (incest by males),
- (c) *paragraph 6* of the *Schedule* (incest by females of or over 17 years of age), or
- (d) *paragraph 18, 19 or 20* of the *Schedule* in so far as it relates to an offence referred to in *paragraph (a), (b) or (c)*,

shall not be a sexual offence for the purposes of this Act if—

- (i) the victim of or, as the case may be, the other party to the offence was aged, at the date of the offence’s commission, 17 years or more, and

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(ii) the person guilty of the offence has not, in respect of the offence, been sentenced to any punishment involving deprivation of liberty for a limited or unlimited period of time or been made subject to any measure involving such deprivation of liberty. Pr.1 S.3

(3) An offence referred to in—

(a) *paragraph 8* of the *Schedule* (defilement of girl between 15 and 17 years of age),

(b) *paragraph 11* of the *Schedule* (buggery of persons under 17 years of age),

(c) *paragraph 12* of the *Schedule* (gross indecency with males under 17 years of age), or

(d) *paragraph 18, 19 or 20* of the *Schedule* in so far as it relates to an offence referred to in *paragraph (a), (b) or (c)*,

shall not be a sexual offence for the purposes of this Act if—

(i) the victim of or, as the case may be, the other party to the offence was aged, at the date of the offence's commission, 15 years or more but less than 17 years, and

(ii) the person guilty of the offence was aged, at that date, not more than 3 years older than that victim or other party.

**4.—**(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed or for the purpose of enabling any provision of this Act to have full effect. Regulations.

(2) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

**5.—**The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

## PART 2

### OBLIGATIONS OF SEX OFFENDERS TO NOTIFY CERTAIN INFORMATION

**6.—**In this Part, “relevant date” means the date of conviction for the sexual offence concerned. “relevant date”.

**7.—**(1) Without prejudice to *subsection (2)* and *sections 13 and 16(7)*, a person is subject to the requirements of this Part if he or she is convicted of a sexual offence after the commencement of this Part. Persons subject to the requirements of this Part.

Pr.2 S.7

(2) A person is also subject to the requirements of this Part if he or she has been convicted of a sexual offence before the commencement of this Part and, at that commencement, either—

- (a) the sentence to be imposed on the person in respect of the offence has yet to be determined, or
- (b) a sentence has been imposed on the person in respect of the offence and—
  - (i) the person is serving the sentence in prison,
  - (ii) the person is temporarily released under section 2 or 3 of the Criminal Justice Act, 1960, or
  - (iii) the sentence is otherwise still in force or current.

Period for which person is subject to requirements of this Part and related matters.

8.—(1) A person who, by reason of *section 7*, is subject to the requirements of this Part shall be so subject for the period referred to in *subsection (3)* or, in the case of a person referred to in *section 7(2)*, so much (if any) of that period as falls after the commencement of this Part.

(2) *Subsection (1)* is subject to *section 11*.

(3) The period mentioned in *subsection (1)* is the period, beginning with the relevant date, of—

- (a) an indefinite duration if the sentence imposed on the person in respect of the offence concerned is one of imprisonment for life or for a term of more than 2 years,
- (b) 10 years if the sentence imposed on the person in respect of the offence concerned is one of imprisonment for a term of more than 6 months but not more than 2 years,
- (c) 7 years if the sentence imposed on the person in respect of the offence concerned is one of imprisonment for a term of 6 months or less, or
- (d) 5 years if the sentence imposed on the person—
  - (i) is one of imprisonment for any term, the operation of the whole of which is suspended (but, if the operation of that term is revived by the court, whichever of the preceding paragraphs is appropriate shall apply instead of this subparagraph), or
  - (ii) is otherwise than one of imprisonment.

(4) If—

- (a) a sentence is imposed on a person in respect of a sexual offence, and
- (b) at the time of sentencing the person is aged under 18 years,

*subsection (3)* shall have effect in relation to that person as if for the references to 10 years, 7 years and 5 years in that subsection there were substituted references to 5 years,  $3\frac{1}{2}$  years and  $2\frac{1}{2}$  years, respectively.



(5) If a sentence of imprisonment for any term is imposed on the person referred to in *subsection (1)* in respect of the offence concerned and the operation of a part of that term is suspended— Pr.2 S.8

- (a) the part of that term the operation of which is not suspended shall be regarded as the term of imprisonment imposed on that person for the purposes of *subsection (3)* (but, if the operation of the first-mentioned part of that term is revived by the court, whichever of *paragraphs (a), (b)* and *(c)* of *subsection (3)* is appropriate shall apply without regard to this paragraph),
- (b) the preceding paragraph extends to a case in which that suspension is provided for subsequent to the imposition of the sentence.

(6) If a person is or has been sentenced in respect of 2 or more sexual offences and the sentences imposed are consecutive or partly concurrent then *subsection (3)* shall have effect as if—

- (a) in the case of consecutive sentences, the sentence imposed in respect of each of the offences were or had been a sentence equal to the aggregate of those sentences,
- (b) in the case of partly concurrent sentences, the sentence imposed in respect of each of the offences were or had been a sentence equal to the aggregate of those sentences after making such deduction as is necessary to ensure that no period of time is counted more than once.

