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**An Bille um Chumarsáid Dhochrach agus Sábháilteacht Dhigiteach, 2017**  
**Harmful Communications and Digital Safety Bill 2017**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILLE UM CHUMARSÁID DHOCHRACH AGUS SÁBHÁILTEACHT  
DHIGITEACH, 2017  
HARMFUL COMMUNICATIONS AND DIGITAL SAFETY BILL 2017**

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ACTS REFERRED TO

Companies Act 2014 (No. 38)

Interpretation Act 2005 (No. 23)

Non-Fatal Offences Against the Person Act 1997 (No. 26)

Petty Sessions (Ireland) Act 1851 (14 & 15 Vic., c. 93)

Post Office (Amendment) Act 1951 (No. 17)



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**AN BILLE UM CHUMARSÁID DHOCHRACH AGUS SÁBHÁILTEACHT  
DHIGITEACH, 2017  
HARMFUL COMMUNICATIONS AND DIGITAL SAFETY BILL 2017**

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# **Bill**

*entitled*

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An Act to consolidate and reform the criminal law concerning harmful communications, to repeal certain provisions of the Post Office (Amendment) Act 1951 and the Non-Fatal Offences against the Person Act 1997, to promote and encourage measures to improve digital safety for all persons, to confer certain powers on the courts in respect of intended civil proceedings, and to provide for related matters.

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

## **PART 1**

### **PRELIMINARY AND GENERAL**

#### **Short title and commencement**

1. (1) This Act may be cited as the Harmful Communications and Digital Safety Act 2017. 15
- (2) This Act comes into operation on such day or days as the Minister for Justice and Equality, with the consent of the Minister for Children and Youth Affairs and the Minister for Communications, Climate Action and Environment, may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or provisions. 20

#### **Interpretation**

2. In this Act—

“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; 25

“consent” means that a person agrees by choice and that the person has the freedom and capacity to make that choice; 30

“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; 5

“enactment” has the same meaning as in the Interpretation Act 2005;

“intimate image” means a visual recording of a person made by any means including a photographic, film or video recording (whether or not the image of the person has been altered in any way)— 10

- (a) (i) of the person’s genital or anal region or in the case of a female of her breasts (whether the genital or anal region or, as the case may be, the breasts are covered by underwear or are bare),
- (ii) in which the person is nude, is exposing his or her genital organs or anal region or in the case of a female is exposing her breasts, or 15
- (iii) in which the person is engaged in explicit sexual activity,
- (b) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy (and such circumstances can include that the recording was made when the person whose image was recorded was in a public place), and 20
- (c) in respect of which the person depicted retains a reasonable expectation of privacy at the time the image is communicated;

“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

### Repeals

- 3. Section 13 of the Post Office (Amendment) Act 1951 and section 10 of the Non-Fatal Offences against the Person Act 1997 are repealed.

## PART 2

### HARMFUL COMMUNICATIONS 30

#### **Distributing intimate image without consent, or threatening to do so, with intent to cause harm**

- 4. (1) A person commits an offence where he or she, without lawful authority or reasonable excuse and in the circumstances referred to in *subsection (2)*, by any means of communication distributes or publishes an intimate image of another person (in this section referred to as “the other person”) without the consent of the other person, or threatens to do so. 35

(2) The circumstances are that the person who distributes or publishes the intimate

material, or who threatens to do so, does so where—

- (a) he or she, by his or her act or acts, intentionally or recklessly seriously interferes with the other person's peace and privacy or causes alarm, distress or harm to the other person, and
  - (b) his or her act or acts is or are such that a reasonable person would realise that the act or acts would seriously interfere with the other person's peace and privacy or cause alarm, distress or harm to the other person. 5
- (3) A person who commits an offence under this section is liable—
- (a) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 12 months or to both, or 10
  - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 7 years or to both.

### **Taking or distributing intimate image without consent**

5. (1) A person commits an offence where he or she, without lawful authority or reasonable excuse and in the circumstances referred to in *subsection (2)*, by any means of communication takes, or distributes or publishes an intimate image of another person (in this section referred to as "the other person") without the consent of the other person. 15
- (2) The circumstances are that the person who takes, or distributes or publishes the intimate material does so where he or she, by his or her acts, seriously interferes with the other person's peace and privacy or causes alarm, distress or harm to the other person. 20
- (3) A person who commits an offence under this section is liable on summary conviction to a Class A fine or to imprisonment for a term not exceeding 6 months or to both.

