



AN BILLE UM DHAMÁISTE COIRIÚIL, 1990
CRIMINAL DAMAGE BILL, 1990

*Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann*

ARRANGEMENT OF SECTIONS

Section

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ACTS REFERRED TO

Children Act, 1908	1908, c. 67
Criminal Law (Jurisdiction) Act, 1976	1976, No. 14
Enforcement of Court Orders Act, 1940	1940, No. 23
Family Home Protection Act, 1976	1976, No. 27

[No. 30*b* of 1990]

Family Law (Protection of Spouses and Children) Act, 1981	1981, No. 21
Judicial Separation and Family Law Reform Act, 1989	1989, No. 6
Malicious Damage Act, 1861	1861, c. 97
Police (Property) Act, 1897	1897, c. 30
Probation of Offenders Act, 1907	1907, c. 17
Telegraph Acts, 1863 to 1916	



AN BILLE UM DHAMÁISTE COIRIÚIL, 1990
CRIMINAL DAMAGE BILL, 1990

BILL

entitled

5 AN ACT TO AMEND THE LAW RELATING TO OFFENCES
OF DAMAGE TO PROPERTY AND TO PROVIDE FOR
CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

10 “compensation order” has the meaning assigned to it by *section 9 (1)*;

“to damage” includes—

(a) in relation to property other than data (but including a
storage medium in which data are kept), to destroy,
deface, dismantle or, whether temporarily or otherwise,
15 render inoperable or unfit for use or prevent or impair the
operation of,

(b) in relation to data—

(i) to add to, alter, corrupt, erase or move to another
storage medium or to a different location in the
storage medium in which they are kept (whether or
20 not property other than data is damaged thereby), or

(ii) to do any act that contributes towards causing such
addition, alteration, corruption, erasure or move-
ment,

25 (c) to do any act within the State that damages property outside
the State,

(d) to do any act outside the State that damages property within
the State, and

(e) to make an omission causing damage,

30 and cognate words shall be construed accordingly;

“data” means information in a form in which it can be accessed by
means of a computer and includes a program;

“property” means—

- (a) property of a tangible nature, whether real or personal, including money and animals that are capable of being stolen, and
 - (b) data. 5
- (2) Property shall be treated for the purposes of this Act as belonging to any person—
- (a) having lawful custody or control of it,
 - (b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest), or 10
 - (c) having a charge over it.
- (3) Where, as respects an offence under *section 2, 3 (a) or 4 (a)*—
- (a) the property concerned is a family home within the meaning of the Family Home Protection Act, 1976, and 15
 - (b) the person charged—
 - (i) is the spouse of a person who resides, or is entitled to reside, in the home, and
 - (ii) is the subject of a protection order or barring order (within the meaning in each case of the Family Law (Protection of Spouses and Children) Act, 1981) or is excluded from the home pursuant to an order under section 16 (a) of the Judicial Separation and Family Law Reform Act, 1989, or any other order of a court, 20
- sections 2, 3 (a) and 4 (a)* shall have effect as if the references therein to any property belonging to another, however expressed, were references to the home. 25
- (4) Where property is subject to a trust, the persons to whom the property belongs shall be treated for the purposes of this Act as including any person having a right to enforce the trust. 30
- (5) Property of a corporation sole shall be treated for the purposes of this Act as belonging to the corporation notwithstanding a vacancy in it.
- (6) In this Act—
- (a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act, 35
 - (b) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended, 40
 - (c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it

is indicated that reference to some other provision is intended.

5 2.—(1) A person who without lawful excuse damages any property belonging to another intending to damage any such property or being reckless as to whether any such property would be damaged shall be guilty of an offence. Damaging property.

(2) A person who without lawful excuse damages any property, whether belonging to himself or another—

10 (a) intending to damage any property or being reckless as to whether any property would be damaged, and

(b) intending by the damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered,

shall be guilty of an offence.

15 (3) A person who damages any property, whether belonging to himself or another, with intent to defraud shall be guilty of an offence.

(4) An offence committed under this section by damaging property by fire shall be charged as arson.

