



DÁIL ÉIREANN

AN BILLE UM CHIAPADH, CUMARSÁID DHOCHRACH AGUS CIONTA GAOLMHARA, 2017 HARASSMENT, HARMFUL COMMUNICATIONS AND RELATED OFFENCES BILL 2017

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM CHIAPADH, CUMARSÁID DHOCHRACH AGUS CIONTA GAOLMHARA, 2017 —ROGHCHOISTE

HARASSMENT, HARMFUL COMMUNICATIONS AND RELATED OFFENCES BILL 2017 —SELECT COMMITTEE

*Leasuithe
Amendments*

SECTION 1

1. In page 3, line 13, after “Communications” to insert “, Image-Based Crime”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly

2. In page 3, line 13, after “Communications” to insert “, Image-Based Sexual Abuse”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

Section proposed to be deleted.

—An tAire Dlí agus Cirt.

SECTION 2

3. In page 3, between lines 15 and 16, to insert the following:

“2. In this Act—

“broadcast” has the meaning assigned to it by the Broadcasting Act 2009;

“distribute” means distribute to the public or a section of the public;

“intimate image”, in relation to a person, means any visual representation (including any accompanying sound or document) made by any means including any photographic, film, video or digital representation—

- (a) of the person’s genitals, buttocks or anal region and, in the case of a female, her breasts,
- (b) of the underwear covering the person’s genitals, buttocks or anal region and, in the case of a female, her breasts,
- (c) in which the person is nude, or
- (d) in which the person is engaged in sexual activity;

“harm” includes psychological harm;

“publish” means publish, other than by way of broadcast, to the public or to a portion of the public.”.

[SECTION 2]

—An tAire Dlí agus Cirt.

[Acceptance of this amendment involves the deletion of section 2 of the Bill.]

4. In page 3, line 22, to delete “electronic means or in electronic form” and substitute “electronic or digital means or in electronic or digital form”.

—James Lawless, Jennifer Carroll MacNeill, Holly Cairns, Gary Gannon, Thomas Pringle,
Joan Collins, Catherine Connolly.

5. In page 3, between lines 24 and 25, to insert the following:

“ “persistence” means the persistent interference with a person’s life where the digital online environment may cause harm from one event;”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

6. In page 3, to delete lines 25 to 27 and substitute the following:

“(2) This Act shall not be construed as altering any rule of law or amending any enactment so as to prohibit or unduly restrict any constitutional rights.”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

SECTION 3

7. In page 4, to delete lines 13 to 19 and substitute the following:

“(3) 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,
- (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.

- (4) For the purposes of this section a person stalks the other person where—

- (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, distress or harm to the other person.

- (5) 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.”.

—James Lawless.

[SECTION 3]

8. In page 4, line 14, to delete “his or her” and substitute “their”.

—Bríd Smith, Richard Boyd Barrett, Gino Kenny.

9. In page 4, line 15, to delete “seriously” and substitute “or persistently”.

—Jennifer Carroll MacNeill.

10. In page 4, to delete lines 20 to 32.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

11. In page 4, line 21, after “committed” to insert “are known to each other or”.

—Bríd Smith, Richard Boyd Barrett, Gino Kenny.

12. In page 4, between lines 30 and 31, to insert the following:

“or

- (c) a position of trust existed between the defendant and the person against whom the offence was committed by reason of occupation or circumstances,”.

—James Lawless.

Section proposed to be deleted.

—An tAire Dlí agus Cirt.

SECTION 4

13. In page 4, between lines 32 and 33, to insert the following:

“Stalking

4. (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,
(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—

- (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, 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

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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.”.

—Jennifer Carroll MacNeill, Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins,
Catherine Connolly.

