
DRAFT /
DISREGARD OF HISTORIC SEXUAL OFFENCES BILL 2023

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SCHEDULE 1

Table of Offences Criminalising Same-Sex Sexual Activity in Ireland

SCHEDULE 2

Table of Military Offences Criminalising Same-Sex Sexual Activity in Ireland

DRAFT

Acts Referred To

Act for the Punishment of the Vice of Buggery (Ireland), 1634

Assisted Decision-Making (Capacity) Act, 2015

Criminal Justice Act, 1990

Criminal Law (Rape) (Amendment) Act, 1990

Criminal Law (Sexual Offences) Act 2006

Criminal Law Amendment Act, 1812

Criminal Law Amendment Act, 1885

Defence (Amendment) Act, 2007

Defence Act, 1954

Defence Forces (Temporary Provisions) Act, 1923

Irish Human Rights and Equality Commission Act, 2014

Offences against the Person (Ireland) Act, 1829

Offences against the Person Act, 1861

Offences Against the Persons Act (Ireland), 1861

Vagrancy Act, 1898

DISREGARD OF HISTORIC SEXUAL OFFENCES BILL 2023

Bill

entitled

An Act to make provision for a process for the disregard of certain historic criminal convictions arising from consensual sexual activity between men; to amend the Irish Human Rights and Equality Commission Act 2014; and to provide for related matters.

WHEREAS in light of the damage that the discriminatory criminalisation of consensual same sex activity between men had on the lives of those convicted of such offences, as well as on the lives of their partners, families, friends and communities;

AND WHEREAS the continuing impact of this historic criminalisation and the existence of extant historic convictions for such offences is an ongoing affront to the dignity, privacy, autonomy and equality of those convicted;

AND WHEREAS as a consequence it is necessary to put in place a process that such convictions be disregarded in a manner that respects and vindicates the memory and dignity of those affected;

AND WHEREAS the process by which such convictions are disregarded shall be non-adversarial, trauma informed and situated within a framework of human rights, equality and restorative justice.

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short Title

- (1) This Act may be cited as the Disregard of Historic Sexual Offences Act.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be appointed for different purposes or different provisions.

Interpretation

- (1) In this Act –

“Act of 2014” means the Irish Human Rights and Equality Commission Act 2014;

“Applicant” means a person in relation to whom –

- (a) An application pursuant to section 6(1) is made; or
- (b) An appeal pursuant to section 10(1) is made.

“Commission” means the Irish Human Rights and Equality Commission established pursuant to section 9 of the Act of 2014;

“Conviction for qualifying offences” includes investigation, arrest, charge, caution, prosecution, conviction, sentencing, use of Probation Orders or juvenile diversion programmes, in respect of a qualifying offence or offences.

“Consensual same-sex sexual activity” means sexual activity between two or more persons of the same sex, where all participating parties consented to the activity, and where all parties were aged at least 17-years-of-age, or where both parties were teenagers and the circumstances under section 3(8) of the Criminal Law (Sexual Offences) Act 2006 (as amended). Consent is to be construed in accordance with Section 9 of the Criminal Law (Rape) (Amendment) Act, 1990 (as amended).

“Minister” means the Minister for Justice;

“prescribed” means prescribed by regulations made by the Minister;

“Sexual activity” includes—

- (a) any physical or affectionate activity between two or more persons of the same sex which is of a type which is characteristic of persons involved in an intimate personal relationship, and
- (b) conduct intended to introduce or procure such activity.

Regulations

3. (1) The Minister may—

- (a) after consultation with the Commission, and
- (b) after consultation with the Minister for Children, Equality, Disability, Integration and Youth,

make regulations prescribing an offence for the purposes of section 5 or prescribing a body for the purposes of section 8.

