



(8 Edw. 7) c. 45

PUNISHMENT OF INCEST ACT 1908

REVISED

Updated to 24 February 2023

This Revised Act is an administrative consolidation of the *Punishment of Incest Act 1908*. 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 *Oil Emergency Contingency and Transfer of Renewable Transport Fuels Functions Act 2023* (2/2023), enacted 24 February 2023, and all statutory instruments up to and including the *Housing Loans (Amendment) Regulations 2023* (S.I. No. 76 of 2023), made 24 February 2023, 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

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Criminal Law (Sexual Offences)(Amendment) Act 2019 (4/2019)*
- *Criminal Law (Sexual Offences) Act 2017 (2/2017)*
- *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (24/2012)*
- *Criminal Procedure Act 2010 (27/2010)*
- *Children Act 2001 (24/2001)*

- *Sex Offenders Act 2001* (18/2001)
- *Bail Act 1997* (16/1997)
- *Criminal Justice (Miscellaneous Provisions) Act 1997* (4/1997)
- *Criminal Law (Incest Proceedings) Act 1995* (12/1995)
- *Civil Legal Aid Act 1995* (32/1995)
- *Criminal Justice Act 1993* (6/1993)
- *Criminal Law Amendment Act 1935* (6/1935)

All Acts up to and including *Oil Emergency Contingency and Transfer of Renewable Transport Fuels Functions Act 2023* (2/2023), enacted 24 February 2023, were considered in the preparation of this revision.

Statutory instruments, orders and regulations which affect or previously affected this revision

None

All statutory instruments up to and including *Housing Loans (Amendment) Regulations 2023* (S.I. No. 76 of 2023), made 24 February 2023, were considered in the preparation of this revision.



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ARRANGEMENT OF SECTIONS

Section

1. Incest by males.
2. Incest by females of or over sixteen.
3. Test of relationship.
4. Prosecution of offences.
5. Proceedings to be held in camera. (*Repealed*)
6. Sanction of Attorney-General.
7. Extent.
8. Short title and commencement.



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CHAPTER XLV.

An Act to provide for the punishment of Incest. [21st December 1908.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Annotations:

Editorial Notes:

- | | |
|-----------|---|
| E1 | Provision made for exclusion of public from hearings of proceedings under Act (2.09.2019) by <i>Criminal Law (Sexual Offences) Act 2017 (2/2017)</i> , s. 29, S.I. No. 434 of 2019. |
| E2 | Provision made for anonymity for accused and person to whom offence relates (2.09.2019) by <i>Criminal Law (Sexual Offences) Act 2017 (2/2017)</i> , s. 30, S.I. No. 434 of 2019. |
| E3 | Special provisions made in relation to child victims of offences under Act (1.05.2002) by <i>Children Act 2001 (24/2001)</i> , ss. 251-257 and sch. 1 item 3, S.I. No. 151 of 2002, art. 2(q). |
| E4 | Previous affecting provision: provision made for exclusion of public from hearings of proceedings under Act (5.07.1995) by <i>Criminal Law (Incest Proceedings) Act 1995 (12/1995)</i> , s. 2, commenced on enactment; repealed (2.09.2019) by <i>Criminal Law (Sexual Offences) Act 2017 (2/2017)</i> , s. 29, S.I. No. 434 of 2019. |
| E5 | Previous affecting provision: provision for anonymity for accused and person to whom offence relates made (5.07.1995) by <i>Criminal Law (Incest Proceedings) Act 1995 (12/1995)</i> , s. 3, commenced on enactment; repealed (2.09.2019) by <i>Criminal Law (Sexual Offences) Act 2017 (2/2017)</i> , s. 32, S.I. No. 434 of 2019. |

Incest by males.
48 & 49 Vict. c.
69.

F1[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 F2[imprisonment for a term not exceeding 10 years].

(2) It shall not be a defence to proceedings for an offence under this section for the defendant to show that the carnal knowledge was had with the consent of the female person.]

(3) F3[...]

Annotations:

Amendments:

- F1** Substituted (2.09.2019) by *Criminal Law (Sexual Offences) Act 2017 (2/2017)*, s. 28, S.I. No. 434 of 2019.
- F2** Substituted (2.09.2019) by *Criminal Law (Sexual Offences) (Amendment) Act 2019 (4/2019)*, s. 2, S.I. No. 436 of 2019.
- F3** Deleted (5.07.1995) by *Criminal Law (Incest Proceedings) Act 1995 (12/1995)*, s. 5(b), commenced on enactment.

Editorial Notes:

