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

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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**AN BILLE UM CHIAPADH, CUMARSÁID DHOCHRACH AGUS  
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**EXPLANATORY MEMORANDUM**

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**BACKGROUND**

The Harassment, Harmful Communications and Related Offences Bill 2017 is a Private Member's Bill sponsored by Brendan Howlin T.D., which was influenced by proposals from the Law Reform Commission in their 2016 Report on Harmful Communications and Digital Safety. Following the publication of the Bill, the Minister for Justice agreed to work with Deputy Howlin, as the sponsor of the Bill, to amend the provisions therein. This revised Explanatory Memorandum details the provisions of the Bill as amended at Committee Stage in Dáil Éireann.

The primary purpose of the Bill, as amended, is to amend the law and to create new offences in relation to harassment and harmful communications, both online and offline. The Bill, as amended, provides for two new offences to deal with the recording, distribution or publication of intimate images without consent and provides for the anonymity of victims of those offences. The Bill also provides for an offence involving the distribution, publication or sending of threatening or grossly offensive communications or messages with intent to cause harm without a requirement for persistence.

The offence of harassment in section 10 of the Non-Fatal Offences against the Person Act 1997 has been amended to deal with persistent communications about a person. The maximum penalty for that offence is increased from 7 years' imprisonment to 10 years' imprisonment to reflect the most serious forms of harassment. The Bill also provides for amendments to the Bail Act 1997 and the Domestic Violence Act 2018; and provides for related matters.

The content of this Bill is strongly influenced by persons who have lost their lives because of online abuse, in particular Nicole Fox. The Bill is in recognition of her mother's determination to honour the memory of her daughter and to strengthen the law so that others can be safer. As a result this Bill can be referred to as *Coco's Law*.

**PROVISIONS OF THE BILL**

***Section 1 - Definitions***

*Section 1* defines key terms in the Bill. It provides that, for the purposes of the Bill, "harm" includes psychological harm. Of particular note is the definition of "intimate image":

“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;

This definition is important in the context of the two new offences to deal with the taking, distribution or publication of intimate images without consent. The word “representation” is used to ensure that where an image is altered or doctored to represent another individual (including his or her body parts), that this will still fall within the ambit of the offences.

***Section 2 – 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***

*Section 2* provides for an offence of distributing, publishing or threatening to distribute or publish an intimate image without consent with intent to cause harm or being reckless as to whether harm is caused. This offence will criminalise the distribution or publication of an intimate image without the consent of the person who is the subject of the image.

The person who distributes or publishes the intimate image must have intended, or been reckless as to whether these acts would seriously interfere with the peace and privacy of the other person or cause the other person harm, alarm or distress. Threatening to distribute or publish such an intimate image is also an offence. The maximum penalties for this offence for conviction on indictment are up to 7 years’ imprisonment and/or an unlimited fine.

***Section 3 – Recording, distributing or publishing intimate image without consent***

*Section 3* provides for an offence of recording, distributing or publishing an intimate image without consent. This is a strict liability offence as the person who records, distributes or publishes an intimate image without consent does not need to have a requisite intention to cause harm. It will be sufficient that the taking, recording or distribution of the intimate image seriously interfered with the other person’s peace and privacy or caused them harm, alarm or distress. The maximum penalty for this offence on summary conviction is 12 months’ imprisonment and/or a €5,000 fine.

***Section 4 – Distributing, publishing or sending threatening or grossly offensive communication***

*Section 4* provides for an offence of distributing, publishing or sending a threatening or grossly offensive communication. This offence will apply to any form of message or communication, both online or offline. It will criminalise the once-off sending of a threatening or grossly offensive message where the person who is sending the message or communication intends to cause harm to the person who is the recipient of the message. This offence is intended to deal with the most harmful forms of messages and communications, both online and offline, where there is a clear intent to cause harm. The maximum penalties for this offence for conviction on indictment are 2 years’ imprisonment and/or an unlimited fine.

### ***Section 5 – Anonymity of victim of offence under section 2 or 3***

*Section 5* provides for the anonymity of victims of an offence under section 2 or 3 of the Bill, that is an offence of distributing, publishing or threatening to distribute or publish an intimate image without consent with intent to cause harm or being reckless as to whether harm is caused and recording, distributing or publishing an intimate image without consent.

