



Number 32 of 2020

Harassment, Harmful Communications and Related Offences Act 2020



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**HARASSMENT, HARMFUL COMMUNICATIONS AND RELATED OFFENCES ACT
2020**

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ACTS REFERRED TO

Bail Act 1997 (No. 16)

Broadcasting Act 2009 (No. 18)

Children Act 2001 (No. 24)

Domestic Violence Act 2018 (No. 6)

Non-Fatal Offences against the Person Act 1997 (No. 26)

Petty Sessions (Ireland) Act 1851 (14 & 15 Vict.) c. 93



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**HARASSMENT, HARMFUL COMMUNICATIONS AND RELATED OFFENCES ACT
2020**

An Act to amend the law relating to harassment; to provide for offences relating to the recording, distribution or publication of intimate images and to provide for the anonymity of victims of those offences; to provide for an offence involving the distribution, publication or sending of threatening or grossly offensive communication; and for those and other purposes to amend the Non-Fatal Offences against the Person Act 1997, the Bail Act 1997 and the Domestic Violence Act 2018; and to provide for related matters. [28th December, 2020]

Be it enacted by the Oireachtas as follows:

Interpretation

1. In this Act—

“broadcast” has the meaning assigned to it by the Broadcasting Act 2009;

“distribute” means distribute to the public or a section of the public;

“intimate image”, in relation to a person, means any visual representation (including any accompanying sound or document) made by any means including any photographic, film, video or digital representation—

- (a) of what is, or purports to be the person’s genitals, buttocks or anal region and, in the case of a female, her breasts,
- (b) of the underwear covering the person’s genitals, buttocks or anal region and, in the case of a female, her breasts,
- (c) in which the person is nude, or
- (d) in which the person is engaged in sexual activity;

“harm” includes psychological harm;

“publish” means publish, other than by way of broadcast, to the public or to a portion of the public.

Distributing, publishing or threatening to distribute or publish intimate image without consent with intent to cause harm or being reckless as to whether harm is caused

2. (1) A person who distributes, publishes or threatens to distribute or publish an intimate image of another person—
 - (a) without that other person’s consent, and
 - (b) with intent to cause harm to, or being reckless as to whether or not harm is caused to, the other person,is guilty of an offence.
- (2) For the purposes of *subsection (1)*, a person causes harm to another person where—
 - (a) he or she, by his or her acts, intentionally or recklessly seriously interferes with the other person’s peace and privacy or causes alarm or distress to the other person, and
 - (b) his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other person’s peace and privacy or cause alarm or distress to the other person.
- (3) A person who is guilty of an offence under this section is liable—
 - (a) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding seven years, or both.

Recording, distributing or publishing intimate image without consent

3. (1) Subject to *subsection (2)*, a person is guilty of an offence where—
 - (a) he or she records, distributes or publishes an intimate image of another person without that other person’s consent, and
 - (b) that recording, distribution or publication, as the case may be, seriously interferes with that other person’s peace and privacy or causes alarm, distress or harm to that other person.
- (2) *Subsection (1)* shall not apply to a person who distributes or publishes an intimate image for the purpose of the prevention, investigation or prosecution of an offence under this section.
- (3) A person who is guilty of an offence under this section is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both.

Distributing, publishing or sending threatening or grossly offensive communication

4. (1) A person who—
 - (a) by any means—
 - (i) distributes or publishes any threatening or grossly offensive communication

- about another person, or
- (ii) sends any threatening or grossly offensive communication to another person,
- and
- (b) with intent by so distributing, publishing or sending to cause harm,
- is guilty of an offence.
- (2) For the purposes of *subsection (1)*, a person intends to cause harm where he or she, by his or her acts, intentionally seriously interferes with the other person's peace and privacy or causes alarm or distress to the other person.
- (3) A person who is guilty of an offence under this section is liable—
- (a) on summary conviction to a class A fine or imprisonment for a term not exceeding six months, or both, or
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.

