



DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL (GRÍOSÚ CHUN FORÉIGIN NÓ FUATHA AGUS CIONTA FUATHA), 2022 CRIMINAL JUSTICE (INCITEMENT TO VIOLENCE OR HATRED AND HATE OFFENCES) BILL 2022

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL (GRÍOSÚ CHUN FORÉIGIN NÓ FUATHA AGUS CIONTA FUATHA), 2022 —ROGHCHOISTE

CRIMINAL JUSTICE (INCITEMENT TO VIOLENCE OR HATRED AND HATE OFFENCES) BILL 2022 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 2

1. In page 6, to delete lines 3 to 6.

—Thomas Pringle.

2. In page 6, between lines 6 and 7, to insert the following:

“ ‘hate’ includes bias, prejudice, contempt, hostility and bigotry;”.

—Thomas Pringle.

3. In page 6, to delete lines 7 and 8.

—Aodhán Ó Ríordáin.

4. In page 6, to delete lines 7 and 8 and substitute the following:

“ ‘hate’ includes bias, prejudice, contempt, hostility and bigotry;

“ ‘hatred’ means a state of mind characterised as intense and irrational emotions of enmity or detestation against a person or a group of persons in the State or elsewhere on account of their membership or presumed membership of a group defined by reference to protected characteristics, or any one of those characteristics;

“ ‘incitement’ means behaviour towards, or communications about, a person or a group of persons that create a serious risk of discrimination, hostility or violence against persons belonging to or being presumed as belonging to such groups on the basis of their protected characteristics;”.

—Pa Daly, Martin Kenny.

5. In page 6, line 7, to delete “ ‘hatred’ means hatred” and substitute the following:

“ ‘hatred’ means a state of mind characterised as intense and irrational emotions of opprobrium, enmity, and detestation rooted in bias, prejudice or hostility”.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny.

[SECTION 2]

6. In page 6, to delete lines 7 and 8 and substitute the following:

“ “hatred” means a state of mind characterised as intense and irrational emotions of enmity or detestation against a person or a group of persons in the State or elsewhere on account of their membership or presumed membership of a group defined by reference to protected characteristics, or any one of those characteristics;”.

—Thomas Pringle.

7. In page 6, between lines 8 and 9, to insert the following:

“ “incitement” means behaviour towards, or communications about, a person or a group of persons that create a serious risk of discrimination, hostility or violence against persons belonging to or being presumed as belonging to such groups on the basis of their protected characteristics;”.

—Thomas Pringle.

8. In page 6, to delete lines 10 to 12.

—Aodhán Ó Ríordáin, Thomas Pringle.

SECTION 3

9. In page 6, line 19, after “religion”, to insert “or belief”.

—Aodhán Ó Ríordáin.

10. In page 6, between lines 22 and 23, to insert the following:

“(h) migration status.”.

—Thomas Pringle.

11. In page 6, line 23, before “sex” to insert “variation of”.

—Thomas Pringle.

12. In page 6, to delete lines 24 and 25 and substitute the following:

“(i) sexual orientation,
(j) migration status, or
(k) disability.”.

—Pa Daly, Martin Kenny.

13. In page 6, to delete line 26 and substitute the following:

“(2) In *subsection (1)*—”.

—Aodhán Ó Ríordáin.

14. In page 6, to delete lines 27 and 28 and substitute the following:

“(a) the reference—

(i) to “religion” includes reference to the absence of a religious conviction or belief, and

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- (ii) to “belief” includes reference to philosophical convictions or beliefs and to their absence,”.

—Aodhán Ó Ríordáin.

15. In page 6, between lines 31 and 32, to insert the following:

“(c) references to “migration status” include references to persons seeking international protection, persons with refugee status, persons with permission to remain and persons with any other regular or irregular migrant status,”.

—Thomas Pringle.

