

# Criminal Justice (Miscellaneous Provisions) Bill 2022

Bill No. 83 of 2022

Karen McLaughlin, Senior Parliamentary Researcher (Law)

Patrice McDonnell, Senior Parliamentary Researcher (Law)

11 October 2022

## Abstract

The *Criminal Justice (Miscellaneous Provisions) Bill 2022* proposes to: increase the sentence for conspiracy to murder to life imprisonment; amend firearms legislation; amend the existing harassment offence and provide for the introduction of standalone offences of stalking and non-fatal strangulation and suffocation; provide for court orders restraining stalking behaviour and procedural protections for alleged victims during the court process; amend other aspects of substantive and procedural criminal law.



## Contents

Summary.....	3
Introduction .....	4
Background to the Bill .....	5
Policy and legislative context related to Parts 4 and 5 of the Bill .....	6
Research data.....	6
The Istanbul Convention and the Dublin Declaration 2022 .....	7
Public and Parliamentary debates .....	8
Zero Tolerance Strategy on Domestic, Sexual and Gender-Based Violence .....	9
Law Reform Proposals and Enactments in relation to stalking and harassment .....	10
Harassment.....	10
Stalking.....	10
Related legislation.....	12
Principal provisions of the Bill .....	13
Part 2 – Conspiracy to Murder.....	13
Research on sentencing and penal policy.....	14
Part 3 – Firearms offences .....	15
Part 4 – Offences of Harassment, Stalking, Non-Fatal Strangulation and Non-Fatal Suffocation .....	17
Section 11 – Non-fatal strangulation or non-fatal suffocation.....	17
Background to the introduction of a standalone offence.....	17
Proposed new section 3A of the 1997 Act .....	18
Section 12 – Non-fatal strangulation or non-fatal suffocation causing serious harm .....	19
Matters common to sections 11 and 12 .....	19
Definitions .....	19
Penalties.....	20
Option for alternative conviction .....	20
Section 13 – Harassment or stalking.....	22
Proposed reform of section 10 of the 1997 Act – an expanded harassment offence and a new offence of stalking .....	22
Penalties.....	23
Aggravating factor in sentencing .....	24
Part 5 – Civil Orders Against Relevant Conduct .....	25
Order under <i>section 16</i> .....	25

Other procedural matters addressed at Part 5 .....	27
Offence and arrest without warrant .....	27
Part 6 – Miscellaneous provisions .....	28
Amendments related to Parts 4-5 of the Bill.....	28
Repeals .....	28
Other amendments .....	28
Potential Amendment to the Bill – Increased penalty for assault causing harm .....	30
Appendix – The 1997 Act: Relevant Provisions .....	32

### **This L&RS Bill Digest may be cited as:**

Oireachtas Library & Research Service, 2022, *L&RS Bill Digest: Criminal Justice (Miscellaneous Provisions) Bill 2022. Bill No. 83 of 2022.*

### **Legal Disclaimer**

No liability is accepted to any person arising out of any reliance on the contents of this paper. Nothing herein constitutes professional advice of any kind. This document contains a general summary of developments and is not complete or definitive. It has been prepared for distribution to Members to aid them in their parliamentary duties. Some papers, such as a Bill Digest, are prepared at very short notice. They are produced in the time available between the publication of a Bill and its scheduling for second stage debate. Authors are available to discuss the contents of these papers with Members and their staff but not with members of the general public.

## Summary

The [Criminal Justice \(Miscellaneous Provisions\) Bill 2022](#) was published by Minister for Justice Helen McEntee TD on 9 September 2022. The Bill contains 44 sections and is arranged into six parts. The Bill proposes to:

- Increase the maximum penalty for conspiracy to murder from 10 years to life imprisonment (Part 2 of the Bill)
- Amend two provisions in existing firearms legislation (Part 3 of the Bill)
- Introduce standalone offences of non-fatal strangulation, non-fatal strangulation causing harm (Part 4 of the Bill)
- Replace the existing harassment offence in section 10 of the Non-Fatal Offences Against the Person Act 1997 with an expanded harassment offence and a standalone offence of stalking (Part 4 of the Bill)
- Provide for court orders restraining certain behaviour and introduce procedural protections for alleged victims during the court proceedings (Part 5 of the Bill)
- make a number of technical, procedural and consequential amendments to various aspects of procedural and substantive criminal law (Part 6 of the Bill).

Some of the provisions in the Bill were previously set out in the General Scheme Criminal Justice (Miscellaneous Provisions) Bill 2020, with the exception of Parts 4 and 5, which did not form part of the General Scheme and therefore did not undergo pre-legislative scrutiny. These matters have been considered previously by parliament, for example, in debates on the [Non-Fatal Offences Against the Person \(Amendment\) \(Stalking\) Bill 2021 \[PMB\]](#).

Although mentioned in the press release accompanying the Bill, the published Bill does not contain any amendment to [section 3 of the Non-Fatal Offences Against the Person Act 1997](#), proposing to increase the maximum penalty for assault causing harm from five to 10 years. This provision, Heads of the General Scheme, and some additional provisions which were not included in the Bill, may be brought forward by the Minister as amendments to the Bill.

## Introduction

On 9 September 2022, Minister for Justice, Helen McEntee TD, having received [Government approval](#) in August 2022, published the [Criminal Justice \(Miscellaneous Provisions\) Bill 2022](#) (the Bill).<sup>1</sup>

According to the [press release](#) issued when the Bill was published, the Minister for Justice stated:

‘The wide-ranging Bill will also increase the maximum sentence for assault causing harm from five years to 10 years, allow life sentences for conspiracy to murder, make stalking and non-fatal strangulation standalone offences, and expand the existing harassment offence.’

This *Bill Digest* analyses the Bill in the following sections:

- **Background to the Bill:** including a detailed policy and legislative context for the introduction of new standalone criminal offences of stalking and harassment
- **Principal Provisions of the Bill:** A detailed analysis of the provisions of the Bill
- **Potential Amendment to the Bill:** Provides a short discussion of a proposed Ministerial amendment to the Bill in relation to increasing the maximum penalty for assault causing harm from 5 years to 10 years imprisonment
- **Appendix: Relevant provisions from the 1997 Act**

**Further L&RS resources relevant to the Bill:** [L&RS Research Paper Series on Addressing Domestic, Sexual and Gender-Based Violence](#) – a series of three research papers which examine:

- [Part One: Overview](#) – Key causes and risk factors for gender-based violence (GBV), and its prevalence in Ireland (November 2021)
- [Part Two: Interventions](#) – Evidence-based measures to address GBV and the adoption of these measures in Ireland (November 2021)
- [Part Three: National Strategies/Action Plans to Address GBV](#) – National Strategies to address GBV across the 27 European Union member states, the United Kingdom, Norway, and Iceland (December 2021)

For additional L&RS resources on sentencing see: L&RS Spotlight on [Sentencing Policy and Practice](#) (2008) and L&RS Note [on Mandatory Sentences: Wayne Ellis v Minister for Justice and Equality](#) (2019).

The L&RS has also produced a [Bill briefing page](#) which provides links to a wide range of sources on the Bill, including stakeholder and academic commentary (available internally only).

---

<sup>1</sup> Criminal Justice (Miscellaneous Provisions) Bill 2022, [Explanatory Memorandum](#).

## Background to the Bill

On 9 September 2022, Minister for Justice, Helen McEntee TD, having received [Government approval](#) in August 2022, published the [Criminal Justice \(Miscellaneous Provisions\) Bill 2022](#) (the Bill).<sup>2</sup> This is a wide-ranging Bill which creates new criminal offences, increases the maximum sentence for existing offences and makes a number of amendments to both procedural and substantive criminal law. The Bill contains 44 sections and is arranged into six parts as follows:

- **Part 1: Preliminary and General** – includes standard provisions
- **Part 2: Conspiracy to murder** – increases the maximum penalty from 10 years to life imprisonment
- **Part 3: Amendment of Firearms Act 1925 and Firearms (Proofing) Act 1968**
- **Part 4: Offences of harassment, stalking, non-fatal strangulation and non-fatal suffocation**
- **Part 5: Civil orders against relevant conduct**
- **Part 6: Miscellaneous** – this section provides for a number of technical, procedural and consequential amendments.

Some of the provisions in the Bill were previously set out in the [General Scheme Criminal Justice \(Miscellaneous Provisions\) Bill 2020](#) (the General Scheme). The General Scheme contained 26 Heads and was arranged into 11 Parts. The General Scheme was referred to the Joint Committee on Justice on 22 January 2021. The Department of Justice provided a written briefing to the Committee on 8 October 2021. Further to this, the Committee [issued a letter](#) to the Minister for Justice on **16 December 2021** stating that it had **concluded pre-legislative scrutiny** on this General Scheme.

Given the lapse of time between publication of the General Scheme and the Bill, some Heads of the General Scheme have been dealt with in other Bills<sup>3</sup>. In addition, the L&RS notes that Part 7 of the General Scheme (Mutual Legal Assistance) will be dealt with in the forthcoming Communications (Data, Retention and Disclosure) Bill and Part 6 of the General Scheme will be revisited once Mr Justice Peart concludes his [review of the Offences Against the State Acts 1939-1998](#).<sup>4</sup> The L&RS also understands from communication with the Department of Justice that some other Heads of the General Scheme and additional provisions may be published as amendments to the Bill.