Anonymity of victim of offence under *section 2* or *3*

5. (1) Where a person is charged with an offence under *section 2* or *3*, any person who publishes or broadcasts—
- (a) any information,
- (b) a photograph of, or a photograph that includes a depiction of, the alleged victim of the offence, or
- (c) any other representation of the physical likeness, or any representation that includes a depiction of the physical likeness, of the alleged victim of the offence,
- that is likely to enable the identification of the alleged victim of the offence, is, subject to any direction under *subsection (2)*, guilty of an offence.
- (2) Where a judge of the court in which proceedings for an offence under *section 2* or *3*, as the case may be, are brought considers that the interests of justice so require, he or she may, having taken into account the views of the alleged victim of the offence, direct that such information, photograph or representation referred to in *subsection (1)* as he or she specifies may be published or broadcast in such manner and subject to such conditions (if any) as he or she specifies in the direction.
- (3) A direction given under *subsection (2)* shall be in writing.
- (4) A person who contravenes a direction given under *subsection (2)*, including a condition in such a direction, is guilty of an offence.
- (5) A person who is guilty of an offence under *subsection (1)* or *(4)* is liable—
- (a) on summary conviction to a class B fine or to imprisonment for a term not exceeding 12 months, or both, or

- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding three years, or both.
- (6) It shall be a defence for a person who is charged with an offence under *subsection (1)* or *(4)* to prove that at the time of the alleged offence the person was not aware, and neither suspected nor had reason to suspect—
- (a) in the case of an offence under *subsection (1)*, that the information, photograph or other representation published or broadcast was information, a photograph or other representation referred to in that subsection, or
 - (b) in the case of an offence under *subsection (4)*, that the information, photograph or other representation was published or broadcast in contravention of a direction given under *subsection (2)*, including a condition in such a direction.

Liability of directors and officers of corporate bodies

6. (1) Where an offence under this Act is committed by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any wilful neglect of, a person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate or of a person purporting to act in such a capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if guilty of the first-mentioned offence.
- (2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies 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 or manager of the body corporate.

Summary proceedings: time limit of two years

7. Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted at any time within two years from the date on which the offence was committed.

Consent of Director of Public Prosecutions

8. Notwithstanding section 52(4) of the Children Act 2001, where a child under 17 years of age is charged with an offence under this Act, no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.

Amendment of Schedule to Bail Act 1997

9. The Schedule to the Bail Act 1997 is amended by the insertion of the following paragraph after paragraph 41:

*“Offence under the Harassment, Harmful Communications and Related
Offences Act 2020*

42. An offence under *section 2 of the Harassment, Harmful Communications and Related Offences Act 2020.*”.

Amendment of section 10 of Non-Fatal Offences against the Person Act 1997

10. Section 10 of the Non-Fatal Offences against the Person Act 1997 is amended by—

- (a) in subsection (1), the substitution of “communicating with or about him or her” for “communicating with him or her”,
- (b) in subsection (3), the substitution of “communicate by any means with or about the other person” for “communicate by any means with the other person”, and
- (c) the substitution of the following subsection for subsection (6):

“(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.”.

Amendment of section 40 of Domestic Violence Act 2018

11. Section 40(5) of the Domestic Violence Act 2018 is amended by—

- (a) the insertion, in the definition of “relevant offence”, of the following paragraph after paragraph (a):

“(aa) an offence under *section 2 or 3 of the Harassment, Harmful Communications and Related Offences Act 2020,*”,

and

- (b) in paragraph (g), the substitution of “in paragraph (a), (aa), (b), (c), (d), (e) or (f)” for “paragraphs (a) to (f)”.

Review of operation of Act

12. The Minister shall, not later than three years after the commencement of this Act, carry out a review of the operation of this Act.

Short title and commencement

13. (1) This Act may be cited as the Harassment, Harmful Communications and Related Offences Act 2020.

- (2) This Act shall come into operation on such day or days as the Minister for Justice may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.