



Number 32 of 1990

CRIMINAL LAW (RAPE) (AMENDMENT) ACT 1990

REVISED

Updated to 15 February 2022

This Revised Act is an administrative consolidation of the *Criminal Law (Rape) (Amendment) Act 1990*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Maritime Area Planning Act 2021* (50/2021), enacted 23 December 2021, and all statutory instruments up to and including the *Education Act 1998 (Unregistered Persons) (Amendment) Regulations 2022* (S.I. No. 68 of 2022), made 15 February 2022, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Criminal Law (Rape) Acts 1981 and 1990: this Act is one of a group of Acts included in this collective citation, to be read together as one (*Criminal Law (Rape) (Amendment) Act 1990*, s. 22(2)). The Acts in the group are:

- *Criminal Law (Rape) Act 1981*
- *Criminal Law (Rape) (Amendment) Act 1990*



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SCHEDULE

ENACTMENTS REPEALED

ACTS REFERRED TO

Criminal Justice Act, 1951	1951, No. 2
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 Procedure Act, 1967	1967, No. 12
Defence Act, 1954	1954, No. 18
Genocide Act, 1973	1973, No. 28
Offences against the Person Act, 1861	1861, c. 100



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AN ACT TO AMEND THE LAW RELATING TO RAPE AND CERTAIN OTHER SEXUAL OFFENCES AND FOR THAT PURPOSE TO AMEND THE CRIMINAL LAW (RAPE) ACT, 1981, AND CERTAIN OTHER ENACTMENTS. [18th December, 1990]

BE IT ENACTED BY THE OIREACTHAS AS FOLLOWS:

Interpretation.

1. — (1) In this Act—

“ aggravated sexual assault ” has the meaning assigned to it by *section 3* ;

“ rape under *section 4* ” has the meaning assigned to it by *section 4* ;

“ the Principal Act ” means the Criminal Law (Rape) Act, 1981;

“ sexual assault ” has the meaning assigned to it by *section 2* .

(2) (a) In this Act and in the Principal Act a reference to a section is a reference to a section of the Act in which the reference occurs unless it is indicated that reference to some other enactment is intended.

(b) In this Act and in the Principal Act a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(c) In this Act and in the Principal Act a reference to any enactment shall be construed as a reference to that enactment as amended or adapted by or under any subsequent enactment.

Sexual assault.

2. — (1) The offence of indecent assault upon any male person and the offence of indecent assault upon any female person shall be known as sexual assault.

F1[(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.]

(3) Sexual assault shall be a felony.

Aggravated sexual assault.

3. — (1) In this Act “ aggravated sexual assault ” means a sexual assault that involves serious violence or the threat of serious violence or is such as to cause injury, humiliation or degradation of a grave nature to the person assaulted.

(2) A person guilty of aggravated sexual assault shall be liable on conviction on indictment to imprisonment for life.

(3) Aggravated sexual assault shall be a felony.

Rape under section 4 .

4. — (1) In this Act “ rape under section 4 ” means a sexual assault that includes—

(a) penetration (however slight) of the anus or mouth by the penis, or

(b) penetration (however slight) of the vagina by any object held or manipulated by another person.

(2) A person guilty of rape under section 4 shall be liable on conviction on indictment to imprisonment for life.

(3) Rape under section 4 shall be a felony.

Abolition of marital exemption in relation to rape.

5. — (1) Any rule of law by virtue of which a husband cannot be guilty of the rape of his wife is hereby abolished.

(2) Criminal proceedings against a man in respect of the rape by him of his wife shall not be instituted except by or with the consent of the Director of Public Prosecutions.

Capacity to commit offences of a sexual nature.

6. — Any rule of law by virtue of which a male person is treated by reason of his age as being physically incapable of committing an offence of a sexual nature is hereby abolished.

Corroboration of evidence in proceedings in relation to offences of a sexual nature.

7. — (1) Subject to any enactment relating to the corroboration of evidence in criminal proceedings, where at the trial on indictment of a person charged with an offence of a sexual nature evidence is given by the person in relation to whom the offence is alleged to have been committed and, by reason only of the nature of the charge, there would, but for this section, be a requirement that the jury be given a warning about the danger of convicting the person on the uncorroborated evidence of that other person, it shall be for the judge to decide in his discretion, having regard to all the evidence given, whether the jury should be given the warning; and accordingly any rule of law or practice by virtue of which there is such a requirement as aforesaid is hereby abolished.

(2) If a judge decides, in his discretion, to give such a warning as aforesaid, it shall not be necessary to use any particular form of words to do so.

