

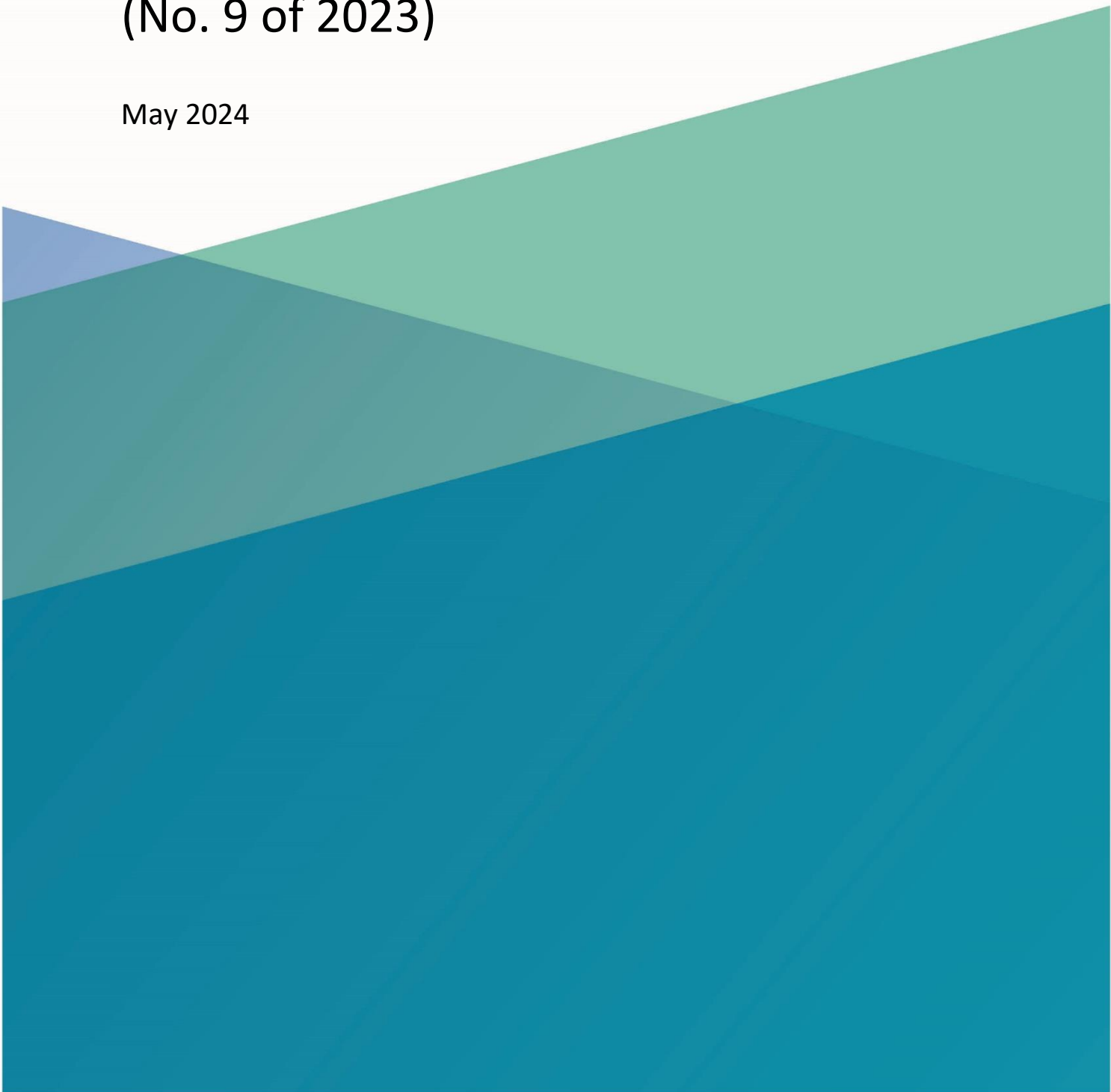


An Roinn Dlí agus Cirt  
Department of Justice

# Post-Enactment Report

## Sex Offenders (Amendment) Act 2023 (No. 9 of 2023)

May 2024



Contents

<b>1. Introduction.....</b>	<b>3</b>
<b>2. Enactment and Commencement of the Act.....</b>	<b>3</b>
<b>3. Background and Overview.....</b>	<b>5</b>
<b>4. Operation of the Act .....</b>	<b>7</b>
<b>5. Conclusion .....</b>	<b>11</b>

## 1. Introduction

The Sex Offenders (Amendment) Act 2023 (the “Act”) was signed into law by the President on the 5 April 2023. Almost all of the sections of the Act were commenced on the 13 November 2023.