(7) Without prejudice to *section 11*, a person shall cease to be subject to the requirements of this Part if the conviction in respect of the offence concerned is quashed on appeal or otherwise.

(8) A reference in this section to a sentence imposed on a person shall, if the sentence is varied on appeal, be construed as a reference to the sentence as so varied and, accordingly, the period for which a person is subject to the requirements of this Part, by reason of this section, shall stand reduced or increased, as the case may be, in the event that such a variation is made which results in the sentence falling into a different paragraph of *subsection (3)* than it did before the variation.

9.—The person for the time being in charge of the place where a person subject to the requirements of this Part is ordered to be imprisoned in respect of an offence (whether or not the offence that gave rise to the person's being subject to those requirements) shall notify in writing—

Supply of information to facilitate compliance with this Part.

- (a) before the date on which the sentence of imprisonment imposed on the person in respect of the first-mentioned offence expires or, as the case may be, the person's remission from the sentence begins ("the date of release"), the person that he or she is subject to the requirements of this Part, and
- (b) at least 10 days before the date of release, the Commissioner of the Garda Síochána of the fact that that expiry or remission will occur in relation to the person.

**10.**—(1) A person who is subject to the requirements of this Part shall, before the end of the period of 7 days beginning with the relevant date, or, if that date is prior to the commencement of this Part, that commencement, notify to the Garda Síochána—

- (a) his or her name and, where he or she also uses one or more other names, each of those names, and
- (b) his or her home address.

(2) A person who is subject to those requirements shall also, before the end of the period of 7 days beginning with—

- (a) the person's using a name which is not the name, or one of the names, last previously notified by him or her to the Garda Síochána under this section,
- (b) any change of his or her home address,
- (c) the person's having resided or stayed, for a qualifying period, at any place in the State, the address of which has not been notified to the Garda Síochána under this section as being his or her current home address, or
- (d) the person's returning to an address in the State, having, immediately prior to such return, been outside the State for a continuous period of 7 days or more,

notify that name, the effect of that change, the address of that place or, as the case may be, the fact of that return to the Garda Síochána.

(3) If a person who is subject to the requirements of this Part intends to leave the State for a continuous period of 7 days or more he or she shall notify the Garda Síochána of that intention and, if known, the address of the place outside the State he or she intends to reside or stay at.

(4) If a person who is subject to the requirements of this Part is outside the State for a continuous period of 7 days or more and did not intend, on leaving the State, to be outside the State for such a continuous period, the person shall, subject to *subsection (5)*, notify the Garda Síochána, before the expiry of a further period of 7 days, reckoned from the 7th day that he or she is so outside the State, of that fact and the address of the place at which he or she is residing or staying outside the State.

(5) *Subsection (4)* shall not apply if the person concerned has returned to the State before the expiry of the further period of 7 days mentioned in that subsection.

(6) A notification given to the Garda Síochána by any person shall not be regarded as complying with *subsection (1), (2), (3) or (4)* unless it also states the person's—

- (a) date of birth,
- (b) name on the relevant date and, where he or she used one or more other names on that date, each of those names, and
- (c) home address on the relevant date.

(7) For the purpose of determining any period for the purposes of *subsection (1), (2), (3) or (4)*, there shall be disregarded any time when the person concerned is—

- (a) remanded in custody,
- (b) serving a sentence in prison, or
- (c) temporarily released under section 2 or 3 of the Criminal Justice Act, 1960.

(8) A person may give a notification under this section—

- (a) by attending in person at any Garda Síochána station which is a divisional or district headquarters and notifying orally a member of the Garda Síochána at the station of the matters concerned,
- (b) by sending, by post, a written notification of the matters concerned to any Garda Síochána station which is such a headquarters, or
- (c) by such other means as may be prescribed.

(9) Proof of the sending by post of such a notification shall, in any proceedings for an offence under *section 12(1)(a)*, lie on the defendant.

(10) A notification under this section shall be acknowledged in writing and that acknowledgement shall be in such form as may be prescribed.

(11) In this section—

“home address”, in relation to any person, means the address of his or her sole or main residence or, if he or she has no such residence, his or her most usual place of abode or, if he or she has no such abode, the place which he or she regularly visits;

“qualifying period” means—

- (a) a period of 7 days, or
- (b) 2 or more periods, in any period of 12 months, which (taken together) amount to 7 days.

**11.—**(1) A person who, by reason of *sections 7 and 8*, is subject to the requirements of this Part for a period of an indefinite duration may apply to the court for an order discharging the person from the obligation to comply with those requirements on the ground that the interests of the common good are no longer served by his or her continuing to be subject to them.

Discharge from obligation to comply with requirements of this Part.

(2) An application under this section shall not be made before the expiration of the period of 10 years from the date of the applicant’s release from prison.