The Bill also seeks to introduce new criminal offences and civil orders relating to domestic, sexual and gender-based violence (DSGBV) as set out in Parts 4 and 5 of the Bill. Since Parts 4 and 5 were not part of the [General Scheme](#) and were not subject to pre-legislative scrutiny, the background to these provisions will be considered below.

---

<sup>2</sup> Criminal Justice (Miscellaneous Provisions) Bill 2022, [Explanatory Memorandum](#).

<sup>3</sup> For example, Head 25: Amendment of Section 24 of the Parole Act 2019 has been dealt with in [section 9 of the Criminal Justice \(Amendment\) Act 2021](#). Part 4 of the General Scheme is also provided for in the [European Arrest Warrant \(Amendment\) Bill 2022](#), which is currently progressing through the Houses.

<sup>4</sup> Information provided to the L&RS by the Department of Justice.

It should also be noted that, although mentioned in the press release accompanying the Bill, the published Bill does not contain any amendment to [section 3 of the \*Non-Fatal Offences Against the Person Act 1997\*](#), proposing to increase the maximum penalty for assault causing harm from five to 10 years. Since this provision will likely be brought forward as an amendment to the Bill, it will be discussed later in this Digest.

## Policy and legislative context related to Parts 4 and 5 of the Bill

### Research data

The prevalence of instances of domestic, sexual and gender-based violence (DSGBV) internationally and in Irish society is well documented. For example, UN Women has stated that:

“Globally, an estimated 736 million women—**almost one in three**—have been subjected to physical and/or sexual intimate partner violence, non-partner sexual violence, or both at least once in their life (30 per cent of women aged 15 and older).”<sup>5</sup>

In 2021 Women’s Aid reported that 26,906 contacts were made to their direct services in Ireland during which 33,831 disclosures of abuse were made; <sup>6</sup> 3,984 of those disclosures related to physical abuse, which includes strangulation.<sup>7</sup>

According to the findings of a survey undertaken by the European Union Fundamental Rights Agency (FRA):

“... one in three women has experienced physical and/or sexual violence since the age of 15; one in five women has experienced stalking; every second woman has been confronted with one or more forms of sexual harassment.”<sup>8</sup>

Analysis of survey responses from Ireland indicates that 26 per cent of respondents had experienced physical and/or sexual violence by a partner or non-partner.<sup>9</sup> Questions were also asked about incidents of stalking, sexual harassment, and the role played by new technologies in women’s experiences of abuse. In this survey, stalking is described as “repeated offensive or threatening acts perpetrated a number of times by the same person against the respondent”.<sup>10</sup> However, the survey questions did not use the word ‘stalking’ to ensure that respondents consider

---

<sup>5</sup> UN Women, [‘Facts and figures: Ending violence against women’](#) (accessed on 5.9.22). See also: [National statistics](#), compiled by Women’s Aid, on domestic violence and abuse.

<sup>6</sup> Women’s Aid, [‘Annual Impact Report 2021’](#) (June 2022).

<sup>7</sup> Women’s Aid, [‘Annual Impact Report 2021’](#) (June 2022), p. 19.

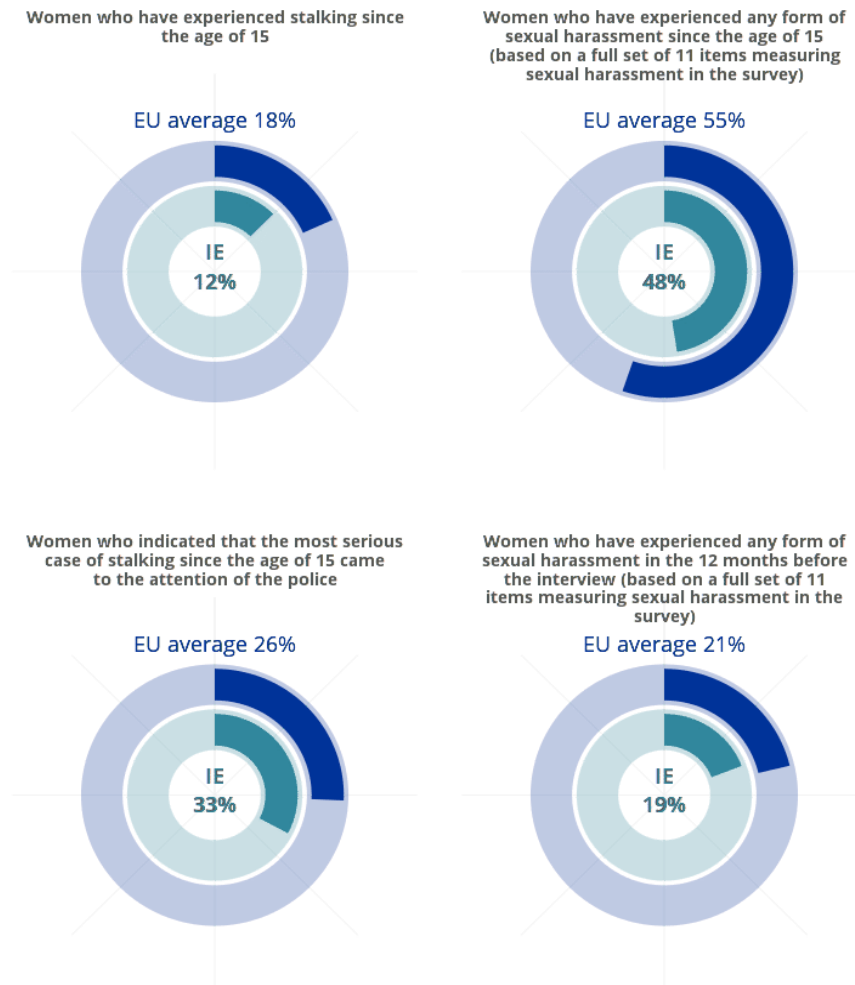
<sup>8</sup> European Union Agency for Fundamental Rights (2015), [‘Violence against women: an EU-wide survey. Results at a glance’](#). This survey is considered one of the most comprehensive studies undertaken in the European Union (EU), the FRA survey results published in 2014, based on interviews with 42,000 women across the EU. The survey asked women about their experiences of physical, sexual and psychological violence, including domestic violence, since the age of 15 and over the 12 months before the interview.

<sup>9</sup> European Union Agency for Fundamental Rights (2015), [‘Survey on violence against women in EU’](#) (2012): Ireland (accessed on 5.9.22).

<sup>10</sup> European Union Agency for Fundamental Rights (2015), [‘Violence against women: an EU-wide survey. Main Results’](#), p 82.

all types of repeated incidents and not only those which correspond to any preconceived ideas of stalking. Figure 1 below provides an illustration of the survey data in relation to women's experience of sexual harassment and stalking in Ireland as compared to the EU average. The data refers to women who have experienced at least one incidence of stalking since the age of 15 and over the 12 months before the interview.

**Figure 1: Women's experience of sexual harassment and stalking from age 15 – Ireland compared to EU average**



Source: FRA (2012) [Survey on violence against women in EU](#) (last accessed 10.10.2022)

### The Istanbul Convention and the Dublin Declaration 2022

Ireland became a signatory to the [Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence](#) (commonly known as the 'Istanbul Convention') in 2015 and ratified it on 8 March 2019.

The Istanbul Convention recognises violence against women as a violation of human rights and a form of discrimination against women. The Istanbul Convention creates a legal framework at the European level to protect women against all forms of violence, and to prevent, prosecute, and



eliminate violence against women. Under the Convention, State Parties obligations have been categorised into four pillars, namely: preventing violence against women, protecting victims, prosecuting perpetrators, as well as implementing related comprehensive and co-ordinated policies.

On 30 September 2022, at a conference hosted by the Minister for Justice Helen McEntee TD, entitled “No safe haven: Integrated prevention measures to end domestic, sexual and gender-based violence”, Ministers of the Council of Europe made a declaration on the prevention of domestic, sexual and gender-based violence (the [Dublin Declaration](#)) seeking to underline their commitment to adopting measures and strategies aimed at preventing and combatting DSGBV.

