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**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**

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*Meabhrán Míniúcháin*  
*Explanatory Memorandum*

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

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**EXPLANATORY MEMORANDUM**

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**Purpose of the Bill**

The Bill aims to:

- Repeal the Prohibition of Incitement to Hatred Act 1989 in its entirety and replace it with new, simpler provisions for Incitement to Hatred. This new offence has been drafted in such a way that it will be easier to secure a conviction, and has been expanded to include incitement to violence in line with the requirements of Council Framework Decision 2008/913/JHA.
- In accordance with the Programme for Government Commitments, the Bill creates new provisions for hate crime, based on an aggravated offences model. There is also a general provision whereby for any offence, where there is evidence of a hate motivation, this must be considered as an aggravating factor at sentencing and reflected in the record.
- Provide for the prohibition of condoning, denying or grossly trivialising genocide, crimes against humanity and war crimes, in line with the requirements of Framework Decision 2008/913/JHA.

**Provisions of the Bill:-**

**Part 1 – Preliminary and General**

*Part 1* of the Bill (Sections 1-5) contains the standard parts which give the Title of the Bill and provides definitions for some important terms used later throughout the Bill. It defines the protected characteristics for the purpose of the Bill. It repeals the Prohibition of Incitement to Hatred Act 1989 in its entirety, which will be replaced by updated provisions in Part 2 of this Bill. This Part also contains a standard commencement provision and standard expenses provision.

**Section 1**

*Section 1* provides for the short title of this Bill and contains a standard Commencement provision.

**Section 2**

*Section 2* is the interpretation section and provides definitions for important words and terms used throughout the Bill.

### **Section 3**

*Section 3* sets out the protected characteristics for the purpose of the Bill, which includes race, colour, nationality, religion, national or ethnic origin, descent, gender (including gender expression or identity), sex characteristics, sexual orientation and disability. This section also outlines the meaning of those protected characteristics.

### **Section 4**

*Section 4* repeals the Prohibition of Incitement to Hatred Act 1989.

### **Section 5**

*Section 5* provides that expenses in the administration of this Bill shall be paid out of monies provided by the Oireachtas.

### **Part 2 – Prohibition of incitement to violence or hatred**

*Part 2* of the Bill (Sections 6-16) is the part of the Bill that deals with incitement to violence or hatred.

The principal purpose of this part is to provide for a new offence of incitement to violence or hatred which will replace the provisions of the Prohibition of Incitement to Hatred Act 1989 and to create an offence of condonation, denial or gross trivialisation of genocide etc. to fulfil Ireland's requirements under the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

### **Section 6**

*Section 6* sets out the definitions and their application for the incitement part of the Bill; including the definitions of "behaviour" and "material" relevant to this section.

### **Section 7**

*Section 7* of the Bill creates a new offence of incitement to violence or hatred based on a person communicating material to the public or a section of the public or the behaviour of a person in a public place that is likely to incite violence or hatred. The threshold for this offence is intent or recklessness, which means that the individual must have intended to incite violence or hatred, or have thought about it, realised that the communication would be likely to incite violence or hatred, and decided to press ahead anyway.

7(2) is a provision for the offence not to apply to relevant service providers within the meaning of the European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No. 68 of 2003); that is, with respect to information society services that are mere conduits, caching, or hosting hateful content.

7(3) provides defences which may be used by an individual accused of the section 7 offence of inciting violence or hatred.

7(4) provides for defences which may be used by bodies corporate accused of the section 7 offence of inciting violence or hatred.

7(5) sets out the applicable penalties for conviction under this offence.

### **Section 8**

*Section 8* of the Bill creates an offence of condonation, denial or gross trivialisation of genocide, war crimes, crimes against humanity or an act specified in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945. This offence is a requirement under Council Framework Decision 2008/913/JHA.

8(2) sets out the applicable penalties for conviction under this offence.

8(3) outlines the definitions relevant to this section.

### **Section 9**

*Section 9* of the Bill specifies that a person may be found guilty of an offence under section 7 or 8 regardless of whether they were successful in inciting another person to violence or hatred.

9(2) provides that in a prosecution under section 7 or 8, it may be presumed that the accused knew that the communication contained, understood its meaning, and when posting on a public forum, that they knew the communication would be public.

9(3) provides for the rebuttal of these presumptions.

### **Section 10**

*Section 10* of the Bill creates a new offence of preparation or possession of material likely to incite violence or hatred. This will criminalise those who create content that would incite violence with the intention of communicating it, but have not yet communicated it publicly.

10(2) provides for defences of the same substantive nature as those that apply to section 7 are also included for this offence.

10(3) provides that in a prosecution under the section 10 offence, where it is reasonable to assume that the material was not intended for the personal use of the person, the person shall be presumed, until the contrary is proved, to have been in possession of the material.

10(4) sets out the applicable penalties for conviction under this offence.

### **Section 11**

*Section 11* is a provision to protect freedom of expression and clarifies that for the purpose of this Part, a communication is not taken to incite violence or hatred solely on the basis that it involves discussion or criticism of matters relating to a protected characteristic.

### **Section 12**

*Section 12* is a requirement of Council Framework Decision 2008/913/JHA and establishes jurisdiction for offences in this section to be prosecuted as an offence committed within the state when the person is in the state (whether or not the information system hosting the information is in the state), and in cases where the offence involves material hosted on an information system in the state (whether or not the person is in the state).