(3) The applicant shall, not later than the beginning of such period before the making of the application as may be prescribed, notify the superintendent of the Garda Síochána of the district in which he or she ordinarily resides or has his or her most usual place of abode of his or her intention to make an application under this section.

(4) That superintendent or any other member of the Garda Síochána shall be entitled to appear and be heard at the hearing of that application.

(5) On the hearing of an application under this section, the court shall, if satisfied that the interests of the common good would no longer be served by the applicant's continuing to be subject to the requirements of this Part, make an order discharging the applicant from the obligation to comply with those requirements.

(6) In considering an application under this section, the court may require to be adduced, in such form as it thinks appropriate, evidence (including expert evidence) with regard to whether or not the interests of the common good would any longer be served by the applicant's continuing to be subject to the requirements of this Part.

(7) If the court makes an order discharging the applicant from the obligation to comply with the requirements of this Part, the court shall cause the Garda Síochána to be notified, in writing, of that discharge.

(8) The jurisdiction of the court in respect of an application under this section may be exercised by the judge of the circuit where the applicant ordinarily resides or has his or her most usual place of abode.

(9) Proceedings under this section shall be heard otherwise than in public.

(10) In this section—

“applicant” means the person referred to in *subsection (1)*;

“court” means the Circuit Court;

“date of the applicant's release from prison” means the date on which the applicant's sentence of imprisonment referred to in *section 8(3)* expires or, as the case may be, his or her remission from the sentence begins.

Offences in connection with notification requirements.

**12.—(1)** A person who—

(a) fails, without reasonable excuse, to comply with *subsection (1), (2), (3) or (4) of section 10*, or

(b) notifies to the Garda Síochána, in purported compliance with that *subsection (1), (2), (3) or (4)*, any information which he or she knows to be false or misleading in any respect,

shall be guilty of an offence.

(2) A person is guilty of an offence under *subsection (1)(a)* on the day on which he or she first fails, without reasonable excuse, to comply with *subsection (1), (2), (3) or (4)*, as the case may be, of *section 10* and continues to be guilty of it throughout any period during which the failure continues; but a person shall not be prosecuted under that provision more than once in respect of the same failure.

(3) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both.

(4) In proceedings for an offence under *subsection (1)(a)* a statement on oath by a member of the Garda Síochána referred to in *subsection (5)* that no notification of the matters concerned was given by the defendant to the Garda Síochána by any of the means referred to in *section 10(8)* shall, until the contrary is shown, be evidence that no such notification was given by the defendant. Pr.2 S.12

(5) The member of the Garda Síochána referred to in *subsection (4)* is a member not below the rank of sergeant who, from his or her evidence to the court, the court is satisfied—

- (a) is familiar with the systems operated by the Garda Síochána for recording the fact that particular information has been received by them, and
- (b) has made all proper inquiries in ascertaining whether a notification by the defendant of the matters concerned was received by the Garda Síochána.

**13.—(1) If—**

Application of this Part to persons convicted outside State.

- (a) a person has been convicted, in a place other than the State, of an offence,
- (b) the act constituting the offence concerned would, if done in the State, constitute a sexual offence (within the meaning of this Act) under the law of the State, and either—
  - (i) the person would, accordingly, be subject to the requirements of this Part by reason of *subsection (1)* or *(2)* of *section 7*, or
  - (ii) at the commencement of this Part, the person, as a person who has been convicted of the first-mentioned offence in *paragraph (a)*, is required, under the law of the first-mentioned place in that paragraph (however that requirement is described in that law), to notify to the police in that place information of a similar nature to that required to be notified by a person otherwise subject to the requirements of this Part,

and

- (c) the person is, at the time of the conviction, or thereafter becomes, resident in the State,

that person shall be deemed to be subject to the requirements of this Part and this Part shall, subject to *subsection (2)*, apply accordingly.

(2) For the purposes of such application, *section 10* shall have effect as if for *subsection (1)* there was substituted the following subsection:

“(1) A person who is subject to the requirements of this Part shall, before the end of the period of 7 days beginning with—

- (a) in case the person is already resident in the State upon his or her so first returning and *paragraph (c)* does not apply, the date on which

the person first returns to the State after being convicted of the offence concerned,

- (b) in case the person is not so resident and *paragraph (c)* does not apply, the date on which the person first becomes resident in the State after being convicted of the offence concerned, or
- (c) in case the date on which the person so first returns to, or becomes resident in, the State is prior to the commencement of this Part, the commencement of this Part,

notify to the Garda Síochána—

- (i) his or her name and, where he or she also uses one or more other names, each of those names, and
- (ii) his or her home address.”.

(3) For the purposes of this section, a person shall be deemed to be resident in the State if he or she is ordinarily resident, or has his or her principal residence, in the State, or is in the State for a qualifying period.

(4) Where a person to whom this section applies is charged with an offence under *section 12*, he or she shall, whether or not he or she would be treated for the purposes of *section 12* as having a reasonable excuse apart from this subsection, be treated for those purposes as having a reasonable excuse if he or she believed that the act constituting the offence referred to in *subsection (1)* would not, if done in the State, constitute any sexual offence (within the meaning of this Act) under the law of the State.

