



An Bille um Chiapadh, Cumarsáid Dhochrach agus Cionta Gaolmhara, 2017
Harassment, Harmful Communications and Related Offences Bill 2017

Mar a tionscnaíodh

As initiated



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

Section

1. Short title
 2. Interpretation
 3. Harassment
 4. Distributing, etc., intimate image without consent
 5. Threatening, etc., messages
 6. Liability of directors and officers of corporate bodies
 7. Jurisdiction
 8. Double jeopardy
 9. Summary proceedings: time limit of 2 years
 10. Consent of Director of Public Prosecutions
 11. Protection of privacy
 12. Forfeiture of apparatus, etc., on conviction
 13. Civil restraint orders
 14. Powers of courts in intended civil proceedings
 15. Repeals
-

ACTS REFERRED TO

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

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

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

Sex Offenders Act 2001 (No. 18)



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

Bill

5

entitled

An Act to consolidate and reform the criminal law concerning harassment and harmful communications, to repeal certain provisions of the Post Office (Amendment) Act 1951 and the Non-Fatal Offences against the Person Act 1997, and to provide for related matters.

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Be it enacted by the Oireachtas as follows:

Short title

1. This Act may be cited as the Harassment, Harmful Communications and Related Offences Act 2017.

Interpretation

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2. (1) In this Act—

“communication” means the communication of information by any means and, without prejudice to the generality of the foregoing, includes—

- (a) communication by spoken words, other audible means, behaviour, writing, sign or visible representation, and

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- (b) the communication of information that is generated, processed, transmitted, received, recorded, stored or displayed by electronic means or in electronic form;

“distribute” and “publish” mean distribute or publish by any means of communication.

- (2) This Act shall not be construed as altering any rule of law or amending any enactment so as to prohibit or unduly restrict the exercise of the rights of peaceable assembly or peaceful picketing or any other constitutional right.

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Harassment

3. (1) A person who, without lawful authority or reasonable excuse—

- (a) intentionally or recklessly—

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- (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 5
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 10
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 15
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— 20

- (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 the offence the defendant—
- (i) made use of personal information about the other person, being information 25
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 a recording of the other person or his or her movements,
activities and communications, without the other person’s knowledge and 30
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.

Distributing, etc., intimate image without consent

4. (1) A person who without lawful authority or reasonable excuse—

- (a) records, distributes or publishes, or threatens to record, distribute or publish, an 35
intimate image of another person without the other person’s consent, 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 an offence and is liable—

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

(ii) where the offence was committed intentionally or recklessly and a reasonable person would have realised that those acts would seriously interfere with the other person's peace and privacy or cause alarm, distress or harm to the other person— 5

(I) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 12 months or to both, or 10

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

(2) In *subsection (1)*:

“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)— 15

(a) (i) of his or her genital organs or anal region or her breasts (whether covered by underwear or bare), or

(ii) in which the person is nude, is exposing his or her genital organs or anal region or her breasts, or 20

(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;

“consent” means the agreement by choice of a person who has the freedom and capacity to make that choice. 25

(3) Where, in proceedings for an offence under this section, the court is satisfied that the offence was committed against a child or against another person who, by reason of—

(a) suffering from a disorder of the mind or having an intellectual disability, or

(b) suffering from a physical impairment or having a physical disability, 30

was restricted in his or her capacity to guard himself or herself against harm by another 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) Subject to *subsection (5)*, an offence under this section is a sexual offence for the purposes of the Sex Offenders Act 2001. 35

(5) *Subsection (3)* does not apply if the person guilty of the offence was not, in respect of the offence, sentenced to imprisonment.

Threatening, etc., messages

5. A person who by any means of communication—
- (a) with intent to cause alarm, distress or harm to another person, or being reckless as to whether he or she causes alarm, distress or harm to another person, or
 - (b) persistently distributes or publishes a threatening, false, indecent or obscene message to or about the other person is guilty of an offence and is liable—
 - (i) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 12 months or to both, or
 - (ii) 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 corporate bodies

6. (1) Where an offence under this Act is committed by a body corporate and the offence is proved to have been committed with the consent or connivance of a person who, when the offence was committed, was a director, manager, secretary or other officer of the body, or of a person purporting to act in such a capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if guilty of the first-mentioned offence. 15
- (2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies 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 or manager of the body corporate. 20

Jurisdiction

7. (1) Proceedings may be brought for an offence under this Act if, at the time the acts alleged to constitute the offence were done, either the defendant or the person against whom the offence is alleged to have been committed was in the State, or if at that time both were in the State. 25
- (2) Proceedings for an offence alleged to have been committed outside the State may be brought in any place in the State and the offence may, for all incidental purposes, be treated as having been committed in that place.

Double jeopardy 30

8. A person who is acquitted or convicted of an offence in a place outside the State shall not be proceeded against for an offence under this Act consisting of the act that constituted the offence of which the person was so acquitted or convicted.