16. In page 6, to delete lines 32 to 34 and substitute the following:

“(c) the reference to “national or ethnic origin” includes reference to membership of the ethnic group within the Nation known as “Travellers”, and also known as “Mincéiri” or “Pavees”,.”.

—Aodhán Ó Ríordáin.

17. In page 7, to delete lines 1 to 3 and substitute the following:

“(d) “gender” means the gender of a person or the gender which a person expresses or with which the person identifies, and includes the male, female, transgender and non-binary genders,”.

—Aodhán Ó Ríordáin.

18. In page 7, to delete lines 1 to 3 and substitute the following:

“(d) “gender” means the gender of a person or the gender which a person expresses or with which the person identifies and includes male, female, transgender, non-binary and a gender other than those of male and female,”.

—Thomas Pringle.

19. In page 7, to delete lines 4 and 5 and substitute the following:

“(e) “sexual orientation” refers to emotional, romantic or sexual attraction to others based on gender, and includes heterosexual, lesbian, gay, bisexual, pansexual and asexual orientation,”.

—Aodhán Ó Ríordáin.

20. In page 7, to delete lines 4 and 5 and substitute the following:

“(e) “sexual orientation” refers to emotional, romantic, and/or sexual attraction to men, women, and non-binary people. It also includes heterosexual, lesbian, gay, bisexual, pansexual and asexual,”.

—Thomas Pringle.

21. In page 7, to delete lines 6 to 9 and substitute the following:

“(f) references to “migration status” include references to persons seeking international protection, persons with refugee status, persons with permission to

[SECTION 3]

remain and persons with any other regular or irregular migrant status,

- (g) references to “sex characteristics” shall be construed as references to the physical and biological features of a person relating to sex, and
- (h) “disability” has the same meaning as it has in section 2(1) of the Equal Status Act 2000.”.

—Pa Daly, Martin Kenny.

22. In page 7, to delete lines 6 and 7 and substitute the following:

- “(f) references to “sex characteristics” shall be construed as references to the physical and biological features of a person relating to sex, and as including variations of such characteristics whether dimorphic or otherwise, and”.

—Aodhán Ó Ríordáin.

23. In page 7, to delete lines 6 and 7 and substitute the following:

- “(f) references to variations of sex characteristics shall be construed as references to the physical and biological features of a person relating to sex, and”.

—Thomas Pringle.

SECTION 5

24. In page 7, line 14, after “Expenditure” to insert “, National Development Plan Delivery”.

—An tAire Dlí agus Cirt.

SECTION 6

25. In page 7, between lines 15 and 16, to insert the following:

“Review of Operation of Act

6. The Minister shall—

- (a) not later than 5 years after this Act comes into operation, commence a review of the operation of this Act, and
- (b) not later than 12 months after the commencement of the review, make a report to each House of the Oireachtas of the findings made on the review and of the conclusions drawn from the findings.”.

—Thomas Pringle.

26. In page 7, between lines 19 and 20, to insert the following:

- “ “hatred” means hatred against a person or a group of persons in the State or elsewhere on account of their protected characteristics or any one of those characteristics;”.

—Aodhán Ó Ríordáin.

27. In page 7, to delete lines 26 to 28.

—Thomas Pringle.

[SECTION 7]

SECTION 7

28. In page 8, to delete lines 7 to 16 and substitute the following:

“7. (1) Subject to *subsections (2) to (4)* and *section 11*, a person shall be guilty of an offence under this section if—

(a) the person—

(i) communicates material to the public or a section of the public, or

(ii) behaves in a public place in a manner, that is likely to incite violence or hatred against a person or a group of persons on account of their membership or presumed membership of a group defined by reference to protected characteristics, or any one of those characteristics,

and

(b) does so with intent to incite violence or hatred against such a person or group of persons on account of those characteristics or any of those characteristics or being reckless as to whether such violence or hatred is thereby incited.”.

—Thomas Pringle.