14. In page 4, between lines 32 and 33, to insert the following:

“Relationship between defendant and the person against whom the offence was committed as aggravating factor in sentencing for certain offences

4. Where, in proceedings for an offence under this Act, the court is satisfied that—

- (a) the defendant and the person against whom the offence was committed are known to each other, and
- (b) in the course of or for the purposes of committing any offence under this Act, the defendant—
- (i) made use of personal information, correspondence or records about the other person, being information or records that would, in the ordinary course of events, be known only to the other person or members of the family, or friends, of the other person, or
- (ii) made use of any electronic device or software in order to monitor, observe, listen to or make or view a recording of the other person or his or her movements, activities and communications, without the other person’s knowledge and consent,

the court shall take that fact into account as an aggravating factor in determining any sentence to be imposed on the defendant for the offence.”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

15. In page 4, between lines 33 and 34, to insert the following:

“Distributing, publishing or threatening to distribute or publish intimate image without consent with intent to cause harm or being reckless as to whether harm is caused

4. (1) A person who distributes, publishes or threatens to distribute or publish an intimate image of another person—
- (a) without that other person’s consent, and
- (b) with intent to cause harm to, or being reckless as to whether or not harm is caused to, the other person,
- is guilty of an offence.
- (2) For the purposes of *subsection (1)*, a person causes harm to another person where—
- (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 or distress to the other

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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 or distress to the other person.

(3) A person who is guilty of an offence under this section is liable—

- (a) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 7 years, or both.”.

—An tAire Dlí agus Cirt.

[Acceptance of this amendment involves the deletion of section 4 of the Bill.]

16. In page 4, line 37, after “the” where it firstly occurs to insert “good name, reputation,”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

17. In page 4, line 37 to delete “peace and privacy” and substitute “good name, reputation, peace and/or privacy”.

—Bríd Smith, Richard Boyd Barrett, Gino Kenny.

18. In page 5, line 14, to delete “means” where it firstly occurs and substitute “for the purpose of this Act, is defined as”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly,
Bríd Smith, Richard Boyd Barrett, Gino Kenny.

19. In page 5, between lines 21 and 22, to insert the following:

“(iv) any facsimile purporting to be the genital organs, anal region or her breasts or the person engaged in sexual activity.”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

20. In page 5, to delete lines 22 to 24 and substitute the following:

“(b) anyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty of an indictable offence;”.

—Martin Kenny.

21. In page 5, to delete lines 22 to 26.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

22. In page 5, line 24, to delete “privacy;” and substitute the following:

“privacy, or

- (c) any facsimile purporting to be the genital organs, anal region or breasts or the

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person engaged in any sexual activity,

- (d) any image of the person, or any other person, manipulated to be an image of the person’s genital organs, anal region or breasts or the person engaged in any sexual activity;”.

—Jennifer Carroll MacNeill.

23. In page 5, between lines 24 and 25, to insert the following:

- “(i) any person who intentionally, knowingly, recklessly or through coercion, communicates, distributes, publishes, transmits, sells, makes available or advertises an intimate image of a person with the knowledge that the person depicted in the image did not consent to that conduct, or being reckless as to whether or not consent was present, is guilty of an indictable offence,
- (ii) any person who intentionally, knowingly, recklessly or through coercion requests, receives or procures any intimate image of a person from a third party without the consent of the person depicted in the image and with the knowledge that the intimate image is being distributed or published without consent of the person, is guilty of an indictable offence.”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

24. In page 5, after line 37, to insert the following:

- “(6) If a person intentionally shares a sexual image without the consent of the recipient for the purpose of sexual gratification, or humiliating, distressing or alarming the victim, they have committed a sexual offence for the purposes of the Sex Offenders Act 2001.”.

—Martin Kenny.

25. In page 5, after line 37, to insert the following:

- “(6) If a person intentionally shares sexual images without the consent of the person depicted in the image or through coercion, for the purpose of sexual gratification or humiliating, degrading, distressing or alarming the person against whom the offence was committed, they have committed a sexual offence for the purposes of the Sex Offenders Act 2001.
- (7) Any person who without lawful excuse retains any intimate image, when asked to delete it or remove it by the person depicted in the image, or upon the knowledge that consent is not present, shall be liable to prosecution under this Act.”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

SECTION 5

26. In page 5, after line 37, to insert the following:

“Recording, distributing or publishing intimate image without consent

5. (1) Subject to *subsection (2)*, a person is guilty of an offence where—

- (a) he or she records, distributes or publishes an intimate image of another person

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without that other person's consent, and

- (b) that recording, distribution or publication, as the case may be, seriously interferes with that other person's peace and privacy or causes alarm, distress or harm to that other person.
- (2) *Subsection (1)* shall not apply to a person who distributes or publishes an intimate image for the purpose of the prevention, investigation or prosecution of an offence under this section.
- (3) A person who is guilty of an offence under this section is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both.”.