### Public and Parliamentary debates

The Citizens’ Assembly on Gender Equality made a number of recommendations having considered DSGBV. Whilst DSGBV wasn’t included in the initial considerations of the Citizens’ Assembly on Gender Equality (Citizens’ Assembly),<sup>11</sup> it was decided that it be included early on in the consideration process owing to its “importance as a gender equality issue”.<sup>12</sup> The Citizens’ Assembly made a number of recommendations, as stated in the [Report of the Citizens’ Assembly on Gender Equality](#), including coordinated Government action to prevent and counter DSGBV and to eliminate tolerance in Irish society of DSGBV. A victim-centred approach, in the context of the courts system, was also recommended.<sup>13</sup>

In an open letter to the Oireachtas, the Citizens’ Assembly made the following statement:

“There is no place in our society for gender-based violence. We support the aspiration of the Istanbul Convention to create a Europe free from violence against women and all forms of domestic violence. We want our Government to work actively towards this goal.”<sup>14</sup>

The recommendations of the Citizens’ Assembly were considered by the Joint Committee on Gender Equality on 31 March 2022.<sup>15</sup>

In July 2021, Senator Lisa Chambers introduced the [Non-Fatal Offences Against the Person \(Amendment\) \(Stalking\) Bill 2021 \[PMB\]](#).<sup>16</sup> As stated in the Long Title, the PMB sought to ‘provide for a specific offence of stalking characterised by repeated, unwanted behaviour that occurs as a result of fixation or obsession and causes alarm, distress or harm to the victim and to provide for related matters.’ The Explanatory Memorandum<sup>17</sup> relating to the PMB refers to the

---

<sup>11</sup> The Citizen’s Assembly on Gender Equality was established by Oireachtas resolution in July 2019 to ‘consider gender equality and make recommendations to the Oireachtas to advance gender equality by bringing forward proposals’ in relation to various areas of consideration.

<sup>12</sup> [Report of the Citizens’ Assembly on Gender Equality](#) (June 2021), 82.

<sup>13</sup> [Report of the Citizens’ Assembly on Gender Equality](#) (June 2021), 82.

<sup>14</sup> [Open Letter to the Oireachtas from the Citizens’ Assembly on Gender Equality](#).

<sup>15</sup> Houses of the Oireachtas, ‘[Gender Equality Committee to discuss Domestic, Sexual and Gender-based Violence with representatives from the Rape Crisis Centre and Women’s Aid](#)’ (Press Release, 30 March 2022).

<sup>16</sup> This Bill passed Final Stage in Seanad Éireann on 9 February 2022.

<sup>17</sup> Non-Fatal Offences Against the Person (Amendment) (Stalking) Bill 2021, [Explanatory Memorandum](#).

recommendation made by the Law Reform Commission in its Report on Harmful Communications and Digital Safety (2016) that a specific stalking offence be enacted. Minister for Justice, Helen McEntee TD, having received Cabinet approval to make stalking a standalone criminal offence, acknowledged Senator Chamber for her work on this and for her advocacy on behalf of victims of stalking by bringing forward the PMB.<sup>18</sup>

### Zero Tolerance Strategy on Domestic, Sexual and Gender-Based Violence

The Bill follows the publication of Ireland's Third National Strategy on Domestic, Sexual and Gender-Based Violence which was published on 28 June 2022 (the Zero Tolerance Strategy).<sup>19</sup> The overall goal of the strategy is to achieve 'zero tolerance' in response to domestic, sexual and gender-based violence (DSGBV) in Irish society.<sup>20</sup>

Through the Zero Tolerance Strategy, the Government has sought to align itself with the four pillars of the Istanbul Convention: prevention, protection, prosecution, and policy coordination.

Based on the obligations for policy coordination, a 'whole of Government' approach is being taken in addressing the fragmented nature of the current structures in terms of addressing DSGBV. As stated in the Zero Tolerance Strategy:

"This will require a radical shift away from the current system of fragmented silos, to one where the four pillars of the Conventions are addressed with ambition".

Aligning with Ireland's obligations under the Istanbul Convention, the Zero Tolerance Strategy also seeks to "embed a victim/survivor centred approach ... placing the needs and priorities of victims / survivors of domestic, sexual and gender-based violence at the forefront of responses".<sup>21</sup>

The Zero Tolerance Strategy sets out the actions connected to meeting the obligations of the prosecution pillar, including reforms in the law to provide for a specific offence of non-fatal strangulation, a specific offence of stalking and other reforms that will help address DSGBV.<sup>22</sup>

In response to the Government's strategy, its work of advancing a family law courts system, and the introduction of stalking and strangulation as standalone offences, Sarah Benson, CEO of Women's Aid, acknowledged this as "excellent progress", and said "it will require focus, co-ordination and – crucially – investment from Government to see the ambitions of an excellent plan realised".<sup>23</sup>

---

<sup>18</sup> Department of Justice, '[Minister McEntee to make stalking and non-fatal strangulation standalone offences](#)' (21 April 2022).

<sup>19</sup> Department of Justice, '[Third National Strategy on Domestic, Sexual and Gender-Based Violence](#)' (Published: 28 June 2022).

<sup>20</sup> Department of Justice, '[Zero Tolerance](#)' (last updated on 28 June 2022) (last accessed on 31.08.2022) 6.

<sup>21</sup> Department of Justice, '[Third National Strategy on Domestic, Sexual and Gender-Based Violence](#)' (Published: 28 June 2022), 10.

<sup>22</sup> Department of Justice, '[Third National Strategy on Domestic, Sexual and Gender-Based Violence](#)' (Published: 28 June 2022), 28.

<sup>23</sup> Women's Aid, '[Annual Impact Report 2021](#)' (June 2022) 8 – 9.

## Law Reform Proposals and Enactments in relation to stalking and harassment

### Harassment

Section 10 of the [Non-Fatal Offences against the Person Act 1997](#) (the 1997 Act) provides for the offence of harassment, as amended, and set out in full at Appendix 1. Section 10 was recently amended by the [Harassment, Harmful Communications and Related Offences Act 2020](#) (the 2020 Act) to capture indirect forms of harassment.

The amendments to section 10 of the 1997 Act reflect the recommendations made by the Law Reform Commission in its 'Report on Harmful Communications and Digital Safety' (LRC Report).<sup>24</sup>

Before the 2020 amendment, the harassment offence required the accused to engage in "following, watching, pestering, besetting or communicating **with**" the victim, thus limiting the type of offending communications to direct forms. The amendment introduced by the 2020 Act<sup>25</sup> provided for indirect forms of communications, such as "posting content on public websites or sending harmful communications to third parties connected to the victim".<sup>26</sup>

### Stalking

As stated by the LRC, "[s]talking is an aggravated form of harassment characterised by repeated, unwanted contact that occurs as a result of fixation or obsession and causes alarm, distress or harm to the victim". Stalking is viewed as "an aggravated form of harassment" owing to the creation of unwanted intimacy between the victim and the stalker, which is not present in all cases of harassment.<sup>27</sup>

The LRC Report found the existing harassment offence, as provided at section 10 of the 1997 Act, to be inefficient in terms of dealing with stalking. Having considered other elements, such as digital technology and its impacts, the LRC is of the view that a specific stalking offence is required to "effectively" target this behaviour'.

The LRC Report points to legislative regimes in other jurisdictions to illustrate the way the issue of stalking is addressed.

---

<sup>24</sup> Law Reform Commission, [Report on Harmful Communications and Digital Safety](#) (LRC 116-2016), September 2016, para 2.50 – 2.54.

<sup>25</sup> By the substitution, in s10(1) of the 1997 Act of "communicating with **or about** him or her" for "communicating with him or her."

<sup>26</sup> Law Reform Commission, [Report on Harmful Communications and Digital Safety](#) (LRC 116-2016), September 2016, para 2.51.

<sup>27</sup> Law Reform Commission, [Report on Harmful Communications and Digital Safety](#) (LRC 116-2016), September 2016, para 2.57; citing *Out of Sight, Out of Mind: An investigation into the response to stalking* (Suzy Lamplugh Trust, 2016) at 6; and see *Independent Parliamentary Inquiry into Stalking Law Reform, Main Findings and Recommendations* (Justice Unions' Parliamentary Group, 2012) at 11.

In Scotland, a standalone offence for stalking was introduced by section 39 of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#).<sup>28</sup> Supporting the introduction of a specific offence, members of the Scottish police believe it offers clarity to the public and law enforcement agencies.<sup>29</sup>

In England and Wales, specific stalking offences were introduced by the Protection of Freedoms Act 2012, which inserted two new offences into the Protection from Harassment Act 1997.<sup>30</sup> The motivation to introduce a standalone offence arose from a concern that the legislative provisions were too narrow to capture cases of stalking, as well as the dissatisfaction of stalking victims who felt that their cases had not been taken seriously by the criminal justice system.<sup>31</sup>

The merits of introducing a specific stalking offence are considered by the LRC and are summarised as follows:

- [n]aming stalking as an offence appears to have had a significant practical effect, with the number of prosecutions for stalking activity increasing in both Scotland, England and Wales since they introduced specific stalking offences;
- identifying stalking as a specific crime carries particular importance for victims of stalking because of the “hidden” nature of the crime as well as its more serious nature compared to harassment;
- by specifically naming stalking in legislation, rather than including it within the broad ranging offence of harassment, the different and more insidious character of the crime is underlined.<sup>32</sup>

During Committee Stage debate on the Harassment, Harmful Communications and Related Offences Bill 2017, Minister McEntee, said:

“Creating a new stalking offence will not change or improve things, given what is already encompassed in the language around harassment. In previous cases, judges have given decisions under harassment law but have referred to it as stalking, so it is already happening that stalking is being connected with harassment legislation.

[...]

In the engagement with members of the Garda Síochána, it is very much their view that what they have is strong enough. What we are proposing is to strengthen the harassment piece. In the language that has been used to date, stalking is very clearly understood to come under the harassment element.”<sup>33</sup>

---

<sup>28</sup> [Criminal Justice and Licensing \(Scotland\) Act 2010](#), s 39.