The Act amended the Sex Offenders Act 2001 in order to improve the management and monitoring of sex offenders in the community.

In accordance with Dáil Standing Order 164A and Seanad Standing Order 168 (2016), the Minister shall produce a post-enactment report to be laid in the Parliamentary Library 12 months after a Bill is enacted.

## 2. Enactment and Commencement of the Act

The Bill was signed by the President on 5 April 2023.

The Act was commenced on 13 November 2023 with the exception of the electronic monitoring provisions. The sections on electronic monitoring which are (14)(a), 14(b), (15), (16), (24) and (25) will be commenced when recommendations from a Working Group established to develop an approach to operationalising electronic monitoring have been finalised. This Working Group is chaired by the Department of Justice and comprises representatives of the Courts Service, the Probation Service, the Irish Prison Service and An Garda Síochána.

In addition, section 30(2) has not been commenced. This section amends section 25 of the Garda Síochána (Functions and Operational Areas) Act 2022, which is a transitional provision. However, the Garda Síochána (Functions and Operational Areas) Act 2022 has not yet been commenced. On advice from Office of Parliamentary Counsel to the Government, commencement of this section has been postponed until the relevant sections of the Garda Síochána (Functions and Operational Areas) Act 2022 are commenced.

Section	Date	Commencement Information
Ss. <a href="#">1-13</a>	13 November 2023	Sex Offenders (Amendment) Act 2023 (Commencement) Order 2023 ( <a href="#">S.I. No. 539 of 2023</a> ), reg. 2(a)
S. <a href="#">14</a> (a), (b)		Not yet commenced. Commencement order required under s. 1(2)
S. <a href="#">14</a> (c)	13 November 2023	Sex Offenders (Amendment) Act 2023 (Commencement) Order 2023 ( <a href="#">S.I. No. 539 of 2023</a> ), reg. 2(b)
Ss. <a href="#">15</a> , 16		Not yet commenced. Commencement order required under s. 1(2)
Ss. <a href="#">17-23</a>	13 November 2023	Sex Offenders (Amendment) Act 2023 (Commencement) Order 2023 ( <a href="#">S.I. No. 539 of 2023</a> ), reg. 2(c)
Ss. <a href="#">24</a> , 25		Not yet commenced. Commencement order required under s. 1(2)
Ss. <a href="#">26-29</a>	13 November 2023	Sex Offenders (Amendment) Act 2023 (Commencement) Order 2023 ( <a href="#">S.I. No. 539 of 2023</a> ), reg. 2(d)
S. <a href="#">30</a> (1)	13 November 2023	Sex Offenders (Amendment) Act 2023 (Commencement) Order 2023 ( <a href="#">S.I. No. 539 of 2023</a> ), reg. 2(e)
S. <a href="#">30</a> (2)		Not yet commenced. Commencement order required under s. 1(2)
S. <a href="#">30</a> (3)	13 November 2023	Sex Offenders (Amendment) Act 2023 (Commencement) Order 2023 ( <a href="#">S.I. No. 539 of 2023</a> ), reg. 2(e)

The delay between enactment and commencement of the Act was to allow a period of time to facilitate transition to the new statutory Sex Offenders Risk Assessment and Management (SORAM) model from the previous administrative regime. Operational guidance documents were required to be produced in order to support the implementation of the statutory SORAM model on a national basis. This is further outlined below.

### 3. Background and Overview

On 6 June 2018, the Government approved the publication and drafting of the Sex Offenders (Amendment) Bill and it underwent pre-legislative scrutiny in January 2019. The Bill was introduced into the Dáil on 12 November 2021 and completed passage through the Oireachtas on 29 March 2023.

The Sex Offenders (Amendment) Act 2023 amends the Sex Offenders Act 2001 in order to improve the management and monitoring of sex offenders in the community. The main features of the Act are set out below:

- Changes to the notification requirements (“sex offenders register”) for convicted sex offenders. This Act reduced the notification period for those who are subject to the Act from 7 days to 3 days, meaning that a sex offender must notify An Garda Síochána:
  - of their name and address within 3 days of leaving prison;
  - of any change to their name or address within 3 days;
  - if they are going to be outside the State for more than 3 days;
  - if they are returning to the State having been outside it for 3 days;
  - if they are at an address in the State for 3 days and that address has not been notified to An Garda Síochána;
  - or every 12 months if they have not notified within the previous 12 months.

Offenders will also have to notify in person at a Garda divisional headquarters or at a station which has been designated for this purpose by the Commissioner.

For offenders who have no home address, the Gardaí can require that person to notify every 3rd day of the place they intend to reside that night until the Gardaí are satisfied that a home address has been acquired.

