



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

Meabhrán Mínitheach
Explanatory Memorandum



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Purpose of the Bill

The purpose of the Children's Digital Protection Bill 2018 ("the Bill") is to safeguard children exposed to legal but harmful and age-inappropriate website content by placing responsibility for the distribution of information on the internet service provider hosting or making available the harmful information. Where harmful content is made available, the takedown procedures in the Bill come into effect. The mechanism of enforcement is by way of takedown orders distributed at first instance by the Commission for Communications Regulation ("the Commission") where content falls within the description of harmful material in this Bill. The Bill mirrors similar provisions in the Digital Economy Act 2017 but is further informed by the Internet Content Governance Advisory Group Report published in May 2014. The Bill is greatly informed by the work of Dr. Mary Aiken, Adjunct Associate Professor at University College Dublin, Geary Institute for Public Policy, and Academic Advisor to the European Cyber Crime Centre (EC3) at Europol.

The proposed legislation seeks to strengthen regulation as regards access to unsafe online material. At present there is no unique approach to regulating online content. The existing practice is that a complaint can be made directly to the internet service provider. There are 33 internet service providers in Ireland registered with the Internet Service Providers of Ireland (ISPI) but no uniform complaint mechanism by which online content can be regulated let alone clear procedures as to how enforcement operates in relation to harmful content. The Commission, as governed by the Communications Regulation Act 2002, states that "the main responsibility for resolving a complaint lies with your service provider, as they have the direct relationship with you". The legislation responds to a concern that self-governance is not effective in controlling the unlimited breath of harmful content online and freely available.

Harmful content is described in *section 3(2)* of the Children's Digital Protection Bill 2018 as content containing encouragement and incitement to suicide and encouragement of prolonged nutritional deprivation that would have the effect of exposing a person to risk of death or endangering health. There is a further provision which provides for a re-evaluation of the definition of harmful content which may be expanded by the Minister for Children and Youth Affairs. The notice provisions are set out at *section 4* which allow the Commission to request that internet service providers block access to harmful material. The notice must specify the time by which the internet service provider must have complied with any requirement imposed by this notice.

Where a Digital Services Undertaking refuses to comply with the notice, they will be subject to the sanctions in *section 5* and depending on the circumstances, *section 6* may apply. Where the content is made available intentionally or recklessly, the undertaking shall be guilty of an offence and subject to the sanctions set out under *section 5(2)(a)* and *(b)*. This provision makes clear that only in circumstances where the internet service provider is aware of the existence of the website can he be held accountable for failure to remove the content. The Harassment, Harmful Communications and Related Offences Bill 2017 inform the sanctions as set out in the this Bill.

Senator Joan Freeman,
Nollaig, 2018.