



An Bille um Chosaint Leanáí (Ábhar Pornagrafach ar Líne), 2020
Protection of Children (Online Pornographic Material) Bill 2020

Mar a tionscnaíodh

As initiated



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ACTS REFERRED TO

Communications Regulation Act 2002 (No. 20)
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Criminal Law Act 1997 (No. 14)
Data Protection Act 2018 (No. 7)
Data Protection Acts 1988 to 2018



An Bille um Chosaint Leanai (Ábhar Pornagrafach ar Líne), 2020
PROTECTION OF CHILDREN (ONLINE PORNOGRAPHIC MATERIAL) BILL 2020

Bill

entitled

An Act to protect children from viewing pornographic material on the internet; and to provide for related matters. 5

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement 10

1. (1) This Act may be cited as the Protection of Children (Online Pornographic Material) Act 2020.
- (2) This Act shall come into operation on such day or days as the Minister 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 provisions. 15

Interpretation

2. In this Act—

“audio representation” includes—

- (a) any such representation by means of tape, computer disk or other thing from which such a representation can be produced, and 20
- (b) any tape, computer disk or other thing on which any such representation is recorded;

“child” means a person under the age of 18 years;

“the Commission” means the Commission for Communications Regulation established by Part 2 of the Communications Regulation Act 2002; 25

“contravene” includes failure to comply, and cognate words shall be construed accordingly;

“Data Protection Commission” means the Commission established under Part 2 of the Data Protection Act 2018;

“Data Protection Regulation” has the same meaning as it has in the Data Protection Act 2018;

“document” includes—

- (a) any book, periodical or pamphlet, and
- (b) where appropriate, any tape, computer disk or other thing on which data capable of conversion into any such document is stored; 5

“enforcement notice” means a notice under *section 8*;

“gain” has the same meaning as it has in the Criminal Justice (Theft and Fraud Offences) Act 2001;

“IFCO” means the Irish Film Classification Office; 10

“information notice” means a notice under *section 7*;

“internet service provider” means a provider of an internet access service within the meaning given in Article 2 of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012; 15

“the Minister” means the Minister for Environment, Climate and Communications;

“personal data” has the same meaning as it has in the Data Protection Regulation;

“pornographic material” has the meaning assigned to it by *section 3*;

“prescribed” means prescribed by regulations made under this Act; 20

“relevant person” has the meaning assigned to it by *section 4*;

“visual representation” includes—

- (a) any photographic, film or video representation, any accompanying sound or any document,
- (b) any copy of any such representation or document, and 25
- (c) any tape, computer disk or other thing on which the visual representation and any accompanying sound are recorded.

Meaning of “pornographic material”

3. (1) In this Act “pornographic material” means—

- (a) any visual representation— 30
 - (i) that shows a person who is engaged in or is depicted as being engaged in real or simulated sexually explicit activity, or
 - (ii) that shows, for a sexual purpose, the genital or anal region of a person,

or

- (b) any audio representation of a person who is engaged in or is represented as being engaged in sexually explicit activity, 35

irrespective of how the representation has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation by or from computer graphics or by any other electronic or mechanical means.

- (2) The references in *paragraph (a)* of the definition of ‘pornographic material’ in *subsection (1)* to a person shall be construed as including a reference to a figure resembling a person that has been generated or modified by computer-graphics or otherwise. 5

Meaning of “relevant person”

4. (1) In this Act, “relevant person” means 10
- (a) an internet service provider, or
 - (b) any other person who appears to be or to have been involved in making pornographic material available on the internet on a commercial basis to persons in the State.
- (2) For the purposes of this Act, material is made available on the internet on a commercial basis if it is made available on the internet in the course of business or otherwise in exchange for, or with an expectation of obtaining, a gain or other economic benefit in connection with so making such material available. 15

Expenses

5. The expenses incurred by the Minister, the Commission, IFCO and the Data Protection Commission in the performance of their functions under this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas. 20