(5) For the purposes of *subsection (4)*, it is immaterial whether a belief is justified or not if it is honestly held.

(6) In this section—

“police” means, in relation to the first-mentioned place in *subsection (1)*, any police force in that place, or a member thereof, whether that force is organised at a national, regional or local level;

“qualifying period” has the same meaning as it has in *section 10*.

Certificate as evidence of person’s being subject to requirements of this Part.

**14.—(1)** If the conviction, after the commencement of this Part, of a person for an offence gives rise to his or her becoming subject to the requirements of this Part, the court before which he or she is convicted of the offence shall forthwith, after the conviction, issue to each of the persons referred to in *subsection (5)* a certificate stating—

- (a) that the person has been convicted of the offence,
- (b) the sentence, if any, imposed on the person in respect of the offence, and
- (c) that the person has become subject to the requirements of this Part.

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(2) If a sentence is imposed on a person in respect of the offence referred to in *subsection (1)* after a certificate relating to that offence has been issued under that subsection, the court which imposed the sentence shall forthwith, after the imposition of the sentence, issue to each of the persons referred to in *subsection (5)* a certificate stating the sentence that has been imposed on the person. Pr.2 S.14

(3) If—

- (a) the conviction referred to in *subsection (1)* is quashed on appeal or otherwise, or
- (b) the sentence imposed on foot of that conviction is varied on appeal or otherwise,

the court which quashes the conviction or varies the sentence shall forthwith, after the quashing of the conviction or the variation of the sentence, issue to each of the persons referred to in *subsection (5)* a certificate stating that the conviction has been quashed or stating the variation that has been made in the sentence.

(4) A certificate purporting to be issued under *subsection (1), (2)* or *(3)* shall, in any proceedings, be evidence of the matters stated in it without proof of the signature of the officer of the court purporting to sign it or that that person was authorised to sign it.

(5) The persons referred to in *subsections (1), (2)* and *(3)* are—

- (a) the Garda Síochána,
- (b) the person convicted of the offence concerned, and
- (c) where appropriate, the person for the time being in charge of the place where the convicted person is ordered to be imprisoned or, as the case may be, the probation and welfare service (within the meaning of *Part 5*).

(6) The mode of proving a conviction or sentence authorised by *subsection (4)* shall be in addition to, and not in substitution for, any other authorised mode of proving such conviction or sentence.

(7) Rules of court may make provision in relation to the form of certificates under this section and the manner in which they may be issued.

### PART 3

#### SEX OFFENDERS ORDERS

**15.—**In this Part, unless the context otherwise requires— Definitions (*Part 3*).

“applicant” means a member of the Garda Síochána not below the rank referred to in *section 16* who has applied to the court for the making of a sex offender order and, in relation to such an order that is in force, means any member of the Garda Síochána;

“court” means the Circuit Court;

“respondent” means a person in respect of whom an application for a sex offender order has been made or in respect of whom such an order has been made;

“sex offender order” has the meaning assigned to it by *section 16*.

Sex offender orders.

**16.—(1)** If, on application to it in that behalf by a member of the Garda Síochána not below the rank of Chief Superintendent, it appears to the court, on evidence tendered by the applicant, that the conditions specified in *subsection (2)* are satisfied in respect of the respondent, the court may make an order (in this Act referred to as a “sex offender order”) prohibiting the respondent from doing one or more things specified in the order.

(2) The conditions mentioned in *subsection (1)* are that—

(a) the respondent has been convicted, before or after the commencement of this Part, either—

(i) in the State of a sexual offence, or

(ii) in a place outside the State of an offence and the act constituting that offence would, if done in the State, constitute a sexual offence (within the meaning of this Act) under the law of the State,

and

(b) the respondent has, at a time referred to in *subsection (3)*, acted on one or more occasions in such a way as to give reasonable grounds for believing that an order under this section is necessary to protect the public from serious harm from him or her.

(3) The time mentioned in *paragraph (b)* of *subsection (2)* is any time subsequent to the date of the respondent’s release from prison or, as the case may be, the date on which the sentence imposed on the respondent in respect of the offence referred to in that subsection otherwise ceases to be in force, being in either case a time after the commencement of this Part.

(4) A sex offender order shall contain only such prohibitions on the respondent’s doing a thing or things as the court considers necessary for the purpose of protecting the public from serious harm from the respondent.

(5) References in this section to protecting the public from serious harm from the respondent shall be construed as references to protecting a member or members of the public from death or serious personal injury, whether physical or psychological, which would be occasioned if the respondent were to commit a sexual offence at a time subsequent to the making of the application under this section.

(6) A sex offender order shall continue in force until the expiration of—

(a) 5 years from the date of notification of its making being given to the respondent, or

(b) such longer period as the court may provide for in the order.

