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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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*Mar a ritheadh ag Dáil Éireann*

*As passed by Dáil Éireann*

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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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*Mar a ritheadh ag Dáil Éireann  
As passed by Dáil Éireann*

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### SCHEDULE

COUNCIL FRAMEWORK DECISION 2008/913/JHA OF 28 NOVEMBER 2008 ON COMBATTING CERTAIN FORMS  
AND EXPRESSIONS OF RACISM AND XENOPHOBIA BY MEANS OF CRIMINAL LAW

## ACTS REFERRED TO

Bail Act 1997 (No. 16)  
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Companies Act 2014 (No. 38)  
Criminal Damage Act 1991 (No. 31)  
Criminal Justice (Offences Relating to Information Systems) Act 2017 (No. 11)  
Criminal Justice (Public Order) Act 1994 (No. 2)  
Criminal Justice (Public Order) Act 2003 (No. 16)  
Criminal Justice (Safety of United Nations Workers) Act 2000 (No. 16)  
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Equal Status Act 2000 (No. 8)  
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Garda Síochána Act 2005 (No. 20)  
International Criminal Court Act 2006 (No. 30)  
National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (No. 47)  
Non-Fatal Offences against the Person Act 1997 (No. 26)  
Police (Property) Act 1897 (60 & 61 Vict. c.30)  
Prohibition of Incitement to Hatred Act 1989 (No. 19)  
Taxi Regulation Act 2013 (No. 37)





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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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# Bill

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*entitled*

An Act to amend the law relating to the prohibition of incitement to violence or hatred against a person or a group of persons on account of certain characteristics (referred to as protected characteristics) of the person or the group of persons and to provide for an offence of condoning, denying or grossly trivialising genocide, war crimes, crimes against humanity and crimes against peace and, in doing so, to give effect to Council Framework Decision 2008/913/JHA of 28 November 2008<sup>1</sup> on combating certain forms and expressions of racism and xenophobia by means of criminal law; to provide for certain offences aggravated by hatred in the Criminal Damage Act 1991, the Criminal Justice (Public Order) Act 1994 and the Non-Fatal Offences against the Person Act 1997; for those purposes, to provide for amendments of those and other enactments and to repeal the Prohibition of Incitement to Hatred Act 1989; to provide in respect of other offences for hatred against a person or a group of persons on account of certain characteristics (referred to as protected characteristics) of the person or the group of persons to be an aggravating factor in sentencing for those offences; and to provide for related matters.

**Be it enacted by the Oireachtas as follows:**

## PART 1

### PRELIMINARY AND GENERAL

#### **Short title and commencement**

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1. (1) This Act may be cited as the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Act 2023.
- (2) This Act shall come into operation on such day or days as the Minister for Justice may by order or orders appoint either generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions.

<sup>1</sup> OJ L328, 6.12.2008, p.55

## Interpretation

### 2. (1) In this Act—

“Framework Decision” means Council Framework Decision 2008/913/JHA of 28 November 2008<sup>2</sup> on combating certain forms and expressions of racism and xenophobia by means of criminal law, the text of which is set out for convenience of reference in the Schedule; 5

“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;

“protected characteristic” shall be construed in accordance with *section 3*.

### (2) A word or expression that is used in this Act and is also used in the Framework Decision has, unless the context otherwise requires, the same meaning in this Act as it has in the Framework Decision. 10

## Meaning of protected characteristic

### 3. (1) In this Act, other than in *section 8*, “protected characteristic”, in relation to a person or a group of persons, means any one of the following, namely— 15

(a) race,

(b) colour,

(c) nationality,

(d) religion,

(e) national or ethnic origin, 20

(f) descent,

(g) gender,

(h) sex characteristics,

(i) sexual orientation, or

(j) disability. 25

### (2) In this Act, in relation to the protected characteristics—

(a) references to “religion” include references to the absence of a religious conviction or belief,

(b) references to “descent” include references to persons or groups of persons who descend from persons who could be identified by certain characteristics (such as race or colour), but not necessarily all of those characteristics still exist, 30

(c) references to “national or ethnic origin” include references to membership of the Traveller community (within the meaning of section 2(1) of the Equal Status Act 2000),



- (d) “gender” means the gender of a person or the gender which a person expresses as the person’s preferred gender or with which the person identifies and includes transgender and a gender other than those of male and female,
- (e) “sexual orientation” has the same meaning as it has in section 2(1) of the Equal Status Act 2000, 5
- (f) references to sex characteristics shall be construed as references to the physical and biological features of a person relating to sex, and
- (g) “disability” has the same meaning as it has in section 2(1) of the Equal Status Act 2000.

