



**RCNI Submission to Joint Oireachtas Committee
on Justice and Equality on the
Sex Offenders (Amendment) Bill General Scheme
and the Sex Offenders (Amendment) Bill 2018
November 2018**

RCNI Sex Offenders (Amendment) Bill General Scheme and Sex Offenders (Amendment) Bill 2018: Submission to Joint Oireachtas Committee on Justice and Equality November 2018

Introduction – Rape Crisis Network Ireland

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects such as using our expertise to influence national policy and social change, and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

Introduction – this Submission

RCNI is very glad to have the opportunity to put forward its views on both the General Scheme of the Sex Offenders (Amendment) Bill 2018¹ and the Sex Offenders (Amendment) Bill 2018 (PMB), to the Joint Oireachtas Committee on Justice and Equality². Our concern in this area is two-fold: firstly that every possible step is taken to ensure that sex offenders in the community are monitored and managed in such a way as to minimise the risk that they will reoffend in the future, and secondly, that the victims of these offenders do not feel vulnerable and powerless once they are released into the community (as most of them will be) but instead feel that the State can and will address their concerns. Both the General Scheme and the Private Members' Bill are very welcome as they represent significant increases in the legal powers available to the relevant agencies charged with monitoring and supervision of sex offenders.

In this context, we welcomed the amendments made to the Sex Offenders Act 2001³ by Section 51 of the Criminal Law (Sexual Offences) Act 2017⁴, which added a general condition of compliance with directions from probation officers to post-release supervision orders and created a general power to add to or amend conditions attached to existing orders.

¹ [http://www.justice.ie/en/JELR/Sex_Offenders_\(Amendment\)_Bill_2018-General_Scheme.pdf/Files/Sex_Offenders_\(Amendment\)_Bill_2018-General_Scheme.pdf](http://www.justice.ie/en/JELR/Sex_Offenders_(Amendment)_Bill_2018-General_Scheme.pdf/Files/Sex_Offenders_(Amendment)_Bill_2018-General_Scheme.pdf)

² <https://data.oireachtas.ie/ie/oireachtas/bill/2018/28/eng/initiated/b2818d.pdf>

³ Available online at: <http://www.irishstatutebook.ie/eli/2001/act/18/enacted/en/print>

⁴ Available online at: <http://www.irishstatutebook.ie/eli/2017/act/2/section/51/enacted/en/html#sec51>

RCNI Sex Offenders (Amendment) Bill General Scheme and Sex Offenders (Amendment) Bill 2018: Submission to Joint Oireachtas Committee on Justice and Equality November 2018

More information on RCNI's general policy on sex offenders may be found in two submissions on our website, one made on the Review of Penal Policy in 2013⁵ and the other made to the Working Group on the Management of Sex Offenders in 2009⁶.

Structure of this Submission

In this Submission, the focus is on selected Heads of the General Scheme and on selected Sections of the Bill only, in that order. These Heads and Sections are discussed in the order in which they appear in their respective documents, and any RCNI recommendations for amendments appear towards the end of the discussion on each Head or Section. At the end of the General Scheme recommendations, there are two brief paragraphs on discharge of orders and on monitoring compliance with conditions respectively.

I Sex Offenders (Amendment) Bill 2018 General Scheme

Head 5: Amendment of Section 10 of the Principal Act (Notification Requirements)

RCNI welcomes the proposed reduction of the notification period from the current 7 days to 3 days, at first notification and also following any change of name or address or return from abroad (subsections 1 and 2). We have long advocated that 7 days is too long for responsible Gardaí not to know the whereabouts or current identity of sex offenders. We also welcome the power given to Gardaí to take fingerprints, palm-prints, or photographs of each sex offender notifying their whereabouts to them (subsection 1 e g), in certain circumstances, set out clearly in subsections 19-23. There is also a lot of detail in this Head about the procedure to be followed for notifications to be made, in the ordinary way and also where special circumstances apply, such as the sex offender being unable to return to the jurisdiction as planned, or being disabled or made homeless, which is also welcome (subsections 4, 6, 10, 11, 12, 14, 15, 16 and 17). Under these procedures, notification will have to be made in person at the Garda Station which is the divisional or district headquarters nearest to the offender's home address, to a Garda, unless such notification cannot be made there in person because of an "enduring physical disability".

In summary, RCNI's view is that these new notification requirements are somewhat stricter, providing clarity on notification procedures and duties in a range of possible circumstances, and are an improvement on the current provisions in the Sex Offenders Act 2001 because they will make the task of monitoring sex offenders easier for the relevant State agencies.