(7) For so long as a sex offender order is in force, *Part 2* shall have effect as if—

(a) the respondent were subject to the requirements of that Part, and



(b) “relevant date” (within the meaning of that Part) were the date on which notification of the making of the sex offender order has been given to the respondent. Pr.3 S.16

(8) *Subsection (7)* shall not operate to prevent a respondent’s remaining subject to the requirements of *Part 2*, on the date that the sex offender order concerned ceases to be in force, if, by reason of the operation of *sections 7 and 8* (including those sections as applied by *section 13*), he or she would remain so subject to those requirements.

(9) The reference in *subsection (3)* to the date of the respondent’s release from prison is a reference to the date on which the sentence of imprisonment imposed on the respondent in respect of the offence referred to in *subsection (2)* (if such be the sentence imposed) expires or, as the case may be, the respondent’s remission from the sentence begins.

**17.—**(1) A sex offender order shall take effect on notification of its making being given to the respondent. Taking effect of sex offender order.

(2) Oral communication to the respondent by or on behalf of the applicant of the fact that a sex offender order has been made, together with production of a copy of the order, shall, without prejudice to the sufficiency of any other form of notification, be taken to be sufficient notification to the respondent of the making of the order.

(3) If the respondent is present at the sitting of the court at which the sex offender order is made, he or she shall be taken for the purposes of *subsection (1)* to have been notified of its making.

**18.—**An appeal from a sex offender order shall, if the court that made the order or the court to which the appeal is brought so determines (but not otherwise), stay the operation of the order on such terms (if any) as may be imposed by the court making the determination. Effect of appeal from order.

**19.—**(1) Where a sex offender order is in force, the court, on application to it in that behalf at any time by the respondent, may, if it is shown to the satisfaction of the court that— Discharge or variation of sex offender order.

(a) the protection of the public from serious harm from the respondent does not require that the order should continue in force, or

(b) the order’s effect for the time being is the cause of injustice, discharge or, as may be appropriate, vary the order.

(2) The court shall, on application to it in that behalf at any time by the applicant, discharge a sex offender order.

(3) The reference in *subsection (1)* to protecting the public from serious harm from the respondent shall be construed in accordance with *section 16(5)*.

**20.—**(1) The jurisdiction of the court in respect of civil proceedings under this Part may be exercised by the judge of the circuit where Court jurisdiction and venue.

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the respondent ordinarily resides or carries on any profession, business or occupation or by the judge of the circuit where the respondent is alleged to have acted in such a way as to give reasonable grounds for believing that the making of a sex offender order is or, as the case may be, was necessary.

(2) For the avoidance of doubt, *subsection (1)* applies in the case of *section 19* notwithstanding that the sex offender order concerned was made by the High Court on appeal from a decision of the court refusing to make such an order.

Provisions in relation to evidence and proceedings under this Part.

**21.**—(1) The standard of proof required to determine any question relating to the making, varying, or discharge of a sex offender order shall be that applicable to civil proceedings.

(2) Proceedings under this Part (other than under *section 22*) in relation to a sex offender order shall be heard otherwise than in public.

Offence in respect of contravention of sex offender order.

**22.**—A respondent who, without reasonable excuse, contravenes a sex offender order shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

Rules of court.

**23.**—(1) For the purpose of ensuring the expeditious hearing of applications under this Part, rules of court may make provision for the service of documents otherwise than under *section 7* of the Courts Act, 1964 (as amended by *section 22* of the Courts Act, 1971), in circumstances to which that *section 7* relates.

(2) Rules of court shall provide for the documentation required for the commencement of proceedings under this Part.

(3) This section is without prejudice to *section 17* of the Interpretation Act, 1937, which provides for rules of court.

Amendment of Civil Legal Aid Act, 1995.

**24.**—*Section 28* of the Civil Legal Aid Act, 1995, is hereby amended by the substitution of the following subsection for *subsection (3)*:

“(3) Where the proceedings the subject matter of the application under this section concern—

(a) the welfare of (including the custody of or access to) a child, or

(b) a sex offender order (within the meaning of the *Sex Offenders Act, 2001*),

paragraphs (c) and (e) of *subsection (2)* shall not apply.”.

PART 4

PROVISION OF INFORMATION FOR EMPLOYMENT PURPOSES

**25.—(1)** In this Part—

Interpretation (*Part 4*).

“child” means a person who is less than 18 years of age;

“contract of employment” means—

- (a) a contract of service or apprenticeship, or
- (b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract),

whether the contract is express or implied and if express, whether it is oral or in writing;

“mentally impaired” has the meaning assigned to it by section 5 of the Act of 1993;

“State work or a service” means work done or a service performed by a person who—

- (a) holds office under, or is otherwise in the service of the State (including as a civil servant, within the meaning of the Civil Service Regulation Act, 1956),
- (b) is a member of the Garda Síochána or the Defence Forces,
- (c) is an officer or servant of a local authority for the purposes of the Local Government Act, 1941, or
- (d) is an officer or servant of a harbour authority, health board or vocational education committee.

(2) In this Part a reference to a person applying to another person includes a reference to the person applying to another person without that other’s having requested or solicited the making of the application.

