



An Bille um Chosaint Dhigiteach do Leanaí, 2018
Children's Digital Protection Bill 2018

Mar a tionscnaíodh

As initiated



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CHILDREN'S DIGITAL PROTECTION BILL 2018

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ACTS REFERRED TO

Communications Regulation Act 2002 (No. 20)

Companies Act 2014 (No. 38)

Data Protection Act 2018 (No. 7)



AN BILLE UM CHOSAINT DHIGITEACH DO LEANAÍ, 2018
CHILDREN'S DIGITAL PROTECTION BILL 2018

Bill

entitled

An Act to regulate legal but age-inappropriate content by way of takedown enforcement procedure. This procedure will operate where material falls within the definition of harmful material set out in this Act. 5

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL 10

Short title and commencement

1. (1) This Act may be cited as the Children's Digital Protection Act 2018.
- (2) This Act comes into operation on such day or days as the Minister for Justice and Equality, with the consent of the Minister for Children and Youth Affairs and the Minister for Communications, Climate Action and Environment, may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or provisions. 15

Interpretation

2. In this Act— 20
 - “child” is a person who has not attained the age of 16 and where such definition harmonises with Article 8 of Regulation (EU) 2016/679¹ of the European Parliament and of the Council of 27 April 2016 given effect domestically through section 31 of the Data Protection Act 2018;
 - “Commission for Communications Regulation” (in this Act referred to as the ‘Commission’) has the same meaning and functions as under the Communications Regulation Act 2002; 25
 - “digital service undertaking” means an undertaking that provides a digital or online service whether by the internet, a telecommunications system, the world wide web or otherwise, and includes an undertaking that is described, whether in an enactment or 30

¹ OJ No. L 119, 4.5.2016, p.1

otherwise, as an intermediary service provider, an internet service provider, an internet intermediary, an online intermediary, an online service provider, a search engine, a social media platform, a social media site, or a telecommunications undertaking;

“harmful material” has the meaning provided for in *section 3* of this Act;

“internet service provider” means a person who is engaged in the provision of a publicly available electronic communications service or a public communications network by means of fixed line or mobile telephones or the internet; 5

“social technology” means internet platforms and search engines which enable users to share any content with other users to access or to share or to make information available to the public; 10

“user” means a person using a publicly available electronic communications service, for private or business purposes, without necessarily having subscribed to that service;

“Takedown Notice” (in this Act referred to as the ‘notice’) is an enforcement notice sent to an internet service provider notifying them that a website must be made unavailable.

PART 2 15

HARMFUL MATERIAL

Distribution of harmful material

3. (1) A digital service undertaking will have contravened this section if it distributes or otherwise makes available on the internet or by other means of communication whether for free or on a commercial basis harmful material. 20
- (2) Harmful material is understood as content containing any of the following:
- (a) encouragement and incitement to suicide;
 - (b) encouragement of any self harm practices;
 - (c) encouragement of prolonged nutritional deprivation that would have the effect of exposing a person to risk of death or endangering health; 25
 - (d) encouragement of any unsafe practices which would severely endanger the health and wellbeing of the child.
- (3) Internet service providers owe a duty of care to children using the internet not to knowingly distribute or disseminate harmful content.
- (4) The Minister for Children and Youth Affairs and/or the Minister for Communications, Climate Action and Environment may make regulations specifying, for the purposes of *section 3*, further circumstances in which material is to be regarded as harmful. 30

Power of Commission to block access to material

4. (1) The Commission has sole responsibility for investigating complaints in relation to harmful material. 35
- (2) A person can make a complaint to the Commission under section 10 of the