⁵ Available online at: <https://www.rcni.ie/wp-content/uploads/RCNI-Submission-SRPP-February-2013-LPD-Final-Word.pdf>

⁶ Available online at: <https://www.rcni.ie/wp-content/uploads/RCNIsubmissiononthemanagementofsexoffenders29thApril2009.pdf>

RCNI Sex Offenders (Amendment) Bill General Scheme and Sex Offenders (Amendment) Bill 2018: Submission to Joint Oireachtas Committee on Justice and Equality November 2018

RCNI recommends that consideration be given to broadening the notification requirements in subsection 6 to include, as under Head 8 below (sex offenders convicted abroad) not only the sex offender's home address but also "the address of any other place in the State at which.....he or she regularly resides or stays". In our respectful submission, this would assist members of An Garda Síochána in particular to monitor sex offenders more effectively.

Head 7: Substitution of Section 12 of the Principal Act (offences in connection with notification requirements)

This new Section increases the maximum penalty for notification offences to 5 years on indictment. RCNI's view is that this is appropriate, as some such offences may have serious consequences for the proper monitoring and supervision of sex offenders in the community.

Head 8: Amendment of Section 13 of the Principal Act (Application of this Part to persons convicted outside the State)

This new Section will apply to persons convicted of sex offences and/or subject to notification requirements, outside the State. It expands the notification requirements to include any address at which the sex offender "regularly resides or stays" in addition to their home address, within or outside the State, and provides for fingerprints, palm-prints or photographs to be taken on request by a member of An Garda Síochána. RCNI welcomes this broadening of notification and identification requirements because it will help the relevant State agencies to monitor and supervise sex offenders convicted abroad but resident here.

Head 9: New Section 14A in the Principal Act (Assessment & Management of risk posed by sex offenders)

This new Section in essence puts existing arrangements for risk assessment and management of sex offenders in the community, on a statutory footing. RCNI's view is that it makes sense to do this, and also, to put the Garda Commissioner in charge of risk assessment and management arrangements. It also makes sense to provide for the sharing of "relevant information" about offenders among members of the assessment team, and where deemed necessary, by them with an individual or organisation outside the team. Finally, the provision allowing for research to be undertaken, either by the Garda Commissioner or others, on "any matter relevant to protecting the public from harm from relevant offenders", is also welcome.

RCNI's general comment on the Section as a whole is that its language emphasises the "assessment" role of the relevant agencies rather than its (much longer term and more complicated) "management" role. Risk assessment and management is dynamic in nature, therefore the framework to assess initially, if necessary re-assess and find strategies to manage risk (thereby hopefully reducing it) should also be dynamic. While the purposes of

RCNI Sex Offenders (Amendment) Bill General Scheme and Sex Offenders (Amendment) Bill 2018: Submission to Joint Oireachtas Committee on Justice and Equality November 2018

this Head as set out at subsection 2 do include “to provide for all necessary cooperation between the members of an assessment team....required to assess and reduce any such risk”, it appears from Sections 3 through 7 that other assessment team members firstly will only be convened if an Inspector or higher-ranking Garda deems it necessary, and secondly that their function will be to participate in assessment or re-assessment of risk only, including by providing any relevant information. **RCNI recommends** that the purpose of these teams is emphasized by re-naming them “risk assessment and management teams”.

The reality of ongoing risk management is that probation service officers in particular, because they are likely to have the most contact with sex offenders, may often be the ones best placed to identify any potential increase in risk, and also, to suggest and help implement risk-reducing measures (such as participation in a sex offenders programme or a COSA⁷ initiative). Accordingly, **RCNI recommends** that consideration be given to allowing other assessment team members to either convene a further assessment team meeting, or at least, to request the relevant member of An Garda Síochána to do so – wherever any one of these team members feels that it is necessary to re-assess the risk by a sex offender, to protect the public or any individual member(s) of the public.

RCNI recommends also that consideration be given to providing in this Section for a mechanism whereby relevant information could be received by the assessment team, or at least to the Garda member in charge, from third party individuals or organisations. It would be very reassuring for survivors of sexual violence to know that once the person convicted in their case is released, they could pass on any fresh concerns they have about his behaviour on release to the very agencies charged with monitoring and supervising him in the community.

Finally, **RCNI recommends** that whether through an extra provision in this Section or otherwise, every Garda in charge of the risk assessment and management of sex offenders in each local Division, should engage in community liaison, such as attendance at JPC meetings and more informal contacts with local rape crisis centres and other support organisations, to provide information not about individual sex offenders but about what is being done, and can be done, to reduce risk generally from sex offenders in the community. We know from our own work that survivors find it empowering and reassuring to be told by the Gardaí themselves that not only is there a framework in place to monitor and supervise sex offenders in the community, but also that if they have particular concerns, it is possible that these can be addressed.

