



DÁIL ÉIREANN

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

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

DÁIL ÉIREANN

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

HARASSMENT, HARMFUL COMMUNICATIONS AND RELATED OFFENCES BILL 2017 —REPORT

Leasuithe Amendments

1. In page 3, between lines 18 and 19, to insert the following:

“ “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)—

- (a) (i) of his or her genital organs or anal region or her breasts (whether covered by underwear or bare),
 - (ii) in which the person is nude, is exposing his or her genital organs or anal region or her breasts,
 - (iii) in which the person is engaged in sexual activity, or
 - (iv) any facsimile image or part of an image generated by computer graphics or otherwise, purporting to be the genital organs, buttocks or anal region of the person or in the case of a female, her breasts, or purporting to be the person engaged in sexual activity,
- (b) in respect of which, if it was recorded with consent, at the time of the recording and afterwards there were circumstances that gave rise to a reasonable expectation of privacy;”.

“ “consent” means the agreement by choice of a person who has the freedom and capacity to make that choice;”.

—Thomas Pringle, Joan Collins, Catherine Connolly.

2. In page 3, between lines 18 and 19, to insert the following:

“ “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)—

- (a) (i) of his or her genital organs or anal region or her breasts (whether covered by underwear or bare),
- (ii) in which the person is nude, is exposing his or her genital organs or anal

region or her breasts, or

- (iii) in which the person is engaged in sexual activity,
- (b) in respect of which, if it was recorded with consent, at the time of the recording and afterwards there were circumstances that gave rise to a reasonable expectation of privacy,
- (c) any facsimile image, whether generated by computer graphics or in any other way, purporting to be the genital organs, anal region or breasts of the person or to be an image of the person engaged in any sexual activity, or
- (d) any photographic or video-recorded image of the person, or any other person, manipulated so as to appear to be an image of the person's genital organs, anal region or, in the case of a female, her breasts or of the person engaged in any sexual activity;”.

—Thomas Pringle, Joan Collins, Catherine Connolly.

3. In page 3, to delete lines 19 to 27.

—Thomas Pringle, Joan Collins, Catherine Connolly.

4. In page 3, line 21, after “representation” to insert “without informed consent given by the subject of the intimate image”.

—Jennifer Murnane O’Connor.

5. In page 3, line 22, after “of” where it firstly occurs to insert “what is, or purports to be”.

—Jim O’Callaghan.

6. In page 3, between lines 27 and 28, to insert the following:

- “(e) purporting to be of the person’s genitals, buttocks or anal region, and in the case of a female, her breasts,
- (f) purporting to be of the underwear covering the person’s genitals, buttocks or anal region and, in the case of a female, her breasts,
- (g) in which the person is depicted as being nude, or
- (h) in which the person is depicted as being engaged in sexual activity.”.

“ “visual representation” as referred to in *paragraphs (e), (f), (g) or (h)* of the definition of “intimate image” includes visual representations generated by computer graphics or in any other way.”.

—Brid Smith, Richard Boyd Barrett, Mick Barry, Gino Kenny, Paul Murphy,
Thomas Pringle, Joan Collins, Catherine Connolly, Gary Gannon.

7. In page 3, after line 30, to insert the following:

- “2. (1) “consent” can be defined as an instrument of mutual communication between the subject of the intimate image and the person taking charge of the intimate image whether in writing or orally given before or after the capture of the intimate image.

- (2) A person consents to the capture of the intimate image if he or she freely and voluntarily agrees to engage in that act.
- (3) A person does not consent to the capture of the intimate image if—
 - (a) he or she permits the act to take place or submits to it because of the application of force, threat of the application of force, or because of a well-founded fear that force may be applied to them,
 - (b) they are asleep or unconscious,
 - (c) they are incapable of consenting because of the effect of alcohol or drugs,
 - (d) they, by reason of disability are prevented to communicate consent,
 - (e) they are mistaken as to the nature and purpose of the capture of the intimate image whether by reason of age or mental incapacity,
 - (f) the only expression or indication of consent or agreement to the capture of the intimate image comes from somebody other than the subject of the image.
- (4) Consent to the capture of an intimate image may be withdrawn at any time before the image is captured or after the image is captured by mutual communication whether in writing or orally given.
- (5) Any failure or omission on the part of a person to offer resistance to the capture of an intimate image does not of itself constitute consent.”.

—Jennifer Murnane O’Connor.

8. In page 4, to delete lines 3 and 4 and substitute the following:

- “2.** (1) Any person who distributes, publishes, transmits, sells, makes available, advertises or threatens to distribute, publish, transmit, sell, make available or advertise an intimate image of another person—”.

—Thomas Pringle, Joan Collins, Catherine Connolly.

9. In page 4, line 3, after “who” to insert the following:

“communicates any content by digital, spoken word, audible file or visual method or means which seriously interferes with the peace or privacy of another individual or causes an individual alarm, distress or psychological trauma,”.

—Jennifer Murnane O’Connor.

10. In page 4, line 3, after “distributes,” to insert “holds,”.

—Brid Smith, Richard Boyd Barrett, Mick Barry, Gino Kenny, Paul Murphy.