<sup>29</sup> Law Reform Commission, [Report on Harmful Communications and Digital Safety](#) (LRC 116-2016), September 2016, para 2.62.

<sup>30</sup> [Protection from Harassment Act 1997](#) (England and Wales), s 4A.

<sup>31</sup> Law Reform Commission, [Report on Harmful Communications and Digital Safety](#) (LRC 116-2016), September 2016, para 2.65; citing Independent Parliamentary Inquiry into Stalking Law Reform, Main Findings and Recommendations (Justice Unions’ Parliamentary Group, 2012) at 21 – 22.

<sup>32</sup> Law Reform Commission, [Report on Harmful Communications and Digital Safety](#) (LRC 116-2016), September 2016, para 2.71 – 2.72.

<sup>33</sup> Select Committee on Justice debate, [Harassment and Harmful Communications and Related Offences Bill 2017: Committee Stage](#) (1 December 2020).

The introduction of a standalone stalking offence now represents one of the key goals of the Zero Tolerance Strategy. The introduction of an explicit stalking offence also seeks to align Irish criminal law with the Istanbul Convention.

According to the Department of Justice's Regulatory Impact Analysis:

... the existing harassment provision has been used to prosecute stalking behaviour. However, the offence is described in relatively limited and technical terms (e.g. besetting), and public awareness of the unlawful and serious nature of stalking behaviour may be limited.

...

International practice has recognised that the introduction of a standalone stalking offence brings benefits in terms of awareness and access by victims of appropriate supports, including law enforcement. A standalone offence clearly positions stalking as a serious offence, and one distinct from the broader range of behaviours which may be considered harassment.<sup>34</sup>

### Related legislation

- [Non-Fatal Offences Against the Person Act 1997](#)
- [Criminal Law \(Sex Offences\) Act 2017](#)
- [Criminal Justice \(Victims of Crime\) Act 2017](#)
- [Domestic Violence Act 2018](#)
- [Harassment, Harmful Communications and Related Offences Act 2020](#)
  
- See also Schedule 3 (Harmful Online Content: Offence-Specific Categories) of the Online Safety and Media Regulation Bill 2022 which refers to harassment under section 10 of the Non-Fatal Offences Against the Person Act 1997. See [L&RS Bill Briefing page](#).

---

<sup>34</sup> Department of Justice (2022) Criminal Justice (Miscellaneous Provisions) Bill 2022 Stalking/Harassment, Non-Fatal Strangulation. A copy was provided to the L&RS by Department officials.

## Principal provisions of the Bill

This Bill contains 44 provisions, which are arranged into six Parts. Part 1 of the Bill includes standard provisions relating to the long title, commencement, and expenses. This section of the *Digest* will provide an overview of the provisions in Parts 2-6.

### Part 2 – Conspiracy to Murder

The primary purpose of Part 2 is to increase the penalty for conspiracy to murder from a maximum term of imprisonment of 10 years to a maximum term of life imprisonment.

*Section 3* provides for the amendment of [section 4 of the \*Offences against the Person Act 1861\*](#) to increase the penalty for conspiring or soliciting to commit murder from a maximum term of imprisonment of ten years to a maximum term of life imprisonment.

*Section 4* amends the [Criminal Justice Act 2006](#) to provide that section 71 of the 2006 Act does not apply to an offence of conspiring to commit murder set out in section 4 of the 1861 Act. Section 4(e) also prohibits anyone from being prosecuted twice for conspiracy to murder if that person has been prosecuted in another jurisdiction. According to the Regulatory Impact Analysis carried out by the Department of Justice, this will:

correct an anomaly arising from the existence of two contradictory provisions with differing sentences for the offence of conspiracy to murder and to increase the maximum sentence for the offence of conspiracy to murder from 10 years to up to life.<sup>35</sup>

*Sections 5 and 6* make consequential amendments to the [Criminal Justice Act 2007](#) and the [European Union \(Passenger Name Record Data\) Regulations 2018 \(S.I. No. 177/2018\)](#), respectively, arising from the exclusion of the offence of conspiracy to murder under the 1861 Act from section 71 of the 2006 Act.

When asked to outline the rationale for the introduction of these legislative provisions, the Minister for Justice stated:

“I consider a maximum sentence of life imprisonment to be appropriate given the seriousness of the offences in question. The Deputy will appreciate that, ultimately, the Judiciary is best placed to decide on the appropriate sentence in any given case. The impact of all violent crime spreads far wider than the victims alone and it is vital that the powers available to the Judiciary are such as to provide an appropriate deterrent for conspiring to commit the most heinous crime of taking a person's life.”<sup>36</sup>

When the Bill was published, the Minister for Justice also stated:

---

<sup>35</sup> A copy of the 2019 Regulatory Impact Analysis (RIA) of the General Scheme was provided by the Department.

<sup>36</sup> Response to [PQ \[16090/22\]](#), 29 March 2022.

“the imposition of a life sentence for it underlines the Government’s commitment to tackling serious crime and will ensure that An Garda Síochána and our Courts have the tools they need to take firm and decisive action to deal with our most serious criminals.”<sup>37</sup>

It may be of interest to note that a Private Members Bill proposing to increase the sentence to life imprisonment was introduced to Dáil Éireann by Jim O’Callaghan TD on 28 March 2019. The [Criminal Justice \(Conspiracy to Murder\) Bill 2019 \[PMB\]](#) lapsed with the dissolution of the Dáil and Seanad on 14 January 2020. According to the [Explanatory Memorandum](#) for the Private Members Bill, the following rationale was provided for increasing the maximum available sentence:

“Organised criminals now hire professional assassins to murder other people. In late 2018 an organised criminal gang hired an assassin to travel to Ireland in order to murder a man in Northern Ireland. The assassin was arrested by members of An Garda Síochána and charged with conspiracy to murder. He pleaded guilty to conspiring with others to murder a man in April 2018. The maximum sentence that could be imposed by the Special Criminal Court was ten years but since the convicted man had pleaded guilty the Court was required to give recognition of his guilty plea and co-operation. Serious criminals within organised crime gangs now conspire with others so that those others can carry out murders on behalf of organised crime gangs. A maximum sentence of ten years is insufficient for the gravity of these offences.”

According to a report in the Irish Examiner, an individual who had been hired in connection to a gangland crime murder received a six-year prison sentence.<sup>38</sup>

### Research on sentencing and penal policy

According to the Review of Policy Options for Prison and Penal Reform 2022-2024:

A custodial sanction has a dual role of removing from society those who cannot be managed safely in the community while also offering rehabilitative interventions that provide an opportunity for the individual to engage in a pro-social lifestyle on release.<sup>39</sup>

The Review also cites Professor Ian O’Donnell’s 2020 report on recidivism, which concludes:

If prison is criminogenic, as the evidence suggests, the arguments in favour of using it less are persuasive. While necessary as a last resort, the desirability of a more parsimonious approach is indicated.<sup>40</sup>

Commenting on sentencing, the Law Reform Commission observed in its 2020 report on [Suspended Sentences](#), that the deterrence principle has been criticised on the basis that evidence as to its efficacy as a crime desistance strategy is “unconvincing”.<sup>41</sup>

---

<sup>37</sup> [Department of Justice \(2022\) ‘New system of court orders to restrain stalking behaviour and protect victims as part of new Bill from Minister McEntee’, press release.](#)

<sup>38</sup> Irish Examiner, [New law targeting gangland ‘kill teams’ to impose life terms for murder plots](#), 30 August 2022.

<sup>39</sup> Department of Justice (2022) Review of Policy Options for Prison and Penal Reform 2022-2024, p 10.

<sup>40</sup> O’Donnell (2020) [An Evidence Review of Recidivism and Policy Responses](#), p. 93.

<sup>41</sup> Law Reform Commission (2020) [Suspended Sentences](#), p 42. See also LRC report on [Mandatory Sentences](#) and [IPRT Position Paper 3: Mandatory Sentencing](#).



### Part 3 – Firearms offences

Part 3 of the Bill proposes to amend two provisions in existing firearms legislation as follows:

*Section 8* inserts a new subsection into [section 2 of the Firearms Act 1925](#). This proposes an exemption for officers of the Forensic Science Ireland (FSI) from existing restrictions on possession, use and carriage of firearms. According to the Department of Justice’s Regulatory Impact Analysis, this would allow for the “planned move of Garda ballistics section”.<sup>42</sup>

*Section 9* inserts a definition into [section 1 of the Firearms \(Proofing\) Act 1968](#) to provide that a ‘firearm’ has the same meaning as provided for in the *Firearms Act 1925*. [Section 1 of the Firearms Act 1925](#) states:

“firearm” means—

- (a) a lethal firearm or other lethal weapon of any description from which any shot, bullet or other missile can be discharged,
- (b) an air gun (including an air rifle and air pistol) with a muzzle energy greater than one joule or any other weapon incorporating a barrel from which any projectile can be discharged with such a muzzle energy,
- (c) a crossbow,
- (d) any type of stun gun or other weapon for causing any shock or other disablement to a person by means of electricity or any other kind of energy emission,
- (e) a prohibited weapon,
- (f) any article which would be a firearm under any of the foregoing paragraphs or paragraph,
- (h) but for the fact that, owing to the lack of a necessary component part or parts, or to any other defect or condition, it is incapable of discharging a shot, bullet or other missile or projectile or of causing a shock or other disablement, as the case may be,
- (g) except where the context otherwise requires, any component part of any article referred to in any of the foregoing paragraphs and, without prejudice to the generality of the foregoing, the following articles shall be deemed to be such component parts:
  - (i) telescope sights with a light beam, or telescope sights with an electronic light amplification device or an infra-red device, designed to be fitted to a firearm specified in paragraph (a), (b), (c) or (e),
  - (ii) a silencer designed to be fitted to a firearm specified in paragraph (a), (b) or (e), and
  - (iii) any object—

---

<sup>42</sup> A copy of the 2019 Regulatory Impact Analysis (RIA) of the General Scheme was provided by the Department.