PART 2

REGULATIONS, NOTICES AND APPEALS

Regulations 25

6. (1) The Minister shall, within six months from the coming into operation of this section, make regulations for the purpose of ensuring as far as practicable (by means of age-verification or other means consistent with this Act) that children in the State cannot view pornographic material on the internet.
- (2) In making regulations under this section, the Minister shall have due regard to the following: 30
- (a) the importance of protecting children, as far as practicable, from viewing pornographic material;
 - (b) the right to privacy in relation to persons who have attained the age of 18 years;
 - (c) the need to avoid infringing the lawful entitlements of persons who have attained the age of 18 years in relation to their use of the internet for purposes which are (either for persons generally or for persons who have attained the age of 18 years) 35

- lawful;
- (d) the importance of freedom of expression in relation to material other than pornographic material;
 - (e) the steps which the regulations may, lawfully, reasonably and in accordance with the provisions of this section, require internet service providers or other relevant persons to take in order to comply with the regulations; and 5
 - (f) the need to ensure the protection of personal data and that any regulations made under this Act are not contrary to the Data Protection Acts 1988 to 2018 and the Data Protection Regulation.
- (3) Without prejudice to the generality of the foregoing, regulations under this section shall provide for the issuing by the Commission of notices to relevant persons in accordance with this Act. The regulations shall prescribe the form of such notices, in accordance with the provisions of this Act which set out matters which are required to be included in such notices. 10
 - (4) Regulations under this section may make different provisions for internet service providers and other relevant persons. 15
 - (5) Before making regulations under this section, the Minister shall consult with the Data Protection Commission, IFCO and the Commission regarding the best means of implementing, by regulations under this section, the principles and policies set out in this section. 20
 - (6) Regulations made under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either House within the next 21 days on which that House has sat after the regulations have been laid before it, the regulations shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder. 25

Information Notices

- 7. (1) Subject to and in accordance with regulations made under this Act, the Commission may issue to a relevant person a notice (in this Act referred to as an “information notice”) requiring the relevant person to provide it with any information which it—
 - (a) believes the relevant person has; and 30
 - (b) requires for the purpose of exercising, or deciding whether or not to exercise, any function conferred on it by or under this Act.
- (2) A notice under this section shall be in the prescribed form and shall specify—
 - (a) the form and manner in which the information is required to be provided; and
 - (b) a reasonable period within which the information is required to be provided. 35
- (3) Subject to *subsection (4)* and section 9, the relevant person to whom the information notice is issued shall comply with the notice. A relevant person who contravenes this subsection shall be guilty of an offence and shall be liable, on summary conviction, to a Class A fine or imprisonment for a term not exceeding 12 months or both.
- (4) The relevant person may, prior to the expiration of the period permitted for 40

compliance with the information notice, make representations in response to it. The Commission shall consider any representations made to it in accordance with this subsection and shall revoke the notice if, following receipt of such representations, it no longer believes that the relevant person has the information required by the notice or it believes that *subsection (5)* applies to the information. 5

- (5) The power in *subsection (1)* shall not be exercisable in relation to information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Enforcement Notices

8. (1) Subject to and in accordance with regulations made under this Act, where it appears to the Commission that a provision of this Act or of the regulations is being contravened by a relevant person, the Commission may issue to the relevant person a notice (in this Act referred to as an “enforcement notice”) requiring the relevant person to end the contravention. 10
- (2) Prior to issuing an enforcement notice, the Commission shall— 15
- (a) inform the relevant person of the alleged contravention and of the grounds on which it appears to the Commission that the alleged contravention is occurring;
 - (b) allow the relevant person an opportunity to make representations as to why, in the opinion of the relevant person, an enforcement notice should not be issued; and
 - (c) consider such representations, if made. 20
- (3) An enforcement notice shall be in the prescribed form and shall—
- (a) state the reasons for the decision to issue the notice; and
 - (b) fix a reasonable period for ending the contravention to which the notice relates.
- (4) Subject to *section 9*, the relevant person to whom the enforcement notice is issued shall comply with the notice. 25