### **Distributing threatening or false message** 25

6. (1) A person commits an offence where he or she, without lawful authority or reasonable excuse and in the circumstances referred to in *subsection (2)*, by any means of communication distributes or publishes a threatening, false, indecent or obscene message to or about another person (in this section referred to as "the other person").
- (2) The circumstances are that the person who distributes or publishes the message does so— 30
- (a) intentionally or recklessly for the purpose of causing alarm, distress or harm to the other person, or
  - (b) persistently.
- (3) A person who commits an offence under this section is liable— 35
- (a) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 12 months or to both, or
  - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 7 years or to both.

## Harassment

7. (1) A person commits an offence where he or she, without lawful authority or reasonable excuse, harasses another person (in this section referred to as “the other person”) by—
- (a) persistently following, watching, pestering or besetting the other person, 5
  - (b) persistently communicating by any means of communication with the other person, or
  - (c) persistently communicating with a third person by any means of communication about the other person.
- (2) For the purposes of this section a person harasses the other person where— 10
- (a) he or she, by his or her acts, intentionally or recklessly, seriously interferes with the other person’s peace and privacy or causes alarm, distress or harm to the other person, and
  - (b) his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other person’s peace and privacy or cause alarm, 15  
distress or harm to the other person.
- (3) A person who commits an offence under this section is liable—
- (a) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 12 months or to both, or
  - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 20  
7 years or to both.

## Stalking

8. (1) A person commits an offence where he or she, without lawful authority or reasonable excuse, stalks another person (in this section referred to as “the other person”) by—
- (a) persistently following, watching, pestering or besetting the other person, 25
  - (b) persistently communicating by any means of communication with the other person, or
  - (c) persistently communicating with a third person by any means of communication about the other person.
- (2) For the purposes of this section a person stalks the other person where— 30
- (a) he or she, by his or her acts, intentionally or recklessly, seriously interferes with the other person’s peace and privacy,
  - (b) causes alarm, distress or harm to the other person, and
  - (c) his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other person’s peace and privacy and cause alarm, 35  
distress or harm to the other person.
- (3) A person who commits an offence under this section is liable—
- (a) on summary conviction to a Class A fine or to imprisonment for a term not

exceeding 12 months or to both, or

- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 7 years or to both.

**Liability of directors and officers of undertakings**

9. (1) Where an offence under this Part has been committed by an undertaking and the doing of the acts that constituted the offence has been authorised, or consented to by, or is attributable to connivance or wilful neglect on the part of, a person, being a director, manager or other similar officer of the undertaking, or a person who purports to act in any such capacity, that person as well as the undertaking shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 5 10
- (2) Where a person is proceeded against as aforesaid for such an offence and it is proved that, at the material time, he or she was a director of the undertaking concerned or a person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, or a person who purported to act in any such capacity, it shall be presumed, until the contrary is proved, that the doing of the acts by the undertaking which constituted the commission by it of the offence concerned under any of the relevant statutory provisions was authorised, consented to or attributable to connivance or neglect on the part of that person. 15 20
- (3) Where the affairs of a body corporate are managed by its members, *subsections (1) and (2)* shall apply in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

**Jurisdiction for Part 2**

10. (1) A person may be tried in the State for an offence under this Part in relation to an act, to which this subsection applies by virtue of *subsection (2)*, committed, whether in whole or in part— 25
- (a) by the person in the State in relation to a means of communication that is located outside the State, 30
- (b) by the person outside the State in relation to a means of communication that is located in the State, or
- (c) by the person outside the State in relation to a means of communication that is located outside the State if—
- (i) that person is a person to whom this subparagraph applies by virtue of *subsection (3)*, and 35
- (ii) the act is an offence under the law of the place where the act was committed.
- (2) *Subsection (1)* applies to an act which, if it had been committed by a person in the State in relation to a means of communication that is located in the State, would constitute an offence under this Part. 40