(5) A person guilty of an offence under this section shall be liable—

20 (a) on summary conviction, to a fine not exceeding £1,000 or imprisonment for a term not exceeding 12 months or both, and

(b) on conviction on indictment—

25 (i) in case the person is guilty of arson under *subsection (1) or (3)* or of an offence under *subsection (2)* (whether arson or not), to a fine or imprisonment for life or both, and

30 (ii) in case the person is guilty of any other offence under this section, to a fine not exceeding £10,000 or imprisonment for a term not exceeding 10 years or both.

(6) For the purposes of this section a person is reckless if he has foreseen that the particular kind of damage that in fact was done might be done and yet has gone on to take the risk of it.

35 3.—A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out— Threat to damage property.

(a) to damage any property belonging to that other or a third person, or

(b) to damage his own property in a way which he knows is likely to endanger the life of that other or a third person,

40 shall be guilty of an offence and shall be liable—

(i) on summary conviction, to a fine not exceeding £1,000 or imprisonment for a term not exceeding 12 months or both, and

- (ii) on conviction on indictment, to a fine not exceeding £10,000 or imprisonment for a term not exceeding 10 years or both.

Possessing any thing with intent to damage property.

4.—A person (in this section referred to as the possessor) who has any thing in his custody or under his control intending without lawful excuse to use it or cause or permit another to use it— 5

(a) to damage any property belonging to some other person, or

(b) to damage his own or the intended user's property—

(i) in a way which he knows is likely to endanger the life of a person other than the possessor, or 10

(ii) with intent to defraud,

shall be guilty of an offence and shall be liable—

(A) on summary conviction, to a fine not exceeding £1,000 or imprisonment for a term not exceeding 12 months or both, and 15

(B) on conviction on indictment, to a fine not exceeding £10,000 or imprisonment for a term not exceeding 10 years or both.

Unauthorised accessing of data.

5.—(1) A person who without lawful excuse operates a computer—

(a) within the State with intent to access any data kept either within or outside the State, or 20

(b) outside the State with intent to access any data kept within the State,

shall, whether or not he accesses any data, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 or imprisonment for a term not exceeding 3 months or both. 25

(2) *Subsection (1)* applies whether or not the person intended to access any particular data or any particular category of data or data kept by any particular person.

"Without lawful excuse".

6.—(1) This section applies to— 30

(a) any offence under *section 2 (1)* or *5*,

(b) any offence under *section 3* other than one involving a threat by the person charged to damage property in a way which he knows is likely to endanger the life of another, and

(c) any offence under *section 4* other than one involving an intent by the person charged to use, or cause or permit the use of, something in his custody or under his control to damage property in such a way as aforesaid. 35

(2) A person charged with an offence to which this section applies shall, whether or not he would be treated for the purposes of this Act as having a lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse— 40

(a) if at the time of the act or acts alleged to constitute the

5 offence he believed that the person or persons whom he believed to be entitled to consent to or authorise the damage to (or, in the case of an offence under *section 5*, the accessing of) the property in question had consented, or would have consented to or authorised it if he or they had known of the damage or the accessing and its circumstances,

10 (b) in the case of an offence under *section 5*, if he is himself the person entitled to consent to or authorise accessing of the data concerned, or

15 (c) if he damaged or threatened to damage the property in question or, in the case of an offence under *section 4*, intended to use or cause or permit the use of something to damage it, in order to protect himself or another or property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another and, at the time of the act or acts alleged to constitute the offence, he believed—

20 (i) that he or that other or the property, right or interest was in immediate need of protection, and

(ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

25 (3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of *subsection (2)* a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

30 (5) This section shall not be construed as casting doubt on any defence recognised by law as a defence to criminal charges.

35 7.—(1) Proceedings for an offence under *section 2* or *5* alleged to have been committed by a person outside the State in relation to data kept within the State or other property so situate may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the State. Proceedings.

(2) (a) Where a person is charged with an offence under *section 2, 3* or *4* in relation to property belonging to another—

(i) it shall not be necessary to name the person to whom the property belongs, and

40 (ii) it shall be presumed, until the contrary is shown, that the property belongs to another.

45 (b) Where a person is charged with an offence under *section 2* in relation to such property as aforesaid, it shall also be presumed, until the contrary is shown, that the person entitled to consent to or authorise the damage concerned had not consented to or authorised it, unless the property concerned is data and the person charged is an employee or agent of the person keeping the data.

50 (c) *Paragraph (b)* shall apply in relation to a person charged with an offence under *section 5* as if the reference to

damage were a reference to access and with any necessary modifications.