Appeals

9. (1) A relevant person may appeal to the High Court against the issuing of an information notice or an enforcement notice to that person.
- (2) An appeal under this section shall not be brought unless the relevant person has first made representations to the Commission in accordance with *section 7* or *section 8* (as the case may be). 30
- (3) An appeal under this section shall not be brought after the expiration of the time permitted for compliance with the notice, unless in exceptional circumstances the Court is satisfied that justice requires that an appeal be permitted to be brought after the expiration of that time. 35
- (4) Where an appeal is brought in accordance with the provisions of this section, the relevant person may apply to the Court for a suspension of the period permitted for compliance with the notice. Such a suspension shall have effect pending the determination of the appeal, or for such other period as the Court deems fit, on such

terms (if any) as the Court deems fit.

- (5) On an application under *subsection (4)*, the Court may grant such a suspension if satisfied that such an order would be just, having due regard for
- (a) the relevant circumstances of the case as appearing to the Court at the time of the application under *subsection (4)*; and 5
 - (b) the principles and policies specified in *section 6(2)* insofar as they are relevant to the case.
- (6) On an appeal under this section against the issuing of an information notice, the Court may—
- (a) if it is satisfied that 10
 - (i) the relevant person has the information required by the notice;
 - (ii) the Commission requires that information for the purpose of exercising, or deciding whether or not to exercise, any function conferred on it by or under this Act;
 - (iii) the Commission has complied with *section 7*; and 15
 - (iv) the notice also complies with *subsection (9)*,
affirm the notice;
 - or
 - (b) if it is not so satisfied, annul or vary the notice as appropriate.
- (7) On an appeal under this section against the issuing of an enforcement notice, the Court may— 20
- (a) if it is satisfied that
 - (i) the relevant person is contravening the provision of this Act or of the regulations which is alleged in the notice to have been contravened by that person; 25
 - (ii) the Commission has complied with *section 8*; and
 - (iii) the notice also complies with *subsection (9)*,
affirm the notice;
 - or
 - (b) if it is not so satisfied, annul or vary the notice as appropriate. 30
- (8) In the event that the Court affirms or varies the notice, and at the time of the decision of the Court the period permitted for compliance with the notice as stated in the notice has expired, the Court shall fix a reasonable period within which the notice (or, as the case may be, the notice as varied by the Court pursuant to this section) must be complied with. 35
- (9) Every information notice or enforcement notice issued under this Act shall contain a statement that the relevant person to whom it is issued has a right of appeal against the issuing of the notice and that such right of appeal applies subject to and in

accordance with the terms of this section.

Notices to payment-services providers and ancillary service providers

10. (1) Subject to and in accordance with regulations made under this Act, where the Commission considers that a relevant person (“the non-complying person”) is contravening a provision of this Act or of the regulations, it may give notice of that fact to any payment-services provider or ancillary service provider. 5
- (2) A notice under this section shall be in the prescribed form and shall—
- (a) identify the non-complying person in such manner as the Commission considers appropriate;
 - (b) inform the payment-services provider or ancillary service provider of the alleged contravention and of the grounds on which the Commission considers that the alleged contravention is occurring; and 10
 - (c) provide such further particulars as the Commission considers appropriate.
- (3) The Commission shall not issue a notice under this section unless, at the time of the issuing of such notice— 15
- (a) an enforcement notice has been issued to the non-complying person;
 - (b) the non-complying person has failed to comply with that enforcement notice within the period permitted for compliance with it; and
 - (c) the time permitted for appealing against the issuing of that enforcement notice has expired without an appeal having been brought or, if an appeal has been brought, no suspension of the period permitted for compliance with the notice is in effect. 20
- (4) If the Commission issues a notice under this section, it shall inform the non-complying person of the issuing of that notice. The non-complying person may make representations in response to it. The Commission shall consider any representations made to it in accordance with this subsection and shall revoke the notice if, following receipt of such representations, it is satisfied that the contravention has ceased. 25
- (5) In this section—
- “ancillary service provider” means a person, other than a payment-services provider, who appears to the Commission to— 30
- (a) provide, in the course of a business, services which enable or facilitate the making available of pornographic material on the internet by the non-complying person; or
 - (b) advertise, on or via any internet site operated by the non-complying person or via any other means of accessing the internet operated or provided by that person, any goods or services provided in the course of a business; 35
- “payment-services provider” means a person who appears to the Commission to provide services, in the course of a business, which enable funds to be transferred in connection with the payment by any person for access to pornographic material made available on the internet by the non-complying person. 40