29. In page 8, to delete lines 12 and 13 and substitute the following:

“that is likely to incite violence or hatred against a person or a group of persons on account of their membership or presumed membership of a group defined by reference to protected characteristics, or any one of those characteristics and,”.

—Pa Daly, Martin Kenny.

30. In page 8, line 12, to delete “or hatred” and substitute “or intimidation, hostility or discrimination”.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny.

31. In page 8, line 14, before “does” to insert “the person”.

—An tAire Dlí agus Cirt.

32. In page 8, line 14, to delete “or hatred” and substitute “or intimidation, hostility or discrimination”.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny.

33. In page 8, line 16, to delete “or hatred” and substitute “or intimidation, hostility or discrimination”.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny.

34. In page 8, to delete lines 17 to 21 and substitute the following:

“(2) It shall not be an offence under this section for a relevant service provider, within the meaning of the European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No. 68 of 2003), to do an act to which Regulation 16, 17 or 18 of those Regulations applies if—

[SECTION 7]

- (a) the requirements of the Regulation concerned for liability not to apply are satisfied, and
- (b) the doing of the act is not a contravention of an online safety code or other code of practice having the force of law by virtue of any enactment.”.

—Aodhán Ó Ríordáin.

35. In page 8, to delete lines 22 to 39, and in page 9, to delete lines 1 to 5 and substitute the following:

“(3) In any proceedings for an offence under this section, it shall be a defence to prove that the material concerned or, insofar as appropriate, the behaviour concerned was, in the particular circumstances, reasonable or consisted solely of—

- (a) a statement that is the subject of the defence of absolute privilege, or
- (b) material or behaviour, as the case may be, that is necessary for any other lawful purpose, including law enforcement or the investigation or prosecution of an offence.

(4) For the purpose of *subsection (3)* in determining whether material or behaviour was reasonable, particular regard must be had to the importance of the right to freedom of expression by virtue of Article 40.6.1.i of the Constitution of Ireland and Article 10 of the European Convention on Human Rights, including the general principle that the right applies to the expression of information or ideas that offend, shock or disturb.”.

—Thomas Pringle.

36. In page 8, to delete lines 25 and 26.

—Aodhán Ó Ríordáin.

37. In page 8, line 26, to delete “religious”.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny.

38. In page 8, to delete lines 36 and 37 and substitute the following:

“persons on account of their membership or presumed membership of a group defined by reference to protected characteristics, or any one of those characteristics,”.

—Pa Daly, Martin Kenny.

SECTION 8

39. In page 9, to delete lines 22 to 26 and substitute the following:

“where such communication of material or behaviour is directed against a person or group of persons on account of their membership or presumed membership of a group defined by reference to protected characteristics, or any one of those characteristics and is done with intent to incite violence or hatred against such a person or such a group of persons on account of those characteristics or any of those characteristics.”.

—Pa Daly, Martin Kenny.

[SECTION 8]

40. In page 10, to delete lines 9 to 11 and substitute the following:

““protected characteristic”, in relation to a person or a group of persons, means any of the characteristics specified in *paragraph (a), (b), (c), (d), (e), (f) or (g)* of the definition of that term in *section 3(1)*.”

—Pa Daly, Martin Kenny, Thomas Pringle.

41. In page 10, line 10, to delete “(d), (e) or (f)” and substitute “(c), (d), (e), (f) or (g)”.

—An tAire Dlí agus Cirt.

SECTION 9

42. In page 10, to delete lines 22 and 23 and substitute the following:

“of persons on account of their membership or presumed membership of a group defined by reference to protected characteristics (within the meaning of *section 7 or 8*, as the case may be), or any one of those characteristics.”

—Pa Daly, Martin Kenny.

SECTION 10

Section opposed.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny.