**26.—(1)** In this section “relevant work” means work or a service (including State work or a service) a necessary and regular part of which consists, mainly, of the person referred to in *subsection (3), (5) or (6)* having unsupervised access to, or contact with, a child or children or a mentally impaired person or persons.

Failure to inform employer, etc., of sexual offence conviction.

(2) A person referred to in *subsection (3)* shall be guilty of an offence if he or she—

- (a) applies to another person to be employed by that person to do relevant work,
- (b) enters into a contract of employment to do relevant work,
- (c) applies to another person to do relevant work on that other person’s behalf (whether in return for payment or for any other consideration or not), or
- (d) enters into a contract for services to do relevant work,

without, during the course of the application or before entering into the contract, informing the other person or the other party to the contract of the fact that he or she has been convicted of the offence referred to in *subsection (3)*.

(3) The person mentioned in *subsection (2)* is a person who has been convicted, before or after the commencement of this Part, either—

- (a) in the State of a sexual offence, or
- (b) in a place outside the State of an offence and the act constituting that offence would, if done in the State, constitute a sexual offence (within the meaning of this Act) under the law of the State.

(4) In proceedings for an offence under *subsection (2)* it shall be a defence for the accused to prove that he or she neither knew nor could reasonably be expected to have known that the work to which the application or contract referred to in *subsection (2)* related was relevant work (within the meaning of this section).

(5) A person convicted, before or after the commencement of this Part, of an offence referred to in *subsection (3)* who—

- (a) does a thing referred to in any of *paragraphs (a) to (d)* of *subsection (2)* (and, in the case of *paragraph (a)* or *(c)* of that subsection, commences to do the work concerned), and
- (b) at the time he or she does such a thing, neither knows nor can reasonably be expected to know that the work concerned is relevant work (within the meaning of this section),

shall inform the other person or the other party to the contract referred to in *subsection (2)* of the fact that he or she has been convicted of that offence as soon as may be after he or she becomes aware of the fact that the work concerned is relevant work.

(6) A person who—

- (a) does a thing referred to in any of *paragraphs (a) to (d)* of *subsection (2)* (and, in the case of *paragraph (a)* or *(c)* of that subsection, commences to do the work concerned), and
- (b) is subsequently convicted of an offence referred to in *subsection (3)*,

shall, unless, at the time of the conviction, the work he or she has applied to do is wholly completed or the contract he or she has entered into has expired or ceased to be in force, inform the person on whose behalf the work is being done or the other party to the contract, as soon as may be after the conviction, of the fact that he or she has been so convicted.

(7) A person who fails to comply with *subsection (5)* or *(6)* shall be guilty of an offence.

(8) A person guilty of an offence under *subsection (2)* or *(7)* shall be liable—

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- (a) on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding £10,000 or imprisonment for a term not exceeding 5 years or both.

## PART 5

### POST-RELEASE SUPERVISION FOR SEX OFFENDERS

**27.—**(1) In this Part—

Interpretation (*Part 5*).

“probation and welfare officer” means a person appointed by the Minister to be a probation and welfare officer or to be a welfare officer or probation officer;

“probation and welfare service” means the probation and welfare service of the Department of Justice, Equality and Law Reform;

“sentence involving post-release supervision” shall be construed in accordance with *section 29(1)*;

“sex offender” means a person who, after the commencement of this Part, is convicted of a sexual offence for which, in the opinion of the court before which the person appears, the appropriate sentence is, apart from the provisions of this Part, one of imprisonment for any term (whether in addition to the imposition of a fine or not);

“supervision period” shall be construed in accordance with *section 29(1)*;

“supervision period conditions” means the conditions referred to in *section 29(1)(b)* or *30* that relate to the sex offender concerned.

(2) References in this Part to protecting the public from serious harm from a sex offender shall be construed as references to protecting a member or members of the public from death or serious personal injury, whether physical or psychological, which would be occasioned if the offender were to commit a sexual offence after he or she has been released into the community.

**28.—**(1) In determining the sentence to be imposed on a sex offender in respect of the sexual offence concerned, the court shall consider whether to impose a sentence involving post-release supervision.

Duty of court to consider imposition of sentence involving post-release supervision.

(2) In considering that matter, the court shall have regard to—

- (a) the need for a period, after the offender has been released into the community, during which his or her conduct is supervised by a responsible person,
- (b) the need to protect the public from serious harm from the offender,
- (c) the need to prevent the commission by the offender of further sexual offences, and
- (d) the need to rehabilitate or further rehabilitate the offender.

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(3) For the purposes of this section, the court may, if it thinks it necessary to do so, receive evidence or submissions from any person concerned.

Power of court to impose sentence involving post-release supervision.

**29.—(1)** A court may impose on a sex offender in respect of the sexual offence concerned a sentence involving post-release supervision, that is to say a sentence which consists of—

- (a) the imposition of a sentence of imprisonment for a specified term (whether in addition to the imposition of a fine or not), and
- (b) a provision that during a specified period (“the supervision period”) commencing on the date of the offender’s release from prison, the offender shall be under the supervision of a probation and welfare officer and requiring the offender to comply with such conditions as are specified in the sentence for securing that supervision.

