

Sexual Offences against the Mentally Handicapped

In September 1990 the Commission published its Report on [*Sexual Offences against the Mentally Handicapped \(LRC 33 – 1990\)*](#) following a 1987 request by the then Attorney General.

In this Report, the Commission recommended the replacement of the existing criminal offence by an indictable offence, committed by a person who has unlawful sexual intercourse with another person who has mental handicap or suffers from mental illness which in either case is of such a nature or degree that the person is incapable of guarding himself or herself against exploitation. The Commission recommended that it should also be an offence punishable on indictment to commit acts of anal penetration or to engage in other exploitative sexual activity with persons with such mental handicap or mental illness. It recommended that, in prosecutions of these offences, once it is proved that the complainant was suffering from the relevant degree of mental handicap or mental illness at the time of the alleged offence, it should be presumed until the contrary is shown that the accused was aware of that fact. A person would not be guilty of the offence if he did not know, and had no reason to suspect, that the complainant was suffering from mental handicap or mental illness. None of the acts of vaginal sexual intercourse, anal penetration or other proscribed sexual activity referred to should constitute an offence where both participants are suffering from mental handicap or mental illness as defined, unless the acts in question constitute a criminal offence by virtue of some other provision of the law. It goes on to recommend that there should continue to be higher penalties where the relevant offences are committed by persons in charge of, or employed in, mental institutions or where the accused person had the care of charge or the other participant. The definition of “mental institution” in the *Mental Treatment Act 1945* should be expanded so as to include residential centres and community based residences. In the case of persons with mental handicap, the requirements as to giving evidence on oath or affirmation should be the same as for all other witnesses. Where appropriate, however, the courts should satisfy itself that the person with mental handicap is capable of giving an intelligible account of events which he or she has observed. There should be no requirement of corroboration. The Commission also recommended that any special legislative arrangements facilitating the giving of evidence by children by the use of closed circuit television, video recordings and skilled examiners should apply also in cases of sexual offences against persons with mental handicap or suffering from mental illness. In the case of the proposed offences, the Commission recommended that the maximum sentence should be imprisonment for any term not exceeding 7 years. Where s254 of the *Mental Treatment Act 1945* applies, the maximum sentence should be imprisonment for any term not exceeding 10 years. The consent of the Director of Public Prosecutions should be required before prosecutions are initiated. There should be no 12 months time limit (as under present law) within which prosecutions must be brought.

Draft Legislation in Report

Draft legislative provisions are included in the Report.

Information on Implementation

Recommendations of the Commission were implemented in part by the *Criminal Law (Sexual Offences) Act 1993*, the *Criminal Justice (Miscellaneous Provisions) Act 1997* (see now [Report on Sexual Offences and Capacity to Consent \(LRC 109-2013\)](#)) and *Part 3, Criminal Law (Sexual Offences) Act 2017*.