(I) manufactured for use as a component in connection with the operation of a firearm, and

(II) without which it could not function as originally designed,

and

(h) a device capable of discharging blank ammunition and to be used as a starting gun or blank firing gun,

and includes a restricted firearm, unless otherwise provided or the context otherwise requires;<sup>43</sup>

As noted earlier, the General Scheme of the Bill included a number of proposals to amend firearms legislation. These Heads did not appear in the published Bill, but as noted above, these may be introduced as amendments to the Bill at a later stage. According to a Note prepared by the Department of Justice for the Justice Committee, these included:

Head 2: introduction of a cap on the licensing of centre-fire semi-automatic rifles.

Heads 3 to 5: to enable Ireland to ratify the [United Nations Protocol on Firearms](#):

Head 3: introduction of a new offence for persons falsifying or illicitly obliterating, removing, or altering the marking of firearms.

Head 4: providing for the marking of imported firearms permitting identification of the country of import and the year of import.

Head 5: provide for the destruction of firearms and ammunition which have been illicitly manufactured or trafficked.

Head 6: providing an exemption for the keeping of small quantities of certain low hazard explosives in certain circumstances.<sup>44</sup>

---

<sup>43</sup> This definition was substituted by the [Criminal Justice Act 2006](#), which was commenced by s. 26 of [Criminal Justice Act 2006 \(Commencement\) Order 2006](#) (S.I. No. 390 of 2006) on 27.7.2006.

<sup>44</sup> Department of Justice (2021) [General Scheme of The Criminal Justice \(Miscellaneous Provisions\) Bill 2020 Note for the Oireachtas Justice Committee](#), p. 2-4.

## Part 4 – Offences of Harassment, Stalking, Non-Fatal Strangulation and Non-Fatal Suffocation

Part 4 of the Bill seeks to provide for the offences of non-fatal strangulation, non-fatal strangulation causing harm, harassment and stalking. In summary, this Part provides for the following:

- *Section 10* of the Bill provides for definitions relating to Part 4 with any references to “Act of 1997” meaning the [Non-Fatal Offences against the Person Act 1997](#).
- *Sections 11-12* provide for the creation of new criminal offences, each of which will be considered in turn below.
- *Section 13* provides for the overhaul of the existing offence of harassment, as set out in section 10(3) of the 1997 Act, which is reproduced in full, as amended, at Appendix 1 to this *Digest*.
- *Section 14* also provides that a Court Order made under section 10(3) of the 1997 Act will continue to have effect under the proposed new section 10(4) of the 1997 Act.

### Section 11 – Non-fatal strangulation or non-fatal suffocation

#### Background to the introduction of a standalone offence

*Section 11* of the Bill seeks to amend the Act of 1997 by inserting a new section 3A to provide for a new offence of non-fatal strangulation or non-fatal suffocation.

The creation of specific offence of non-fatal strangulation represents one of the key actions of the Zero Tolerance Strategy.<sup>45</sup> The drive for legislative reform and the motivation to legislate for a specific non-fatal strangulation offence seeks to closer align Ireland with its obligations under Articles 49-58 of the Istanbul Convention. Responding to the proposal to introduce the legislation, Safe Ireland said it represents “an acknowledgement of the limitations of existing legal protection and current maximum sentences.” However, according to Safe Ireland, for the legislation to be effective, there is a need for “**adequate training for law enforcement and judiciary to understand the patterns of these abuses and to provide adequate support services to victims**”.<sup>46</sup> (Emphasis added)

According to research from the UK Government, victims of non-fatal strangulation and suffocation (NFS) are seven times more likely to be murdered by their partner.<sup>47</sup> In June 2022, the UK’s [Domestic Abuse Act 2021](#) was amended in order to provide for a standalone offence for non-fatal strangulation.<sup>48</sup> As stated by the CEO of Women’s Aid UK, Farah Nazeer, in response to the UK Government’s intention to introduce a standalone offence for non-fatal strangulation (NFS):

---

<sup>45</sup> Department of Justice, [Third National Strategy on Domestic, Sexual and Gender-Based Violence](#) (Published: 28 June 2022), 7.

<sup>46</sup> Safe Ireland, [‘Safe Ireland welcome new legislation to address violence against women’](#).

<sup>47</sup> UK Government, Ministry of Justice, [‘Press Release: New non-fatal strangulation offences comes into force’](#) (7 June 2022), citing study [here](#).

<sup>48</sup> UK Government, Ministry of Justice, [‘Press Release: New non-fatal strangulation offences comes into force’](#) (7 June 2022), citing study [here](#).

“We know that strangulation is a highly dangerous and common feature of countless domestic abuse cases. It is used as a tool to exert power and control and instil fear, and also indicates that the survivor is at high risk of serious injury or homicide, and should therefore be treated with extreme seriousness.”<sup>49</sup>

### Proposed new section 3A of the 1997 Act

The proposed section 3A(1) of the 1997 Act states:

- (1) A person shall be guilty of an offence who, without lawful excuse, intentionally or recklessly—
  - (a) strangles or suffocates another, or
  - (b) causes another to believe on reasonable grounds that he or she is likely immediately to be subjected to suffocation or strangulation.

In relation to strangulation or suffocation, as set out in section 3A(1)(a), proof of either intention or recklessness is required. The test for recklessness is an objective one; it does not matter that the accused believes their actions not to be reckless, but rather would a reasonable person objectively think so.<sup>50</sup>

Considering section 3A(1)(b), a person must cause another to **believe on reasonable grounds** that they are likely to be subjected to strangulation or suffocation. The standard is, again, an objective one.

The proposed new section 3A(2) of the 1997 Act provides that:

In a prosecution for an offence under subsection (1), it shall be a defence for the accused to show that the other consented to the strangulation or suffocation of which the offence consists.

Section 2 of the 1997 Act currently requires the prosecution to prove that assault was committed without consent. The new section 3A shifts the burden of proof in relation to consent to the defence. In response to a request by the L&RS for information about this provision, Department officials indicated:

“The general rationale for the non-fatal strangulation and suffocation (NFS) offences is to ensure

- (a) that all assaults involving NFS may be treated as being at least of a gravity comparable to a section 3 assault and
- (b) that NFS offences are identified, recorded and managed distinct from other assault offences.

The changes reflect the high incidence of strangulation in domestic violence and the importance of it as a predictor of further, even more, serious outcomes.

---

<sup>49</sup> Women’s Aid, [‘Women’s Aid responds: non-fatal strangulation offence’](#) (7 June 2022).

<sup>50</sup> Brian Hunt, [Murdoch and Hunt’s Encyclopedia of Irish Law](#), ‘recklessness’ (Bloomsbury Professional 2021).

The new offences are not intended to substantively change the law as to whether persons may engage in such behaviour consensually. The decision of the Supreme Court in *DPP v. Brown* [2018] IESC 67 established that section 3, assault causing harm, uses the term “assault” as defined in section 2 of the 1997 Act. Accordingly, an absence of consent is an element of a section 2 and section 3 offence, but not a section 4 offence of causing serious harm.

The drafting of the NFS provisions mirrored this, with the proviso that rather than including an absence of consent as an element to be proved, the evidential burden is placed on the defendant to raise this as a defence. This defence is only available under 3A and not under 4A.”

## **Section 12 – Non-fatal strangulation or non-fatal suffocation causing serious harm**

*Section 12* of the Bill seeks to amend the 1997 Act by inserting a new section 4A after section 4 to provide for a new offence of non-fatal strangulation or non-fatal suffocation causing serious harm.

*Section 12* of this Bill proposes to insert a new section 4A after section 4 of the Act of 1997, which provides for the offence of assault causing serious harm<sup>51</sup>. The elements of the proposed section 4A offence mirror those of the current offence for assault causing serious harm as provided at section 4 of the 1997 Act.

## **Matters common to sections 11 and 12**

### **Definitions**

The proposed new section 3A(5) of the 1997 Act provides definitions for ‘strangle’ and ‘suffocate’ as follows:

- ‘Strangle’ includes applying, directly or indirectly, force to the neck of another so as to impede breathing or the circulation of blood;
- ‘Suffocate’ includes— (a) asphyxiating another, and (b) impeding the breathing of another, including by— (i) covering the mouth or nose, (ii) constricting the chest, or (iii) blocking, by means of a foreign object, the airways, of the other.