Alternative verdicts.

8. — (1) A person indicted for rape may, if the evidence does not warrant a conviction for rape but warrants a conviction for rape under section 4 or aggravated sexual assault or sexual assault, be found guilty of rape under section 4 or of aggravated sexual assault or of sexual assault, as may be appropriate.

(2) A person indicted for rape may, if the evidence does not warrant a conviction for rape but warrants a conviction for an offence under F2[section 2, 3 or 3A of the Criminal Law (Sexual Offences) Act 2006], or under section 3 of the Criminal Law Amendment Act, 1885, be found guilty of an offence under [the said section 3 or section 2, 3 or 3A of the Criminal Law (Sexual Offences) Act 2006] as may be appropriate.

(3) A person indicted for rape under *section 4* may, if the evidence does not warrant a conviction for rape under *section 4* but warrants a conviction for aggravated sexual assault or for sexual assault, be found guilty of aggravated sexual assault or of sexual assault, as may be appropriate.

(4) A person indicted for aggravated sexual assault may, if the evidence does not warrant a conviction for aggravated sexual assault but warrants a conviction for sexual assault, be found guilty of sexual assault.

(5) A person indicted for an offence made felony by F2[*section 2 of the Criminal Law (Sexual Offences) Act 2006*], may, if the evidence does not warrant a conviction for the felony or an attempt to commit the felony but warrants a conviction for an offence under F2[*section 3 or 3A of the Criminal Law (Sexual Offences) Act 2006*], or *section 3* of the Criminal Law Amendment Act, 1885, or rape under *section 4* or aggravated sexual assault or sexual assault, be found guilty of an offence under F2[*the said section 3 or section 3 or 3A of the Criminal Law (Sexual Offences) Act 2006*] or of rape under *section 4* or of aggravated sexual assault or of sexual assault, as may be appropriate.

Consent

F3[9.—(1) A person consents to a sexual act if he or she freely and voluntarily agrees to engage in that act.

(2) A person does not consent to a sexual act if—

(a) he or she permits the act to take place or submits to it because of the application of force to him or her or to some other person, or because of the threat of the application of force to him or her or to some other person, or because of a well-founded fear that force may be applied to him or her or to some other person,

(b) he or she is asleep or unconscious,

(c) he or she is incapable of consenting because of the effect of alcohol or some other drug,

(d) he or she is suffering from a physical disability which prevents him or her from communicating whether he or she agrees to the act,

(e) he or she is mistaken as to the nature and purpose of the act,

(f) he or she is mistaken as to the identity of any other person involved in the act,

(g) he or she is being unlawfully detained at the time at which the act takes place,

(h) the only expression or indication of consent or agreement to the act comes from somebody other than the person himself or herself.

(3) This section does not limit the circumstances in which it may be established that a person did not consent to a sexual act.

(4) Consent to a sexual act may be withdrawn at any time before the act begins, or in the case of a continuing act, while the act is taking place.

(5) Any failure or omission on the part of a person to offer resistance to an act does not of itself constitute consent to that act.

(6) In this section "sexual act" means

(a) an act consisting of—

(i) sexual intercourse, or

(ii) buggery,

(b) an act described in section 3(1) or 4(1) of this Act, or

(c) an act which if done without consent would constitute a sexual assault;

"sexual intercourse" shall be construed in accordance with section 1(2) of the Principal Act.]

Trial of persons for certain offences by Central Criminal Court.

10. — A person indicted for a rape offence or the offence of aggravated sexual assault or attempted aggravated sexual assault or of aiding, abetting, counselling or procuring the offence of aggravated sexual assault or attempted aggravated sexual assault or of incitement to the offence of aggravated sexual assault or conspiracy to commit any of the foregoing offences shall be tried by the Central Criminal Court.

Exclusion of the public from hearings.

11. — The following section shall be substituted for section 6 of the Principal Act:

"6.— (1) Subject to subsections (2), (3) and (4), in any proceedings for a rape offence or the offence of aggravated sexual assault or attempted aggravated sexual assault or of aiding, abetting, counselling or procuring the offence of aggravated sexual assault or attempted aggravated sexual assault or of incitement to the offence of aggravated sexual assault or conspiracy to commit any of the foregoing offences, the judge, the justice or the court, as the case may be, shall exclude from the court during the hearing all persons except officers of the court, persons directly concerned in the proceedings, *bona fide* representatives of the Press and such other persons (if any) as the judge, the justice or the court, as the case may be, may in his or its discretion permit to remain.