⁷ Circles of Support and Accountability: small local groups of appropriately trained and supported volunteers whose task is to befriend sex offenders in the community and to challenge their behaviours and attitude as and when necessary. We understand that a new COSA initiative is now under way, under the auspices of the Probation Service.

RCNI Sex Offenders (Amendment) Bill General Scheme and Sex Offenders (Amendment) Bill 2018: Submission to Joint Oireachtas Committee on Justice and Equality November 2018

Head 10: New Section 14B in the Principal Act (Disclosure of information in certain circumstances)

This Section allows for the disclosure, as distinct from publication, of the name and address and sometimes, the level of risk posed by a sex offender in the community, if he “poses a threat of committing a sexual offence against a person”, to “the minimum number of persons necessary to avoid such threat”. The Garda Commissioner will also have to publish “information concerning the circumstances in which information may be disclosed in accordance with this section”. If there is any danger of vigilante action upon disclosure, generally it will not be made, and if the sex offender agrees not to commit a sexual offence against a person, disclosure will not be made either – unless and until he does indeed commit a sexual offence.

RCNI’s view is that this Section, welcome though it is, needs some attention because it is very general and in places, unclear. For instance:

- How will “committing a sexual offence” be defined? Will it be enough that a sexual offence is reported by its victim, for the Garda officer to be satisfied that it is now appropriate to make the disclosure, or will s/he have to await prosecution or conviction?
- What does “agrees to act” mean? Does it mean by way of a formal declaration akin to a caution, a promise in writing which is not in a sworn document, an oral promise recorded in writing by a Garda, a promise in a sworn document?
- Does “against a person” mean a greater risk of a sexual offence being committed against a particular person or persons, or does it mean against anyone at all? It sounds as if it is intended to refer to a particular person – perhaps it should say so explicitly if this is the case.
- Should the “minimum number of persons” not each be warned that the information disclosed is not for publication or for more general circulation? And finally:
- Is there not a risk that if there is no sanction for inappropriate use of disclosed information, there is no real deterrent to anyone seeking to misuse it, for instance by passing it on to a local vigilante group?

RCNI’s general comment is that every possible step must be taken to ensure that the risk posed by the disclosure of information to any existing or future potential investigation or prosecution – is minimised. The potentially serious **criminal justice** consequences for victims of sexual violence - of inappropriate sharing of disclosed information should be explained clearly to anyone seeking disclosure of a sex offender’s name and address, and where Garda members are not satisfied that the disclosure is being sought in good faith, they should be

RCNI Sex Offenders (Amendment) Bill General Scheme and Sex Offenders (Amendment) Bill 2018: Submission to Joint Oireachtas Committee on Justice and Equality November 2018

empowered to refuse to make it. These negative consequences for victims are additional to the risks posed by the circumstances outlined in subsection (2)(a) to (c).

RCNI recommends that subsection (2) should be amended to include the risks to existing and potential future investigations or prosecutions as well as those already outlined in it.

RCNI also recommends that the meaning of “agrees to act”, “committing a sexual offence” and “against a person”, referred to in subsections (3) and (4), be clarified.

RCNI further recommends that the Section should include an offence of misuse of information disclosed with appropriate penalties, and that the grave consequences of such misuse are explained to the person or persons seeking disclosure of information before a decision is reached to make that disclosure.

Head 18: New Part 4A in the Principal Act (Prohibition against working with children and vulnerable persons)

RCNI broadly welcomes the introduction of this prohibition order procedure as it would provide some extra protection for vulnerable persons and children who might otherwise be at risk of serious harm from sex offenders in the workplace. While we note that a sentencing judge would have to consider in every case involving a sex offender, whether or not to make such an order, it seems to us that a prohibition order should be automatic unless there are exceptional circumstances in the case which make it unnecessary. However, we are concerned that a possible unintended effect of it would be that some sex offenders convicted of more serious sexual offences, would be subjected to a prohibition order for the least amount of time (see under Section 26C below). It may be that an entirely separate procedure would be appropriate to ensure that the prohibition lasted longer than the maximum possible penalty for the offence sentenced- in the case of offences having a maximum lower than life imprisonment.

Proposed Section 26B: (subsection 2) – **RCNI recommends** that the victim of the sexual offence(s) before the court should be asked for his/her own views on whether a prohibition order should be made and the sentencing court should have regard to them **unless** they are made mandatory as recommended below, in every case.

