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**An Bille fá Choimisinéir um Shábháilteacht Dhigiteach, 2017**  
**Digital Safety Commissioner Bill 2017**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILLE FÁ CHOIMISINÉIR UM SHÁBHÁILTEACHT DHIGITEACH, 2017**  
**DIGITAL SAFETY COMMISSIONER BILL 2017**

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*Mar a tionscnaíodh*

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ACT REFERRED TO

Companies Act 2014 (No. 38)



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**AN BILLE FÁ CHOIMISINÉIR UM SHÁBHÁILTEACHT DHIGITEACH, 2017**  
**DIGITAL SAFETY COMMISSIONER BILL 2017**

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# Bill

*entitled*

An Act to establish an office of a Digital Safety Commissioner and to provide for its functions to ensure the oversight and regulation of procedures for removal, by digital service undertakings, of harmful digital communications; to provide for the creation of codes of practice for digital services undertakings; to establish an advisory committee to the Digital Safety Commissioner and to provide for related matters. 5

**Be it enacted by the Oireachtas as follows:** 10

## **Interpretation**

1. “communication” means any form of communication, including by speech, by letter, by camera, by telephone (including SMS text message), by smart phone, by any digital or online communication (including the internet, a search engine, a social media platform, a social media site or the world wide web), or by any other telecommunications system; and “communicated”, “communications” and “means of communication” shall be interpreted accordingly; 15

“digital service undertaking” means an undertaking that provides a digital or online service whether by the internet, a telecommunications system, the world wide web or otherwise, and includes an undertaking that is described, whether in an enactment or otherwise, as an intermediary service provider, an internet service provider, an internet intermediary, an online intermediary, an online service provider, a search engine, a social media platform, a social media site, or a telecommunications undertaking; 20

“Minister” means the Minister for Justice and Equality;

“undertaking” means a person being an individual, a body corporate or an unincorporated body of persons engaged in the production, supply or distribution of goods or the provision of a service (whether carried on by him or her for profit or not). 25

## **Digital Safety Commissioner of Ireland**

2. (1) The Minister, with the consent of the Minister for Children and Youth Affairs and the Minister for Communications, Climate Action and Environment, shall, by order, appoint a day to be the establishment day for the purposes of this Act. 30

(2) On the establishment day there shall stand established a body to be known, in the English language, as the Office of the Digital Safety Commissioner of Ireland or, in

the Irish language, as Oifig Choimisinéir Sábháilteachta Digití na hÉireann.

- (3) On the establishment day the Minister, with the consent of the Minister for Children and Youth Affairs and the Minister for Communications, Climate Action and Environment, shall appoint a suitably qualified person to be the Digital Safety Commissioner of Ireland (in this Act referred to as the Commissioner). 5

### **Functions of Commissioner**

3. The functions of the Commissioner are—

- (a) to promote digital safety for all persons,
- (b) to support and encourage the implementation of measures to improve digital safety, 10
- (c) to ensure the oversight and regulation, in accordance with this Act, of a timely and efficient procedure for the take down, that is, removal, by digital service undertakings, of harmful digital communications, (referred to as the “take down procedure”),
- (d) to ensure that the take down procedure is made available to all affected individual persons by digital service providers free of charge, 15
- (e) to consult widely in the development of the code of practice referred to in *section* 3, including with the public, with such Government Departments as he or she considers appropriate, with the Ombudsman for Children, with such other public bodies as he or she considers appropriate, with digital service undertakings and with such other persons as he or she considers appropriate, 20
- (f) to support the preparation and publication by the Ombudsman for Children of guidance material, including guidance material for schools, relevant to digital safety of children and to harmful digital communications,
- (g) to coordinate the activities of Government Departments and other public bodies and authorities relating to digital safety, 25
- (h) to collect, analyse, interpret and disseminate information relating to digital safety,
- (i) to support, encourage, conduct and evaluate research about digital safety,
- (j) to publish (whether on the internet or otherwise) reports and papers relating to digital safety, 30
- (k) such other functions, if any, as may be conferred in writing by the Minister, with the consent of the Minister for Children and Youth Affairs and the Minister for Communications, Climate Action and Environment, and
- (l) to promote positive use of the internet and active online citizenship.

### **Code of practice on take down procedure for harmful communications**

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4. The Commissioner shall, as soon as is practicable after his or her appointment, prepare, and publish in a form that is easily accessible, a code of practice on take down procedure for harmful communications (in this section referred to as the code of practice) that shall, *inter alia*—

- (a) describe in detail, and provide practical guidance on, the take down procedure of digital service undertakings for harmful digital communications,
- (b) require that the take down procedure is made available to all affected individual persons by digital service undertakings free of charge,
- (c) describe the steps required by a digital service undertaking to meet the national digital safety standards referred to in *section 5*, and 5
- (d) contain time lines within which a digital service undertaking shall respond to complaints about different categories of harmful digital communications, and, in the event that such a complaint is upheld, the time lines within which the digital service undertaking is to take down each category. 10