**Repeal** 10

- 4. The Prohibition of Incitement to Hatred Act 1989 is repealed.

**Expenses**

- 5. The expenses incurred by the Minister for Justice in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of monies provided by the Oireachtas. 15

PART 2

PROHIBITION OF INCITEMENT TO VIOLENCE OR HATRED

**Interpretation and application (*Part 2*)**

- 6. (1) In this Part— 20
  - “information system” has the same meaning as it has in section 1 of the Criminal Justice (Offences Relating to Information Systems) Act 2017;
  - “material” means anything that is capable of being looked at, read, watched or listened to, either directly or after conversion from data stored in another form;
  - “public place” means any place to which the public have access whether as of right or by permission and whether subject to or free of charge; 25
  - “reasonable and genuine contribution”, in relation to literary, artistic, political, scientific, religious or academic discourse, means a contribution that is considered by a reasonable person as being reasonably necessary or incidental to such discourse.
- (2) For the purposes of this Part, a person shall be regarded as communicating material to the public or a section of the public if the person— 30
  - (a) displays, publishes, distributes or disseminates the material,
  - (b) shows or plays the material, or
  - (c) makes the material available in any other way including through the use of an information system, 35

to the public or a section of the public.

- (3) For the purposes of this Part, a person's behaviour shall include behaviour of any kind and, in particular, things that the person says, or otherwise communicates, as well as things that the person does and such behaviour may consist of a single act or a course of conduct.

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### **Offence of incitement to violence or hatred against persons on account of their protected characteristics**

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—

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(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 protected characteristics or any of those characteristics, and

(b) the person 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.

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- (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 the requirements of the Regulation concerned for liability not to apply are satisfied.

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- (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 consisted solely of—

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(a) a reasonable and genuine contribution to literary, artistic, political, scientific, religious or academic discourse,

(b) a statement that is the subject of the defence of absolute privilege, or

(c) 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.

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- (4) In any proceedings for an offence under this section, it shall be a defence for a body corporate to prove, as respects the communication of material by the body corporate, that—

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(a) it has reasonable and effective measures in place to prevent the communication generally of material inciting violence or hatred against a person or a group of persons on account of their protected characteristics or any of those characteristics,

- (b) it was complying with the measures referred to in *paragraph (a)* at the time the offence concerned was alleged to have been committed, and
  - (c) it did not know and had no reason to suspect at the time the offence concerned was alleged to have been committed that the content of the material concerned was intended or 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. 5
- (5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or 10
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

**Offence of condonation, denial or gross trivialisation of genocide, etc., against persons on account of their protected characteristics**

8. (1) Subject to *section 11*, a person shall be guilty of an offence under this section if the person— 15
- (a) communicates material to the public or a section of the public, or
  - (b) behaves in a public place in a manner,
- that condones, denies or grossly trivialises—
- (i) genocide, 20
  - (ii) a crime against humanity,
  - (iii) a war crime, or
  - (iv) an act specified in Article 6 of the Charter of the International Military Tribunal,
- where such communication of material or behaviour is directed against a person or group of persons on account of their protected characteristics or any 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. 25
- (2) A person guilty of an offence under this section shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both. 30
- (3) In this section—
- “an act specified in Article 6 of the Charter of the International Military Tribunal” means such an act that has been determined to be a crime against peace, a war crime or a crime against humanity, as the case may be, each within the meaning of that Article by a final decision of the International Military Tribunal established by the London Agreement of 8 August 1945 and referred to in Article 1 of the Charter of the International Military Tribunal; 35
- “Charter of the International Military Tribunal” means the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945;

“court in the State” has the meaning assigned to “court” by section 3(5) of the International Criminal Court Act 2006;

“crime against humanity” (other than in the definition of “an act specified in Article 6 of the Charter of the International Military Tribunal”) means any of the acts specified in Article 7 of the Rome Statute where such an act has been determined to be a crime against humanity by a final decision of a court in the State or of an international court or tribunal; 5

“genocide” means any of the acts specified in Article 6 of the Rome Statute where such an act has been determined to be genocide by a final decision of a court in the State or of an international court or tribunal; 10

“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)*;

“Rome Statute” means the Rome Statute of the International Criminal Court, done at Rome on 17 July 1998; 15

“war crime” (other than in the definition of “an act specified in Article 6 of the Charter of the International Military Tribunal”) means any of the acts specified in Article 8.2 of the Rome Statute where such an act has been determined to be a war crime by a final decision of a court in the State or of an international court or tribunal.

