



TPN/001/2019

The Permanent Mission of Ireland to the United Nations Office and other International Organisations in Geneva presents its compliments to the Secretary General of the United Nations (High Commissioner for Human Rights) and has the honour to refer to the Communication reference OL IRL 1/2018 (Digital Safety Commissioner Bill 2017), received from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr David Kaye.

The response from Tánaiste and Minister for Foreign Affairs and Trade, Mr Simon Coveney T.D. to the aforementioned Communication is enclosed.

The Permanent Mission of Ireland to the United Nations Office at Geneva avails itself of this opportunity to renew to the Secretary General of the United Nations (High Commissioner for Human Rights) the assurances of its highest consideration.



Geneva, 3rd January 2019



Mr. David Kaye
UN Special Rapporteur on the Promotion and
Protection of the Right to Freedom of Opinion
and Expression

21 December 2018

Our Ref: POL180095

Re: Communication Ref: OL IRL 1/2018 Digital Safety Commissioner Bill 2017

Dear Mr. Kaye

I wish to thank you for your Communication Ref: OL IRL 1/2018 of 5 November 2018 in respect of the draft legislation referenced above. At the outset, I wish to reiterate the Irish Government's commitment to discharging its obligations under international human rights law including under Article 19 of the International Covenant on Civil and Public Rights (ICCPR). Let me also point out that the name of the State Party is "Ireland" and not "the Republic of Ireland" as indicated at page 3 of the Communication and request that any further communication be addressed to Ireland.

The Digital Safety Commissioner Bill 2017 is a Private Members' Bill (as opposed to a Government Bill), which was introduced into Dáil Éireann (the House of Representatives, the lower House of the Oireachtas, or Parliament) by Donnchadh Ó Laoghaire TD (Member of the House of Representatives) on 30 November 2017. Mr. Ó Laoghaire is a member of Sinn Féin, a political party which is not in government and sits on the opposition benches of the parliament.

On 22 February 2018, during Second or Debate Stage in Dáil Éireann [**comment: Bills go through second and following stages in both Houses of the Oireachtas, hence I am specifying Second Stage in the Dáil**], the Government did not oppose the Bill. However, the then Minister for Communications, Climate Action and Environment, Denis Naughton TD, outlined the Government's serious concerns regarding legal issues presented by the Bill. These included a number of issues which you have identified in your correspondence, such as the lack of a definition of "harmful digital communications".

As the enactment of this legislation could incur public expenditure, the Constitution of Ireland requires that the Bill must have the support of Government (guaranteeing that the required resources will be provided) in order to progress to Committee Stage (Third Stage) in Dáil Éireann.

Furthermore, Private Members' Bills which have passed Second Stage, must pass a further step, involving parliamentary scrutiny by an Oireachtas Committee and in some instances may be referred for a procedure known as "detailed scrutiny". This involves scrutiny of the Bill by the relevant Joint Oireachtas Committee (made up of members of both Dáil Éireann and Seanad Éireann, the upper House of the Oireachtas), in this case the Committee on Communications, Climate Action and Environment. The intention is that the Committee will compile a report and make recommendations to Government, which will then consider whether or not to support the passage of the Bill to the next stage in the legislative process.

The Committee has commenced public hearings on the Bill as part of its detailed scrutiny and my colleague the Minister for Communications, Climate Action and Environment, Richard Bruton TD, and his officials have given evidence at the two hearings held to date, on 25 October and 6 November 2018¹. At the first hearing, the Minister stated that self-regulation of online platforms may no longer be appropriate but emphasised that if the Oireachtas were to legislate on this issue, it must ensure that the legislation is robust, effective and meets the urgent public policy need to protect all online users, but especially children. It is not known at this point when the Committee intends to conclude its work and finalise its report, but the Committee's Chair has indicated that they intend to engage with national and international stakeholders.

Minister Bruton has requested the advice of the Attorney General on the range of legal issues which the Bill presents, and, in this regard, has brought your correspondence to his attention. Minister Bruton has also forwarded your correspondence to the Committee so that it may consider the issues and concerns you have raised in detail as part of its work.

As you have indicated, the Digital Safety Commissioner Bill 2017 is based on recommendations of the Law Reform Commission contained in its report on *Harmful Communications and Digital Safety*² published in September 2016. This report, together with a number of others (including the *Internet Content Governance Advisory Group's Report 2014*³ and the report of the Joint Oireachtas Committee on Children and Youth Affairs on the *Cyber Security of Children and Young Adults 2018*⁴) was considered in the context of the Government's Action Plan for Online Safety 2018-2019⁵ which was published by the Taoiseach (Prime Minister) on 11 July 2018.

The Action Plan contains 25 Actions to be implemented or substantially progressed by six key Government Departments before the end of 2019. Furthermore, the Action Plan commits three Government Departments (Communications, Climate Action and Environment; Justice and Equality; and Business, Enterprise and Innovation) to working with the Committee on Communications, Climate Action and Environment to "explore the issues arising" in relation to the Digital Safety Commissioner Bill 2017. The Action Plan also notes that there are aspects of the Digital Safety Commissioner Bill 2017, "which raise jurisdictional and other legal issues and which require greater examination and scrutiny".

¹ Transcripts are available at

<https://www.oireachtas.ie/en/debates/find/?debateType=committee&committee=%2Fen%2Fcommittees%2F32%2Fcommunications-climate-action-and-environment%2F>

² <https://www.lawreform.ie/news/report-on-harmful-communications-and-digital-safety.683.html>

³ <https://www.dccae.gov.ie/en-ie/communications/publications/pages/internet-content-governance-advisory-group-report.aspx>

⁴

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_children_and_youth_affairs/reports/2018/2018-03-29_report-on-cyber-security-for-children-and-young-adults_en.pdf

⁵ <https://www.gov.ie/en/campaigns/be-safe-online/>

Having regard to the specific questions you have asked, these will be considered by Government in the context of the advice of the Attorney General, and by the Committee as part of its consideration of the Bill. The Government is aware that many stakeholders share the concerns which you have expressed in your correspondence and I can assure you that many of these are shared by Government. We are therefore resolved that they must be clarified before the Bill can progress to the next stage of the legislative process and the Government will continue to work with the Committee to resolve these issues.

I would like to thank you again for your most helpful and timely Communication.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Simon Coveney', is positioned above a horizontal line.

Simon Coveney T.D.
Tánaiste
Minister for Foreign Affairs and Trade