—An tAire Dlí agus Cirt.

27. In page 6, between lines 1 and 2, to insert the following:

“Distributing, publishing or sending threatening or grossly offensive communication

- 6. (1) A person who—
 - (a) by any means—
 - (i) distributes or publishes any threatening or grossly offensive communication about another person, or
 - (ii) sends any threatening or grossly offensive communication to another person, and
 - (b) with intent by so distributing, publishing or sending to cause harm, is guilty of an offence.
- (2) For the purposes of *subsection (1)*, a person intends to cause harm where he or she, by his or her acts, intentionally seriously interferes with the other person's peace and privacy or causes alarm or distress to the other person.
- (3) A person who is guilty of an offence under this section is liable—
 - (a) on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
 - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or both.”.

—An tAire Dlí agus Cirt.

[Acceptance of this amendment involves the deletion of section 5 of the Bill.]

28. In page 6, line 5, after “false,” to insert “intimate,”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

29. In page 6, between lines 10 and 11, to insert the following:

“(2) Where, in proceedings for an offence under this section, the court is satisfied that the

[SECTION 5]

defendant intentionally or recklessly incited others to persistently harass or distribute or publish a threatening, false or obscene message about the other person, the court may take that into account as an aggravating factor in determining any sentence to be imposed on the defendant for the offence.”.

—Jennifer Carroll MacNeill.

30. In page 6, between lines 10 and 11, to insert the following:

“(2) Where, in proceedings for an offence under this section, the court is satisfied that the defendant intentionally, or recklessly, incited other to cause alarm, distress or harm to another person or incited others to persistently distribute or publish a threatening, false, indecent or obscene message to or about the other person the court may take that fact into account as an aggravating factor in determining any sentence to be imposed on the defendant for the offence.”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

SECTION 6

31. In page 6, between lines 10 and 11, to insert the following:

“Anonymity of victim of offence under *section 4 or *5***”**

6. (1) Where a person is charged with an offence under *section 4** or *5***, any person who publishes or broadcasts—
- (a) any information,
 - (b) a photograph of, or a photograph that includes a depiction of, the alleged victim of the offence, or
 - (c) any other representation of the physical likeness, or any representation that includes a depiction of the physical likeness, of the alleged victim of the offence,
- that is likely to enable the identification of the alleged victim of the offence, is, subject to any direction under *subsection (2)*, guilty of an offence.
- (2) Where a judge of the court in which proceedings for an offence under *section 4** or *5***, as the case may be, are brought considers that the interests of justice so require, he or she may direct that such information, photograph or representation referred to in *subsection (1)* as he or she specifies may be published or broadcast in such manner and subject to such conditions (if any) as he or she specifies in the direction.
- (3) A direction given under *subsection (2)* shall be in writing.
- (4) A person who contravenes a direction given under *subsection (2)*, including a condition in such a direction, is guilty of an offence.
- (5) A person who is guilty of an offence under *subsection (1)* or (4) is liable—
- (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.

[SECTION 6]

- (6) It shall be a defence for a person who is charged with an offence under *subsection (1)* or *(4)* to prove that at the time of the alleged offence the person was not aware, and neither suspected nor had reason to suspect—
- (a) in the case of an offence under *subsection (1)*, that the information, photograph or other representation published or broadcast was information, a photograph or other representation referred to in that subsection, or
 - (b) in the case of an offence under *subsection (4)*, that the information, photograph or other representation was published or broadcast in contravention of a direction given under *subsection (2)*, including a condition in such a direction.”.