43. In page 11, to delete lines 1 to 9 and substitute the following:

“(a) prepares or possesses material which is threatening, abusive or insulting that is likely to incite violence or hatred against a person or a group of persons on account of their protected characteristics or any of those characteristics with a clear and serious intention of communicating the material to the public or a section of the public, whether by himself or herself or another person, and

(b) prepares or possesses such material with intent to incite violence or hatred against such a person or group of persons on account of those characteristics.”

—Pa Daly, Martin Kenny, Thomas Pringle.

44. In page 11, to delete lines 12 and 13.

—Aodhán Ó Ríordáin.

45. In page 11, to delete lines 17 to 21.

—Thomas Pringle.

SECTION 11

46. In page 11, between lines 26 and 27, to insert the following:

“Protection of freedom of expression

11. For the purposes of this Part, any material or behaviour is not taken to incite violence or hatred against a person or a group of persons on account of their protected characteristics or any of those characteristics solely on the basis that that material or behaviour includes or involves—

[SECTION 11]

- (a) discussion or criticism of matters relating to a protected characteristic,
- (b) statements that are factually incorrect,
- (c) arguments that may reasonably be considered to be fallacious, or
- (d) matter that may be considered by some members of the community to be offensive, shocking or otherwise disturbing,

but, in determining whether an offence has been committed, the presence or absence of any of those factors may be taken into account.”.

—Aodhán Ó Ríordáin.

[Acceptance of this amendment involves the deletion of section 11 of the Bill.]

47. In page 11, between lines 26 and 27, to insert the following:

“11. For the purposes of this Part, any material or behaviour is not taken to incite violence or hatred against a person or group of persons on account of their membership or presumed membership of a group defined by reference to protected characteristics solely on the basis that that material or behaviour includes or involves discussion or criticism of matters relating to a protected characteristic.”.

—Pa Daly, Martin Kenny.

[Acceptance of this amendment involves the deletion of section 11 of the Bill.]

48. In page 11, line 28, to delete “For the purposes of this Part,” and substitute “In line with the right to freedom of expression, for the purposes of this Part,”.

—Thomas Pringle.

49. In page 11, line 31, after “characteristic” to insert the following:

“, in this respect, particular regard must be had to the importance of the right to freedom of expression by virtue of Article 10 of the European Convention on Human Rights, including the general principle that the right applies to the expression of information or ideas that offend, shock or disturb”.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny.

SECTION 15

Section opposed.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny.

SECTION 17

50. In page 15, between lines 8 and 9, to insert the following:

“Interpretation

17. In this Part, “hate” includes hatred, bias, prejudice, contempt or hostility against a person or a group of persons in the State or elsewhere on account of their protected characteristics or any one of those characteristics.”.

—Aodhán Ó Ríordáin.

[SECTION 17]

51. In page 15, between lines 8 and 9, to insert the following:

“Interpretation

17. In this Part, “hatred” means a state of mind characterised as intense and irrational emotions of enmity or detestation against a person or a group of persons in the State or elsewhere on account of their membership or presumed membership of a group defined by reference to protected characteristics, or any one of those characteristics.”.

—Thomas Pringle.

52. In page 15, to delete line 15 and substitute the following:

“ ‘hate’ has the meaning it has in *section 17* of the *Act of 2022*;”.

—Aodhán Ó Ríordáin.

53. In page 15, line 29, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

54. In page 15, to delete lines 31 to 36, and in page 16, to delete lines 1 to 8 and substitute the following:

“(2) An offence under section 2 committed by a person is aggravated by hate for the purposes of this section if hate is in whole or in part the person’s motive for committing the offence.”.

—Aodhán Ó Ríordáin.

55. In page 15, to delete lines 33 to 36, and in page 16, to delete lines 1 to 4.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny, Thomas Pringle.

56. In page 16, line 9, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

57. In page 16, line 36, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

58. In page 17, line 2, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

SECTION 18

59. In page 17, to delete line 9 and substitute the following:

“ ‘hate’ has the meaning it has in *section 17* of the *Act of 2022*;”.

—Aodhán Ó Ríordáin.