(2) Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled

accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses

4. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

PART 2

DISREGARD OF CONVICTIONS

Qualifying Offences

5. (1) A qualifying offence for the purpose of this Act includes—
 - (a) An offence listed at Schedule 1 of this Act pursuant to:
 - (i) the common law offence of buggery,
 - (ii) the Act for the Punishment of the Vice of Buggery (Ireland) 1634,
 - (iii) section 18 of the Offences against the Person (Ireland) Act 1829,
 - (iv) section 61 of the Offences against the Person Act 1861,
 - (v) section 62 of the Offences against the Person Act 1861,
 - (vi) section 66 of the Offences against the Person Act 1861,
 - (vii) section 11 of the Criminal Law Amendment Act 1885, or
 - (viii) section 1(1)(b) of the Vagrancy Act 1898.
 - (b) An offence listed at Schedule 2 of this Act pursuant to:
 - (i) section 48(6) of the Defence Forces (Temporary Provisions) Act 1923,
 - (ii) section 69(5) of the Defence Forces (Temporary Provisions) Act 1923,
 - (iii) section 168(1) of the Defence Act 1954, or
 - (iv) section 169 of the Defence Act 1954.
 - (c) Any other offence pursuant to statute or common law where the behaviour constituting the offence consisted of consensual same-sex sexual activity.
- (2) A reference to a qualifying offence under subsection (1) includes an attempt to commit any such offence.
- (3) A reference to a qualifying offence under subsection (1) includes a reference to an equivalent offence against, or punishable under, military law.
- (4) The Minister may add offences to Schedules 1 and 2 of this Act by way of regulation.

Disregard of Convictions for Certain Qualifying Offences

6. (1) The Commission may, upon application by any person in accordance with section 9, disregard—

- (a) convictions for qualifying offences, where such conviction was carried out by—
 - (i) a court or court martial established by or under the Constitution or the Constitution of Saorstát Éireann, or
 - (ii) prior to the establishment of Saorstát Éireann, by a court or court martial sitting in a place that is now within the State
- (2) The Commission shall consider an application under this section and shall decide to either—
 - (a) disregard the conviction, where the Commission is reasonably satisfied—
 - (i) as to the identity of the person convicted, and
 - (ii) that the conviction relates to a qualifying offence, or
 - (b) refuse to disregard the conviction.
- (3) In considering an application under this Act, the Commission—
 - (a) shall have regard to all relevant information submitted by or on behalf of an applicant under section 9, and
 - (b) may have regard to any statutory declaration made or affidavit sworn by the applicant concerned to the effect that, to the best of the applicant's knowledge and belief, the information is correct in every material respect and that the applicant has taken all reasonable steps to ensure the accuracy of the information.
- (4) The Commission may require a person who has made an application under section 9(1) to provide further information for the purposes of the application and to produce to the Commission such documents as it considers necessary or expedient to determine the application.
- (5) The Commission shall give notice in writing to the person who has made the application under section 9(1) of a decision under subsection (2), as soon as practicable after it is made, which shall, in relation to a decision under subsection (2)(b) —
 - (a) include reasons for the decision,
 - (b) inform the person who has made the application under section 9(1) that they may, under section 10, appeal the decision within 90 days of the date of the notice, and
 - (c) inform the person who has made the application under section 9(1) that the decision shall be suspended until—
 - (i) the decision becomes final under subsection (6), or
 - (ii) the disposal of an appeal under section 10(4).

- (6) If, on the expiration of the period of 120 days beginning on the date of the notice under subsection (5), no appeal under section 10 is made, the Commission's decision under subsection (2)(b) is final.
- (7) Nothing shall operate to preclude a further application being made pursuant to section 9(1) notwithstanding the Commission's decision being made final under subsection (6) in relation to the same applicant where information that was not otherwise available to the person who has made the application under section 9(1) becomes available.

Effect of Disregard

7. (1) This section applies where a disregard for a certain conviction for a qualifying offence has taken effect in accordance with section 6 or section 10.
- (2) The person who was convicted of the offence is to be treated for all purposes as not having—
- (a) committed the offence,
 - (b) been arrested for the offence,
 - (c) been charged with, or prosecuted for, the offence,
 - (d) been convicted of the offence,
 - (e) been sentenced for the offence, or
 - (f) been cautioned for the offence.
- (3) Subject to the provisions of this Act, where a person has a conviction which is, in accordance with this Act, regarded as a disregarded conviction, they shall not be required by—
- (a) any rule of law, or
 - (b) by the provisions of any agreement or arrangement which purport to require the person to disclose the conviction or any circumstances ancillary to the conviction,
- to disclose that conviction or the circumstances ancillary thereto.
- (4) Where, otherwise than before a court, a question is put to a person purporting to seek information in relation to the person's previous convictions or the circumstances ancillary thereto and the person has a conviction which is, in accordance with this Act, regarded as a disregarded conviction, then, subject to the provisions of this Act—
- (a) the question shall be regarded as not applying to the disregarded conviction and the person may respond accordingly, and
 - (b) the person shall not incur any liability or be otherwise prejudiced in law because they did not disclose the disregarded conviction or the circumstances ancillary to that conviction.