(3) A person charged with an offence under *section 2* in relation to data or an attempt to commit such an offence may, if the evidence does not warrant a conviction for the offence charged but warrants a conviction for an offence under *section 5*, be found guilty of that offence. 5

Jurisdiction of District Court.

8.—No rule of law ousting the jurisdiction of the District Court to try offences where a dispute of title to property is involved shall preclude that court from trying offences under this Act. 10

Compensation order.

9.—(1) On conviction of any person of an offence under *section 2* of damaging property belonging to another, the court, instead of or in addition to dealing with him in any other way, may, on application or otherwise, make an order (in this Act referred to as a “compensation order”) requiring him to pay compensation in respect of that damage to any person (in this section referred to as the “injured party”) who, by reason thereof, has suffered loss (other than consequential loss). 15

(2) The compensation payable under a compensation order (including a compensation order made against a parent or guardian of the convicted person and notwithstanding, in such a case, any other statutory limitation as to amount) shall be of such amount (not exceeding £5,000 in the case of such an order made by the District Court or such other amount as may stand prescribed for the time being by law as the limit of that Court’s jurisdiction in tort) as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the convicted person or the prosecutor, and shall not exceed the amount of the damages that, in the opinion of the court, the injured party concerned would be entitled to recover in a civil action against the convicted person in respect of the damage concerned. 20 25 30

(3) A compensation order shall not be made unless both the injured party concerned and the approximate cost of making good the damage to it (or, where appropriate, of replacing it) are readily ascertainable at the time of the conviction concerned or within a reasonable period thereafter. 35

(4) In determining whether to make a compensation order against a person, and in determining the amount to be paid by a person under such an order, the court shall have regard—

(a) to his means, or 40

(b) in a case to which section 99 of the Children Act, 1908 (which empowers a court to require a parent or guardian to pay any fine, damages or costs imposed on a child or young person), applies, the means of the parent or guardian,

so far as they appear or are known to the court. 45

(5) A compensation order may provide for payment of the compensation by such instalments and at such times as the court shall in all the circumstances consider reasonable.

(6) Where the court considers—

(a) that it would be appropriate both to impose a fine and to make a compensation order, but

(b) that the convicted person has insufficient means to pay both an appropriate fine and appropriate compensation,

5 the court may, if it is satisfied that the means are sufficient to justify its doing so, make a compensation order and, if it is satisfied that it is appropriate to do so having regard to the means that would remain after compliance with the order, impose a fine.

(7) At any time after a compensation order has ceased to be suspended by virtue of *section 10 (1)* and before it has been complied with or fully complied with, the District Court may—

(a) on the application of the convicted person concerned—

15 (i) reduce the amount to be paid, vary any instalment payable, or direct that no payments or further payments be made, under the order if it appears to the Court—

(I) that the means of the convicted person are insufficient to satisfy the order in full, or

20 (II) on being satisfied that the injured party concerned has been given an opportunity of making representations to the court on the issue and having regard to any such representations that are made by him or on his behalf, that the damage in respect of which the order was made is less than
25 it was taken to be for the purposes of the order, and

(ii) if any amount paid under the order exceeds the amount appearing to the Court to be reasonable compensation for the damage, order that the amount of the excess be repaid by the injured party to the convicted person, and, upon the making of such
30 order, the compensation order shall cease to have effect,

or

35 (b) on the application of the injured party concerned, increase the amount to be paid, the amount of any instalment or the number of instalments payable, under the order if it appears to the Court—

40 (i) that the means of the convicted person are sufficient for the relevant purposes aforesaid, or

(ii) on being satisfied that the convicted person concerned has been given an opportunity of making representations to the court on the issue and having regard to any such representations that are made by him or on his behalf, that the damage in respect of which the order was made is more than it was taken to be for the purposes of the order.
45

(8) A compensation order and an order under *subsection (7) (b)* shall be treated for the purposes of enforcement as if they were
50 orders made by the court concerned in civil proceedings and, without

prejudice to the provisions of *subsection (7)*, a compensation order shall be treated for those purposes as if it were an instalment order within the meaning of Part I of the Enforcement of Court Orders Act, 1940.

