



SEANAD ÉIREANN

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

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM CHOSAINN DHIGITEACH DO LEANAÍ, 2018 —AN COISTE

CHILDREN’S DIGITAL PROTECTION BILL 2018 —COMMITTEE STAGE

Leasuithe Amendments

**Government amendments are denoted by an asterisk*

SECTION 2

1. In page 3, between lines 24 and 25, to insert the following:

“ “Children’s e-Safety Commissioner” shall be governed by the functions set out in *section 4* and for the purposes of this Act shall be referred to as the ‘Commissioner’;”.

—*Senators Joan Freeman, Gerard P. Craughwell.*

2. In page 3, to delete lines 25 to 27.

—*Senators Joan Freeman, Gerard P. Craughwell.*

3. In page 4, line 4, to delete “material”.

—*Senators Joan Freeman, Gerard P. Craughwell.*

4. In page 4, between lines 7 and 8, to insert the following:

“ “material” means material—

- (a) whether in the form of text,
- (b) whether in the form of data,
- (c) whether in the form of speech, music or other sounds,
- (d) whether in the form of visual images (moving or otherwise),
- (e) whether in any other form, or
- (f) whether in any combination of forms;”.

—*Senators Joan Freeman, Gerard P. Craughwell.*

5. In page 4, between lines 7 and 8, to insert the following:

“ “responsible person” means either the child’s parent or guardian and includes any adult authorised by the child to make a complaint about harmful material;”.

—*Senators Joan Freeman, Gerard P. Craughwell.*

6. In page 4, to delete lines 8 to 10 and substitute the following:

“ “social media” means, for the purposes of this Act, an electronic service that satisfies

[SECTION 2]

the following conditions:

- (a) the sole or primary purpose of the service is to enable online social interaction between 2 or more end-users;
- (b) the service allows end-users to link to, or interact with, some or all of the other end-users;
- (c) the service allows end-users to post material on the service;”.

—*Senators Joan Freeman, Gerard P. Craughwell.*

SECTION 4

7. In page 4, between lines 33 and 34, to insert the following:

“Children’s e-Safety Commissioner

4. (1) The functions of the Children’s e-Safety Commissioner are:
- (a) to investigate complaints made under this Act;
 - (b) for the purposes of an investigation, to obtain information from such persons, and make such inquiries, as he or she thinks fit;
 - (c) to support and encourage the implementation of measures to improve online safety for children;
 - (d) to collect, analyse, interpret and disseminate information relating to online safety for children;
 - (e) to support, encourage, conduct, accredit and evaluate educational, promotional and community awareness programs that are relevant to online safety for children;
 - (f) to publish (whether on the internet or otherwise) reports and papers relating to online safety for children;
 - (g) to give the Minister reports about online safety for children;
 - (h) to advise the Minister about online safety for children;
 - (i) to monitor compliance with this Act;
 - (j) to promote compliance with this Act; and
 - (k) to formulate and promote, guidelines or statements that—
 - (i) recommend best practices for persons and bodies involved in online safety for children, and
 - (ii) are directed towards facilitating the timely and appropriate resolution of incidents involving harmful material targeted at children.
- (2) The Commissioner is to be appointed by the Minister.
- (3) A person is not eligible for appointment as the Commissioner unless the Minister is satisfied that the person has—

[SECTION 4]

- (a) substantial experience or knowledge; and
- (b) significant standing;

in at least one of the following fields:

- (i) the operation of social media services;
 - (ii) the operation of the internet industry;
 - (iii) public engagement on issues relating to online safety;
 - (iv) public policy in relation to the communications sector; or
 - (v) child welfare or child wellbeing.
- (4) The Commissioner holds office on a full-time basis for a period which must not exceed 5 years.”.

—*Senators Joan Freeman, Gerard P. Craughwell.*

[Acceptance of this amendment involves the deletion of section 4 of the Bill.]

SECTION 5

8. In page 5, between lines 35 and 36, to insert the following:

“Powers of Children’s e-Safety Commissioner

5. (1) A child or a responsible person as provided for in *section 2* of this Act can make a complaint to the Commissioner concerning harmful material published or otherwise made available by a digital service undertaking, notwithstanding that the digital service undertaking is outside the jurisdiction.
- (2) The Commissioner shall investigate a complaint of this nature within a period of 48 hours from receipt of the complaint.
- (3) Where the Commissioner is satisfied that a digital service undertaking is contravening *section 3* it shall give written notice to the digital service undertaking.
- (4) The notice shall—
- (a) identify the non-complying digital service undertaking in such a manner as the Commissioner considers appropriate,
 - (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, so as to prevent a child in Ireland from being able to access the offending material using the service it provides,
 - (d) provide such further particulars as the Commissioner deems appropriate, and
 - (e) specify in the notice the time by which the internet service provider must have complied with the requirement imposed by the notice which shall be no later than

[SECTION 5]

72 hours after the notice is served.

- (5) The notice may be varied or revoked at the discretion of the Commissioner.
- (6) It is the duty of a digital service undertaking to comply with any requirement imposed on it by a notice under this section once made aware of the infringing content.
- (7) The Commissioner may compel a digital service undertaking to comply with the notice requirements in civil proceedings by way of injunction, specific performance or by any other appropriate relief or remedy.
- (8) If the Commissioner decides to refuse to issue a notice under this section, the Commissioner must give written notice of the refusal to the person who made a *section 4(2)* complaint about the material concerned.
- (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.”.

—*Senators Joan Freeman, Gerard P. Craughwell.*

[Acceptance of this amendment involves the deletion of section 5 of the Bill.]

SECTION 6

9. In page 6, between lines 9 and 10, to insert the following:

“Failure to comply

6. (1) All digital service undertakings shall have a designated contact person for the purposes of this Act.
- (2) Any notice served under this Act is taken to have been served on the designated contact person.
- (3) Where a digital services undertaking fails to comply with the notice delivered under *section 5(3)*# 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.
- (4) 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) 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.
- (6) The following circumstances may be regarded as aggravating circumstances in relation to an offence committed under *section 5*#:
- (a) the degree of responsibility of the digital service undertaking taking into account

[SECTION 6]

- the technical and organisational measures that have been implemented by them;
- (b) the offender has deliberately or recklessly endangered the life of the child;
 - (c) the digital service undertaking has previously been the subject of a notification under *section 5#*; and
 - (d) the degree of co-operation with the supervisory authority to remedy the infringement.”.

—*Senators Joan Freeman, Gerard P. Craughwell.*

[# This is a reference to the section proposed to be inserted by amendment No. 8.]

[Acceptance of this amendment involves the deletion of section 6 of the Bill.]