Summary proceedings: time limit of 2 years

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 within 2 years from the date on which the offence was committed. 35

Consent of Director of Public Prosecutions

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

Protection of privacy

11. (1) After a person is charged with an offence under this Act, no matter likely to lead members of the public to identify any person as a person against whom the offence is alleged to have been committed (“the relevant person”) shall be published in a publication available to the public or broadcast, except as authorised by a direction given under this section. 5
- (2) If, at any stage before the commencement of a trial of a person for an offence under this Act, 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— 10
- (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, 15
- the judge shall direct that *subsection (1)* shall not apply to such matter relating to the relevant person as is specified in the direction.
- (3) If, at any stage before the commencement of a trial for an offence under this Act, the defendant applies to a judge of the Circuit Court for a direction under this subsection and satisfies the judge— 20
- (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
- (b) that the conduct of the defendant’s defence at the trial is likely to be adversely affected if the direction is not given, 25
- the judge shall direct that *subsection (1)* shall not apply to such matter relating to the relevant person as is specified in the direction.
- (4) If at a trial for an offence under this Act, the defendant applies to the judge for a direction under 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, 30
- (b) that the conduct of the defendant’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, 35
- the judge shall direct that *subsection (1)* shall not 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 Act 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 40

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 under this subsection by reason only of an acquittal of an accused person at the trial.

- (6) If a person who has been convicted of an offence under this Act 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— 5
- (a) that the direction is required for the purpose of obtaining evidence in support of the appeal, and
 - (b) that the applicant is likely to suffer injustice if the direction is not given, 10
- the court shall direct that *subsection (1)* shall not apply to such matter relating to a specified relevant person and offence under this Act 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:
- (a) in the case of matter published in a newspaper or periodical publication, the proprietor, the editor and the publisher; 15
 - (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. 20
- (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 Act, or 25
 - (b) affecting any prohibition or restriction imposed by virtue of any other enactment upon the publication or broadcasting of any matter.
- (9) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a class B fine or to imprisonment for a term not exceeding 12 months or both, or 30
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 3 years or both.
- (10) It is a defence for a person charged with an offence under this section to 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. 35
- (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 40

by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

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

“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. 5

Forfeiture of apparatus, etc., on conviction

12. Where a person is convicted of an offence under this Act, 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. 10

Civil restraint orders

13. (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— 15
- (a) communicate by any means of communication with or about a named person, or
 - (b) that the respondent shall not approach within such distance as the court shall specify of the place of residence or employment of a named person.
- (2) A person who fails to comply with the terms of an order under *subsection (1)* is guilty of an offence and is liable— 20
- (a) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 6 months or to both, or
 - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 2 years or to both. 25

Powers of courts in intended civil proceedings

14. (1) Where a person (“the intended applicant”) intends to bring civil proceedings before the Circuit Court or the High Court concerning communications that are unlawful under this Act or otherwise by virtue of being abusive, threatening, offensive, false, defamatory or an invasion of another person’s privacy, the court concerned may hear and decide an application by the intended applicant for an order under *subsection (2)*. 30
- (2) Where the intended applicant establishes a *prima facie* case of wrongful activity engaged in by the intended respondent through a digital service operated by a digital service undertaking, the court may make an order (previously referred to as a Norwich Pharmacal order), subject to such terms as it considers appropriate, directing the digital service undertaking to disclose either the name of the intended respondent or the address (which may be a digital address) of the intended respondent, or both the name and address of the intended respondent. 35
- (3) Before making an order under *subsection (2)*, the court may order, subject to such

terms as it considers appropriate, that the digital service undertaking serve notice on the intended respondent, in order to allow the intended respondent to appear and to make representations to the court.

- (4) Rules of court may provide for the circumstances in which an order under *subsection (2)* directed at a digital service undertaking will bind any other digital service undertaking on which notice of the making of the order is served. 5

Repeals

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

An Bille um Chiapadh, Cumarsáid
Dhochrach agus Cionta Gaolmhara, 2017

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do chomhdhlúthú agus d'athchóiriú an dlí
choiriúil i dtaobh ciapadh agus 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, agus do dhéanamh socrú i
dtaobh nithe gaolmhara.

An Teachta Breandán Ó Húilín a thug isteach,
16 Bealtaine, 2017

Harassment, Harmful Communications and
Related Offences Bill 2017

BILL

(as initiated)

entitled

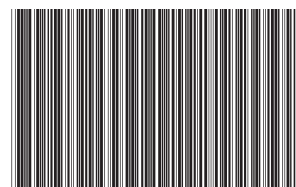
An Act to consolidate and reform the criminal law
concerning harassment and harmful
communications, to repeal certain provisions of
the Post Office (Amendment) Act 1951 and the
Non-Fatal Offences Against the Person Act
1997, and to provide for related matters.

Introduced by Deputy Brendan Howlin,
16th May, 2017

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