(5) In particular -

- (a) no evidence shall be admissible to show that a person, who has a conviction which is, in accordance with this Act, regarded as a disregarded conviction, has committed or been charged with or prosecuted for or convicted of or sentenced or cautioned for in respect of an offence which is the subject of the disregarded conviction, and
 - (b) no question shall be asked in any such proceedings and if asked, the person shall not be required to answer, any question relating to his or her past which cannot be answered without disclosing the disregarded conviction or the circumstances ancillary to that conviction.
- (6) A disregarded conviction, or any circumstances ancillary to it, is not a proper ground for—
- (a) dismissing or excluding a person from any office, profession, occupation or employment, or
 - (b) prejudicing the person in any way in any office, profession, occupation or employment.
- (7) This Act is without prejudice to a person's right to disclose their previous convictions or the circumstances ancillary thereto.

Removal of Disregarded Convictions

8. (1) The Commission shall by notice direct the Commissioner of the Garda Síochána or other prescribed body to amend details, contained in relevant official records, of a disregarded conviction.
- (2) Such notice under subsection (1) may be given at any time after a determination pursuant to section 6(2) or section 10(5) is made.
- (3) Subject to that, the Commissioner of the Garda Síochána must direct the deletion of the details as soon as reasonably practicable.
- (4) Having done so, the Commissioner of the Garda Síochána must give notice to the person who has the disregarded conviction that the details of it have been deleted.
- (5) In this section—

“amend”, in relation to such relevant official records as may be prescribed, means record with the details of the conviction concerned—

- (a) the fact that it is a disregarded conviction, and
- (b) the effect of it being such a conviction;

“official records” means records containing information about persons convicted of qualifying offences and kept by any court, police force, government department or local or other public authority for the purposes of its functions.

Applications for Disregard

9. (1) An application may be made to the Commission for a conviction relating to a qualifying offence to be disregarded pursuant to section 6.
- (2) An application made under subsection (1) must be in writing and must include –
 - (a) the applicant’s name, address and date of birth,
 - (b) in so far as known to the applicant, the applicant’s name and address at the time of the conviction,
 - (c) in so far as known to the applicant, the time when and place where the conviction took place and the relevant case number,
 - (d) in so far as known to the applicant, the nature and circumstances of the offence and the sentence imposed, if applicable,
 - (e) any other information which the Commission may require.
- (3) An application made under subsection (1) may also include any other information which the applicant wishes the Commission to consider when determining the application.
- (4) An application under subsection (1) may be made by a person on their own behalf or by an attorney appointed in accordance with Part 7 of the Assisted Decision-Making (Capacity) Act 2015.
- (5) An application under subsection (1) may be made on behalf of a person who is deceased by a representative.
- (6) For the purposes of subsection (5), a “representative” means –
 - (a) the applicant’s spouse or civil partner or an individual who, at the time of the applicant’s death, was their cohabitant for a period of at least one year;
 - (b) the applicant’s child;
 - (c) the applicant’s parent;
 - (d) the applicant’s brother or sister;
 - (f) the applicant’s executor or the administrator of the applicant’s estate;
 - (g) any other person that the Commission determines was sufficiently closely connected to the applicant.
- (7) (a) For the purposes of subsection (6), a “cohabitant” means one of two adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within

the prohibited degrees of relationship or married to each other or civil partners of each other.