(2) Subject to subsection (3), during the hearing of an application under section 3 (including that section as applied by section 5) or under section 4 (2), the judge, the justice or the court, as the case may be, shall exclude from the court all persons except officers of the court and persons directly concerned in the proceedings.

(3) Subsections (1) and (2) are without prejudice to the right of a parent, relative or friend of the complainant or, where the accused is not of full age, of the accused to remain in court.

(4) In any proceedings to which subsection (1) applies the verdict or decision and the sentence (if any) shall be announced in public."

Amendment of section 1 of Principal Act.

12. — Section 1 of the Principal Act is hereby amended by the substitution of the following subsection for subsection (1):

"(1) In this Act—

'aggravated sexual assault', 'rape under section 4' and 'sexual assault' have the meanings respectively assigned to them by the *Criminal Law (Rape) (Amendment) Act, 1990*;

'complainant' means a person in relation to whom a sexual assault offence is alleged to have been committed;

'a rape offence' means any of the following, namely, rape, attempted rape, burglary with intent to commit rape, aiding, abetting, counselling and procuring rape, attempted rape or burglary with intent to commit rape, and incitement to rape and, other than in sections 2 (2) and 8 of this Act, rape under section 4, attempted rape under section 4, aiding, abetting, counselling and procuring rape under section 4 or attempted rape under section 4 and incitement to rape under section 4;

‘ a sexual assault offence ’ means a rape offence and any of the following, namely, aggravated sexual assault, attempted aggravated sexual assault, sexual assault, attempted sexual assault, aiding, abetting, counselling and procuring aggravated sexual assault, attempted aggravated sexual assault, sexual assault or attempted sexual assault, incitement to aggravated sexual assault or sexual assault and conspiracy to commit any of the foregoing offences.”.

Amendment of
section 3 of
Principal Act.

13. — Section 3 of the Principal Act is hereby amended by the substitution of the following subsection for subsection (1):

“(1) If at a trial any person is for the time being charged with a sexual assault offence to which he pleads not guilty, then, except with the leave of the judge, no evidence shall be adduced and no question shall be asked in cross-examination at the trial, by or on behalf of any accused person at the trial, about any sexual experience (other than that to which the charge relates) of a complainant with any person; and in relation to a sexual assault tried summarily pursuant to section 12—

(a) subsection (2) (a) shall have effect as if the words ‘in the absence of the jury’ were omitted,

(b) subsection (2) (b) shall have effect as if for the references to the jury there were substituted references to the court, and

(c) this section (other than this paragraph) and subsections (3) and (4) of section 7 shall have effect as if for the references to the judge there were substituted references to the court.”.

Amendment of
section 8 of
Principal Act.

14. — Section 8 of the Principal Act is hereby amended—

(a) by the substitution of the following subsection for subsection (2):

“(2) If a person charged with a rape offence applies in that behalf to a judge of the High Court before the commencement of the trial or to the judge at the trial, the judge shall direct that subsection (1) shall not apply to the person in relation to the charge:

Provided that, if it appears to the judge that, if the direction were given, the publication of any matter in pursuance of the direction might enable members of the public to identify a person as the complainant in relation to the charge, the judge shall not give the direction unless he is satisfied that a direction could properly be given in relation to that person in pursuance of section 7.”,

and

(b) by the insertion of the following subsection after subsection (7):

“(8) If, at any time after a person is charged with a rape offence, the Director of Public Prosecutions applies in that behalf to a judge of the High Court, the judge, if he is satisfied that it is in the public interest to do so, shall direct that subsection (1) shall not apply to such matter relating to the person charged with the offence as is specified in the direction.”.

Amendment of
section 9 of
Principal Act.

15. — Section 9 (2) of the Principal Act is hereby amended by the insertion after paragraph (a) of the following paragraph:

“(aa) in section 8 (8) for the reference to the Director of Public Prosecutions there shall be substituted a reference to the convening authority and for the references to a judge of the High Court there shall be substituted

references to a superior authority; and, for the purposes of this paragraph, each of the following shall be a superior authority:

- (i) the Minister for Defence,
- (ii) the Adjutant-General of the Defence Forces,
- (iii) any general officer or flag officer (within the meaning, in each case, of the Defence Act, 1954) appointed by the Minister for Defence for the purpose, and”.

Amendment of section 12 of Principal Act.

16. — Section 12 (1) of the Principal Act is hereby amended by—

- (a) the substitution of “a sexual assault or an offence to which section 11 relates” for “an offence to which section 10 or 11 relates”, and
- (b) the substitution of “ £1,000” for “ £500”.

Miscellaneous amendments of Principal Act.