- (3) *Subsection (1)(c)(i)* applies to each of the following persons:
- (a) an Irish citizen;
  - (b) a person ordinarily resident in the State;
  - (c) an undertaking established under the law of the State;
  - (d) a company formed and registered under the Companies Act 2014; 5
  - (e) an existing company within the meaning of the Companies Act 2014.
- (4) 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 of 12 months immediately preceding the alleged commission of an offence under this Part. 10
- (5) Proceedings for an offence to which *subsection (1)(c)* applies may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

#### **Evidence in proceedings for offences outside State**

11. (1) In any proceedings relating to an offence under this Part in circumstances in which *section 10* applies— 15
- (a) a certificate that is signed by an officer of the Minister for Foreign Affairs and Trade and stating that a passport was issued by the Minister to a person on a specified date, and
  - (b) a certificate that is signed by an officer of the Minister and stating that, to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen, 20
- shall be evidence that the person was an Irish citizen on the date on which the relevant offence concerned is alleged to have been committed, unless the contrary is shown.
- (2) A document purporting to be a certificate under *subsection (1)(a)* or *(b)* is deemed, unless the contrary is shown— 25
- (a) to be such a certificate, and
  - (b) to have been signed by the person purporting to have signed it.

#### **Double jeopardy**

12. (1) Where a person has been acquitted of an offence in a place outside the State, he or she shall not be proceeded against for an offence under this Part consisting of the alleged act or acts constituting the first-mentioned offence. 30
- (2) Where a person has been convicted of an offence in a place outside the State, he or she shall not be proceeded against for an offence under this Part consisting of the act or acts constituting the first-mentioned offence. 35

#### **Summary proceedings: time limit of 2 years**

13. Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary

proceedings for an offence under this Part may be instituted at any time within 2 years from the date on which the offence was committed.

### **Consent of Director of Public Prosecutions**

14. Proceedings against a person under the age of 17 charged with an offence under this Part shall not be taken except by or with the consent of the Director of Public Prosecutions. 5

### **Protection of privacy of person to whom offence relates**

15. (1) After a person is charged with an offence under this Part, no matter likely to lead members of the public to identify any person as a person in relation to whom the offence is alleged to have been committed (in this section referred to as “the relevant person”) shall be published in a publication available to the public or broadcast, except as authorised by a direction given in pursuance of this section. 10
- (2) If, at any stage before the commencement of a trial of a person for an offence under this Part, the relevant person or the prosecution applies to a judge of the Circuit Court, on notice to the accused, for a direction in pursuance of this subsection and satisfies the judge— 15
- (a) that the relevant person consents to waiving the application of *subsection (1)*, or
- (b) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial,
- the judge shall direct that *subsection (1)* shall not apply to such matter relating to the relevant person as is specified in the direction. 20
- (3) If, at any stage before the commencement of a trial of a person for an offence under this Part, he or she or another person, against whom the relevant person may be expected to give evidence at the trial, applies to a judge of the Circuit Court for a direction in pursuance of this subsection and satisfies the judge—
- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial, and 25
- (b) that the conduct of the applicant’s defence at the trial is likely to be adversely affected if the direction is not given,
- the judge shall direct that *subsection (1)* shall not, by virtue of the charge alleging the offence under this Part, apply to such matter relating to the relevant person as is specified in the direction. 30
- (4) If at a trial of a person for an offence under this Part, he or she or another person who is also charged at the trial applies to the judge for a direction in pursuance of this subsection and satisfies the judge—
- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial, 35
- (b) that the conduct of the applicant’s defence at the trial is likely to be adversely affected if the direction is not given, and
- (c) that there was good reason for his or her not having made an application under

*subsection (3)* before the commencement of the trial,

the judge shall direct that *subsection (1)* shall not, by virtue of the charge alleging the offence under this Part, apply to such matter relating to the relevant person as is specified in the direction.