- (b) In determining whether or not two adults are cohabitants, the Commission shall take into account all the circumstances of the relationship and in particular shall have regard to the following:
- (i) the duration of the relationship;
 - (ii) the basis on which the couple live together;
 - (iii) the degree of financial dependence of either adult on the other and any agreements in respect of their finances;
 - (iv) the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;
 - (v) whether there are one or more dependent children;
 - (vi) whether one of the adults cares for and supports the children of the other; and
 - (vii) the degree to which the adults present themselves to others as a couple.
- (c) For the avoidance of doubt a relationship does not cease to be an intimate relationship for the purpose of this section merely because it is no longer sexual in nature.
- (8) An application under subsection (1) may be made regardless of whether or not the applicant or the person making the application is ordinarily resident in the State or is an Irish citizen.

Appeals to an Appeals Officer

10. (1) A person who made an application under section 9(1), may appeal against a refusal of the Commission under section 6(2)(b) to an Appeals Officer.
- (2) An appeal under subsection (1) shall be brought in writing within 90 days from the date of the sending to the person who made the application under section 9(1) of the notification under section 6(5).
- (3) On application by the person who made the application under section 9(1), an Appeals Officer may for reasonable cause extend the period referred to in subsection (2) for up to a further period not exceeding 90 days.
- (4) An appeal made under subsection (1) must be in writing and must include –
- (a) the applicant's name, address and date of birth,
 - (b) in so far as known to the applicant, the applicant's name and address at the time of the conviction,
 - (c) in so far as known to the applicant, the time when and place where the conviction took place and the relevant case number,

- (d) in so far as known to the applicant, the nature and circumstances of the offence and the sentence imposed, if applicable,
 - (e) any other information which an Appeals Officer may require.
- (5) In relation to an appeal under subsection (1) an Appeals Officer may decide to-
- (a) affirm the decision of the Commission that the applicant's conviction for a qualifying offence should not be disregarded; or
 - (b) set aside the decision of the Commission that the applicant's conviction should not be disregarded and determine that the applicant's conviction be disregarded.
- (6) A decision of an Appeals Officer under subsection (5)(a) and the reasons for it shall be communicated by the Appeals Officer to the person who made the appeal under subsection (1).
- (7) The Minister shall, after consultation with the Commission, appoint an Appeals Officer to determine appeals made pursuant to subsection (2), as they consider appropriate to be an Appeals Officer for the purposes of this Act.
- (8) The Minister shall appoint such number of Appeals Officers, as, with the consent of the Minister for Public Expenditure and Reform, considered necessary for the expeditious performance of section 10.
- (9) The Appeals Officer shall hold office under a contract for services in writing, containing such terms and conditions (including terms and conditions relating to remuneration, allowances, expenses and superannuation) as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.
- (10) The term of office of the Appeals Officer shall be 5 years and may be reappointed to the office for a second term not exceeding 5 years.

PART 3

REVIEW

Review of Operation of Act

11. (1) The Minister shall, not later than 3 years after the commencement of the Act, carry out a review into the Act, regarding -
- (a) the operation of the Act since its commencement;
 - (b) the Schedule of Act and the range of qualifying offences;
 - (c) the efficacy and adequacy of the application procedure pursuant to section 9;
 - (d) whether any amendments to this Act or any other law are necessary or desirable;
- and

(e) whether any further review or assessment of the matters set out in this paragraph is necessary or desirable.

(2) The Minister shall carry out, or cause to be carried out, any other review, assessment, and reporting required by regulations made under this Act, within the time prescribed by such regulations.

Reports to Minister

12. (1) The Commission shall, not later than 30 April in each year, make a report (in this section referred to as the “annual report”) to the Minister on the performance of its functions in relation to this Act during the preceding year.

(2) The annual report shall be in such form and shall include information in respect of such matters as the Commission considers appropriate.

(3) The Commission may make such other reports to the Minister relating to its functions as it considers appropriate.

(4) For the purposes of subsection (1), the period between the establishment day and the following 31 December shall be deemed to be a preceding year.

(5) The Minister shall, as soon as is practicable, cause copies of the annual report or, as the case may be, a report referred to in subsection (3), to be laid before each House of the Oireachtas.

(6) The Commission shall publish its annual report in such form and manner as it considers appropriate as soon as is practicable after subsection (1) has been complied with in respect of the report.