*Section 12* of the Bill also provides for these definitions to apply to the proposed new section 4A offence of non-fatal strangulation and non-fatal suffocation causing serious harm.

In the UK, [Section 70 Domestic Abuse Act 2021](#) (DAA 2021) introduced the offences of non-fatal strangulation and non-fatal suffocation. The offences came into force on 7 June 2022. However, the legislation does not provide any definition for ‘strangulation’ or ‘strangles’.

As stated by the Crown Prosecution Service (CPS), the word “strangle” should get its ordinary meaning “which is the obstruction or compression of blood vessels and/or airways by external pressure to the neck impeding normal breathing or circulation of the blood”. The CPS guide also

---

<sup>51</sup> Full text of provision set out in Appendix 1.

points to a non-exhaustive list describing common methods of non-fatal strangulation.<sup>52</sup> The CPS guide also highlights that the DAA Act does not provide a definition for non-fatal suffocation and makes the same point regarding interpretation in terms of giving it its ordinary meaning and looking at broader methods of non-fatal suffocation.<sup>53</sup>

The use of the word “includes” in Section 3A (5) could imply that the list of descriptors is non-exhaustive, therefore allowing for additional descriptions of conduct to fall within each of these terms. However, the question arises as to whether a definition for strangle and suffocate is required or whether it may cause some conduct to fall outside the meanings provided in the definitions and potentially result in some perpetrators not being captured by the offence.

### Penalties

Largely mirroring [section 3\(2\)\(a\) of the 1997 Act](#), which provides for the offence of assault causing harm, a person guilty of an offence under *section 11*, which proposes to introduce *section 3A*, shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months, or to both. [Section 4 of the Fines Act 2010](#) provides that any reference to a Class A fine shall be construed as a fine not exceeding €5000 but greater than €4000.<sup>54</sup> However, the class of fine attached to liability on summary conviction for the offence of assault causing harm is a Class C fine which equates to a fine not exceeding €2500 but greater than €1000.<sup>55</sup>

A person found guilty of an offence under the proposed *section 3A (1)* will be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both, mirroring the liability provision at [section 3\(2\)\(b\) of the 1997 Act](#).

*Section 12* provides that a person found guilty on indictment for an offence under the proposed the *section 4A* will be liable to a fine or imprisonment for life, or both. This mirrors the penalty under [section 4 of the 1997 Act](#), which provides for an offence of assault causing harm.

### Option for alternative conviction

The proposed *section 3A (4)* provides for an alternative conviction for an offence under section 3 of the 1997 Act (assault causing harm) where the evidence is insufficient to secure a conviction for an offence under the newly proposed *section 3A (4)*.

*Section 3A (4)* therefore allows the judge to find a defendant guilty of section 3 assault causing harm where “harm” is proven but the prosecution has provided insufficient evidence of a section 3A of the 1997 Act. According to the Regulatory Impact Analysis (RIA) undertaken by the Department of Justice:

---

<sup>52</sup> Crown Prosecution Service, [‘Legal Guidance, Domestic abuse, Violent crime, Sexual Offences’](#) (25 August 2022).

<sup>53</sup> Crown Prosecution Service, [‘Legal Guidance, Domestic abuse, Violent crime, Sexual Offences’](#) (25 August 2022).

<sup>54</sup> Fines Act 2010, section 4, available [here](#).

<sup>55</sup> [Non-Fatal Offences against the Person Act 1997](#) (Revised Act, updated to 10 February 2021), section 3.

“The under-charging of strangulation and asphyxiation has been identified as a problem in several jurisdictions, including the United States, the United Kingdom, Australia and New Zealand. The lack of observable injuries means that the offender’s conduct may be minimised, and may be charged at an equivalent level to an offence of section 2 assault in Ireland (which is a summary offence, carrying a maximum penalty of six months ‘imprisonment’). Recognising these issues, new offences of non-fatal strangulation have been introduced in New Zealand (in 2018) and the UK (in 2021). In the United States, 37 states have introduced such offences.”<sup>56</sup>

Similarly, the proposed *section 4A* includes the alternative conviction for an offence under section 4 of the Act of 1997 (assault causing serious harm) where the evidence is insufficient in terms of a conviction for an offence under section the newly proposed *section 4A*.

The definitions of “harm” and “serious harm”, as well as the full text of sections 3 and 4 of the 1997 Act, are set out in the Appendix.

---

<sup>56</sup> Department of Justice (2022) Criminal Justice (Miscellaneous Provisions) Bill 2022 Stalking/Harassment, Non-Fatal Strangulation.

### Section 13 – Harassment or stalking

Section 13 of the Bill proposes the insertion of a new section 10 of the Act of 1997, which will result in a further expansion of the harassment offence and provide for a new offence of stalking.

#### Proposed reform of section 10 of the 1997 Act – an expanded harassment offence and a new offence of stalking

The proposed section 10(1) of the 1997 Act provides that a person shall be guilty of an offence of harassment where:

(a) they, without lawful authority or reasonable excuse, persistently, by their acts, intentionally or recklessly, at the time when the acts occur or when the other becomes aware of them

- (i) seriously interferes with another person's peace or privacy,
- or (ii) causes alarm, distress or harm to the other person;

and (b), the person's acts are such that a reasonable person would realise that the acts would seriously interfere with the other's peace and privacy or cause alarm, distress or harm to another, at the time when the acts occurred or when the other becomes aware of them.

The proposed section 10(1) is largely reflective of the current law set out at section 10 (1) and (2) of the Act of 1997 concerning the offence of harassment. Conduct, such as harmful indirect forms of communication as discussed above, is reflected at section 10(3)(d) of the proposed Bill.

Section 13 of the Bill also seeks to provide for a new standalone offence for stalking by the substitution of a new section 10(2) into the 1997 Act. A person is guilty of the offence where:

(a) the person, without lawful authority or reasonable excuse, persistently, by their acts, intentionally or recklessly, at the time when the acts occur or when the other becomes aware of them –

- i. to fear that violence will be used against them or another a person connected to them, or
- ii. serious alarm or distress that has a substantial adverse impact on their usual daily activities

and (b) a reasonable person would consider such acts to cause another to fear that violence will be used against them, or a person connected to them or cause them to experience serious alarm or distress that would have a substantial impact on their daily activities.

It should be highlighted that the proposed section 10(2) does not include any reference to the element of "persistence" as a required ingredient of the offence of stalking. This is distinct from the offence of harassment in which "persistence" is a recognised aspect of the offence.

The proposed new section 10(3) of the 1997 Act also provides a list of the possible acts to which section 10(1) offence (harassment), or a section 10(2) offence (stalking) would apply, and include:

- (a) following, watching, monitoring, tracking or spying upon a person;
- (b) pestering a person;
- (c) impersonating a person;
- (d) communicating with or about a person;

- (e) purporting to act or communicate on behalf of a person;
- (f) disclosing to other persons private information in respect of a person;
- (g) interfering with the property (including pets) of a person;
- (h) loitering in the vicinity of a person;
- (i) causing, without the consent of the person, an electronic communication or information system operated by a person to function in a particular way;
- (j) breaching a court order— (i) made pursuant to this section or Part 5 of the Criminal Justice (Miscellaneous Provisions) Act 2022 or (ii) otherwise restraining the person from communicating with or about the other person or, within such distance as is specified in the order, approaching the other or the place of residence, education or employment of the other person.

The expansion of the harassment offence is evident by the detail provided for in the type of acts or the types of offending behaviour that constitutes harassment at section 10(3).

### Penalties

The proposed section 10(4) of the 1997 Act states that:

“Where a person is guilty of an offence under subsection (1) or (2), the court may, in addition to or as an alternative to any other penalty, order that the person shall not, for such period as the court may specify, communicate by any means with or about the other person or that the person shall not approach within such distance as the court shall specify of the place of residence, education or employment of the other person.”

The option to provide for the making of an order is a protective measure (similar to other protective measures as provided for in the [Domestic Violence Act 2018](#)) that does not require the parties to be in an “intimate relationship”.

The proposed section 10(4) of the 1997 Act provides that a person who does not comply with an order pursuant to *subsection (4)* will be guilty of an offence.

The proposed section 10(6) of the 1997 Act provides that a person guilty of an offence under subsection (1), (2) and (5) liable on summary conviction to (a) a class A fine<sup>57</sup> and / or to imprisonment for a term not more than 12 months or (b) on conviction on indictment to a fine or term of imprisonment not more than 10 years or both.

In terms of the Class A fine, section 4 of the [Fines Act 2010](#) provides that any reference to a class A fine shall be construed as equating to a fine not exceeding €5000 but greater than €4000.

---

<sup>57</sup> Pursuant to section 4 of the Fines Act 2010 any reference to class A fine shall be construed as equating to fine not exceeding €5000 but greater than €4000.



### Aggravating factor in sentencing

The proposed section 10(7) of the 1997 Act seeks to provide that, in determining a sentence, the court will treat the fact that a person has been previously convicted for an offence(s) against the other person as an aggravating factor.