(9) The references to damages in the aforesaid section 99 shall be construed as if they included references to compensation under a compensation order and subsections (5) and (6) of that section shall not apply in relation to a compensation order. 5

(10) This section is without prejudice to any other enactment which provides for the payment of compensation by a person convicted of an offence of damaging property or otherwise proved to have committed such an offence. 10

(11) The making of a compensation order against a parent or guardian of a convicted person shall not of itself give rise to any other liability on the part of the parent or guardian in respect of the damage concerned. 15

(12) In this section—

(a) references to conviction of a person include references to dealing with a person under section 1 (1) of the Probation of Offenders Act, 1907, and 20

(b) the third reference in *subsection (1)*, the first reference in *subsection (2)* and the references in *subsections (6) (b)* and *(7)* to a convicted person, however expressed, include, in cases to which the aforesaid section 99 applies, references to his parent or guardian. 25

Suspension of compensation order pending appeal.

10.—(1) The operation of a compensation order shall be suspended—

(a) in any case, until the expiration of one month from the date of the conviction to which the order relates, and

(b) where notice of appeal, or of application for leave to appeal, against the conviction or sentence is given within one month from the date of the conviction, until the appeal or any further appeal therefrom is finally determined or abandoned or the ordinary time for instituting any further appeal has expired. 30 35

(2) Where the operation of a compensation order is suspended under *subsection (1) (b)*, the order shall not take effect if the conviction concerned is reversed on appeal.

(3) A court hearing an appeal against conviction or sentence may annul or vary the compensation order concerned. 40

(4) A person against whom a compensation order is made may appeal against the order to the court to which an appeal against the conviction concerned may be brought and *subsections (1) (b)* and *(3)* shall apply in relation to an appeal under this subsection as they apply, or would apply, to an appeal against the conviction. 45

(5) In this section references to conviction of a person include references to dealing with a person under section 1 (1) of the Probation of Offenders Act, 1907.

11.—Where—

Effect of
compensation order
on civil
proceedings.

- (a) a compensation order has been made in favour of a person in respect of damage to any property, and
- 5 (b) damages in respect of the damage fall to be assessed in civil proceedings, then—
- (i) if the damages, as so assessed, exceed any amount paid under the compensation order, the damages to be awarded shall not exceed the amount of that excess, and
- 10 (ii) if any amount paid under the compensation order exceeds the damages, as so assessed, the court may order that the amount of the excess be repaid by that person to the person against whom the compensation order was made,
- 15 and, upon the award of damages or, as the case may be, the making of the order by the court, the compensation order shall cease to have effect.

12.—(1) This section applies to an offence under this Act other than *section 5* or *13 (4)*. Arrest without warrant.

20 (2) Any person may arrest without warrant anyone who is or whom he, with reasonable cause, suspects to be in the act of committing an offence to which this section applies.

(3) Where an offence to which this section applies has been committed, any person may arrest without warrant anyone who is or
25 whom he, with reasonable cause, suspects to be guilty of the offence.

(4) Where a member of the Garda Síochána, with reasonable cause, suspects that an offence to which this section applies or an offence under *section 13 (4)* has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to
30 be guilty of the offence.

(5) A member of the Garda Síochána may arrest without warrant anyone who is or whom he, with reasonable cause, suspects to be about to commit an offence to which this section applies.

35 (6) For the purpose of arresting a person under any power conferred by this section a member of the Garda Síochána may enter (if need be, by force) and search any place where that person is or where the member, with reasonable cause, suspects him to be.

(7) This section shall apply to an attempt to commit an offence as it applies to the commission of that offence.

40 (8) This section shall not prejudice any power of arrest conferred by law apart from this section.

13.—(1) If a justice of the District Court is satisfied by information on oath of a member of the Garda Síochána that there is reasonable cause to believe that any person has in his custody or under his control or on his premises any thing and that it has been used, or is intended
45 for use, without lawful excuse— Search warrant.

