Overview of Harassment, Harmful Communications & Related Offences Act 2020

Dublin Rape Crisis Centre Resource

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The Harassment, Harmful Communications and Related Offences Act 2020 was signed into law on 28th December 2020. It has been brought into force by order of the Minister for Justice on 9 February 2021. The Act

► amends the law relating to harassment

► creates new offences to deal with the non-consensual distribution of intimate images, both online and offline

► provides anonymity for the victims of those offences.

The text of the Act can be found on the Oireachtas website at bit.ly/HHCROact

What are the key provisions of the Act?

Intimate Images

Section 1: *Definition of an intimate image.*

- The Act defines an "intimate image" of a person as any visual representation, made by any photo, film or digital means, which shows – or seems to show – any of the following or any combination of them:
  - a person's genitals, buttocks or anal region and, in the case of a woman, her breasts, or
  - the underwear covering the person's genitals, buttocks or anal region and, in the case of a woman, her breasts, or
  - a person who is nude, or
  - someone engaged in sexual activity.

Section 2: *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.*

- This offence will criminalise the distribution or publication of an intimate image without the consent of the person who is the subject of the image. Threatening to distribute or publish an intimate image is also an offence under this new legislation.
- The person who distributes or publishes the intimate image must have intended, or been reckless as to whether these acts would seriously interfere with the peace and privacy of the other person, or cause them harm, alarm or distress. Harm includes psychological harm.
- This offence will be considered in light of whether a *reasonable person* would think that such behaviour would interfere with the peace and privacy of the other person, or cause them harm, alarm or distress.

- This offence will carry a maximum penalty of seven years' imprisonment and/or an unlimited fine.

Section 3: *Recording, distributing or publishing intimate image without consent*

- This offence will criminalise the recording, distributing or publishing of an intimate imagine without the consent of the person who is the subject of the image if, in so doing, the recording, distribution or publication seriously interferes with peace and privacy of the person who is the subject of the image or causes them alarm, distress or harm.
- The person who records, distributes or publishes the image without consent, does not need to have intended to cause harm. It will be sufficient that the taking, recording or distribution of the intimate image seriously affected the other person's peace and privacy or caused them harm, alarm or distress.
- This offence will carry a maximum penalty of 12 months' imprisonment and/or a €5000 fine.

Offensive Communication

Section 4: *Distributing, publishing or sending threatening or grossly offensive communication*

- This offence covers the distributing, publishing or sending threatening or grossly offensive communication, both online and offline. Threatening or grossly offensive communications are not defined and therefore take their ordinary meaning.
- A person will now commit a criminal offence if, intending to cause harm to another person, they send a threatening or grossly offensive message either to that person or about them.
- This offence will carry a maximum penalty of 2 years' imprisonment and/or an unlimited fine.

Anonymity

Section 5*: Anonymity of victim of an offence under section 2 or 3 of the Act*

- Section 5 of the Act prevents the identification of the victim and provides additional sanctions for anyone distributing or publishing information that may lead to identification of the victim.
- This offence will carry a maximum penalty of 3 years' imprisonment and/or an unlimited fine.

Section 8: *Consent of Director of Public Prosecutions*

- This section of the Act is an important safeguard in respect of prosecutions against children under 17 years of age.
- The consent of the Office of the Director of Public Prosecutions, must be given prior to proceedings for an offence under the Act where the alleged offender is under 17 years of age.

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

- This amendment will strengthen the offence of harassment under the Act. The harassment may be as a result of persistent communication <u>with a</u> person but it can now also be persistent communication <u>about a</u> person, sometimes referred to as indirect harassment.
- This offence will carry a maximum penalty of 10 years' imprisonment to reflect the serious nature of harassment and the wide range of behaviours it represents.

Section 11: *Amendment of section 40 of Domestic Violence Act 2018*

- Section 11 amends section 40 of the Domestic Violence Act 2018 to include the section 2 and 3 offences of the Harassment, Harmful Communications and Related Offences Act 2020 so that they become relevant offences in the Domestic Violence Act.
- The amendment means it will be an aggravating factor for the purposes of sentencing if the perpetrator of the offence is or was in an intimate relationship with the victim of the offence.

Dublin Rape Crisis Centre is there for anyone affected by sexual violence, including those supporting others. You can call the National 24-hour Helpline 1800 77 8888 for confidential, non-judgemental information & support.

More information and further resources are available at www.drcc.ie.

Disclaimer: This resource is for information only - it does not constitute legal advice. Dublin Rape Crisis Centre accepts no responsibility for any actions undertaken on foot of this resource, or for the content of any external information sources it mentions.

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