- (5) Without prejudice to *subsection (2)*, if at a trial for an offence under this Part the judge is satisfied that the effect of *subsection (1)* is to impose a substantial and unreasonable restriction on the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, the judge shall direct that *subsection (1)* shall not apply to such matter relating to the relevant person as is specified in the direction, but a direction shall not be given in pursuance of this subsection by reason only of an acquittal of an accused person at the trial. 5 10
- (6) If a person who has been convicted of an offence under this Part and given notice of appeal against the conviction applies to the appellate court for a direction in pursuance of this subsection and satisfies the court—
- (a) that the direction is required for the purpose of obtaining evidence in support of the appeal, and 15
- (b) that the applicant is likely to suffer injustice if the direction is not given,
- the court shall direct that *subsection (1)* shall not apply to such matter relating to a specified relevant person and offence under this Part as is specified in the direction.
- (7) If any matter is published or broadcast in contravention of *subsection (1)*, the following persons shall be guilty of an offence namely: 20
- (a) in the case of matter published in a newspaper or periodical publication, the proprietor, the editor and the publisher;
- (b) in the case of matter published in any other publication, the publisher; and
- (c) in the case of matter broadcast, any person who transmits or provides the programme in which the broadcast is made and any person who performs functions in relation to the programme corresponding to those of the editor of a newspaper. 25
- (8) Nothing in this section shall be construed as—
- (a) prohibiting the publication or broadcast of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or an appeal arising out of, a trial of a person for an offence under this Part, or 30
- (b) affecting any prohibition or restriction imposed by virtue of any other enactment upon the publication or broadcasting of any matter.
- (9) A person who commits an offence under this section is liable— 35
- (a) on summary conviction, to a Class B fine or to imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 3 years or both.
- (10) It shall be a defence for a person who is charged with an offence under this section to 40

prove that at the time of the alleged offence the person was not aware, and neither suspected nor had reason to suspect, that the matter alleged to have been published or broadcast was a matter specified in this section.

(11) In this section—

“broadcast” means the transmission, relaying or distribution by wireless telegraphy or by any other means or by wireless telegraphy in conjunction with any other means of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not; 5

“publication” includes a film, sound track or any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings; 10

“published” means published to any person, and includes published on the internet.

#### **Forfeiture of apparatus, etc., on conviction**

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16. Where a person is convicted of an offence under this Part, the court may, in addition to any other penalty imposed for the offence, order any apparatus, equipment or other thing used in the course of committing the offence to be forfeited to the State.

#### **Civil restraint orders**

17. (1) The Circuit Court may, upon an application to it in that behalf, make an order, having regard to the evidence presented and if the court is satisfied that it is in the interests of justice so to do, that a person (in this section referred to as the respondent) shall not, for such period as the court may specify— 20

(a) communicate by any means of communication with or about a named person, or

(b) approach within such distance as the court shall specify of the place of residence or employment of a named person. 25

(2) A person who fails to comply with the terms of an order under *subsection (1)* commits an offence and is liable—

(a) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 6 months or to both, or 30

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 2 years or to both.

An Bille um Chumarsáid Dhochrach agus  
Sábháilteacht Dhigiteach, 2017

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# BILLE

*(mar a tionscnaíodh)*

*dá ngairtear*

Acht do chomhdhlúthú agus d'athchóiriú an dlí choiriúil i dtaobh cumarsáid dhochrach, d'aisghairm forálacha áirithe den Acht um Oifig an Phoist (Leasú), 1951 agus den Acht um Chionta Neamh-Mharfacha in aghaidh an Duine, 1997, do chur chun cinn agus do spreagadh beart d'fhonn sábháilteacht dhigiteach a fheabhsú don uile dhuine, do thabhairt cumhachtaí áirithe do na cúirteanna i leith imeachtaí sibhialta beartaithe, agus do dhéanamh socrú i dtaobh nithe gaolmhara.

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*An Teachta Eoin Ó Broin a thug isteach,  
24 Eanáir, 2017*

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Harmful Communications and Digital Safety  
Bill 2017

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# BILL

*(as initiated)*

*entitled*

An Act to consolidate and reform the criminal law concerning harmful communications, to repeal certain provisions of the Post Office (Amendment) Act 1951 and the Non-Fatal Offences Against the Person Act 1997, to promote and encourage measures to improve digital safety for all persons, to confer certain powers on the courts in respect of intended civil proceedings, and to provide for related matters.

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*Introduced by Deputy Jonathan O'Brien,  
24th January, 2017*

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BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2.  
(Tel: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
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