



Number 10 of 1981

CRIMINAL LAW (RAPE) ACT 1981

REVISED

Updated to 1 May 2021

This Revised Act is an administrative consolidation of the *Criminal Law (Rape) Act 1981*. 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 *Children (Amendment) Act 2021 (6/2021)*, enacted 26 April 2021, and all statutory instruments up to and including the *Value-Added Tax Consolidation Act 2010 (section 46(5)) Order 2021 (S.I. No. 228 of 2021)*, made 30 April 2021, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.



Number 10 of 1981

CRIMINAL LAW (RAPE) ACT 1981

REVISED

Updated to 1 May 2021

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 construed together as one (*Criminal Law (Rape) (Amendment) Act 1990* (32/1990), s. 22(2)). The Acts in this group are:

- *Criminal Law (Rape) Act 1981* (10/1981)
- *Criminal Law (Rape) (Amendment) Act 1990* (32/1990)

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

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Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked.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. 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.



Number 10 of 1981

CRIMINAL LAW (RAPE) ACT 1981

REVISED

Updated to 1 May 2021

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Meaning of “rape”.
3. Restrictions on evidence at trials for rape offences.
4. Proceedings under Part IA of the Criminal Procedure Act, 1967.
- 4A. Legal representation for complainants.
5. Trials of juveniles.
6. Exclusion of the public from hearings.
7. Anonymity of complainants.
8. Anonymity of accused.
9. Trials by court-martial.
10. Punishment of indecent assault on female. *(Repealed)*
11. Penalty for publication of unauthorised matter.
12. Summary jurisdiction.
13. Short title and commencement.

ACTS REFERRED TO

Children Act, 1908	1908, c. 67
Children Act, 1941	1941, No. 12
Criminal Justice Act, 1951	1951, No. 2
Criminal Law Amendment Act, 1935	1935, No. 6
Criminal Procedure Act, 1967	1967, No. 12
Offences against the Person Act, 1861	1861, c. 100
Summary Jurisdiction over Children (Ireland) Act, 1884	1884, c. 19



Number 10 of 1981

CRIMINAL LAW (RAPE) ACT 1981

REVISED

Updated to 1 May 2021

AN ACT TO AMEND THE LAW RELATING TO RAPE AND INDECENT ASSAULT ON FEMALES.
[6th May, 1981]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—F1[(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.]

(2) In this Act references to sexual intercourse shall be construed as references to carnal knowledge as defined in section 63 of the Offences against the Person Act, 1861, so far as it relates to natural intercourse (under which such intercourse is deemed complete on proof of penetration only).

(3) In this Act “ man ” and “ woman ” include respectively a male and a female person of any age; F2[...].

Meaning of
“rape”.

2. — (1) A man commits rape if—

(a) he has F3[...] sexual intercourse with a woman who at the time of the intercourse does not consent to it, and

(b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it,

and references to rape in this Act and any other enactment shall be construed accordingly.

(2) It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed.

Restrictions on evidence at trials for rape offences.

3.—F4[(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.]

(2) (a) The judge shall not give leave in pursuance of *subsection (1)* for any evidence or question except on an application made to him, in the absence of the jury, by or on behalf of an accused person.

(b) The judge shall give leave if, and only if, he is satisfied that it would be unfair to the accused person to refuse to allow the evidence to be adduced or the question to be asked, that is to say, if he is satisfied that, on the assumption that if the evidence or question was not allowed the jury might reasonably be satisfied beyond reasonable doubt that the accused person is guilty, the effect of allowing the evidence or question might reasonably be that they would not be so satisfied.

(3) If, notwithstanding that the judge has given leave in accordance with this section for any evidence to be adduced or question to be asked in cross-examination, it appears to the judge that any question asked or proposed to be asked (whether in the course of so adducing evidence or of cross-examination) in reliance on the leave which he has given is not or may not be such as may properly be asked in accordance with that leave, he may direct that the question shall not be asked or, if asked, that it shall not be answered except in accordance with his leave given on a fresh application under this section.

(4) Nothing in this section authorises evidence to be adduced or a question to be asked which cannot be adduced or asked apart from this section.

F5[Proceedings under Part IA of the Criminal Procedure Act, 1967.

4.—(1) In a proceeding under Part IA of the Criminal Procedure Act, 1967, relating to—

(a) the dismissal of a charge of a sexual assault offence, or

(b) the taking of a person's evidence by way of deposition in the case of a sexual assault offence.

then, except with leave of the judge conducting the proceeding, evidence shall not be adduced and a question shall not be asked which, if the proceeding were a trial such as is mentioned in *section 3(1)*, could not be adduced or asked without leave in pursuance of that section.

