



Briefing on the Harassment, Harmful Communications Act 2020

Also known as 'Coco's Law'.



Introduction

The Harassment, Harmful Communications and Related Offences Act 2020 (also referred to as Coco's Law) commenced on 9th February 2021. It brings in a number of key developments relating to image based sexual abuse offences and threatening and offensive communications. It also brings in a change to the existing Harassment Offence.

Part 1: Image Base Sexual Abuse Offences

The Harassment, Harmful Communications and Related Offences Act 2020 creates two new offences which criminalise the non-consensual distribution of intimate images.

Offence 1: 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.

This means it is now an offence to distribute or publish an intimate image **without consent**, with the **intent** to cause harm or not considering if harm is caused.

Note that **threatening** to publish and distribute an intimate image without consent is **in itself** an offence, even if the threat is not carried out.

This offence reflects the situation that women most often report to Women's Aid, where the perpetrator is intentionally trying to cause harm.

Women in this situation should keep evidence of the intimate images having been shared (eg screenshot) and evidence of any intent to cause harm, for example, vengeful or threatening messages relating to the image.

Any evidence of the negative effects of these actions on the woman would also be useful.

Offence 2: Recording, distributing or publishing intimate image without consent

This is a less severe offence, with no need to prove intent, and is meant to deal with so called up-skirting and down-blousing offences.

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.

Important Notes:

- Note that the definition of intimate image for both these offences, is comprehensive and includes altered images. “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.
- The offences apply even when the images were taken with consent, if there was not consent to them being shared or published.
- For both offences, being in an intimate relationship is an aggravating circumstance
- Importantly, victims in criminal proceedings for these two offences have a right to anonymity and cannot be identified in the media (except in special circumstances).



Part 2: Threatening and Offensive Communications

- S4 of the Act also makes it an offence to distribute, publish or send threatening or grossly offensive communications by any means to or about another person with the intent to cause harm.
- The important change here is that it includes communications **about a person** and not only with a person. This is very helpful when abusers make threats or send offensive communications about their partner to a third party.
- Another good point of this offence is that unlike harassment, you do not need a pattern, this offence can be charged with just **one** offensive/threatening message.
- However, intent to cause harm has to be proven (and not just recklessness).

Part 3: Sunset Clause

- For summary offences in this Act, proceedings must start within two years of the offence being committed. There is no time limit for indictable offences.
- In this Bill the offence under S3 (distributing images without consent and without intent) is only a summary offence, so the two year limit applies.
- Offences under S2 and S4 can be either summary or indictable, depending on the gravity of the offence carried out.
- There was a lot of discussion about this in the Oireachtas debates, as the victim may not be aware the images are out there within the two years. The Minister seems to think any new upload /distribution is a new offence.
- It may be advisable in any case to report to Garda asap.
- Women's Aid will monitor if this sunset clause creates barriers to prosecution.

Part 4: Changes to the Harassment Offence

- This Act also changes S10 of the Non-Fatal Offences against the person Act, by including in the existing Harassment offence communicating **about** a person (previously only communication with a person was included).



- Again this is important for women experiencing domestic abuse as it includes the situation where the perpetrator harasses the woman by communicating about her to a third person, for example with her family and friends.
- The maximum penalty for harassment is also increased to 10 years (previously 7).

Link to legislation

<http://www.irishstatutebook.ie/eli/2020/act/32/enacted/en/html?q=harassment&years=2020>

Part 5: Helpful Information for those Affected by Image Based Sexual Abuse

Has someone shared sexually explicit images of you without your consent?

The term Image Based Sexual Abuse (sometimes inappropriately referred to as 'revenge porn') covers the online posting of sexually explicit visual material, without the consent of the person portrayed. The term typically includes photographs and video clips which have been consensually generated-either jointly or by self ("sexting"), as well as content covertly recorded by a partner or unknown third party.

Image based sexual abuse is now a crime in Ireland and you can report it to An Garda Síochána.

Things you should know:*

- If private, sexually explicit material is posted online without your consent, notify the platform or website immediately.
- There may be an online complaint button,; if so, use it and make clear in your online complaint that the material is an invasion of your privacy, and data protection rights, and has been uploaded without your consent.
- If you know the person who uploaded the material, notify them also to take it down immediately for the same reasons.
- Often however, the person may not be identified. Also, even if he or she takes it down, the material may have been posted to other sites. For that reason, you need to contact the platform such as Facebook or Twitter, or whatever website is hosting the material.



- Take a screen shot of your complaint, so that you have a record of it, and send a written complaint to the platform or site, and the uploader, keeping a copy of your letters.
- Under the legislation, offences must be reported within two years of being carried out. So it is important to report to the Gardaí as soon as you can.

Things you could say:

- I did not consent to the image being shared, therefore this is an offence under the Harassment, Harmful Communications and related Offences Act 2020.
- The material was private: you did not give permission for it to be published online. It is an invasion of your privacy rights under the Constitution, the European Convention on Human Rights, and the Charter of Fundamental Rights.
- If the material relates to persons who are under the age of 18 years, the material may be classed as images of child sexual abuse. Possession or distribution by anyone of images of child sexual abuse is a criminal offence.
- You have a right of access, rectification and erasure in relation to personally sensitive data under the Data Protection Acts 1988-2003, so request the internet site to take it down under Data Protection laws.
- If you are being blackmailed, or anyone is seeking money from you, or if you feel harassed, you can go to the Gardai to make a complaint.

If you have experienced this type of abuse and harassment please contact the [Women's Aid National Freephone Helpline](#) on 1800 341 900 from 24 hours a day, seven days a week, your local domestic violence service or contact An Garda Síochána on 112/999.

**Please note that this is not legal advice. If you need legal advice, please consult a solicitor.*