(2) The aggregate of the sentence of imprisonment referred to in *subsection (1)(a)* and the supervision period shall not exceed the duration of the maximum term of imprisonment that may be imposed in respect of the sexual offence concerned.

(3) The term of the sentence of imprisonment referred to in *subsection (1)(a)* shall not be less than the term the court would have imposed if it had considered the matter apart from the provisions of this Part.

(4) In determining the period to be specified as the supervision period, the matters to which the court shall have regard shall include the matters referred to in *paragraphs (a) to (d) of section 28(2)*.

(5) The reference in this section to the date of the offender’s release from prison is a reference to the date on which the offender’s sentence of imprisonment referred to in *subsection (1)(a)* expires or, as the case may be, the offender’s remission from the sentence begins.

Additional provisions which may be included in sentence involving post-release supervision.

**30.—(1)** In addition to the conditions referred to in *section 29(1)(b)*, a sentence involving post-release supervision may include such conditions as the court considers appropriate for the purposes of *paragraphs (a) to (d) of section 28(2)* and having regard to the needs of the sex offender.

(2) Without prejudice to the generality of *subsection (1)*, there may be included in a sentence involving post-release supervision—

- (a) a condition prohibiting the sex offender from doing such one or more things as the court considers necessary for the purpose of protecting the public from serious harm from the offender, and
- (b) a condition requiring the sex offender to receive psychological counselling or other appropriate treatment provided by the probation and welfare service or any other body which it appears to the court, having regard to any submissions made to it on behalf of the probation and welfare service, is an appropriate body to provide such counselling or treatment.

(3) A condition referred to in *subsection (1) or (2)* shall have effect during the whole or a specified part of the supervision period as the court considers appropriate and specifies in the sentence concerned. Pr.5 S.30

**31.**—In imposing a sentence involving post-release supervision on a sex offender, the court shall explain to him or her— Duty of court to explain effect of sentence to offender.

- (a) the effect of the sentence,
- (b) the consequences provided for under *section 33* if he or she fails to comply with any of the supervision period conditions, and
- (c) that under this Act the court may vary or discharge any of those conditions on the application of either the offender or a probation and welfare officer.

**32.**—At any time after the supervision period has commenced the court may, on the application of— Discharge or variation of requirements relating to supervision period.

- (a) the offender on whom the sentence involving post-release supervision concerned was imposed, or
- (b) a probation and welfare officer,

discharge all of the supervision period conditions (and the supervision period shall lapse accordingly) or vary or discharge one or more of those conditions if, having regard to the circumstances which have arisen since the sentence was imposed, it considers—

- (i) it would be in the interests of justice to do so, and
- (ii) the protection of the public from serious harm from the offender no longer requires that those conditions should continue in force or, as appropriate, that they should continue in force in the form in which they stand at the date of the making of the application.

**33.**—(1) A sex offender who fails, without reasonable excuse, to comply with any of the supervision period conditions shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both. Non-compliance with requirements relating to supervision period.

(2) Subject to *subsection (3)*, the conviction of a sex offender for an offence under this section shall not prevent the supervision period conditions from continuing to have effect.

(3) If a sentence of imprisonment is imposed on a sex offender for an offence under this section, that sentence shall, for the period the offender spends in prison on foot of that sentence, operate to suspend the supervision period conditions and the period for which those conditions are so suspended shall not be reckoned in calculating the date on which the supervision period expires.

PART 6

MISCELLANEOUS

Amendment of Criminal Law (Rape) Act, 1981.

**34.**—The Criminal Law (Rape) Act, 1981, is hereby amended by the insertion after section 4 of the following section:

“Legal representation for complainants.

4A.—(1) Where an application under section 3 or 4 is made by or on behalf of an accused person who is for the time being charged with an offence to which this section applies, the complainant shall be entitled to be heard in relation to the application and, for this purpose, to be legally represented during the hearing of the application.

(2) Notice of intention to make an application under section 3 or 4 shall be given to the prosecution by or on behalf of the accused person before, or as soon as practicable after, the commencement of the trial for the offence concerned or, as the case may be, the commencement of the proceeding concerned referred to in section 4(1).

(3) The prosecution shall, as soon as practicable after the receipt by it of such a notice, notify the complainant of his or her entitlement to be heard in relation to the said application and to be legally represented, for that purpose, during the course of the application.

(4) The judge shall not hear the said application without first being satisfied that subsections (2) and (3) have been complied with.

(5) If the period between the complainant’s being notified, under subsection (3), of his or her entitlements under this section and the making of the said application is not, in the judge’s opinion, such as to have afforded the complainant a reasonable opportunity to arrange legal representation of the kind referred to in this section, the judge shall postpone the hearing of the application (and, for this purpose, may adjourn the trial or proceeding concerned) for a period that the judge considers will afford the complainant such an opportunity.