(2) On an application for leave the judge shall—

(a) refuse leave unless he is satisfied that leave in respect of the evidence or question would be likely to be given at such a trial, or

(b) give leave if he is so satisfied.

(3) *Section 3(3)* shall apply to an application under *subsection (2)* of this section.]

F6[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 F7[, an offence under the Criminal Law (Sexual Offences) Act 2006], F8[an offence under section 6 of the Criminal Law (Sexual Offences) Act 1993] 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.]

Trials of juveniles.

5. — Where a person charged with a F9[sexual assault offence] is tried for that offence summarily in pursuance of F10[section 75 (which provides for the summary trial in certain cases of persons under the age of 18 years who are charged with indictable offences) of the Children Act, 2001]—

(a) *sections 2 (2)* and *3 (2) (b)* shall have effect as if for the references to the jury there were substituted references to the court,

(b) *section 3 (2) (a)* shall have effect as if the words “ in the absence of the jury ” were omitted, and

(c) *section 3, subsections (3)* and *(4)* of *section 7* and *subsections (2), (4)* and *(5)* of *section 8* shall have effect as if for the references to the judge there were substituted references to the court.

Exclusion of the public.

F11[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.

F12[(3) *Subsections (1) and (2)* are without prejudice to the right of—

(a) a parent, relative or friend of the complainant or, where the accused is not of full age, of the accused, or

(b) a support worker chosen by the complainant,

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.]

F13[(5) In this section, ‘support worker’ means a volunteer of, or an individual employed under a contract of service or under a contract for services by, an organisation which provides support to victims of crime.]

Anonymity of complainants.

7. — (1) Subject to *subsection (8) (a)*, after a person is charged with a F14[sexual assault offence] no matter likely to lead members of the public to identify a F14[person] as the complainant in relation to that charge shall be published in a written publication available to the public or be broadcast except as authorised by a direction given in pursuance of this section.

(2) If, at any stage before the commencement of a trial of a person for a F14[sexual assault offence], he or another person against whom the complainant may be expected to give evidence at the trial applies to a judge of the High Court or Circuit Court for a direction in pursuance of this subsection and satisfies the judge—

(a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial, and

(b) that the conduct of the applicant's defence at the trial is likely to be adversely affected if the direction is not given,

the judge shall direct that *subsection (1)* shall not, by virtue of the charge alleging the offence aforesaid, apply to such matter relating to the complainant as is specified in the direction.

(3) If at a trial of a person for a F14[sexual assault offence] he or another person who is also charged at the trial applies to the judge for a direction in pursuance of this subsection and satisfies the judge—

(a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial,

(b) that the conduct of the applicant's defence at the trial is likely to be adversely affected if the direction is not given, and

(c) that there was good reason for his not having made an application under *subsection (2)* before the commencement of the trial,

the judge shall direct that *subsection (1)* shall not, by virtue of the charge alleging the offence aforesaid, apply to such matter relating to the complainant as is specified in the direction.

(4) If at a trial for a F14[sexual assault offence] the judge is satisfied that the effect of *subsection (1)* is to impose a substantial and unreasonable restriction on the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, he shall direct that that subsection shall not apply to such matter relating to the complainant as is specified in the direction; but a direction shall not be given in pursuance of this subsection by reason only of F14[the outcome of] the trial.

(5) If a person who has been convicted of an offence and given notice of appeal against the conviction, or, on conviction on indictment, notice of an application for leave so to appeal, applies to the appellate court for a direction in pursuance of this subsection and satisfies the court—

(a) that the direction is required for the purpose of obtaining evidence in support of the appeal, and

(b) that the applicant is likely to suffer injustice if the direction is not given,

the court shall direct that *subsection (1)* shall not apply to such matter relating to a specified complainant and F14[sexual assault offence] as is specified in the direction.

(6) If any matter is published or broadcast in contravention of *subsection (1)*, the following persons, namely—

(a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,

(b) in the case of any other publication, the person who publishes it, and

(c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence.

(7) In this section—

“ a broadcast ” means a broadcast by wireless telegraphy of sound or visual images intended for general reception, and cognate expressions shall be construed accordingly;

“ written publication ” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

(8) Nothing in this section—

(a) prohibits the publication or broadcasting of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with a F14[sexual assault offence], or

(b) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast.

(9) A direction in pursuance of this section does not affect the operation of *subsection (1)* at any time before the direction is given.

(10) If, after the commencement of a trial of a person for a F14[sexual assault offence], a new trial of the person for that offence is ordered, the commencement of any previous trial of that person for that offence shall be disregarded for the purposes of *subsections* (2) and (3).

Anonymity of accused.