- (a) to damage property belonging to another,
- (b) to damage any property in a way likely to endanger the life of another or with intent to defraud, or
- (c) to access, or with intent to access, data,

the justice may issue a search warrant mentioned in *subsection (2)*. 5

(2) A search warrant issued under this section shall be expressed and operate to authorise a named member of the Garda Síochána, accompanied by such other members of the Garda Síochána as may be necessary, at any time or times within one month of the date of issue of the warrant, to enter if need be by force the premises named in the warrant, to search the premises and any persons found therein, to seize and detain anything which he believes to have been used or to be intended for use as aforesaid and, if the property concerned is data or the search warrant has been issued on a ground referred to in *subsection (1) (c)*, to operate, or cause to be operated by a person accompanying him for that purpose, any equipment in the premises for processing data, inspect any data found there and extract information therefrom, whether by the operation of such equipment or otherwise. 10 15

(3) The Police (Property) Act, 1897, shall apply to property which has come into the possession of the Garda Síochána under this section as it applies to property which has come into the possession of the Garda Síochána in the circumstances mentioned in that Act. 20

(4) A person who—

- (a) obstructs or impedes a member of the Garda Síochána acting under the authority of a search warrant issued under this section, or 25
- (b) is found on or at the premises specified in the warrant by a member of the Garda Síochána acting as aforesaid and who fails or refuses to give the member his name and address when required by the member to do so or gives him a name or address that is false or misleading, 30

shall be guilty of an offence and shall be liable on summary conviction—

- (i) in the case of an offence under *paragraph (a)*, to a fine not exceeding £1,000 or imprisonment not exceeding 12 months or both, and 35
- (ii) in the case of an offence under *paragraph (b)*, to a fine not exceeding £500.

Minor and consequential changes in existing law.

14.—(1) The common law offence of arson is hereby abolished.

(2) The Malicious Damage Act, 1861, is hereby amended— 40

(a) by the substitution in section 37, for “Electric or Magnetic Telegraph”, of “telegraph (within the meaning of the Telegraph Acts, 1863 to 1916)”, and

(b) by the substitution—

- (i) in section 40, for the words from “shall be liable” to the end of the section, and 45

(ii) in section 41, for the words from "shall, on conviction thereof" to the end of the section,

of "shall be liable—

5 (a) on summary conviction, to a fine not exceeding £1,000 or imprisonment for a term not exceeding 12 months or both, and

(b) on conviction on indictment, to a fine not exceeding £10,000 or imprisonment for a term not exceeding 10 years or both."

10 (3) The abolition by *subsection (1)* of the common law offence of arson shall not affect the operation of section 2 of, and paragraph 3 of the Schedule to, the Criminal Law (Jurisdiction) Act, 1976, and the repeal by *section 15* of sections 1 to 7 of the Malicious Damage Act, 1861, shall not affect the operation of those sections for the
15 purposes of the said section 2 and paragraph 6 of the said Schedule; and accordingly the said section 2 and the said Schedule shall have effect as if *subsection (1)* and *section 15* had not been enacted.

(4) On the commencement of this subsection—

(a) *subsection (3)* shall cease to have effect,

20 (b) section 21 (2) of, and paragraph 3 of the Schedule to, the Criminal Law (Jurisdiction) Act, 1976, shall be repealed, and

(c) the following paragraphs shall be substituted for paragraph 6 of the said Schedule:—

25 "Criminal Damage

6. Any offence under section 35 (interference with railway) of the Malicious Damage Act, 1861.

30 6A. Any offence under *subsections (1)* and *(4)* or *subsections (2)* and *(4)* of *section 2* of the *Criminal Damage Act, 1991* (arson)."

15.—The Malicious Damage Act, 1861 (except sections 35 to 38, 40, 41, 47, 48, 58 and 72), is hereby repealed. Repeal.

16.—(1) This Act may be cited as the Criminal Damage Act, 1991. Short title and commencement.

35 (2) This Act (except *section 14 (4)*) shall come into operation one month after the date of its passing.

(3) *Section 14 (4)* shall come into operation on such day as may be fixed therefor by order made by the Minister for Justice.

AN BILLE UM DHAMÁISTE COIRIÚIL,
1990

BILLE

dá ngairtear

Acht do leasú an dlí i ndáil le cionta a bhaineann le damáiste do mhaoin agus do dhéanamh socrú i dtaobh nithe comhghaolmhara.

An tAire Dlí agus Cirt a thólaic

*Ritheadh ag Dáil Éireann,
27 Samhain, 1991*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais, Teach Sun Alliance, Sráid Theach Laighean, Baile Átha Cliath 2, nó trí aon díoltóir leabhar.

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CRIMINAL DAMAGE BILL, 1990

BILL

entitled

An Act to amend the law relating to offences of damage to property and to provide for connected matters.

Presented by the Minister for Justice

*Passed by Dáil Éireann,
27th November, 1991*

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