



SEANAD ÉIREANN

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

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

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

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

Leasuithe Amendments

**Government amendments are denoted by an asterisk*

SECTION 1

1. In page 3, to delete lines 19 to 27, and substitute the following:

“ “intimate image” means a visual recording of a person made, with or without their consent, 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;”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

[SECTION 2]

SECTION 2

2. In page 4, to delete lines 3 and 4, and substitute the following:
 - “2. (1) A person who distributes, publishes, makes available or threatens to distribute, publish or make available an intimate image of another person—”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*
3. In page 4, line 3, after “who” to insert “records,”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

4. In page 4, line 3, after “distribute” to insert “, retains”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

5. In page 4, line 5, to delete “and” and substitute “or”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

6. In page 4, line 10, to delete “seriously”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

7. In page 4, line 12, to delete “and” and substitute “or”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

8. In page 4, line 14, to delete “seriously”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

SECTION 3

9. In page 4, line 23, after “records,” to insert “retains,”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*
10. In page 4, line 24, to delete “and” and substitute “or”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*
11. In page 4, to delete lines 25 to 27 and substitute the following:
 - “(b) that his or her acts are such that a reasonable person would realise that the acts would interfere with the other person’s peace and privacy or cause alarm or distress to the other person.”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*
12. In page 4, line 25, after “recording,” to insert “retention,”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

 13. In page 4, between lines 27 and 28, to insert the following:
 - “(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.”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

[SECTION 4]

SECTION 4

14. In page 4, line 37, after “threatening” to insert “, private”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

15. In page 5, line 1, after “threatening” to insert “, private”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

SECTION 5

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) follows, watches, pesters or besets another person,

(ii) communicates with another person, or

(iii) 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 seven 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 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

[SECTION 5]

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.”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

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

“Stalking

5. (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) following, watching, pestering or besetting the other person,
 - (b) communicating by any means of communication with the other person, or
 - (c) 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, 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 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 exceeding 12 months or to both, or
 - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding seven years or to both.”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

18. In page 5, between lines 22 and 23, to insert the following:

“(2) Notwithstanding *subsection (1)*, the alleged victim of the offence may make an application to the Circuit Court for the purpose of waiving their anonymity under this section.”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

SECTION 7

19. In page 6, line 22, to delete “within 2 years” and substitute “within seven years”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

[SECTION 7]

20. In page 6, lines 22 and 23, to delete all words from and including “within” in line 22 down to and including line 23 and substitute the following:

“from the date on which the person against whom the offence was committed became aware of the offence.”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

21. In page 6, lines 22 and 23, to delete all words from and including “2” in line 22 down to and including line 23 and substitute the following:

“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.”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

SECTION 9

22. In page 6, between lines 28 and 29, to insert the following:

“Civil restraint orders

9. (1) A 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—
- (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, the place of residence or employment of a named person.
- (2) If the court accepts that in the interests of the safety and welfare of the applicant and the applicant’s constitutional right to privacy and peaceful enjoyment of their dwelling requires that the address of the applicant be withheld from the court order against the accused, the court may so order that the address of the applicant 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

[SECTION 9]

- (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.
- (6) A person who fails to comply with the terms of an order under *subsection (1)* is guilty of an offence and is liable—
 - (a) on summary conviction to a class A fine or to imprisonment for a term not exceeding six months or to both, or
 - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both.”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

SECTION 10

- 23.** In page 7, line 2, after “her” to insert “and the deletion of “persistently””.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

- 24.** In page 7, between lines 2 and 3, to insert the following:

“(b) in subsection (2), the deletion of “seriously” where it firstly and secondly occurs,”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

- 25.** In page 7, line 4, to delete “and” and substitute the following:

“(c) the insertion of a new subsection (5):

“(5) 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.”.”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

SECTION 11

- 26.** In page 7, line 15, to delete “*section 2 or 3*” and substitute “*section 2, 3 or 4*”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*

[SECTION 12]

SECTION 12

27. In page 7, to delete lines 21 and 22 and substitute the following:

- “(1) The Minister shall, not later than three years after the commencement of this Act, carry out a review of the operation of this Act.
- (2) Without prejudice to the generality of the foregoing, the Minister, as part of the review, shall:
- (a) concurrently review all enactments relating to harassment and related offences,
 - (b) the extent to which such enactments comprehensively address the relevant issues,
 - (c) the extent to which the State is complying with relevant obligations under the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence, and
 - (d) whether further legislation is required to address issues arising under *paragraphs (b) and (c)*.
- (3) The Minister shall, not later than 12 months after the commencement of the review under *subsection (1)*, make a report to each House of the Oireachtas on the findings of that review.”.

—*Senators Lynn Ruane, Eileen Flynn, Alice-Mary Higgins, Frances Black.*