8. — (1) After a person is charged with a rape offence no matter likely to lead members of the public to identify him as the person against whom the charge is made shall be published in a written publication available to the public or be broadcast except—

(a) as authorised by a direction given in pursuance of this section or by virtue of *section 7 (8) (a)* as applied by *subsection (6)* of this section, or

(b) after he has been convicted of the offence.

F15[(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*.]

(3) If, at any stage before the commencement of a trial of a person for a rape offence, another person who is to be charged with a rape offence at the trial applies to a judge of the High Court F16[...] for a direction in pursuance of this subsection and satisfies the judge—

(a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial, and

(b) that the conduct of the applicant's defence at the trial is likely to be adversely affected if the direction is not given,

the judge shall direct that *subsection (1)* shall not, by virtue of the charge alleging the offence aforesaid, apply to such matter relating to the first-mentioned person as is specified in the direction.

(4) If at a trial of a person for a rape offence another person who is also charged at the trial applies to the judge for a direction in pursuance of this subsection and satisfies the judge—

(a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial,

(b) that the conduct of the applicant's defence is likely to be adversely affected if the direction is not given, and

(c) that there was good reason for his not having made an application under *subsection (3)* before the commencement of the trial,

the judge shall direct that *subsection (1)* shall not, by virtue of the charge alleging the offence aforesaid, apply to such matter relating to the first-mentioned person as is specified in the direction.

(5) If at a trial at which a person is charged with a rape offence the judge is satisfied that the effect of *subsection (1)* is to impose a substantial and unreasonable restriction on the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction in respect of that person, the judge shall direct that

subsection (1) shall not, by virtue of the charge alleging the offence aforesaid, apply to such matter relating to that person as is specified in the direction.

(6) *Subsections (6) to (9) of section 7* shall have effect for the purposes of this section as if for references to that section there were substituted references to this section.

(7) If, after the commencement of a trial of a person for a rape offence, a new trial of the person for that offence is ordered, the commencement of any previous trial of that person for that offence shall be disregarded for the purposes of *subsections (2), (3) and (4)*.

F17[(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.]

Trials by court-martial.

9. — (1) This Act applies to the trial of a F18[sexual assault offence] by court-martial with the necessary modifications.

(2) In particular—

(a) for the references to a judge in *section 7 (2) or section 8 (3)* and for the references to a justice of the District Court in *section 8 (2)* there shall be substituted references to the convening authority, and

F19[(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]

(b) for references in *section 3* and for other references in *section 7 or 8* to a judge there shall be substituted references to the court-martial.

Punishment of indecent assault on female.

10. — F20[...]

Penalty for publication of unauthorised matter.

11. — (1) A person guilty of an offence under *section 7 (6)* (including an offence under that section as applied by *section 8 (6)*) shall be liable on conviction on indictment to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding 3 years or to both such fine and such imprisonment.

(2) (a) Where an offence to which *subsection (1)* relates and which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(b) Where the affairs of a body corporate are managed by its members, *paragraph (a)* shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where a person is charged with an offence to which *subsection (1)* relates it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or broadcast in question was of such matter as is mentioned in *section 7 (1)* or *section 8 (1)*, as the case may be.

Summary jurisdiction.

12. — (1) A justice of the District Court shall have jurisdiction to try summarily F21[a sexual assault or an offence to which *section 11* relates] if—

(i) the justice is of opinion that the facts proved or alleged against a defendant charged with such an offence constitute a minor offence fit to be tried summarily,

(ii) the Director of Public Prosecutions consents, and

(iii) the defendant (on being informed by the justice of his right to be tried by a jury) does not object to being tried summarily,

and, upon conviction under this subsection, the said defendant shall be liable to a fine not exceeding F21[£1,000] or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both such fine and such imprisonment.

(2) Section 13 of the Criminal Procedure Act, 1967 (which provides for the procedure where a person pleads guilty in the District Court to an indictable offence) shall apply in relation to an offence mentioned in *subsection (1)* as if, in lieu of the penalties specified in subsection (3) of the said section 13, there were specified therein the penalties provided for by *subsection (1)* of this section and the reference in subsection (2) (a) of the said section 13 to the penalties provided for in subsection (3) of that section shall be construed accordingly.

(3) F22[...]

Short title and commencement.

13. — (1) This Act may be cited as the Criminal Law (Rape) Act, 1981.

(2) This Act shall come into operation one month after the date of its passing.

(3) *Section 3* (including that section as applied by *sections 5* and *9*) and *section 4* shall not have effect in relation to a trial or preliminary examination which begins before the commencement of this Act and *sections 7* and *8* shall not have effect in relation to a charge alleging a rape offence which is made before such commencement.

(4) *Section 10* and, in so far as it relates to an offence under *section 10*, *section 12* shall not have effect in relation to an offence committed before the commencement of this Act.