In addition, the Act:

- Explicitly provides for the court to prohibit a sex offender from working with children and vulnerable adults.
- Provides powers to An Garda Síochána to take fingerprints, palm-prints and photographs to confirm the identity of the offender.
- Allows An Garda Síochána to disclose information relating to persons on the sex offender register in extenuating circumstances (for example, where there is a serious threat to public safety). An Garda Síochána can disclose the name, their address, the nature of the sexual offence, the level of risk posed by the offender and any other information deemed necessary by An Garda Síochána.
- Creates a legislative basis for the current Sex Offenders Risk Assessment and Management (SORAM) monitoring process for high-risk offenders. SORAM involves the joint management of sex offenders by An Garda Síochána and the Probation Service with the involvement of the Child and Family Agency (Tusla) where there are child protection concerns and other agencies where necessary.
- Allows An Garda Síochána to apply for the discharge and variation of a sex offender order. A sex offender order is a civil order for which An Garda Síochána can make an application to the Circuit Court. The subject of the application must be a convicted sex offender exhibiting behaviour that gives reasonable grounds for believing he or she poses a risk of serious harm to the public. A sex offender order prohibits the offender from doing anything the court considers necessary to protect the public. A prohibition may, for example, forbid an offender from going to a specified place(s).
- Allows for electronic monitoring of sex offenders in order to ensure compliance with a post release supervision order or a sex offender order.

The provisions in the Act were developed through extensive consultation with relevant stakeholders; in particular the Probation Service and An Garda Síochána.

#### 4. Operation of the Act

In preparing this report, the Department of Justice sought inputs from personnel working on Sex Offender Risk Assessment and Management (SORAM) and An Garda Síochána to seek their views on the operation of the legislation in the year following its enactment. A summary of this feedback received is provided below:

##### **Sex Offender Risk Assessment and Management (SORAM)**

SORAM involves the joint management of sex offenders by An Garda Síochána and the Probation Service with the involvement of the Child and Family Agency (Tusla) where there are child protection concerns, and other agencies where necessary.

Section 14b of the Act provides for the establishment of a 'Risk Assessment and Management Team' and places SORAM on a statutory footing. A Legislative Working Group was established to consider how the legislation would be implemented. The Legislative Working Group drafted an operational guidance document to support the implementation of the Statutory SORAM model on a national basis.

The guidance document provided an entry criterion to reflect the specific requirements as set out in Section 14b of The Sex Offenders (Amendment) Act 2023. The definition of 'Relevant Offender' as provided for in the legislation and the provision for sharing of relevant information for the purposes of accurately and effectively assessing and managing the risk of harm posed by a Relevant Offender were captured within the operational guidance document. All sex offenders who have a conviction for a scheduled sexual offence must now be screened for entry into SORAM using an Entry Criteria Screening Form which has been developed to assist and inform the decision-making process.

The National SORAM Office (NSO) produced a training module to assist the twenty-eight local SORAM Teams throughout the country to implement the new statutory model. The NSO hosted six in-person training dates throughout Ireland in January and February 2024 for all relevant SORAM representatives. Following this, the new statutory model commenced operation in the local SORAM Teams on the 4th March 2024. The National SORAM office will continue to monitor and support the implementation of SORAM under the new legislation.

## **An Garda Síochána**

### *Additional Notification Requirements*

Section 10(a)(1) of the Sex Offenders Act 2001 as amended by the Sex Offenders (Amendment) Act 2023 reduced the notification period from 7 days to 3 days and in addition, the offender must now notify in person. According to An Garda Síochána, this has made a significant difference to monitoring of convicted sex offenders within the community as it increases their interaction with An Garda Síochána in complying with their requirements under the Act.

The additional requirement for offenders who travel outside the jurisdiction to provide each address they intend to stay under section 10(3)(c) of the Act allows An Garda Síochána to assist colleagues in other jurisdictions to mitigate the risk they pose to their communities. Section 10(6)(A) created the requirements for an offender who has not made any notification since the enactment of the new Act to notify 12 months after their last notification. This new notification encompasses the offenders who are quite settled and do not generally travel. Section 10(7)(D) of the Sex Offenders (Amendment) Act 2023 incorporates a new practical process for offenders who suffer from a disability and were unable to attend a Divisional Headquarters, to fulfil their requirements under the Act. This addresses the issues raised by offenders with disabilities who may have been in hospitals, nursing homes or even house bound.