- (6) The reference in *paragraph* (b) of the definition of ‘ancillary service provider’ in *subsection* (5) to a means of accessing the internet does not include a device or other equipment for doing so.

Blocking of Access to Material in Certain Circumstances

11. (1) Subject to and in accordance with regulations made under this Act, where the Commission considers that a relevant person (“the non-complying person”) is contravening a provision of this Act or of the regulations, it may give a notice under this subsection to any internet service provider. 5
- (2) The notice shall be in the prescribed form and shall—
- (a) identify the non-complying person in such manner as the Commission considers appropriate; 10
 - (b) inform the internet service provider of the alleged contravention and of the grounds on which the Commission considers that the alleged contravention is occurring;
 - (c) require the internet service provider to take steps or put in place arrangements that appear to the provider to be appropriate in order to prevent persons in the State from viewing the material concerned using the service it provides; 15
 - (d) specify a reasonable period within which the notice is to be complied with;
 - (e) provide such information as the Commission considers may assist the internet service provider in complying with any requirement imposed by the notice; 20
 - (f) provide such further particulars as the Commission considers appropriate.
- (3) The notice may require the internet service provider to provide information specified in the notice, in a manner specified in the notice, to persons in the State who—
- (a) attempt to access the material concerned using the service provided by the provider, and 25
 - (b) are prevented from doing so as a result of steps taken, or arrangements put in place, by the provider pursuant to the notice.
- (4) An internet service provider to whom a notice under *subsection* (1) is issued shall comply with the notice.
- (5) Before giving a notice to an internet service provider under *subsection* (1), the Commission shall— 30
- (a) inform the Minister and the non-complying person of its decision to do so and provide each of them with a copy of the proposed notice; and
 - (b) indicate to the non-complying person what steps the Commission considers could be taken by the non-complying person to end the contravention to which the notice relates and the manner in which the non-complying person should inform the Commission of any steps so taken to end the contravention. 35
- (6) The Commission shall not issue a notice under *subsection* (1), or, if such notice has already been given, shall revoke such notice, if—