PART 4

MISCELLANEOUS

Apology

13. The Minister shall issue a written apology to each applicant or representative as the case may be who is granted a disregard in accordance with section 6 or section 10.

Information Campaign

14. (1) The Minister shall take such measures as they consider appropriate to promote awareness among the public of the process to be followed in order to apply for a conviction for a qualifying offence to be disregarded. Such measures may include—

(a) the holding of a public information campaign, and

(b) support and resourcing of LGBTQI+ and civil society organisations in order to promote engagement with and understanding of the disregard process.

Financial and Counselling Supports

15. (1) Applications pursuant to sections 9 and 10 shall be made free of charge to the applicant.

(2) The Commission shall, insofar as practicable, provide assistance to a relevant person who wishes to make an application under section 9 or 10, which assistance may include—

(a) support relating to the interpretation and understanding of information and records provided on foot of the application,

(b) financial or practical support relating to the application process under section 9 or 10, and

(c) information related to counselling supports and other appropriate supports available to the applicant.

Amendment of the Act of 2014

16. The Irish Human Rights and Equality Commission Act 2014 is amended by the insertion of the following section after section 10(2)(r):

“(s) to administer the system of disregarding certain historical criminal convictions as provided for by the Disregard of Historic Sexual Offences Act.”

SCHEDULE 1

Table of Offences Criminalising Same-Sex Sexual Activity in Ireland

IRISH OFFENCES CRIMINALISING SAME-SEX SEXUAL ACTIVITY	
Repealed by Criminal Law (Sexual Offences) Act, 1993 (7 June 1993)	
1	Act for the Punishment of the Vice of Buggery (Ireland) 1634
Relevant provisions:	Entire Act (Buggery)
	"Forasmuch as there is not yet sufficient and condigne punishment appointed and limited by the due course of the laws of this realme, for the detestable and abominable vice of buggery committed with mankind or beast; it may therefore please the King's Highnesse, with the assent of his lords spirituall and temporall, and the commons of this present Parliament assembled, that it may be enacted, and be it enacted by the authority of the same, That the same offence be from henceforth adjudged felonie, and such order and form of processe therein to be used against the offenders, as in the case of felony at the common law; and that the offenders being hereof convicted by verdict, confession, or outlawry, shall suffer such paines of death, and losses ... as felons be accustomed to doe, according to the order of the common lawes of this realme..." as quoted in <i>DPP v Devins</i> [2012] 4 IR 491; [2012] IESC 7.
2	Offences Against the Person (Ireland) Act 1829
Relevant provisions:	Section 18 (Buggery)
	"And be it enacted, that every Person convicted of the abominable Crime of Buggery, committed either with Mankind or with any Animal, shall suffer Death as a Felon."
3	Offences Against the Persons Act (Ireland) 1861
Relevant provisions:	Section 61 (Sodomy [and bestiality])
	"Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable . . . to be kept in penal servitude for life . . ."
	Section 62 (Attempt to commit an infamous crime)
	"Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable . . . to be kept in penal servitude for any term not exceeding ten years . . ."

IRISH OFFENCES CRIMINALISING SAME-SEX SEXUAL ACTIVITY		
Repealed by Criminal Law (Sexual Offences) Act, 1993 (7 June 1993)		
		<p>Section 66 (A person loitering at night, and suspected of any felony against this Act, may be apprehended)</p> <p>“Any constable or peace officer may take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony in this Act mentioned, and shall take such person as soon as reasonably may be before a justice of the peace, to be dealt with according to law.”</p>
4	The Criminal Law Amendment Act (Ireland) 1885	
	Relevant provisions:	<p>Section 11 (Outrages on decency)</p> <p>“Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.”</p>
5	The Vagrancy Act 1898 (as amended by the Criminal Law Amendment Act 1812)	
	Relevant provisions:	<p>Section 1(1)(b) (Persons trading in prostitution)</p> <p>“(1.) Every male person who— (...)</p> <p>(b) in any public place persistently solicits or importunes for immoral purposes,</p> <p>Shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.”</p>
6	Common law offence of buggery	