Subsection (1) of section 5 creates an offence where any person distributes or publishes any information that may lead to the identification of the victim of the offences at section 2 and section 3.

Under subsection (2) of section 5, a judge may, if it is in the interests of justice to do so, direct that certain information may be published or broadcast in such manner and subject to such conditions (if any) as he or she specifies in the direction. It shall be an offence if any person publishes or broadcasts any information in contravention of a direction under subsection (2).

The maximum penalties for conviction on indictment for an offence under this section are up to 3 years' imprisonment and/or an unlimited fine. It shall be a defence for a person to prove that he or she was not aware that the material they published or broadcast was material that was subject to the provisions of this section or a direction under this section.

### ***Section 6 – Liability of directors and officers of corporate bodies***

*Section 6* provides for the liability of bodies corporate where an offence under the Bill is committed with the consent or connivance of, or to be attributable to any wilful neglect of a director, manager, secretary or other officer of the body corporate. That person, as well as the body corporate will be liable to conviction under the Bill.

### ***Section 7 – Summary proceedings: time limit of 2 years***

*Section 7* extends the ordinary time limit for bringing summary proceedings under section 10(4) of the Petty Sessions (Ireland) Act 1851 from 6 months to 2 years for a summary offence under this Bill. This is in recognition of the fact that, where online communications are involved, evidence gathering can be time-consuming and such an extension is justified in the circumstances.

### ***Section 8 – Consent of Director of Public Prosecutions***

*Section 8* is an important safeguard in the Bill. It provides that the Director of Public Prosecutions must consent to proceedings for an offence under this Bill being taken against a child under the age of 17 years.

### ***Section 9 – Civil restraint orders***

*Section 9* provides for civil restraint orders which provides that the Circuit Court may order, where it is in the interests of justice to do so, that a person shall not communicate with, or approach the place or residence or employment of the applicant. It is an offence to fail to comply with such an order. The maximum penalty for conviction on indictment for an offence under this section is 2 years' imprisonment and/or an unlimited fine.

### ***Section 10 – Amendment of Schedule to Bail Act 1997***

*Section 10* amends the Schedule to the Bail Act 1997 to include the offence of distributing, publishing or threatening to distribute or publish an intimate image without consent with intent to cause harm or being reckless as to whether harm is caused in section 2 of the Bill in that Schedule. This will mean that a member of An Garda Síochána may make an objection to bail under the 1997 Act in the case of a person who is remanded in custody for an offence under section 2 of this Bill.

***Section 11 – Amendment of section 10 of Non-Fatal Offences against the Person Act 1997***

*Section 10* amends section 10 of the Non-Fatal Offences Against the Person Act 1997 with the intention of strengthening the offence of harassment contained therein. The amendment will provide that harassment may be as a result of persistent communication with a person but also persistent communication about a person, sometime referred to as indirect harassment.

The maximum penalty for harassment has been increased from 7 years’ imprisonment to 10 years’ imprisonment to reflect the serious nature of harassment and the wide range of behaviours it represents.

***Section 12 – Amendment of section 40 of Domestic Violence Act 2018***

*Section 12* amends section 40 of the Domestic Violence Act 2018 to include the offences at sections 2 and 3 of the Bill as “relevant offences” for the purposes of that section. Section 40 provides that where a “relevant offence” is committed against a “relevant person”, it shall be an aggravating factor for the purposes of sentencing for the offence. A “relevant person”, under section 40, means a person who:

- (a) is the spouse or civil partner of that other person, or
- (b) is not the spouse or civil partner of that other person and is not related to that other person within a prohibited degree of relationship but is or was in an intimate relationship with that other person.

This means that it will be an aggravating factor for the purposes of sentencing a person for an offence of distributing, publishing or threatening to distribute or publish an intimate image without consent with intent to cause harm or being reckless as to whether harm is caused and recording, distributing or publishing an intimate image without consent if that person is the spouse or civil partner of the victim, or is or was in an intimate relationship with the victim.

***Section 13 – Review of operation of Act***

*Section 13* places an obligation on the Minister for Justice to carry out a review of the operation of the Act within three years of the commencement of the Act.

***Section 14 – Short title and commencement***

This is a standard provision to provide for the short title of the Act, namely the Harassment, Harmful Communications and Related Offences Act 2020. This section also provides that the Act may be commenced by the Minister for Justice.

*An Roinn Dlí and Cirt,  
Nollaig, 2020.*