- Communications Regulation Act 2002 concerning a website with harmful material specified in *section 3(2)* of this Act notwithstanding that the digital service undertaking is outside the jurisdiction.
- (3) The Commission must investigate a complaint of this nature within a period of 7 days from receipt of the complaint. 5
- (4) Where the Commission considers that a digital service undertaking is contravening *section 3* it shall give notice to the internet service provider.
- (5) The notice must—
- (a) identify the non-complying digital service undertaking in such a manner as the Commission considers appropriate, 10
 - (b) state the type of harmful material under *section 3(2)* that applies,
 - (c) require the internet service provider—
 - (i) to take steps specified in the notice, or
 - (ii) if no such steps are specified to put in place arrangements that appear to the provider to be appropriate, 15
 so as to prevent a person in Ireland from being able to access the offending material using the service it provides,
 - (d) provide such information as the Commission considers may assist the internet service provider in complying with any requirement imposed by the notice,
 - (e) provide such further particulars as the Commission deems appropriate, and 20
 - (f) specify in the notice the time by which the internet service provider must have complied with any requirement imposed by the notice.
- (6) The notice may be varied or revoked at the discretion of the Commission.
- (7) It is the duty of an internet service provider to comply with any requirement imposed on it by a notice under this section once made aware of the infringing content. 25
- (8) The Commission may force the internet service provider to comply with the notice requirements in civil proceedings by way of injunction, specific performance or by any other appropriate relief or remedy.
- (9) Any notice delivered under this section shall in the case of a body corporate be sent to the address of its registered office or principal office. 30
- (10) The steps that may be specified or arrangements that may be put in place by the Commission include steps or arrangements that will or may also have the effect of preventing persons in Ireland from being able to access material other than the offending material using the service provided by the internet service provider.

Failure to comply

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5. (1) Where a digital services undertaking fails to comply with the notice delivered under *section 4(4)* the undertaking, in addition to any other person who at the time of non-compliance intentionally or recklessly authorised or consented to the dissemination or distribution of the harmful material, shall be guilty of an offence.

- (2) A person, director and any other authorised person purporting to act on behalf of a digital services undertaking is liable—
 - (a) on summary conviction to a class A fine or to a term of imprisonment not exceeding 12 months or to both, or
 - (b) on conviction on indictment to a fine or to a term of imprisonment not exceeding 7 years or to both. 5
- (3) Where the affairs of a body corporate are managed by its members, *subsection (1)* and *(2)* shall apply 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 of the body corporate.

Aggravating circumstances 10

- 6. The following circumstances may be regarded as aggravating circumstances in relation to an offence committed under *section 5*:
 - (a) the offender has deliberately or recklessly endangered the life of the child; and
 - (b) the internet service provider has previously been the subject of a notification under *section 8*. 15

Jurisdiction

- 7. (1) A person may be tried in the State for an offence under this Part in relation to an act committed, whether in whole or in part—
 - (a) by the person in the State in relation to a means of communication that is located outside the State, 20
 - (b) by the person outside the State in relation to a means of communication that is located in the State, or
 - (c) by the person outside the State in relation to a means of communication that is located outside the State if—
 - (i) that person is a person to whom this subparagraph applies by virtue of *subsection (2)*, and 25
 - (ii) the act is an offence under the law of the place where the act was committed.
- (2) *Subsection (1)(c)(i)* applies to each of the following persons:
 - (a) an Irish citizen;
 - (b) a person ordinarily resident in the State; 30
 - (c) an undertaking established under the law of the State;
 - (d) a company formed and registered under the Companies Act 2014;
 - (e) an existing company within the meaning of the Companies Act 2014.
- (3) For the purpose of this section, a person shall be deemed to be ordinarily resident in the State if he or she has had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of an offence under this Part. 35

- (4) Proceedings for an offence to which *subsection (1)(c)* applies may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

Report on operation of *Part 2* of this Act

8. (1) Within one year of the coming into force of *Part 2* of this Act, the Minister for Children and Youth Affairs and the Minister for Communications, Climate Action and Environment must produce a report on the impact and effectiveness of the regulatory framework provided for in this Part. 5
- (2) This report should consult on the definition of harmful material used in *Part 1*.
- (3) The report must be laid before both houses of the Oireachtas. 10

An Bille um Chosaint Dhigiteach do Leanaí,
2018

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do rialáil ábhar atá dleathach ach míchuí don aois trí nós imeachta forfheidhmiúcháin um baint anuas. Beidh an nós imeachta seo i ngníomh i gcás go dtagann ábhar faoi réim an mhíneithe ar ábhar dochrach a leagtar amach san Acht seo.

Na Seanadóirí Joan Freeman, Victor Boyhan, Brian Ó Domhnaill, Pádraig Ó Céidigh agus Mícheál Mac Dubhghaill a thug isteach,

6 Nollaig, 2018

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An Act to regulate legal but age-inappropriate content by way of takedown enforcement procedure. This procedure will operate where material falls within the definition of harmful material set out in this Act.

Introduced by Senators Joan Freeman, Victor Boyhan, Brian Ó Domhnaill, Pádraig Ó Céidigh and Michael McDowell,

6th December, 2018

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