Proposed Section 26C: (subsection 2): This subsection says that the prohibition order and the sentence of imprisonment added together cannot last longer than the maximum sentence for the offence being sentenced. That does not matter when the maximum sentence is life imprisonment, as it is for the most serious sexual offences. However, if someone is convicted of sexual assault, maximum 10 years, and is sentenced at the higher end of the scale – e g 8 years plus the maximum length of prohibition order on release, then with remission he will be out in 6 years **and** subject to the prohibition order for only 4 years. If he does not benefit from remission because he misbehaved in prison, that period reduces

RCNI Sex Offenders (Amendment) Bill General Scheme and Sex Offenders (Amendment) Bill 2018: Submission to Joint Oireachtas Committee on Justice and Equality November 2018

to 2 years. After that there will be no deterrent to him working again in any role, a necessary and regular part of which consists mainly of having access to, or contact with, children or vulnerable persons (to borrow the language of this Part and of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012). Of course, he is not likely to be employed or taken on as an independent contractor or a volunteer by any organisation working with either children or vulnerable persons because his convictions for sexual offences would show up on the vetting process, which is now mandatory.

However, the system is not fool-proof. There are at least two ways in which he could work with children and/or vulnerable persons again despite conviction for sexual offences (once any prohibition order had expired). One is by working as a self-employed sole trader or practitioner, and the other (very much less likely in our view) is by convincing a prospective employer that he was no longer a risk to children and/or vulnerable persons.

RCNI recommends that consideration be given to making prohibition orders mandatory in every case unless the circumstances are truly exceptional and also, to making them last as long as the sex offender is subject to the requirements of the Sex Offenders Act 2001. It seems to us that that would be the safest course to prevent future serious harm to children and vulnerable persons.

Sex Offenders Act 2001 as amended: Two additional general points on possible amendments:

- 1. Discharge of orders:** In any provision in the Sex Offenders Act 2001 related to the discharge of orders (existing Sections 11 (discharge from SOA requirements) and 32 (discharge of post-release supervision order obligations), and proposed new Sections 19 (discharge of sex offender order) and 26E (discharge of prohibition order), **RCNI recommends** that the relevant victim(s) should always be notified and given an opportunity to put their views on the proposed discharge to the court, in writing or in person, as they wish.
- 2. Monitoring compliance with conditions:** RCNI notes that it is proposed to introduce electronic monitoring (commonly called tagging) of offenders to help ensure compliance with certain Sex Offender Orders and Post Release Supervision Orders. In our respectful submission, logically this form of monitoring should be considered also to help ensure compliance with conditions attached to part-suspended sentences. **RCNI recommends** that electronic monitoring be considered also to help ensure compliance with relevant conditions of a part-suspended sentence.

II Sex Offenders (Amendment) Bill 2018 – Private Members’ Bill

Section 4: Amendment of Section 30 (Additional provisions which may be included in sentence involving post-release supervision) of Act of 2001

RCNI Sex Offenders (Amendment) Bill General Scheme and Sex Offenders (Amendment) Bill 2018: Submission to Joint Oireachtas Committee on Justice and Equality November 2018

RCNI notes that the extra condition proposed by this Section requiring sex offenders subject to post release supervision only to apply to the court for permission to leave the State if they so desire – is a significant restriction on personal liberty. We appreciate of course that its intention is to prevent serious harm to overseas residents caused by sex offenders from Ireland, particularly vulnerable persons and children, and welcome it very much in principle. We are concerned however that judges might be very reluctant to grant orders limiting personal liberty to this extent, unless those seeking a condition restricting travel beyond Ireland are able to provide powerful justification for making such orders.

RCNI recommends therefore that consideration be given to making the Section more robust, perhaps by the inclusion of a proviso limiting prohibitions on travel outside Ireland to those offenders whose behaviour has already demonstrated that they have travelled abroad for the primary purpose of sexual exploitation, or are contemplating or are likely to contemplate, doing so.

RCNI also recommends that consideration be given to including provisions in this Bill which would give the court power to make orders prohibiting travel outside the jurisdiction on sentence in appropriate cases, where there is no post-release supervision order being made.

Section 5: Application to leave the State

RCNI must concede that this Section, which gives sex offenders subject to an order prohibiting travel outside the jurisdiction the right to apply to have that condition varied so that, subject to appropriate conditions, they may do so if the court “considers that it would be in the interests of justice to do so” – is the necessary counterpart of Section 4, as there will always be such circumstances and as risk levels are capable of declining over time.

Rape Crisis Network Ireland clg

Carmichael Centre, North Brunswick Street, Dublin D07 RHA8

Tel: 01 8656954

Website: www.rcni.ie

Email: legal@rcni.ie

22 November 2018

RCNI/LPD/1