### *New Powers for An Garda Síochána*

The insertion of Section 10 (7)(a) in the Sex Offenders (Amendment) Act 2023 creates a new power for An Garda Síochána where an offender is making a notification and has provided an address to a member of An Garda Síochána who is not satisfied the offender is staying at an address provided or is not satisfied they have an address.

A member of An Garda Síochána can now inform the offender that they must provide the address they are staying at that night, and notify the address every third day until the member is satisfied they are staying at the address provided or have an address.



The Act also provides for a member of An Garda Síochána not below the Rank of Inspector to vary the number of days the offender must notify. This section has had a positive impact on the management of transient offenders who generally have a chaotic lifestyle.

#### *New Powers for An Garda Síochána to take Fingerprints, Palm Prints and Photograph*

Section 9 of the Sex Offenders (Amendment) Act 2023 provides a new power for a member of An Garda Síochána to require the sex offender, in making a notification, to provide their fingerprints, palm prints and photograph. This assists An Garda Síochána in monitoring the offender and managing the risk posed by the offender.

#### *Offences*

Section 10 of the Sex Offenders (Amendment) Act 2023 amends section 12 of the Sex Offenders Act 2001 regarding failing to notify offence types. Section 12 now incorporates all amendment and new manner of notifications.

Further to this a new subsection, subsection (2A), has been inserted into section 12 of the Principal Act. This creates offences regarding the refusal to allow the taking of fingerprints, palm prints or photograph or the failure or refusal to comply with the requirement to attend at the Garda station for the purposes of having fingerprints, palm prints or photograph taken.

Since its commencement on the 13<sup>th</sup> November 2023 there have been 13 prosecutions initiated for breaches of the Sex Offenders (Amendment) Act 2023 to date.

#### *Disclosure of Information Relating to Relevant Offender Where Offender Poses a Risk of Harm.*

Section 14D of the Sex Offenders (Amendment) Act 2023 provides for a member of An Garda Síochána not below the rank of Inspector to authorise the disclosure of information about a relevant offender where he or she is satisfied there is a risk of harm to the public, or a member of the public, due to the commission of a sexual offence by the relevant offender.

This new power has been broadly welcomed as in the past, An Garda Síochána's only avenue to make a third party disclosure was by TUSLA notification and this was only applicable to children. Previously there was no avenue of disclosure to a third party where the person at risk was an adult.

However, section 14D(5) states when making a disclosure to a third party they must:

- (a) specify the purpose for which the information may be used by the person to whom it is being disclosed
- (b) impose such conditions relating to the further disclosure of the information by that person as the member considers appropriate.

If the person to whom the information is disclosed shares that information with others or on social media, the Act does not provide for an offence for such disclosure. While An Garda Síochána raised some concerns with this aspect, it should be noted that consequences may arise should such a disclosure breach other laws or court orders.

#### *Publication of Information in Certain Circumstances*

Section 14F of the Sex Offenders (Amendment) Act 2023 provides that where an offender fails to comply with the requirements of Part 2 of the Principal Act and the offender's whereabouts are unknown, a member of An Garda Síochána not below the rank of Inspector, for the purpose of locating the offender or protecting the public or a member of the public from harm, may authorise the publication of certain information.

It is believed that this power will have a significant impact in locating offenders who have absconded.

#### *Section 26D of the Sex Offenders (Amendment) Act 2023*

Section 26D allows a court, where it is satisfied that it is necessary to do so to protect children or vulnerable persons from serious harm from the applicable offender, to impose on the offender a sentence including a prohibition preventing the offender from engaging in the relevant work for a specified period.

Previously An Garda Síochána's only avenue to prohibit an offender from engaging in relevant work to protect a person from harm was via an application for a Sex Offender Order under section 16 of the Principal Act 2001 and the process could be lengthy. This prohibition made by the courts is a significant tool in enabling An Garda Síochána to mitigate the risk the offender poses to the community.

The overall assessment of An Garda Síochána is that the Sex Offenders (Amendment) Act 2023, while still in its infancy, has made a positive impact on the management of convicted sex offenders subject to Part 2 of the Sex Offenders Act 2001 as amended.

## **5. Conclusion**

Despite the short period of assessment since commencement of the Sex Offenders (Amendment) Act 2023, it would appear that it is achieving its objective of strengthening Ireland's system for monitoring and managing sex offenders in the community.

It is the view of the key stakeholders involved, that the Act strikes an appropriate balance between monitoring and restricting offenders, and supporting them in their rehabilitation. It gives An Garda Síochána and the Probation Service the tools to ensure that sex offenders are managed and monitored effectively in the community.

Commencement of the provisions of the Act related to electronic monitoring will be considered after the recommendations of a Working Group established to develop an approach to operationalising electronic monitoring have been finalised.

