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**AN BILLE UM LÍONRAÍ CUMARSÁIDE LEICTREONÁÍ  
POIBLÍ (ÚSÁID MHÍCHUÍ), 2015  
PUBLIC ELECTRONIC COMMUNICATIONS NETWORKS  
(IMPROPER USE) BILL 2015**

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**EXPLANATORY MEMORANDUM**

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*Purpose of Bill*

In 2013 an Internet Content Advisory Group was established to consider and make recommendations on the regulatory and legislative framework for, and policy responses to, issues of internet content governance, specifically in relation to online abuse and the accessing of potentially harmful content. The group was chaired by Dr Brian O’Neill, Head of the School of Media at Dublin Institute of Technology.

The group reported in May 2014. Among its recommendations was that the Communications Regulation (Amendment) Act 2007 be amended so as to include electronic communications within the existing prohibition on the sending of messages which are grossly offensive, indecent, obscene or menacing.

The law has consistently prohibited the improper use of the postal and telephone systems. For postal services, the provision is now found in section 55 of the Communications Regulation (Postal Services) Act 2011. The equivalent provision for the telephone system is in section 13 of the Post Office (Amendment) Act 1951, section 13 of which originally prohibited—

- sending a message by telephone which is grossly offensive or of an indecent, obscene or menacing character,
- sending a message by telephone which is known to be false, for the purpose of causing annoyance, inconvenience, or needless anxiety to any other person, or
- persistently makes telephone calls without reasonable cause and for the purpose of causing annoyance, inconvenience, or needless anxiety to any other person.

Section 13 was updated in 1983, to substitute a reference to a ‘telecommunications system’ for references to the ‘telephone’.

The section was further amended in 2007, by the Communications Regulation (Amendment) Act of that year, and references to the telephone were reinstated, albeit with a provision that extended the section’s application to include SMS text messages sent by telephone.

The O’Neill Group reported that this 1951 provision, as amended in 2007, had been noted to be especially restrictive, in that it addressed messages by telephone only, excluding electronic communications or social media. The Minister for Communications, Energy and Natural Resources had also acknowledged this gap in legislative provision in a presentation to the Joint Oireachtas Committee on Transport and Communications.

The group agreed that, while much of existing legislation was adequate to deal with offences of bullying and harassment, the 2007 Act should be amended to include all electronic communications within the ambit of the prohibition on the sending of messages which are grossly offensive, indecent, obscene or menacing. Such an amendment would close a gap that has been identified in the legislation, would support victims of abuse and would strengthen the capacity of the Garda Síochána to deal with reports of offences.

Later in 2014 the Law Reform Commission published its ‘Issues Paper on Cyber-crime affecting personal safety, privacy and reputation including cyber-bullying’. The LRC agreed with the O’Neill Group’s recommendation that section 13 should be amended to include electronic communications within its ambit.

The purpose of this short Bill is to give effect to this recommendation.

In the United Kingdom, a broadly similar provision has been amended to this effect. Section 127 of the Communications Act 2003 (U.K.) now covers the sending of improper messages by means of a ‘public electronic communications network’. Similarly to our own section 13, the provision covers messages that are grossly offensive or of an indecent, obscene or menacing character and also targets false messages and persistent misuse intended to cause annoyance, inconvenience or needless anxiety.

#### *Provisions of Bill*

*Section 1* of the Bill amends section 13 of Post Office (Amendment) Act 1951, as substituted by section 4 of, and Schedule 1 to, the Communications Regulation (Amendment) Act 2007.

The new section 13 is headed “Offences in connection with public electronic communications networks”. *Subsection (1)* provides that it is an offence for a person—

- to send or cause to be sent, by means of a public electronic communications network, a message or other matter that is grossly offensive or is indecent, obscene or menacing, or
- for the purpose of causing annoyance, inconvenience or needless anxiety to another, to send or cause to be sent, by means of a public electronic communications network, a message that the sender knows to be false, or
- for the purpose of causing annoyance, inconvenience or needless anxiety to another, persistently and without reasonable cause to make use of a public electronic communications network.

*Subsection (2)* defines a “public electronic communications network” in terms derived from the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011).

*Subsection (3)* provides that the offences do not apply to the transmission, distribution or relay of broadcasting services, within the meaning of the Broadcasting Act 2009.

The remaining subsections are restatements of existing provisions. By *subsection (4)*, a person guilty of an offence is liable on summary conviction to a Class A fine or to 12 months' imprisonment, or both, and, on conviction on indictment, to a fine not exceeding €75,000 or to imprisonment for a term not exceeding 5 years, or to both.

*Subsection (5)* is a procedural provision. It states that an offence under subsection (1) is an offence under the Post Office Act 1908.

Finally, under *subsection (6)*, a court on convicting a person for an offence under subsection (1) may, in addition to any other penalty imposed, order any apparatus, equipment or other thing used in the course of committing the offence to be forfeited to the State.

*Section 2* provides for the short title of the Act.

*Pat Rabbitte, T.D.,  
Aibreán, 2015.*