- E6** Provision for higher sentences in cases of second or subsequent offences under section made by *Criminal Law (Sexual Offences) Act 2017 (2/2017)*, s. 58, as inserted (2.09.2019) by *Criminal Law (Sexual Offences) (Amendment) Act 2019 (4/2019)*, s. 4, S.I. No. 436 of 2019.
- E7** Offence under section designated a sexual offence (29.04.2016) by *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 (4/2016)*, s. 4 and sch. 1 part 2 item 5, S.I. No. 215 of 2016.
- E8** Withholding information in relation to offence against child or vulnerable person under section designated an offence (1.08.2012) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (24/2012)*, ss. 2, 3 and sch. 1 item 8, sch. 2 item 6, S.I. No. 281 of 2012.
- E9** Retrial procedure for offence under section and court approval required for exercise of powers where acquittal provided (1.09.2010) by *Criminal Procedure Act 2010 (27/2010)*, ss. 7-18 and sch., S.I. No. 414 of 2010.
- E10** Offence under section designated a sexual offence (27.09.2001) by *Sex Offenders Act 2001 (18/2001)*, s. 3, S.I. No. 426 of 2001.
- E11** Offence under section designated a serious offence (15.05.2000) by *Bail Act 1997 (16/1997)*, s. 1(1) and sch. item 9, S.I. No. 118 of 2000.
- E12** Previous affecting provision: provision for search warrant in relation to offence under section made (4.04.1997) by *Criminal Justice (Miscellaneous Provisions) Act 1997 (4/1997)*, s. 10, commenced as per s. 21; section substituted (1.08.2006) by *Criminal Justice Act 2006 (26/2006)*, s. 6(1)(a), S.I. No. 390 of 2006.
- E13** Previous affecting provision: complainant in relation to offence under section entitled to legal advice as provided (16.12.1995) by *Civil Legal Aid Act 1995 (32/1995)*, s. 26(3)(b), commenced on enactment; provision substituted (24.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013 (32/2013)*, s. 25(c), commenced on enactment.
- E14** Previous affecting provision: subs. (1) amended (5.07.1995) by *Criminal Law (Incest Proceedings) Act 1995 (12/1995)*, s. 5(a), commenced on enactment; section substituted as per F-note above.
- E15** Previous affecting provision: section amended (3.05.1993) by *Criminal Justice Act 1993 (6/1993)*, s. 12, commenced as per s. 14(2); section substituted as per F-note above.
- E16** Previous affecting provision: section amended (28.02.1935) by *Criminal Law Amendment Act 1935 (6/1935)*, s. 12, commenced on enactment; section substituted as per F-note above.

Incest by females of or over sixteen.

F4[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 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 a term not exceeding 10 years.]

Annotations:**Amendments:**

- F4** Substituted (2.09.2019) by *Criminal Law (Sexual Offences) (Amendment) Act 2019* (4/2019), s. 3, S.I. No. 436 of 2019.

Editorial Notes:

- E17** Provision for higher sentences in cases of second or subsequent offences under section made by *Criminal Law (Sexual Offences) Act 2017* (2/2017), s. 58, as inserted (2.09.2019) by *Criminal Law (Sexual Offences) (Amendment) Act 2019* (4/2019), s. 4, S.I. No. 436 of 2019.
- E18** Offence under section designated a sexual offence (29.04.2016) by *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* (4/2016), s. 4 and sch. 1 part 2 item 6, S.I. No. 215 of 2016.
- E19** Withholding information in relation to offence against child or vulnerable person under section designated an offence (1.08.2012) by *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012* (24/2012), ss. 2, 3 and sch. 1 item 8, sch. 2 item 6, S.I. No. 281 of 2012.
- E20** Offence under section designated a sexual offence (27.09.2001) by *Sex Offenders Act 2001* (18/2001), s. 3, S.I. No. 426 of 2001.
- E21** Offence under section designated a serious offence (15.05.2000) by *Bail Act 1997* (16/1997), s. 1(1) and sch. item 9, S.I. No. 118 of 2000.
- E22** Previous affecting provision: complainant in relation to offence under section entitled to legal advice as provided (16.12.1995) by *Civil Legal Aid Act 1995* (32/1995), s. 26(3)(b), commenced on enactment; provision substituted (24.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 25(c), commenced on enactment.

Test of relationship.

3. In this Act the expressions "brother" and "sister," respectively, include half-brother and half-sister, and the provisions of this Act shall apply whether the relationship between the person charged with an offence under this Act and the person with whom the offence is alleged to have been committed, is or is not traced through lawful wedlock.

Prosecution of offences.
22 & 23 Vict. c. 17.

4. — (1) An offence under this Act shall be deemed to be an offence within, and subject to, the provisions of the Vexatious Indictments Act, 1859, and any Act amending the same.

(2) A court of quarter sessions shall not have jurisdiction to enquire of, hear, or determine any indictment for an offence against this Act, or for an attempt to commit any such offence.

(3) If, on the trial of any indictment for rape, the jury are satisfied that the defendant is guilty of an offence under this Act, but are not satisfied that the defendant is guilty of rape, the jury may acquit the defendant of rape and find him guilty of an offence under this Act, and he shall be liable to be punished accordingly.

If, on the trial of any indictment for an offence under this Act, the jury are satisfied that the defendant is guilty of any offence under sections four or five of the Criminal Law Amendment Act, 1885, but are not satisfied that the defendant is guilty of an offence under this Act, the jury may acquit the defendant of an offence under this Act and find him guilty of an offence under sections four or five of the Criminal Law Amendment Act, 1885, and he shall be liable to be punished accordingly.

(4) Section 4 of the Criminal Evidence Act, 1898, shall have effect as if this Act were included in the schedule to that Act.

Proceedings to be held in camera. 5. F5[...]

Annotations:

Amendments:

F5 Repealed (5.07.1995) by *Criminal Law (Incest Proceedings) Act 1995* (12/1995), s. 6, commenced on enactment.

Editorial Notes:

E23 Previous affecting provision: section repealed by *Criminal Law Amendment Act 1922* (12 & 13 Geo. 5) c. 56, s. 5.

Sanction of Attorney-General. **6.** No prosecution for any offence under this Act shall be commenced without the sanction of His Majesty's Attorney-General, but this section shall not apply to any prosecution commenced by or on behalf of the Director of Public Prosecutions.

Extent. **7.** This Act shall not extend to Scotland.

Short title and commencement. **8.** This Act may be cited as the Punishment of Incest Act, 1908, and shall come into operation on the first day of January one thousand nine hundred and nine.