Subject to the proposed new subsections (9) and (10), section 10(8) obliges a court to impose a greater sentence than they would have had no aggravating factor been present.

An aggravating factor is something that can have a negative effect on the judge's decision when sentencing, thereby increasing the severity of the sentence imposed.

- *Section 10(9)* provides, in exceptional circumstances, an exception to the section 10(7) requirement to treat the fact that a person has been previously convicted for an offence(s) against the other person as an aggravating factor.
- *Section 10(10)* provides that any sentence imposed pursuant to section 10(7) shall not be greater than the maximum sentence permissible.
- *Section 10(11)* provides for the option of an alternative verdict where a person charged with a *section 10(2)* offence (stalking) may be convicted under a section 10(1) offence (harassment).
- *Section 10(12)* provides that offences that will be treated as an aggravating factor in sentencing will include offences involving damage to property.

## Part 5 – Civil Orders Against Relevant Conduct

The primary purpose of Part 5 of the 2022 Bill is to provide for court orders restraining certain behaviour and procedural protections for alleged victims during the court process.

The [LRC recommended](#) that “civil restraint orders” be provided for in legislation.<sup>58</sup> *Section 10* of the 1997 Act does not provide for separate civil action to be brought. *Section 10(3)* enables a court to make a restraining order where a person has been convicted of harassment. An order is thus limited to instances where criminal proceedings are taken.

*Section 15(1)* provides that the District Court (or on appeal, the Circuit Court) may make an order that will prohibit a person from engaging in, among other things, offensive conduct towards the applicant

*Section 15(2)* defines “relevant conduct” as

conduct engaged in, without lawful authority or reasonable excuse, by the respondent towards the applicant (or a person connected to the applicant) that would reasonably cause the applicant –

- (a) to fear that violence will be used against the applicant (or person connected to them),
- (b) causes the applicant to experience serious alarm or distress that has a “substantial adverse impact” on their usual daily activities.

Expanding on this definition of “relevant conduct”, *section 15(3)* provides examples of such conduct as follows:

- a) following, watching, monitoring, tracking or spying upon a person;
- b) pestering a person;
- c) impersonating a person;
- d) communicating with or about a person;
- e) purporting to act or communicate on behalf of a person;
- f) disclosing to other persons private information in respect of a person;
- g) interfering with the property (including pets) of a person;
- h) loitering in the vicinity of a person;
- i) causing, without the consent of the person, an electronic communication or information system operated by a person to function in a particular way.

### Order under *section 16*

*Section 16(1)* provides that an individual (‘the applicant’) or a Member of An Garda Síochána, acting in accordance with *section 19*, may apply to the court for an order against another person (‘the respondent’).

An application is made on notice to the respondent (*section 16(2)*).

---

<sup>58</sup> Law Reform Commission, [Report on Harmful Communications and Digital Safety](#) (LRC 116-2016), September 2016, para 3.98.

*Section 16(3)* provides that a court may make an order where:

- there are reasonable grounds for believing that the respondent engaged in the relevant conduct towards the applicant, or someone connected with the applicant; and
- the making of the order is a necessary and proportionate response when considering the safety and welfare of the applicant.

*Section 16(4)* seeks to provide for the effects of an order under *section 16* which will prohibit the respondent from doing any or all of the following to the applicant or anyone connected with the applicant:

- a) using or threatening to use violence against, molesting or putting in fear the person;
- b) following or communicating by any means with or about the person;
- c) approaching, within such distance as the court shall specify, the place of residence, education or employment of the person;
- d) engaging in such other forms of relevant conduct as the court specifies.

An order under *section 16* may also be subject to exceptions and conditions (as per *section 16(5)*).

An order under *section 16(6)* will be effective for 5 years from the date in which it was made or shorter, as may be specified by the court.

*Section 17* provides for various procedural elements concerning orders, such as variations and discharge of an order under *section 16*, which may be made on application to the court by either the applicant or respondent, on notice to the other respectively, or by a member of An Garda Síochána.

On application to the court, the order may be varied (*section 17(2)*) or discharged (*section 17(3)*) where the court is of the opinion that it is necessary and proportionate to do so.

*Section 18* provides that the court may renew an order.

*Section 19* provides that where members of An Garda Síochána become aware of an alleged incidence(s) of relevant conduct, a member may making an application to the court under *sections 16, 17 or 18*. *Section 19(2)* provides that, before making an application, the views of the applicant concerned shall be ascertained by the member of An Garda Síochána, insofar as this is reasonably practicable. *Section 19* appears to seek to align itself with the protection pillar of the Istanbul Convention.

*Section 20* provides for protection against cross-examination by the applicant or respondent. It seeks to incorporate a commitment made by State Agencies in the Criminal Justice System to help victims and vulnerable witnesses in criminal cases. The proposed *section 20* mirrors [section 16 of the Domestic Violence Act 2018](#).

*Section 21* provides that when an application is made to a court, the court will give reasons for its decisions, including reasons for granting or refusing the application, attaching exceptions or conditions, or for varying the exceptions or conditions.

*Section 22* provides for matters relating to the taking effect of an order on notification to the respondent. Oral communication to a respondent is considered a sufficient means of notification (*section 22(2)*). Where a respondent is not present at a court sitting, it will be accepted that a notification has been made. A court may also direct a member of An Garda Síochána to issue the order to the respondent, who was not present at a court sitting, where there are reasonable grounds to believe that the respondent may evade service of the order (*section 22(4)*).

### Other procedural matters addressed at Part 5

- *Section 23* provides for matters concerning copies of orders to be given to certain persons.
- *Sections 24* concerns the exercise of jurisdiction by a court in civil proceedings.
- *Section 25* provides for hearings of proceedings. Proceedings are, in general, to be held in private (section 25(1)). Proceedings should be as informal as practicable whilst remaining consistent with the administration of justice. Judges and barristers are not permitted to wear wigs and gowns (section 25(2) and (3)).
- *Section 26* provides for a special sitting of the District Court for the purpose of making an application.
- *Section 27* permits the use of a television link for civil proceedings for the purpose of giving evidence.
- *Sections 28* provides for the right of the applicant to be accompanied in court in certain circumstance (in addition to their legal representative); this may be subject to the views of the court.
- *Section 29* provides for the matter of costs which will be at the discretion of the court.
- *Section 30* provides for rules of court and service of documents.
- *Section 31* provides for matters relating to extraterritoriality for the purpose of issuing orders to respondents that reside or intends to reside in the State. *Section 31(3)* provides that a court may consider conduct that occurred outside the State when determining whether to make an order.

### Offence and arrest without warrant

*Section 32* provides that, where a person contravenes an order made against them under section 16, they may be liable on summary conviction to a class B fine or to imprisonment for a term of no more than 12 months.

*Section 33* provides that where a member of An Garda Síochána has reasonable cause to believe that an offence is being committed, e.g. in contravention of an order under section 16, the member may, following a complaint by the applicant or on behalf of them, arrest the respondent concerned without warrant. If required, a member may enter, if needed by force, and search a place the member has reasonable cause to suspect the respondent is (section 33(2)).

*Section 34* inserts a saver which provides that the operation of Part 5 of the Bill is without prejudice to the powers of the court under section 10(4) of the *Act of 1997* or [section 48 of the Criminal Law \(Sexual Offences\) Act 2017](#).

## Part 6 – Miscellaneous provisions

Part 6 proposes to amend various pieces of legislation which have been grouped together under different headings below for ease of reference.

### Amendments related to Parts 4-5 of the Bill

Five provisions in this Part make amendments to numerous pieces of both procedural and substantive criminal law arising from the introduction of new criminal offences and civil orders in Parts 4-5 of this Bill. These provisions may be summarised as follows:

- *Section 35* amends [section 12\(1\) of the Criminal Evidence Act 1992](#) to allow for witness protection in court proceedings, such as the provision of evidence via television link or through an intermediary, in criminal proceedings under [section 10 of the Non-Fatal Offences Against the Person Act 1997](#) (as amended by this Bill) and *section 32*<sup>59</sup> of this Bill.
- *Section 37* amends [section 28 of the Civil Legal Aid Act 1995](#) to provide an individual may apply for legal representation in relation to an application to be excluded from cross-examination under *section 20* of this Bill. Similar protection was provided for under [section 48 of the Domestic Violence Act 2018](#) (which will be superseded by this provision).
- *Section 38(a)* proposes to add the new offences of non-fatal strangulation or suffocation to the Schedule to the [Bail Act 1997](#). The offences specified in the Schedule are classified as “serious offences” because they attract a prison sentence of up to five years. *Section 38(b)* also provides for the inclusion of the offences relating to female genital mutilation; information systems and corruption offences in the Schedule.
- *Section 39* makes a consequential amendment to the [Civil Liability and Courts Act 2004](#) arising from *section 25* above.
- *Section 43* makes consequential amendments to the [Domestic Violence Act 2018](#) allowing for hearings of related matters together and referring to the new offences in respect of non-fatal strangulation.

### Repeals

*Section 41* provides for the repeal of [Part 4 \(requirements relating to construction and extensions of prisons\) of the Prisons Act 2007](#).