60. In page 17, to delete lines 14 to 27 and substitute the following:

“3A. (1) An offence committed by a person is aggravated by hate for the purposes of sections 6A, 7A, 11A and 18A if hate is in whole or in part the person’s motive for committing the offence concerned.”.

[SECTION 18]

—Aodhán Ó Ríordáin.

61. In page 17, to delete lines 16 to 23.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny.

62. In page 17, line 28, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

63. In page 18, line 4, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

64. In page 18, line 16, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

65. In page 18, line 28, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

66. In page 18, line 34, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

67. In page 19, line 4, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

SECTION 19

68. In page 19, to delete line 25 and substitute the following:

“ ‘hate’ has the meaning it has in *section 17* of the *Act of 2022*;”.

—Aodhán Ó Ríordáin.

69. In page 19, to delete lines 30 to 35, and in page 20, to delete lines 1 to 8 and substitute the following:

“1A. (1) An offence committed by a person is aggravated by hate for the purposes of sections 2A, 3A, 4A, 5A, 9A, 10A and 13A if hate is in whole or in part the person’s motive for committing the offence concerned.”.

—Aodhán Ó Ríordáin.

70. In page 19, to delete lines 32 to 35, and in page 20, to delete lines 1 to 4.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny.

71. In page 20, line 9, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

72. In page 20, line 20, to delete “hatred” and substitute “hate”.

—Aodhán Ó Ríordáin.

[SECTION 19]

73. In page 20, line 31, to delete “hatred” and substitute “hate”.
—Aodhán Ó Ríordáin.
74. In page 21, line 4, to delete “hatred” and substitute “hate”.
—Aodhán Ó Ríordáin.
75. In page 21, line 15, to delete “hatred” and substitute “hate”.
—Aodhán Ó Ríordáin.
76. In page 21, line 28, to delete “hatred” and substitute “hate”.
—Aodhán Ó Ríordáin.
77. In page 22, line 3, to delete “hatred” and substitute “hate”.
—Aodhán Ó Ríordáin.
78. In page 22, line 20, to delete “hatred” and substitute “hate”.
—Aodhán Ó Ríordáin.

SECTION 20

79. In page 22, to delete lines 32 to 38 and substitute the following:
- “20. (1) For the purposes of determining the sentence to be imposed on a person for an offence to which this section applies, a court shall, if it is satisfied beyond reasonable doubt from the evidence adduced in the proceedings, take into account as an aggravating factor, that—
- (a) where an individual is a victim of the offence, at the time of committing the offence or immediately before or after doing so, the person demonstrated hate towards the victim of the offence, or
 - (b) whether or not an individual is a victim of the offence, the offence was motivated wholly or partly by hate.
- (2) Without prejudice to the generality of *subsection (1)(b)*, an offence is motivated wholly or partly by hate if—
- (a) an individual was selected as victim of the offence on account of his or her membership or presumed membership of a group defined by reference to a particular protected characteristic, and
 - (b) the reason for so selecting the victim is that, because of his or her membership of the group concerned and having regard to all the circumstances, the victim would be expected—
 - (i) to have impaired physical or mental capacity to understand or to resist the commission of the offence, or to communicate with others in relation to it, or
 - (ii) to be reluctant or unwilling to disclose to others that the offence had been committed.
- (3) *Subsection (1)* applies without prejudice to any other enactment or rule of law and

[SECTION 20]

subject to *subsections (4) and (5)*.”.

—Aodhán Ó Ríordáin.

80. In page 22, to delete lines 32 to 38 and substitute the following:

“**20.** (1) Without prejudice to any other enactment or rule of law and subject to *subsections (2) and (3)* a court shall, where it is established beyond a reasonable doubt that—

(a) the offence was motivated (wholly or partly) by hate on account of the victim’s membership or presumed membership of a group defined by reference to a protected characteristic, or

(b) that at the time of committing the offence, or immediately before or after doing so, the offender demonstrated hate towards the victim on account of the victim’s membership or presumed membership of a group defined by reference to a protected characteristic,

take that into account as an aggravating factor for the purposes of determining the sentence to be imposed on the person for that offence.”.