- (a) the Minister so directs;
 - (b) the non-complying person takes adequate steps to end the contravention; or
 - (c) the Commission considers that in the circumstances, whether existing at the time of the issuing of the notice or at any later time, the steps or arrangements required by the notice constitute an unreasonable or disproportionate response to the contravention. 5
- (7) Before giving a notice under *subsection (1)* requiring an internet service provider to take steps or put in place arrangements referred to in *subsection (2)*, the Commission shall consider whether such steps or arrangements would be likely to be detrimental to a matter mentioned in *subsection (8)*. 10
- (8) The Commission may not give a notice under *subsection (1)* where it appears to the Commission that the steps or arrangements would be likely to be detrimental to—
- (a) national security; or
 - (b) the prevention or detection of an arrestable offence as defined in section 2 of the Criminal Law Act 1997 (other than an offence under this Act). 15
- (9) Subject to *subsections (10) and (11)*, a notice under *subsection (1)* shall have effect for such period, not exceeding 14 days, as the notice may specify, beginning on the day after the day on which the notice is issued.
- (10) Subject to *subsections (11) and (12)*, during the period referred to in *subsection (9)* the Commission may, on notice to the non-complying person and the internet service provider, apply to the High Court for an order— 20
- (a) maintaining the notice issued under *subsection (1)* in effect for an additional period of time to be stated in the order of the Court; or
 - (b) if that notice has ceased to have effect prior to the making of the order, giving effect to the notice again for an additional period of time to be stated in the order of the Court. 25
- (11) The Court may make an order under *subsection (10)* on such terms (if any) as it thinks just. However, the Court shall not make an order under *subsection (10)* unless it is satisfied that—
- (a) The non-complying person is contravening the provision of this Act or of the regulations which is alleged in the notice to have been contravened; 30
 - (b) The non-complying person has taken no steps, or no adequate steps, to end the contravention;
 - (c) The notice was issued in accordance with the provisions of this section and of the regulations made under this Act; 35
 - (d) The steps or arrangements required by the notice, considered in light of the circumstances both at the time it was issued and at the date of the hearing of the application to the Court, constitute a reasonable and proportionate response to the contravention; and
 - (e) The order under *subsection (10)* would be just, having due regard for the principles and policies specified in *section 6(2)* insofar as they are relevant to the 40

case.

- (12) For the avoidance of doubt, the duty imposed upon the Commission by *subsection (6)* subsists in relation to a notice at all times after it is made, including where such notice is for the time being in effect pursuant to an order under *subsection (10)*.
- (13) In this section “the material concerned”, in relation to a non-complying person, means the pornographic material which the Commission considers is being made available by the non-complying person in contravention of a provision of this Act or of regulations made under this Act. 5

General Provision as to Notices

12. (1) Where it considers, by reason of representations received by it or otherwise, that a notice issued by it under this Act should be suspended, amended or revoked, the Commission may suspend, amend or revoke such notice accordingly. 10
- (2) This section is without prejudice to the provisions of this Act that, in certain cases, require the Commission to revoke a notice.

PART 3

15

OFFENCES, REPORT, RULES OF COURT AND SAVER

Offence Provisions

13. (1) A relevant person who contravenes this Act or regulations made under this Act shall be guilty of an offence and (save where the offence is a contravention of *section 7(3)*), shall be liable— 20
- (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 five years or both.
- (2) Where an offence under this Act is committed by a body corporate which is a relevant person, and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 25 30
- (3) Subject to *subsection (4)*, a prosecution for an offence under this Act may be brought only by or with the consent of the Director of Public Prosecutions.
- (4) Summary proceedings for an offence under this Act may be brought by the Commission. 35

Report on Act and Regulations

14. (1) Within two years of the coming into force of regulations made under this Act, the

Minister shall produce a report on the impact and effectiveness of this Act and of the regulations made under it.

- (2) The report under this section shall be laid before each House of the Oireachtas as soon as may be after it is produced.

Rules of Court

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15. The Superior Courts Rules Committee may make rules of court for the purposes of ensuring that appeals and applications to the High Court provided for in this Act are given such priority as is reasonably possible, having regard to all of the circumstances.

Saver for Existing Laws

16. For the avoidance of doubt, nothing in this Act or in regulations made under this Act affects or shall affect any prohibition or restriction on pornographic material, or powers in relation to such material, under any other enactment or any rule of law. 10

An Bille um Chosaint Leanaí (Ábhar
Pornagrafach ar Líne), 2020

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht chun leanaí a chosaint ar ábhar pornagrafach ar
an idirlíon a bhreathnú; agus do dhéanamh socrú
i dtaobh nithe gaolmhara.

*An Teachta Peadar Tóibín a thug isteach,
XX Samhain, 2020*

Protection of Children (Online Pornographic
Material) Bill 2020

BILL

(as initiated)

entitled

An Act to protect children from viewing
pornographic material on the internet; and to
provide for related matters.

*Introduced by Deputy Peadar Tóibín,
XXth November, 2020*