### **Section 13**

*Section 13* sets out corporate liability with respect to incitement to violence or hatred and is also a requirement of Council Framework Decision 2008/913/JHA. It provides for a defence for bodies corporate if it can prove that it took all reasonable steps and exercised due diligence to avoid commission of the relevant offence. It also provides that an individual working for the body corporate can be held liable if the offence was committed by the body corporate with their consent, connivance or due to their negligence, including in situations where a body corporate is managed by its members.

### **Section 14**

*Section 14* provides that for offences under this Part no proceedings (other than remand in custody or bail) may be taken without the consent of the DPP. This is to prevent frivolous and vexatious cases.

### **Section 15**

*Section 15* provides for Garda powers of search and seizure in relation to the offences in this Part.

### **Section 16**

*Section 16* provides for Garda powers of forfeiture of material related to the offences in this Part.

### **Part 3 – Offences aggravated by hatred**

This Part (sections 17-20) creates new, aggravated forms of certain existing criminal offences, where those offences are motivated by prejudice against a protected characteristic. Where possible, these aggravated offences carry an enhanced penalty, unless the penalty is already set at the maximum possible. There is also a safeguard built into all of the offences in this Part whereby a perpetrator may be convicted of the “ordinary” form of the offence if there is insufficient evidence to prove the hate element.

A person is guilty of a hate aggravated offence under this Part if they commit one of the core offences and in doing so are motivated by hatred of a protected characteristic, or demonstrate hatred based on a protected characteristic at the time of committing the offence. For all of the offences in this Part, the hatred may be based on the victims actual or presumed membership of a group associated with a protected characteristic.

### **Section 17**

*Section 17* amends the Criminal Damage Act 1991 to create a new offence of “Damaging property aggravated by hatred”. This offence will be inserted into the Criminal Damage Act and will occur when a person commits an offence under Section 2 of the Criminal Damage Act, and while committing that offence, demonstrates hatred toward the victim on account of the victims membership or presumed membership of a group defined by reference to a protected characteristic, or is motivated by hatred of a protected characteristic.

### **Section 18**

*Section 18* amends the Criminal Justice (Public Order) Act 1994 to create four new aggravated offences; threatening, abusive or insulting behaviour in a public place aggravated by hatred, distribution or display in a public place of material which is threatening, abusive, insulting or obscene aggravated by hatred, entering building, etc. with intent to commit an offence aggravated by hatred, and assault with intent to cause bodily harm or commit an indictable offence aggravated by hatred.

### **Section 19**

*Section 19* amends the Non-Fatal Offences Against the Person Act 1997 to create seven new aggravated offences; assault aggravated by hatred, assault causing harm aggravated by hatred, causing serious harm aggravated by hatred, threats to kill or cause serious harm aggravated by hatred, coercion aggravated by hatred, harassment aggravated by hatred, and endangerment aggravated by hatred.

### **Section 20**

*Section 20* is a general provision whereby a court may treat evidence of hatred as an aggravating factor in sentencing for any other offence apart from those set out in Part 2 or in sections 17-19.

#### **Part 4 – Amendments of other Enactments**

This Part makes amendment to other enactments which are required on foot of this Bill. These mainly occur where an offence under Part 4 is referenced in another enactment, which now needs to be updated to take account of the hate aggravated version of the offence. This would include, for example, the addition of offences under Part 4 of this Bill to the schedule of the Bail Act.

#### **Section 21**

*Section 21* amends the Schedule to the Criminal Law (Jurisdiction) Act 1976.

#### **Section 22**

*Section 22* amends the First Schedule to the Extradition (Amendment) Act 1994.

#### **Section 23**

*Section 23* amends the Schedule to the Bail Act 1997.

#### **Section 24**

*Section 24* amends the Second Schedule to the Criminal Justice (Safety of United Nations Workers) Act 2000.

#### **Section 25**

*Section 25* amends Section 3 of the Criminal Justice (Public Order) Act 2003.

#### **Section 26**

*Section 26* amends Schedule 2 and Schedule 6 to the Criminal Justice (Terrorist Offences) Act 2005.

#### **Section 27**

*Section 27* amends Schedule 3 to the Criminal Justice Act 2006.

#### **Section 28**

*Section 28* amends Schedule 2 to the Criminal Justice Act 2007.

#### **Section 29**

*Section 29* amends Section 71(6) of the Broadcasting Act 2009.

#### **Section 30**

*Section 30* amends the Schedule to the Criminal Procedure Act 2010.

#### **Section 31**

*Section 31* amends Schedule 3 to the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

#### **Section 32**

*Section 32* amends Schedule 1 and Schedule 2 to the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012.

#### **Section 33**

*Section 33* amends Part 2 of the Schedule to the Taxi Regulation Act 2013.

#### **Section 34**

*Section 34* amends Section 2 of Criminal Justice (Victims of Crime) Act 2017.

**Section 35**

*Section 35* amends Schedule 2 to European Union (Passenger Name Record Data) Regulations 2018.

**Section 36**

*Section 36* amends Section 1 of the Criminal Law (Extraterritorial Jurisdiction) Act 2019.

**Schedule**

The Schedule includes the text of the EU instrument that is being transposed by this Bill; the EU Council Framework Decision 2008/913/JHA of 28 November 2008.

*An Roinn Dlí agus Cirt,  
Deireadh Fómhair, 2022.*