—An tAire Dlí agus Cirt.

*[*This is a reference to the section proposed to be inserted by amendment No. 15.]*

*[**This is a reference to the section proposed to be inserted by amendment No. 26.]*

Amendment to Amendment No. 31

1. In each place where “*section 4 or 5*” appears, to substitute “*section 4 or 5 or section 10 of the Non-Fatal Offences against the Person Act 1997*”.

—Brendan Howlin.

32. In page 6, between lines 10 and 11, to insert the following:

“Relationship status an aggravating factor

6. Where, in proceedings for an offence under this Act, the court is satisfied that—
- (a) the defendant and the person against whom the offence was committed are or were in an intimate relationship, and
 - (b) in the course of, or for the purposes of, committing any offence under this Act the defendant—
 - (i) made use of personal information, correspondence or records about the other person, being information or records that would, in the ordinary course of events, be known only to the other person or members of the family, or friends, of the other person, or
 - (ii) made use of any electronic device or software in order to monitor, observe, listen to or make or view a recording of the other person or his or her movements, activities and communications, without the other person’s knowledge and consent, the court shall take that fact into account as an aggravating factor in determining any sentence to be imposed on the defendant for the offence.”.

—Jennifer Carroll MacNeill.

33. In page 6, line 13, to delete “*connivance of*” and substitute “*connivance of, or to be attributable to any wilful neglect of,*”.

—An tAire Dlí agus Cirt.

[SECTION 6]

34. In page 6, line 15, to delete “body,” and substitute “body corporate”.

—An tAire Dlí agus Cirt.

SECTION 7

Section proposed to be deleted.

—An tAire Dlí agus Cirt.

SECTION 8

Section proposed to be deleted.

—An tAire Dlí agus Cirt.

SECTION 9

35. In page 6, between lines 33 and 34, to insert the following:

“Summary proceedings: no time limit

9. Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted at any time from the date on which the person against whom the offence was committed became aware of, or should reasonably have become aware of the offence.”

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

[Acceptance of this amendment involves the deletion of section 9 of the Bill.]

36. In page 6, line 37, to delete “the offence was committed” and substitute “the person the subject of the image or harassment became aware of the offence having been committed”.

—Jennifer Carroll MacNeill.

37. In page 6, line 37, to delete “the offence was committed” and substitute the following:

“the person against whom the offence was committed became aware of or should reasonably have become aware of the offence”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

38. In page 6, line 37, after “committed” to insert “or when the person against whom the offence was committed became aware of the offence”.

—James Lawless.

SECTION 11

39. In page 7, between lines 9 and 10, to insert the following:

“(2) The person against whom the offence was committed may at any time, apply to a judge of the Circuit Court, to waive their right to anonymity. The Court may accept this provided the person is of sound mind and not a protected or relevant person or a ward of court.”

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

[SECTION 11]

40. In page 7, to delete lines 10 to 18.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

41. In page 8, to delete line 21 and substitute the following:

“newspaper, and

- (d) in the case of third-party sharing in a digital age, the third-party that executes the distribution.”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

Section proposed to be deleted.

—An tAire Dlí agus Cirt.

SECTION 12

Section proposed to be deleted.

—An tAire Dlí agus Cirt.

SECTION 13

42. In page 9, line 13, to delete “The Circuit Court” and substitute “A Court”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

43. In page 9, between lines 19 and 20, to insert the following:

“(2) A court may, upon application to it in that behalf, make an order that the respondent body corporate shall remove or delete any image as the court may specify.”.

—Jennifer Carroll MacNeill.

44. In page 9, between lines 19 and 20, to insert the following:

“(2) (a) If the Court accepts that in the interests of the safety and welfare of the person against whom the offence was committed that, that person’s constitutional right to privacy and peaceful enjoyment of their dwelling requires that the address of the person against whom the offence was committed be withheld from the court order against the accused, the court may so order that the address of the person against whom the offence was committed shall be that of the District Court Clerk.

(b) An emergency civil restraint order may be made *ex parte* where having regard to the circumstances of the particular case, the court considers it necessary or expedient to do so in the interests of justice.