(6) This section applies to a rape offence and any of the following, namely, aggravated sexual assault, attempted aggravated sexual assault, aiding, abetting, counselling and procuring aggravated sexual assault or attempted aggravated sexual assault, incitement to aggravated sexual assault and conspiring to commit any of the foregoing offences.”.

Further amendments of Civil Legal Aid Act, 1995.

**35.**—(1) In this section “the Act of 1995” means the Civil Legal Aid Act, 1995.

(2) In addition to the meaning assigned to that expression by section 27 of the Act of 1995, “legal aid” in the Act of 1995 means representation by a solicitor or barrister, engaged by the Legal Aid Board under section 11 of that Act, on behalf of a complainant in relation to an application referred to in section 4A of the Criminal Law (Rape) Act, 1981, that concerns the complainant.



[2001.] *Sex Offenders Act, 2001.* [No. 18.]

(3) Section 28 of the Act of 1995 is hereby amended by the insertion of the following subsection after subsection (5): Pr.6 S.35

“(5A) Notwithstanding any other provision of this Act, the Board shall grant a legal aid certificate to a complainant for the purpose of his or her being represented in relation to an application referred to in section 4A of the Criminal Law (Rape) Act, 1981, that concerns him or her.”.

**36.—**(1) In proceedings against a person for an offence under— Proof of foreign conviction in certain cases.

(a) *section 12* (where the person is a person referred to in *section 13(1)*), or

(b) *section 26* (where the person is a person referred to in *subsection (2), (5) or (6)* of that section and falls within *subsection (3)(b)* of that section),

the production to the court of a document that satisfies the condition referred to in *subsection (2)* and which purports to contain either or both—

(i) particulars of the conviction in a state, other than the State, of that person for an offence and of the act constituting the offence,

(ii) a statement that, on a specified date, that person was subject to the first-mentioned requirement in *section 13(1)(b)(ii)*,

shall, without further proof, be evidence, until the contrary is shown, of the matters stated in it.

(2) The condition mentioned in *subsection (1)* is that the document concerned purports to be signed or certified by a judge, magistrate or officer of the state referred to in that subsection and to be authenticated by the oath of some witness or by being sealed with the official seal of a minister of state of that state (judicial notice of which shall be taken by the court).

(3) That condition shall be regarded as being satisfied without proof of the signature or certification, and the authentication of it, that appears in or on the document.

**37.—**(1) Section 2 of the Act of 1990 is amended by the substitution of the following subsection for subsection (2): Amendment of section 2 of Act of 1990.

“(2) (a) A person guilty of sexual assault shall be liable on conviction on indictment—

(i) in case the person on whom the assault was committed was a child, to imprisonment for a term not exceeding 14 years, and

(ii) in any other case, to imprisonment for a term not exceeding 10 years.

(b) In this subsection ‘child’ means a person under 17 years of age.

(2) The amendment effected by *subsection (1)* shall apply to sexual assaults committed after the commencement of this section.

SCHEDULE

SEXUAL OFFENCES FOR PURPOSES OF ACT

Section 3.

1. Rape.
2. Sexual assault (whether the offence of which the person was convicted was known by that name or by the name “Indecent assault upon a female person” or “Indecent assault upon a male person”).
3. Aggravated sexual assault (within the meaning of section 3 of the Act of 1990).
4. Rape under section 4 of the Act of 1990.
5. An offence under section 1 of the Act of 1908 (incest by males).
6. An offence under section 2 of the Act of 1908 (incest by females of or over 17 years of age).
7. An offence under section 1 of the Act of 1935 (defilement of girl under 15 years of age).
8. An offence under section 2 of the Act of 1935 (defilement of girl between 15 and 17 years of age).
9. The offence of buggery with a person or with an animal referred to in section 61 of the Act of 1861.
10. The offence of an attempt to commit such buggery referred to in section 62 of the Act of 1861.
11. An offence under section 3 of the Act of 1993 (buggery of persons under 17 years of age).
12. An offence under section 4 of the Act of 1993 (gross indecency with males under 17 years of age).
13. An offence under section 11 of the Criminal Law Amendment Act, 1885 (acts of gross indecency).
14. An offence under section 5 of the Act of 1993 (protection of mentally impaired persons).
15. An offence under section 4 of the Act of 1935 (defilement of mentally impaired females).
16. 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 child to be used for child pornography),
  - (c) section 5 (producing, distributing, etc., child pornography),
  - (d) section 6 (possession of child pornography).
17. An offence under section 2 of the Sexual Offences (Jurisdiction) Act, 1996 (sexual offences committed outside the State).

[2001.]                    *Sex Offenders Act, 2001.*                    [No. 18.]

18. An offence consisting of attempting to commit an offence SCH. referred to in any of *paragraphs 1 to 17* of this Schedule (other than such an offence that itself consists of an attempt to do a particular act).

19. An offence consisting of aiding, abetting, counselling, procuring or inciting the commission of an offence referred to in any of *paragraphs 1 to 18* of this Schedule.

20. An offence consisting of conspiracy to commit an offence referred to in any foregoing paragraph of this Schedule.