



**AN BILLE UM CHOSAINT LEANAÍ (ÁBHAR PORNAGRAFACH
AR LÍNE), 2020**
**PROTECTION OF CHILDREN (ONLINE PORNOGRAPHIC
MATERIAL) BILL 2020**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of this Bill is to protect children from viewing pornographic material on the internet.

Provisions of the Bill

Section 1 is a standard provision relating to the short title of the Bill and its commencement.

Section 2 states the definitions of several key terms in the Bill.

Section 3 defines “pornographic material” for the purposes of the Bill.

Section 4 defines a “relevant person” for the purposes of the Bill.

Section 5 provides for the payment of expenses incurred by the Minister for Environment, Climate and Communications and other specified public bodies in the performance of their functions under the Bill.

Section 6 provides for the Minister, within six months from the coming into operation of the section, to make regulations for the purpose of ensuring as far as practicable (by means of age-verification or other means consistent with the Bill) that children in the State cannot view pornographic material on the internet. This section also sets out the principles and policies which are to guide the Minister in making those regulations. The Minister is required to consult with the Data Protection Commission, the Irish Film Classification Office and the Commission for Communications Regulation (ComReg) regarding the best means of implementing those principles and policies by regulations. Such regulations can be annulled by either House of the Oireachtas.

Section 7 empowers ComReg to issue information notices in certain circumstances to “relevant persons” (defined in section 4), seeking information for the purposes of ComReg’s functions under the Bill. The relevant person must comply with the notice, subject to the safeguards in sections 7 and 9.

Section 8 empowers ComReg to issue enforcement notices to relevant persons who appear to be contravening the Bill or regulations made under it. The enforcement notice requires the relevant person to end the contravention. The relevant person must comply with the notice, subject to a right of appeal. The power to issue an enforcement notice is subject to the conditions in the section and in the regulations to be made under the Bill.

Section 9 provides for appeals to the High Court by a relevant person against information notices and enforcement notices. Where an appeal is brought, the relevant person can apply to the Court for a suspension of the period permitted for compliance with the notice. Section 9 sets out the criteria to be applied by the Court in deciding such appeals and applications for suspensions. The right of appeal must be referred to in every information notice or enforcement notice.

Section 10 provides that, subject to the terms of the section and the regulations, if a relevant person (“the non-complying person”) fails to comply with an enforcement notice within the permitted time and no suspension of that time is in effect, ComReg can inform any payment-services provider or ancillary service provider (as defined in section 10) of the situation. ComReg must also notify the non-complying person, who may make representations in response to that notification.

Section 11 provides that, subject to the regulations, where ComReg considers that a relevant person is contravening the Bill or the regulations, it may give a notice under section 11(1) to any internet service provider, with a view to blocking access to the material covered by the notice. ComReg’s power under section 11 is subject to the safeguards in the section and a notice issued under this section cannot have effect for more than 14 days, unless the notice is continued in effect by order of the High Court. The High Court cannot make such an order unless satisfied that the conditions in section 11(11) are fulfilled.

Section 12 provides that, apart from situations in which another provision in the Bill compels ComReg to revoke a notice, ComReg may suspend, amend or revoke such notice where appropriate.

Section 13 provides that a relevant person who contravenes the Bill or regulations under it commits an offence. It prescribes the penalties for such offences (except for the offence of non-compliance with an information notice, the penalties for which are set out in section 7(3)). Offences under the Bill can only be prosecuted by or with the consent of the DPP (or by ComReg in the case of summary prosecutions).

Section 14 provides for the preparation of a report on the impact and effectiveness of the Bill and the regulations, which is to be laid before each House of the Oireachtas.

Section 15 allows the making of rules of court ensuring that appeals and applications to the High Court under the Bill are given such priority as is reasonably possible.

Section 16 makes clear that nothing in the Bill or the regulations will affect any prohibition or restriction on pornographic material, or powers in relation to such material, under any other enactment or rule of law.

*Peadar Tóibín, TD,
Samhain, 2020.*