(c) Where an application for an emergency civil restraint order is made *ex parte*, the application shall be grounded on an affidavit or information sworn by the applicant.

(d) If an emergency civil restraint order is made *ex parte*, a note of evidence given by the applicant shall be prepared forthwith—

(i) by the judge,

(ii) by the applicant or the applicant’s solicitor and approved by the judge, or

[SECTION 13]

(iii) as otherwise directed by the judge.

- (e) A copy of the emergency civil restraint order, affidavit or information sworn under *paragraph (c)* and note of evidence shall be served on the respondent as soon as practicable.”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

SECTION 14

Section proposed to be deleted.

—An tAire Dlí agus Cirt.

SECTION 15

Section proposed to be deleted.

—An tAire Dlí agus Cirt.

NEW SECTION

45. In page 10, after line 9, to insert the following:

“Amendment of Schedule to Bail Act 1997

16. The Schedule to the Bail Act 1997 is amended by the insertion of the following paragraph after paragraph 41:

“Offence under the Harassment, Harmful Communications and Related Offences Act 2020

42. An offence under *section 4** of the *Harassment, Harmful Communications and Related Offences Act 2020*.”.

—An tAire Dlí agus Cirt.

*[*This is a reference to the section proposed to be inserted by amendment No. 15.]*

46. In page 10, after line 9, to insert the following:

“Amendment of section 10 of Non-Fatal Offences against the Person Act 1997

17. Section 10 of the Non-Fatal Offences against the Person Act 1997 is amended by—

- (a) in subsection (1), the substitution of “communicating with or about him or her” for “communicating with him or her”,
- (b) in subsection (3), the substitution of “communicate by any means with or about the other person” for “communicate by any means with the other person”, and
- (c) the substitution of the following subsection for subsection (6):

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

- (a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment to a fine or a term of imprisonment not

[NEW SECTION]

exceeding 10 years, or both.”.”.

—An tAire Dlí agus Cirt.

47. In page 10, after line 9, to insert the following:

“Amendment of section 40 of Domestic Violence Act 2018

18. Section 40(5) of the Domestic Violence Act 2018 is amended by—

(a) the insertion, in the definition of “relevant offence”, of the following paragraph after paragraph (a):

“(aa) an offence under *section 4** or *5*** of the *Harassment, Harmful Communications and Related Offences Act 2020*,”,

and

(b) in paragraph (g), the substitution of “in paragraph (a), (aa), (b), (c), (d), (e) or (f)” for “paragraphs (a) to (f)”.”.

—An tAire Dlí agus Cirt.

[*This is a reference to the section proposed to be inserted by amendment No. 15.]

[**This is a reference to the section proposed to be inserted by amendment No. 26.]

48. In page 10, after line 9, to insert the following:

“Short title and commencement

19. (1) This Act may be cited as the Harassment, Harmful Communications and Related Offences Act 2020.

(2) This Act shall come into operation on such day or days as the Minister for Justice may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.”.

—An tAire Dlí agus Cirt.

Amendment to Amendment No. 48

1. In the second line of subsection (1), after “2020”, to insert “and may also be referred to as Coco’s Law”.

—Brendan Howlin.

49. In page 10, after line 9, to insert the following:

“Review of operation of Act

16. The Minister shall, not later than three years after the commencement of this Act, carry out a review of the operation of this Act.”.

—Holly Cairns, Gary Gannon, Thomas Pringle, Joan Collins, Catherine Connolly.

[TITLE]

TITLE

50. In page 3, to delete lines 7 to 10 and substitute the following:

“An Act to amend the law relating to harassment; to provide for offences relating to the recording, distribution or publication of intimate images and to provide for the anonymity of victims of those offences; to provide for an offence involving the distribution, publication or sending of threatening or grossly offensive communication; and for those and other purposes to amend the Non-Fatal Offences against the Person Act 1997, the Bail Act 1997 and the Domestic Violence Act 2018; and to provide for related matters.”

—An tAire Dlí agus Cirt.