

Post-Enactment Report

Harassment, Harmful Communications and Related Offences Act 2020

Overview

The Harassment, Harmful Communications and Related Offences Act 2020, also known as Coco's Law, was signed into law by the President on the 28th December 2020 and was commenced in full on the 10th February 2021. The Act amended the law relating to harassment, specifically section 10 of the Non-Fatal Offences against the Person Act 1997, the Bail Act 1997 and the Domestic Violence Act 2018. It provides for offences in relation to the recording, distribution or publication of intimate images without consent, as well as providing for the anonymity of victims of these offences. The Act also provides for an offence involving the distribution and publication of threatening and abusive communication.

This legislation was a Private Member's Bill sponsored by Deputy Brendan Howlin, which was influenced by proposals from the Law Reform Commission in their 2016 Report on Harmful Communications and Digital Safety. Following the publication of the Bill, the Minister for Justice agreed to work with Deputy Howlin as the sponsor of the Bill, to amend the provisions therein prior to its enactment. The key provisions of the Act are as follows:

- An offence at section 2 of distributing, publishing or threatening to distribute or publish an intimate image without consent with intent to cause harm or being reckless as to whether harm is caused. The maximum penalty for this offence is an unlimited fine or imprisonment for a term not exceeding 7 years.
- An offence at section 3 of recording, distributing or publishing an intimate image without consent. This strict liability offence does not require any intention to cause harm. The maximum penalty is a Class A fine or a term of imprisonment not exceeding 12 months.

- An offence at section 4 of distributing, publishing, or sending threatening or grossly offensive communication with intent to cause harm. As this could apply to one single message, the penalty is a fine and/or a term of imprisonment not exceeding two years.
- The offence of Harassment in Section 10 of the Non-Fatal Offences against the Person Act 1997 has been extended to include all forms of communication, including through online or digital communications to or about a person. The maximum penalty will now be ten years' imprisonment, increased from seven years' imprisonment.
- The time limit for the initiation of summary proceedings for offences under the Act has been extended to two years as provided for in section 7.
- Anonymity for the victims of the two image-based offences has been provided at section 5 for as well as an aggravating factor where the defendant and the victim are spouses, or are, or were in an intimate relationship by way of amendment to section 40 of the Domestic Violence Act 2018.
- There is a statutory requirement for the Minister for Justice to carry out a review of the legislation within three years of the commencement of the Act.

Implementation

An Garda Síochána

The views of An Garda Síochána, who are responsible for enforcement of the provisions of the Harassment, Harmful Communications and Related Offences Act, 2020, were sought and are outlined hereunder.

The Garda National Protective Services Bureau (GNPSB) indicated that the creation of specific offences in relation to distributing, publishing or threatening to distribute an intimate image of another person without their consent are particularly useful. They note that the Act provides a comprehensive definition of the term “intimate image” and the sentence of up to seven years on conviction on indictment is appropriate in relation to the offence at section 2.

The offences at section 3 and section 4, which carry maximum penalties of 12 months' imprisonment and 2 years' imprisonment respectively, do not have a specific power of arrest without warrant, which is noted as a concern by the GNPSB. This issue will be considered further in the upcoming Garda Síochána (Powers) Bill. An Garda Síochána also noted that the penalties associated with an offence contrary to Sections 3 and 4 of the Act do not come with the same investigative opportunities for investigating Gardaí as set out for offences committed under Section 2 of the Act. Section 7 is beneficial in extending the timeframes prosecution of summary offences and satisfies the criteria for mutual legal assistance requests.

In relation to the numbers of investigations and prosecutions under the Act, no prosecutions have yet taken place, however it is envisaged that a number of current investigations are likely to lead to prosecutions.

By way of specific response to the enactment of this legislation, GNPSB, on behalf of An Garda Síochána, have engaged with the Department of Justice and Hotline.ie, a reporting platform for certain illegal material online, to establish and put into operation a mechanism whereby members of the public can securely report concerns in respect of intimate image abuse. This allows for Hotline.ie to liaise with internet service providers to have suspected illegal content removed from the internet platform and to engage with An Garda Síochána who can investigate an offence. Since the commencement of this initiative, Hotline.ie have referred sixteen cases of the non-consensual sharing of intimate images to GNPSB.

Garda HQ Directive 11/2021 which issued to all Garda Personnel explains the provisions of the new Act. The legislation additionally received a high level of attention in the national media and it is clear that a high level of awareness of the legislation exists throughout An Garda Síochána.

The Director of Public Prosecutions

The Director of Public Prosecutions has indicated that the Act is likely to prove useful in prosecuting cases, specifically in regard to the behaviours covered by sections 2 and 3 of the Act, which previously no specific offence existed to cover that behaviour. Section 4 also provides a clearer and more straightforward offence in relation to

threatening and grossly offensive communications. So far, there have been 2 prosecutions directed in relation to section 2 (distribution of intimate image without consent with intent to cause harm), 1 in regard to section 3 (recording, distribution or publication of intimate image without consent) and 3 prosecutions directed in respect of section 4 (threatening or grossly offensive communication). None have yet been prosecuted as this is a newly enacted piece of legislation and cases take time to come before the courts but the Director anticipates many more prosecutions over the next period of months.

Department of Justice

The Department recently ran the “No Excuses” campaign which aims to increase awareness of sexual harassment and sexual violence in Irish society, including information on the Harassment, Harmful Communication and Related Offences Act 2020. This included a focus on ensuring there is public awareness of the fact that the sharing of intimate images is a form of sexual abuse and one which now carries a significant penalty.

The Department intends to build on the existing No Excuses campaign and its key message of not excusing sexual harassment or sexual violence. This is an important time to increase awareness and educate people about the consequences both legal and psychological of sharing images without consent. 'Supporting a Victims Journey', which will be implemented as a priority, places a strong emphasis on the need for victims to be treated with dignity and respect at every stage throughout the process and includes the provision of specific training for all of the key personnel a victim comes into contact with during the course of their journey through the criminal justice system. Such personnel includes the Gardaí, the DPP, the judiciary and the legal profession.

Department of Justice

February 2022.