SCHEDULE 2

Table of Military Offences Criminalising Same-Sex Sexual Activity in Ireland

IRISH MILITARY OFFENCES CRIMINALISING SAME-SEX SEXUAL ACTIVITY					
1	<p>Defence Forces (Temporary Provisions) Act 1923</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; vertical-align: top;">Relevant provisions:</td> <td> <p>Section 48(6) (Disgraceful conduct)</p> <p>“Every person subject to military law who commits any of the following offences, that is to say:— (...)</p> <p>(6) The offence of being guilty of any disgraceful conduct of a cruel, indecent or unnatural kind not before specifically in this Act mentioned,</p> <p>shall, on conviction by Court-Martial, be liable to suffer imprisonment or such less punishment as is in this Act mentioned.”</p> </td> </tr> <tr> <td style="vertical-align: top;">Relevant provisions:</td> <td> <p>Section 69(5) (Offences punishable by ordinary law of Saorstát Éireann)</p> <p>“Subject to such regulations for the purpose of preventing interference with the jurisdiction of the Civil Courts as are in this Act mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this Section mentioned shall be deemed to be guilty of an offence against military law, and if charged under this Section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by Court-Martial and on conviction to be punished as follows, that is to say:— (...)</p> <p>(5) If he is convicted of buggery be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and</p> <p>(6) If he is convicted of any of the offences specified in the Third Schedule hereto or an attempt to commit any of the offences hereinbefore mentioned in this Section or specified in the said Schedule (the attempt to commit which is a criminal offence punishable by the ordinary criminal law of Saorstát Eireann) or any other offence against the law of Saorstát Eireann not before in this Section particularly referred to, which is punishable by the ordinary criminal law of Saorstát Eireann, be liable either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an offence to the prejudice of good order and military discipline or to suffer any punishment assigned for such offence by the law of Saorstát Eireann:</p> </td> </tr> </table>	Relevant provisions:	<p>Section 48(6) (Disgraceful conduct)</p> <p>“Every person subject to military law who commits any of the following offences, that is to say:— (...)</p> <p>(6) The offence of being guilty of any disgraceful conduct of a cruel, indecent or unnatural kind not before specifically in this Act mentioned,</p> <p>shall, on conviction by Court-Martial, be liable to suffer imprisonment or such less punishment as is in this Act mentioned.”</p>	Relevant provisions:	<p>Section 69(5) (Offences punishable by ordinary law of Saorstát Éireann)</p> <p>“Subject to such regulations for the purpose of preventing interference with the jurisdiction of the Civil Courts as are in this Act mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this Section mentioned shall be deemed to be guilty of an offence against military law, and if charged under this Section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by Court-Martial and on conviction to be punished as follows, that is to say:— (...)</p> <p>(5) If he is convicted of buggery be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and</p> <p>(6) If he is convicted of any of the offences specified in the Third Schedule hereto or an attempt to commit any of the offences hereinbefore mentioned in this Section or specified in the said Schedule (the attempt to commit which is a criminal offence punishable by the ordinary criminal law of Saorstát Eireann) or any other offence against the law of Saorstát Eireann not before in this Section particularly referred to, which is punishable by the ordinary criminal law of Saorstát Eireann, be liable either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an offence to the prejudice of good order and military discipline or to suffer any punishment assigned for such offence by the law of Saorstát Eireann:</p>
Relevant provisions:	<p>Section 48(6) (Disgraceful conduct)</p> <p>“Every person subject to military law who commits any of the following offences, that is to say:— (...)</p> <p>(6) The offence of being guilty of any disgraceful conduct of a cruel, indecent or unnatural kind not before specifically in this Act mentioned,</p> <p>shall, on conviction by Court-Martial, be liable to suffer imprisonment or such less punishment as is in this Act mentioned.”</p>				
Relevant provisions:	<p>Section 69(5) (Offences punishable by ordinary law of Saorstát Éireann)</p> <p>“Subject to such regulations for the purpose of preventing interference with the jurisdiction of the Civil Courts as are in this Act mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this Section mentioned shall be deemed to be guilty of an offence against military law, and if charged under this Section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by Court-Martial and on conviction to be punished as follows, that is to say:— (...)</p> <p>(5) If he is convicted of buggery be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and</p> <p>(6) If he is convicted of any of the offences specified in the Third Schedule hereto or an attempt to commit any of the offences hereinbefore mentioned in this Section or specified in the said Schedule (the attempt to commit which is a criminal offence punishable by the ordinary criminal law of Saorstát Eireann) or any other offence against the law of Saorstát Eireann not before in this Section particularly referred to, which is punishable by the ordinary criminal law of Saorstát Eireann, be liable either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an offence to the prejudice of good order and military discipline or to suffer any punishment assigned for such offence by the law of Saorstát Eireann:</p>				