**Duties of digital service undertakings: National Digital Safety Standards, including take down procedure**

5. For the purposes of this Act, a digital service undertaking shall ensure that it complies with the following National Digital Safety Standards:
- (a) the digital service undertaking’s terms of use shall contain— 15
    - (i) a provision that prohibits end-users from posting harmful digital communications, or
    - (ii) a provision that may reasonably be regarded as the equivalent of a provision covered by *subparagraph (i)*,
  - (b) the digital service undertaking shall have a complaints scheme under which its end users can request the take down, that is, the removal from the digital service undertaking’s service, of harmful digital communications that breach the service’s terms of use, 20
  - (c) the digital service undertaking’s take down procedure shall be made available to all affected individual persons free of charge, 25
  - (d) the digital service undertaking’s take down procedure shall comply with the requirements of the code of practice issued under *section 4*,
  - (e) without prejudice to *paragraph (d)*, the time lines within which the digital service undertaking shall respond to complaints about different categories of harmful digital communications and, in the event that such a complaint is upheld, the time lines within which the digital service undertaking is to take down each category, shall, at least, be no less stringent than the time lines specified in the code of practice issued under *section 4*, 30
  - (f) the digital service undertaking shall appoint a suitably qualified individual, who shall be an employee or agent of the digital service undertaking, as its digital safety officer for the purposes of this Act, and 35
  - (g) the contact details of the digital safety officer shall be notified to the Commissioner.

### **Certificate of compliance with code of practice and National Digital Safety Standards**

6. (1) A digital service undertaking may apply in writing to the Commissioner, in such form as the Commissioner approves, for a certificate that it complies with the code of practice issued under *section 4* and with the National Digital Safety Standards in *section 5*. 5
- (2) If the Commissioner is satisfied that the digital service undertaking complies with the code of practice issued under *section 4* and with the National Digital Safety Standards in *section 5* the Commissioner shall, in writing, issue a certificate of compliance to the digital service undertaking for the purposes of this Act.
- (3) Where the Commissioner issues such a certificate, the Commissioner shall thereafter 10  
presume, until the contrary is established (including in the course of making a determination under *section 7*), that the digital service undertaking complies with the code of practice issued under *section 4* and with the National Digital Safety Standards in *section 5*.
- (4) The Commissioner shall, from time to time, monitor compliance with the code of 15  
practice by each digital service undertaking to whom such a certificate has been issued, and each digital service undertaking shall not unreasonably refuse to cooperate with such compliance monitoring.
- (5) If, following such a monitoring procedure, the Commissioner is satisfied, having 20  
heard and considered the views of the digital service undertaking, that it is not complying with the code of practice issued under *section 4* or with the National Digital Safety Standards in *section 5*, the Commissioner shall revoke the certificate of compliance issued to the digital service undertaking.
- (6) The revocation referred to in *subsection (5)* shall be subject to such terms, if any, as 25  
the Commissioner considers appropriate, including the circumstances in which the digital service undertaking may re-apply for a certificate of compliance.

### **Appeal to Commissioner: investigation and direction**

7. (1) An individual who has sought to have specified communications concerning him or 30  
her removed using the complaints scheme and take-down procedure of a digital service undertaking referred to in *section 4* may, if the digital service undertaking did not take down the specified communications or did not comply with a take-down timeline specified in the code of practice issued under *section 4*, make an appeal to the Commissioner in such form as the Commissioner shall prescribe.
- (2) The Commissioner shall investigate the appeal and, if satisfied, having considered the 35  
respective submissions of the individual and of the digital service undertaking, that the digital service undertaking has not complied with the code of practice issued under *section 4* or with the National Digital Safety Standards in *section 5*, shall make a determination that the appeal shall be upheld and shall issue a direction in writing to the digital service undertaking to remove the specified communications forthwith.
- (3) Where the Commissioner upholds an appeal under *subsection (2)*, he or she shall also 40  
revoke any certificate of compliance issued to the digital service undertaking under *section 5*, and such revocation shall be subject to such terms, if any, as the Commissioner considers appropriate, including the circumstances in which the digital



service undertaking may re-apply for a certificate of compliance.

### **Enforcement in Circuit Court of direction by Commissioner**

8. (1) Where a digital service undertaking refuses to comply with a direction issued by the Commissioner under *section 6*, the Commissioner shall apply to the Circuit Court, on notice to the digital service undertaking, for an injunction requiring compliance with the direction. 5
- (2) The Court, having heard and considered the respective submissions of the Commissioner and the digital service undertaking, and if it is satisfied that the digital service undertaking has not complied with the code of practice issued under *section 4* or with the National Digital Safety Standards in *section 5*, shall by order issue an injunction directing the digital service undertaking to comply with the direction issued by the Commissioner under *section 6*. 10