11. In page 4, between lines 7 and 8, to insert the following:

“(c) 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,”.

—Thomas Pringle, Joan Collins, Catherine Connolly.

12. In page 4, between lines 20 and 21, to insert the following:

“(c) on conviction shall be considered to have committed a sexual offence under the Sex Offenders Act 2001.”.

—Thomas Pringle, Joan Collins, Catherine Connolly.

13. In page 4, line 23, after “records,” to insert “holds,”.

—Brid Smith, Richard Boyd Barrett, Mick Barry, Gino Kenny, Paul Murphy.

14. In page 4, line 25, after “recording,” to insert “holding,”.

—Brid Smith, Richard Boyd Barrett, Mick Barry, Gino Kenny, Paul Murphy.

15. In page 4, to delete lines 35 to 38, and in page 5, to delete lines 1 to 7 and substitute the following:

- “4. (1) A person is guilty of an offence where he or she, by any means—
- (a) distributes or publishes any threatening or grossly offensive communication about another person, or
 - (b) sends any threatening or grossly offensive communication to another person, with intent to cause serious interference with the other person’s peace and privacy or to cause alarm or distress to the other person.
- (2) For the purposes of *subsection (1)*, a person is presumed to have intended the natural and probable consequences of his or her acts, but this presumption may be rebutted.”.

—Brendan Howlin.

16. In page 5, between lines 12 and 13, to insert the following:

“Harassment

5. (1) A person who, without lawful authority or reasonable excuse—
- (a) intentionally or recklessly—
 - (i) persistently follows, watches, pesters or besets another person,
 - (ii) persistently communicates with another person, or
 - (iii) persistently communicates with a third person about another person,and
 - (b) by those acts seriously interferes with the peace and privacy of the other person

or causes alarm, distress or harm to the other person,
is guilty of the offence of harassment.

- (2) A person guilty of harassment 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.
- (3) Where, in proceedings for an offence under this section, the court is satisfied that the defendant by his or her acts both—
- (a) intentionally or recklessly seriously interfered with another person’s peace and privacy, and
 - (b) caused alarm, distress or harm to 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.
- (4) Where, in proceedings for an offence under this section, the court is satisfied that in the course of or for the purposes of committing the offence the defendant—
- (a) made use of personal information about the other person, being information 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
 - (b) made use of any electronic device or software in order to monitor, observe, listen to or make a recording of the other person or his or her movements, activities and communications, without the other person’s knowledge and consent,
- 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.”.

—Thomas Pringle, Joan Collins, Catherine Connolly.

17. In page 5, line 14, after “*section 2 or 3*” to insert “or section 10 of the Non-Fatal Offences against the Person Act 1997”.

—Brendan Howlin.

18. In page 5, between lines 22 and 23, 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 and provided also that the Court is of the opinion that it is in the interests of justice for the person to waive their right to anonymity.”.

—Thomas Pringle, Joan Collins, Catherine Connolly.

19. In page 5, line 23, after “*section 2 or 3*” to insert “or section 10 of the Non-Fatal Offences against the Person Act 1997”.

—Brendan Howlin.

20. In page 5, lines 24 and 25, to delete “he or she may direct” and substitute “he or she may, having taken into account the views of the alleged victim of the offence, direct”.

—An tAire Dlí agus Cirt.

21. In page 6, to delete lines 19 to 22 and substitute the following:

“Summary proceedings: no time limit

7. 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 the offence.”.

—Thomas Pringle, Joan Collins, Catherine Connolly.

22. In page 6, to delete lines 19 to 22 and substitute the following:

“Summary proceedings: no time limit

7. 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 within two years 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.”.

—Gary Gannon.

23. In page 6, line 22, to delete “offence was committed” and substitute the following:

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

—Gary Gannon.

24. In page 6, lines 24 and 25, to delete all words from and including “Proceedings” in line 24 down to and including line 25 and substitute the following:

“Notwithstanding section 52(4) of the Children Act 2001, where a child under 17 years of age is charged with an offence under this Act, no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.”.

—An tAire Dlí agus Cirt.

25. In page 6, to delete lines 26 to 38, and in page 7, to delete line 1.

—An tAire Dlí agus Cirt.

26. In page 6, line 27, to delete “The Circuit Court” and substitute “A Court”.

—Thomas Pringle, Joan Collins, Catherine Connolly.

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

- “(2) 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.
- (3) 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.
- (4) 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.
- (5) If an emergency civil restraint order is made *ex parte*—
- (a) 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
 - (iii) as otherwise directed by the judge,
 - and
 - (b) a copy of the emergency civil restraint order, affidavit or information sworn under *subsection (4)* and note of evidence shall be served on the respondent as soon as practicable.”.

—Thomas Pringle, Joan Collins, Catherine Connolly.

28. In page 7, line 34, after “Communications” to insert “, Image-Based Crime”.

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

29. In page 7, line 34, after “Communications” to insert “, Image-Based Sexual Abuse”.

—Gary Gannon.

30. In page 8, line 1, after “2020” to insert “and may also be referred to as Coco’s Law”.

—Brendan Howlin.