IRISH MILITARY OFFENCES CRIMINALISING SAME-SEX SEXUAL ACTIVITY

		<p>Provided that a person subject to military law shall not be tried by Court-Martial for treason, murder, manslaughter, treason felony, rape or buggery unless such person at the time he committed the offence was on active service.”</p> <p>Offences punishable by ordinary law pursuant to section 69(5) include, inter alia, the common law offence of buggery, offences contrary to sections 61, 62 and 66 of the Offences Against the Person Act 1861, and offences contrary to section 11 of the Criminal Law Amendment Act 1885.</p>
2	Defence Act 1954	
	Relevant provisions:	Section 168(1) (Conduct to the prejudice of good order and discipline)
	As enacted	“Every person subject to military law who commits any act, conduct, disorder or neglect to the prejudice of good order and discipline is guilty of an offence against military law and shall, on conviction by court-martial, be liable, if an officer, to suffer dismissal from the Defence Forces or any less punishment awardable by a court-martial and, if a man, to suffer imprisonment or any less punishment awardable by a court-martial.”
	As amended by Criminal Justice Act 1990 and Defence (Amendment) Act 2007	“Every person subject to military law who commits any act, conduct, disorder or neglect to the prejudice of good order and discipline is guilty of an offence against military law and shall, where a charge under this section is disposed of summarily under section 177C, 178C or 179C, as the case may be, be liable to suffer any punishment awardable thereunder or, on conviction by court-martial, be liable, if an officer, to suffer dismissal from the Defence Forces or any less punishment awardable by a court-martial and, if a man, to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.”
		Section 169 (Offences punishable by ordinary law)
	As enacted	<p>“Subject to the provisions of this Act, every person who, whilst he is subject to military law, commits any of the offences referred to in this section shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial, and on conviction to be punished as follows, that is to say:— (...)</p> <p>(e) if he is convicted of any offence not before in this section particularly specified, which when committed in the State is punishable by the ordinary criminal law of the State, be liable,</p>

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		<p>whether the offence is committed in the State or elsewhere, either to suffer any punishment assigned for such offence by the law of the State or, if he is subject to military law as an officer, dismissal with ignominy from the Defence Forces or any less punishment awardable by a court-martial or, if he is subject to military law as a man, imprisonment or any less punishment awardable by a court-martial.”</p>
	<p>As amended by Criminal Justice Act 1990 and Defence (Amendment) Act 2007</p>	<p>(1) Subject to the provisions of this Act, every person who, while he is subject to military law, commits any of the offences referred to in this section shall be deemed to be guilty of an offence against military law and, if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial. (...)</p> <p>(3) Where a person charged under this section is convicted by a court-martial of an offence other than treason or murder, he shall be liable to be punished as follows:</p> <p>(g) if he is convicted of any offence not before in this section particularly specified which when committed in the State is punishable by the ordinary criminal law of the State, be liable, whether the offence is committed in the State or elsewhere, either to suffer any punishment assigned for such offence by law of the State or to suffer—</p> <p>(i) if he is subject to military law as an officer, dismissal with disgrace from the Defence Forces or any lesser punishment awardable by a court-martial, or</p> <p>(ii) if he is subject to military law as a man, imprisonment for any term not exceeding two years or any lesser punishment awardable by a court-martial.”</p>
		<p>Offences punishable by ordinary law pursuant to section 169 include, <i>inter alia</i>, the common law offence of buggery, offences contrary to sections 61, 62 and 66 of the Offences Against the Person Act 1861, and offences contrary to section 11 of the Criminal Law Amendment Act 1885.</p>