17. — (1) Sections 4 (1), 5 and 9 (1) of the Principal Act are hereby amended by the substitution of “sexual assault offence” for “rape offence”.

(2) Section 7 of the Principal Act is hereby amended by—

- (a) the substitution of “person” for “woman” in subsection (1), and
- (b) the substitution of “the outcome of” for “an acquittal of the accused person at” in subsection (4), and
- (c) the substitution of “sexual assault offence” for “rape offence” in subsections (1), (2), (3), (4), (5), (8) (a) and (10).

Amendment of section 18 of Criminal Law Amendment Act, 1935.

18. — Section 18 of the Criminal Law Amendment Act, 1935, is hereby amended by the substitution of “ £500” for “two pounds” and “6 months or to both” for “one month”.

Amendment of Defence Act, 1954.

19. — The Defence Act, 1954, is hereby amended by—

- (a) the insertion in F4[[section 169 \(3\) \(b\)](#)], after “rape”, of “, rape under *section 4* (within the meaning of the *Criminal Law (Rape) (Amendment) Act, 1990*) or aggravated sexual assault (within the meaning of the *Criminal Law (Rape) (Amendment) Act, 1990*)”, and
- (b) the substitution in section 192 (3) of “, rape, rape under *section 4* (within the meaning of the *Criminal Law (Rape) (Amendment) Act, 1990*) or aggravated sexual assault (within the meaning of the *Criminal Law (Rape) (Amendment) Act, 1990*)” for “or rape”.

Amendment of Criminal Procedure Act, 1967.

20. — (a) Paragraph (a) of subsection (2) of section 13 of the Criminal Procedure Act, 1967, shall not apply in relation to rape, rape under *section 4* (within the meaning of the *Criminal Law (Rape) (Amendment) Act, 1990*) or aggravated sexual assault (within the meaning of the *Criminal Law (Rape) (Amendment) Act, 1990*).

- (b) Notwithstanding *paragraph (a)*, the offences referred to therein shall be deemed, for the purposes of paragraph (b) of the said subsection (2), to be offences to which the said section 13 applies.

Repeals.

21. — The enactments specified in *column (3)* of the Schedule to this Act are hereby repealed to the extent specified in *column (4)* of that Schedule.

Short title,
collective
citation,
construction,
commencement
and transitional
provision.

- 22.** — (1) This Act may be cited as the Criminal Law (Rape) (Amendment) Act, 1990.
- (2) The Criminal Law (Rape) Act, 1981, and this Act may be cited together as the Criminal Law (Rape) Acts, 1981 and 1990, and shall be construed together as one.
- (3) This Act shall come into operation one month after the date of its passing.
- (4) (a) *Sections 2, 3, 4, 5, 6, 8, 12, 16, 19 and 21* (insofar as it relates to *reference numbers 3 and 4* in the Schedule to this Act) shall not have effect in relation to an offence committed before the commencement of this Act.
- (b) *Sections 7, 11, 13, 15 and 17 (1)* shall not have effect in relation to a trial or preliminary examination that begins before such commencement.
- (c) (i) Subject to *subparagraph (ii)*, *section 10* shall not have effect in relation to a case in which, before such commencement, a person has been sent forward for trial to the Circuit Court.
- (ii) In a case to which *subparagraph (i)* applies, an application by a person charged or the Director of Public Prosecutions, made before the commencement of the trial concerned, to a judge of the Circuit Court sitting in the circuit where it is to take place for its transfer to the Central Criminal Court shall be granted.
- (d) *Section 20* shall not have effect in relation to a charge that is made before such commencement.

Section 21 .

SCHEDULE

ENACTMENTS REPEALED

Reference Number	Session and Chapter Number or Number and Year	Short Title	Extent of Repeal
(1)	(2)	(3)	(4)
1	24 & 25 Vic., c. 100	Offences against the Person Act, 1861	In section 62, the words “, or of any indecent assault upon any male person”.
2	48 & 49 Vic., c. 69	Criminal Law Amendment Act, 1885	Section 9.
3	1935, No. 6	Criminal Law Amendment Act, 1935	Section 3.
4	1951, No. 2	Criminal Justice Act, 1951	In the First Schedule, the matter at reference number 6.
5	1981, No. 10	Criminal Law (Rape) Act, 1981	In section 1 (3), the words “but this does not affect any rule of law by virtue of which a male person is treated by reason of his age as being incapable of committing an offence of any particular kind”; In section 2 (1) (a), the word “unlawful”; In section 8 (3), the words “or the Circuit Court”; Section 10; Section 12 (3).