### Other amendments

- *Section 36* amends section 23A of the [Criminal Justice \(Public Order\) Act 1994](#) to include as fixed charge offences, offences contrary to section 21 (Control of access to certain events) and section 22 (Surrender and seizure of intoxicating liquor). In the Department of

---

<sup>59</sup> *Section 32* provides that “a person who contravenes an order made against him or her under commits an offence and shall be liable on summary conviction to a class B fine or to imprisonment for a term not exceeding 12 months.”

Justice's Regulatory Impact Analysis it was stated that this "provides a simpler and more cost effective approach to addressing these minor offences".

- *Section 40* clarifies that the provisions of section 16 of the [Criminal Justice Act 2006](#) apply to persons brought before the Special Criminal Court pursuant to section 47 (Charge before Special Criminal Court in lieu of District Court) of the [Offences against the State Act 1939](#).
- *Section 42* includes section 12 (Corruption occurring outside State) of the [Criminal Justice \(Corruption Offences\) Act 2018](#) as a relevant offence for the purpose of the [Criminal Justice Act 2011](#).

## Potential Amendment to the Bill – Increased penalty for assault causing harm

In the [press release](#) published alongside the Bill on 4 August 2022, it was stated that “the maximum sentence for assault causing harm will increase from five to 10 years”. As noted earlier in this Digest, the published Bill does not contain such provisions. The L&RS understands from communication with the Department that this provision will likely be brought forward by the Minister for Justice as an amendment to the Bill. In light of this, it is worth briefly considering the law in this area – the full text of section 3 of the 1997 Act and other relevant sections are reproduced in the Appendix. The research on sentencing and penal policy discussed earlier in this *Digest* in relation to Part 2 of the Bill is also relevant to the discussion below as it relates to a proposed increase in the maximum prison sentence.

[Section 3\(1\) of the Non-Fatal Offences Against the Person Act 1997](#) provides that “a person who assaults another causing him or her harm shall be guilty of an offence”. This requires proof of harm and an assault. [Section 3\(2\) of the Non-Fatal Offences Against the Person Act 1997](#) indicates that this is a hybrid offence which means that a person may be tried either summarily (in the District Court) or on indictment (in the Circuit Court) for assault causing harm. A summary conviction will attract a maximum term of imprisonment of 1 year and a conviction on indictment will attract a maximum term of imprisonment of 5 years. In both cases, a fine may be imposed. Given the language used in the press release from the Department of Justice, it would appear that the proposed amendment may remove the possibility of assault causing harm to be tried summarily.

Outlining the rationale for this amendment, Minister McEntee stated:

“Most assaults can only be prosecuted at the lower levels, especially where the victim has fully or mostly recovered.

Even where a judge considers the offence as among the most serious, they are limited in their sentencing to five years, and may have to reduce that further to reflect mitigating factors such as a guilty plea.”<sup>60</sup>

It should be noted that the proposed new section 3A of the 1997 Act, discussed above, relating to the offence of non-fatal strangulation or non-fatal suffocation, provides for a maximum penalty of 5 years imprisonment. If an amendment to section 3 of the 1997 Act is brought forward, it is therefore likely that amendments will also be proposed in relation to the new section 3A provided for in this Bill.

It is not known what, if any, implications the proposed increased penalty for assault causing harm will have on other offences in the 1997 Act. In particular, [section 4 of the Non-Fatal Offences Against the Person Act 1997](#) provides for an offence of assault causing serious harm. [Section 4\(2\)](#) provides for a maximum sentence of life imprisonment. Currently, according to information published by the Sentencing Guidelines and Information Committee of the Judicial Council, cases of assault causing serious harm are generally dealt with as follows:

---

<sup>60</sup> Department of Justice, [Criminal Justice \(Miscellaneous Provisions\) Bill 2022 approved by Government](#), 4 August 2022.

Offences in the **low range of seriousness** attract a **headline sentence of 2 to 4 years**, before mitigating factors are taken into account.

Offences in the **mid-range of seriousness** attract a **sentence of between 4 and 7 and a half years**.

Offences in the **high range of seriousness** attract a **sentence of seven and a half to twelve and a half years**.

There may be **exceptional cases** which warrant a higher sentence, including in wholly exceptional cases, **life imprisonment**.<sup>61</sup> (emphasis added)

Noting that the *People (DPP) v. Fitzgibbon*<sup>62</sup> sets out the relevant sentencing guidelines relating to assault causing serious harm, the Judicial Council summarises the principal factors to be taken into account by the sentencing judge in cases of assault causing serious harm as follows:

- the severity or level of viciousness of the assault;
- the level of injury sustained, although it was recognised that there is not always a direct link between the severity of the attack and the degree of injury caused;
- the level of culpability or blame attached to the accused – an entirely unprovoked attack is treated more seriously than one arising from an incident which may not have been instigated by the accused. Provocation may be taken into account;
- the general circumstances of the assault will be considered, including whether or not it was carried out as part of wider criminality and whether or not a weapon was used.<sup>63</sup>

---

<sup>61</sup> Judicial Council (2022) [Sentencing Guidelines and Information Committee – Sentencing Judgments Guidance for The General Public](#), p. 6.

<sup>62</sup> [\[2014\] IECCA 12](#).

<sup>63</sup> Judicial Council (2022) [Sentencing Guidelines and Information Committee – Sentencing Judgments Guidance for The General Public](#), p. 6-7. For more information on the work of the Judicial Council Sentencing Committee, including research, [see here](#). For additional L&RS resources on sentencing see: L&RS Spotlight on [Sentencing Policy and Practice](#) (2008) and L&RS Note [on Mandatory Sentences: Wayne Ellis v Minister for Justice and Equality](#) (2019).



## Appendix – The 1997 Act: Relevant Provisions

[Section 1 of the Non-Fatal Offences Against the Person Act 1997](#) contains the following relevant definitions:

- Harm is defined as “harm to body or mind and includes pain and unconsciousness”
- Serious harm is defined as:

injury which creates a substantial risk of death or which causes serious disfigurement or substantial loss or impairment of the mobility of the body as a whole or of the function of any particular bodily member or organ<sup>64</sup>

The offence of assault is set out in [section 2 of the Non-Fatal Offences Against the Person Act 1997](#) as follows:

- (1) A person shall be guilty of the offence of assault who, without lawful excuse, intentionally or recklessly—
  - (a) directly or indirectly applies force to or causes an impact on the body of another, or
  - (b) causes another to believe on reasonable grounds that he or she is likely immediately to be subjected to any such force or impact,

without the consent of the other.

- (2) In subsection (1) (a), “force” includes—

- (a) application of heat, light, electric current, noise or any other form of energy, and
- (b) application of matter in solid liquid or gaseous form.

The offence of assault causing harm is set out in [section 3 of the Non-Fatal Offences Against the Person Act 1997](#) as follows:

- (1) A person who assaults another causing him or her harm shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding £1,500 or to both, or
  - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or to both.

The offence of assault causing serious harm is set out in [section 4 of the Non-Fatal Offences Against the Person Act 1997](#) as follows:

- (1) A person who intentionally or recklessly causes serious harm to another shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or to imprisonment for life or to both.

---

<sup>64</sup> [Section 1 of the Non-Fatal Offences Against the Person Act 1997](#).

Section 10 of the [Non-Fatal Offences Against the Person Act 1997](#), as amended, states:

**'Harassment.**

**10.—**

(1) Any person who, without lawful authority or reasonable excuse, by any means including by use of the telephone, harasses another by persistently following, watching, pestering, besetting or F2[communicating with or about him or her], shall be guilty of an offence.

(2) For the purposes of this section a person harasses another where—

(a) he or she, by his or her acts intentionally or recklessly, seriously interferes with the other's peace and privacy or causes alarm, distress or harm to the other, and

(b) his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other's peace and privacy or cause alarm, distress or harm to the other.

(3) Where a person is guilty of an offence under *subsection (1)*, the court may, in addition to or as an alternative to any other penalty, order that the person shall not, for such period as the court may specify, F2[communicate by any means with or about the other person] or that the person shall not approach within such distance as the court shall specify of the place of residence or employment of the other person.

(4) A person who fails to comply with the terms of an order under *subsection (3)* shall be guilty of an offence.

(5) If on the evidence the court is not satisfied that the person should be convicted of an offence under *subsection (1)*, the court may nevertheless make an order under *subsection (3)* upon an application to it in that behalf if, having regard to the evidence, the court is satisfied that it is in the interests of justice so to do.

F2[(6) A person guilty of an offence under this section shall be liable—

(a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment to a fine or a term of imprisonment not exceeding 10 years, or both.]<sup>65</sup>

---

<sup>65</sup> [Non-Fatal Offences Against the Person Act 1997](#).

## Contact:

Houses of the Oireachtas  
Leinster House  
Kildare Street  
Dublin 2  
D02 XR20

[www.oireachtas.ie](http://www.oireachtas.ie)

Tel: +353 (0)1 6183000 or 076 1001700

Twitter: @OireachtasNews

Library & Research Service

Tel: +353 (0)1 6184701

Email: [library.and.research@oireachtas.ie](mailto:library.and.research@oireachtas.ie)