### **Powers of courts in intended civil proceedings**

9. (1) The Circuit Court or High Court may hear and decide an application by a person (in this section referred to as the intended applicant) for an order under *subsection (2)* related to civil proceedings which the intended applicant intends to begin before either Court and which concern harmful communications. 15
- (2) The application referred to in *subsection (1)* is for an order (sometimes referred to as a Norwich Pharmacal order) directed at a person or, as the case may be, persons (in this section referred to as the third party or, as the case may be, third parties) to disclose either the name of another person (in this section referred to as the intended respondent) against whom the intended applicant intends to bring the proceedings referred to in *subsection (1)* or the address (which may be a digital address) of the intended respondent, or both the name and address. 20
- (3) The court may, in its discretion, grant an order under *subsection (2)*, subject to such terms, if any, as it considers suitable, if the intended applicant has established to the court on the balance of probabilities that there is a *prima facie* demonstration of wrongful activity by the intended respondent, and that the intended respondent has engaged in such wrongful activity through the third party or, as the case may be, the third parties, including through a digital service or services operated by the third party or, as the case may be, the third parties as a digital service undertaking or, as the case may be, as digital service undertakings. 25 30
- (4) Before making an order under *subsection (2)*, the court may, in its discretion, order (subject to such terms, if any, as it considers suitable) that the third party or, as the case may be, the third parties, serve notice on the intended respondent in order to allow the intended respondent to appear and to make representations to the court. 35

### **Jurisdiction**

10. (1) This Act applies to harmful communications where—
- (a) such harmful communications affect—
- (i) an Irish citizen, or 40

- (ii) a person ordinarily resident in the State,  
and
- (b) the means of communication used in connection with such harmful communications are within the control to any extent of—
  - (i) an undertaking established under the law of the State, or 5
  - (ii) a company formed and registered under the Companies Act 2014, or
  - (iii) an existing company within the meaning of the Companies Act 2014.
- (2) Without prejudice to *subsection (1)*, this Act also applies to harmful communications, where—
  - (a) such harmful communications affect— 10
    - (i) an Irish citizen, or
    - (ii) a person ordinarily resident in the State,  
and
  - (b) where the means of communication used in connection with such harmful communications are within the control to any extent of an undertaking 15
    - established under the law of another State and where a court established in the State would have jurisdiction to give notice of service outside the State in respect of civil proceedings to which such harmful communications refer.
- (3) For the purpose of this section, a person shall be deemed to be ordinarily resident in the State if he or she has had his or her principal residence in the State for the period 20
  - of 12 months immediately preceding the act of harmful communication, concerned.

### **Advisory Committee**

- 11. (1) The Commissioner shall be assisted in his or her work by means of an advisory committee when considering issues such as the speed and proportionality of take downs, changes in technology, changes in usage and culture relating to technology, 25
  - and how the Commissioner’s office can work to promote online citizenship and active healthy use of the internet.
- (2) The Commissioner shall consult with the advisory committee as often as he or she sees fit but not less than four times per year.
- (3) The Chair of the Advisory Committee shall be appointed by the Minister. 30
- (4) The Advisory Committee, other than the Chair, shall be made up of no more than 20 members and as far as practicable 50 per cent of the committee should be from civil society organisations, 25 per cent from Industry groups and 25 per cent from relevant Government Departments or statutory bodies.
- (5) The Minister shall ensure there is representation on the Committee from 35
  - Representatives of Children and Youth Organisations with at least three youth members.
- (6) The Minister shall bring forward regulations to provide for a mechanism whereby Representatives of Children and Youth Organisations as well as industry

representatives may nominate representatives for appointment to the advisory Committee.

**Short title and Commencement**

- 12.** (1) This Act may be cited as the Digital Safety Commissioner Act 2017.
- (2) This shall come into operation on such day or days as, by order or orders made by the Minister under this section. 5

An Bille fá Choimisinéir um Shábháilteacht  
Dhigiteach, 2017

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# BILLE

*(mar a tionscnaíodh)*

*dá ngairtear*

Acht do bhunú oifig Coimisinéara um Shábháilteacht Dhigiteach agus do dhéanamh socrú maidir lena feidhmeanna chun a chinntiú go ndéanfar formhaoirsiú agus rialáil ar nósanna imeachta maidir le gnóthais seirbhíse digití do dhíchur cumarsáid dhigiteach dhochrach; do dhéanamh socrú maidir le cóid chleachtais a chruthú le haghaidh gnóthais seirbhíse digití; do bhunú coiste comhairleach don Choimisinéir um Shábháilteacht Dhigiteach agus do dhéanamh socrú i dtaobh nithe gaolmhara.

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*An Teachta Donnchadh Ó Laoghaire a thug isteach,  
30 Samhain, 2017*

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Digital Safety Commissioner Bill 2017

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# BILL

*(as initiated)*

*entitled*

An Act to establish an office of a Digital Safety Commissioner and to provide for its functions to ensure the oversight and regulation of procedures for removal, by digital service undertakings, of harmful digital communications; to provide for the creation of codes of practice for digital services undertakings; to establish an advisory committee to the Digital Safety Commissioner and to provide for related matters.

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*Introduced by Deputy Donnchadh Ó Laoghaire,  
30th November, 2017*

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BAILE ÁTHA CLIATH  
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(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
nó trí aon díoltóir leabhar.

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DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from  
GOVERNMENT PUBLICATIONS,  
52 ST. STEPHEN'S GREEN, DUBLIN 2.  
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)  
or through any bookseller.

€2.54

ISBN 978-1-4468-6057-1



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