—Pa Daly, Martin Kenny, Thomas Pringle.

81. In page 22, lines 33 and 34, to delete “, where it is satisfied from the evidence adduced in the proceedings that there was” and substitute “treat as an aggravating factor”.

—An tAire Dlí agus Cirt.

82. In page 22, lines 36 and 37, to delete “, take that into account as an aggravating factor”.

—An tAire Dlí agus Cirt.

83. In page 22, to delete lines 39 and 40, and in page 23, to delete lines 1 to 4.

—Thomas Pringle.

84. In page 22, line 40, to delete “is good reason” and substitute “are exceptional circumstances”.

—An tAire Dlí agus Cirt.

85. In page 23, to delete lines 5 to 9 and substitute the following:

“(4) Where an aggravated sentence is imposed by a court pursuant to this section, the court shall state and record in the proceedings—

(a) the fact that the aggravated sentence is imposed pursuant to this section, and

(b) the protected characteristic or characteristics of the person or the group of persons concerned by reference to which that aggravated sentence is imposed.”.

—Pa Daly, Martin Kenny.

86. In page 23, line 5, to delete “a greater sentence” and substitute “an aggravated sentence”.

—Thomas Pringle.

87. In page 23, line 6, to delete “and record”.

—Thomas Pringle.

[SECTION 20]

88. In page 23, line 7, to delete “the greater sentence” and substitute “the aggravated sentence”.

—Thomas Pringle.

89. In page 23, line 9, to delete “that greater sentence” and substitute “the aggravated sentence.”.

—Thomas Pringle.

SECTION 27

90. In page 27, to delete line 19.

—An tAire Dlí agus Cirt.

91. In page 27, line 21, to delete “hatred).” and substitute the following

“hatred”),

and

(iv) the insertion of the following after “section 10 (harassment)”:

“section 10A (harassment aggravated by hatred).”.

—An tAire Dlí agus Cirt.

SECTION 31

92. In page 28, between lines 9 and 10, to insert the following:

“Amendment of National Vetting Bureau (Children and Vulnerable Persons) Act 2012

31. The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 is amended—

(a) in section 14A(4)(c), by the insertion of “6A,” after “6,” and the insertion of “7A,” after “7,” and

(b) in paragraph 17 of Schedule 3, by the insertion of “, 18A” after “18”.

—An tAire Dlí agus Cirt.

[Acceptance of this amendment involves the deletion of section 31 of the Bill.]

SECTION 32

93. In page 28, line 30, to delete “paragraph 11 with the following paragraph” and substitute “the following paragraph for paragraph 11”.

—An tAire Dlí agus Cirt.

SECTION 34

94. In page 29, between lines 11 and 12, to insert the following:

“Amendment of section 5 of Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016

34. Section 5(5)(c) of the Criminal Justice (Spent Convictions and Certain Disclosures) Act

[SECTION 34]

2016 is amended by the insertion of “6A,” after “6,” and the insertion of “7A,” after “7,.”.

—An tAire Dlí agus Cirt.

NEW SECTION

95. In page 30, after line 4, to insert the following:

“Review of operation of this Act

37. The Minister shall—

- (a) not later than 5 years after this Act comes into operation, commence a review of the operation of this Act, and
- (b) not later than 12 months after the commencement of the review, make a report to each House of the Oireachtas of the findings made on the review and of the conclusions drawn from the findings.”.

—Pa Daly, Martin Kenny.

96. In page 30, after line 4, to insert the following:

“Review of Act

37. The Minister shall, not later than 1 year after the commencement of this Act, carry out a review of the Act.”.

—Paul Murphy, Bríd Smith, Richard Boyd Barrett, Gino Kenny.