**Provisions relating to offences under sections 7 and 8** 20

9. (1) A person may be found guilty of an offence under *section 7 or 8* irrespective of whether the communication of material or behaviour the subject of the offence was successful in inciting another person to violence or hatred against a person or a group of persons on account of their protected characteristics (within the meaning of *section 7 or 8*, as the case may be) or any of those characteristics. 25

(2) Subject to *subsection (3)*, in any proceedings for an offence under *section 7 or 8*, where it is proved that the person communicating the material concerned—

(a) knew what the material contained,

(b) understood the meaning of the material, and

(c) made the material available on a platform that is or may be accessible by the public or a section of the public, 30

it shall be presumed that the person intended to communicate the material to the public or a section of the public.

(3) In any proceedings for an offence under *section 7 or 8*, an accused person may rebut the presumption raised in *subsection (2)* by showing at the time of the alleged offence that he or she did not know the material communicated would be made available to the public or a section of the public. 35

## **Offence of preparing or possessing material likely to incite violence or hatred against persons on account of their protected characteristics**

- 10.** (1) Subject to *subsections (2) and (3)* and *section 11*, a person shall be guilty of an offence under this section if the person—
- (a) prepares or possesses material 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 view to the material being communicated to the public or a section of the public, whether by himself or herself or another person, and 5
  - (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 or any of those characteristics or being reckless as to whether such violence or hatred is thereby incited. 10
- (2) In any proceedings for an offence under this section, it shall be a defence to prove that the material concerned consisted solely of— 15
- (a) a reasonable and genuine contribution to literary, artistic, political, scientific, religious or academic discourse,
  - (b) a statement that is the subject of the defence of absolute privilege, or
  - (c) material that is necessary for any other lawful purpose, including law enforcement or the investigation or prosecution of an offence. 20
- (3) In any proceedings for an offence under this section, where it is proved that the accused person was in possession of material such as is referred to in *subsection (1)* and 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 in contravention of *subsection (1)*. 25
- (4) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a class C fine or imprisonment for a term not exceeding 6 months or both, or
  - (b) on conviction on indictment, to a class A fine or imprisonment for a term not exceeding 2 years or both. 30

## **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 discussion or criticism of matters relating to a protected characteristic. 35

## **Jurisdiction**

- 12.** In any proceedings for an offence under *section 7* or *8*, where the offence was committed by a person using an information system, the offence may be prosecuted as an offence committed by the person within the State—

- (a) if the person was in the State when the offence was committed, whether or not the offence involved material hosted on an information system in the State, or
- (b) if the offence involved material hosted on an information system in the State, whether or not the person was in the State when the offence was committed.

**Offences by bodies corporate**

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13. (1) Where a relevant offence is committed for the benefit of a body corporate by a relevant person and the commission of the relevant offence is attributable to the failure, by a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, to exercise, at the time of the commission of the relevant offence and in all the circumstances of the case, the requisite degree of supervision or control of the relevant person, the body corporate shall be guilty of an offence. 10
- (2) In proceedings for an offence under *subsection (1)*, it shall be a defence for a body corporate against which such proceedings are brought to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence. 15
- (3) Where a relevant offence is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 20
- (4) Where the affairs of a body corporate are managed by its members, *subsection (3)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate. 25
- (5) *Subsection (1)*—
- (a) is without prejudice to the other circumstances, under the general law, whereby acts or omissions of a natural person are attributed to a body corporate resulting in criminal liability of that body corporate for those acts or omissions, and 30
  - (b) does not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in an offence referred to in that subsection.
- (6) A body corporate guilty of an offence under *subsection (1)* is liable on conviction on indictment to a fine.
- (7) In this section— 35
- “relevant offence” means—
- (a) an offence under *section 7, 8 or 10*, or
  - (b) an offence of inciting, aiding and abetting, or attempting the commission of an offence referred to in *paragraph (a)*;
- “relevant person”, in relation to a body corporate, means— 40

(a) a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, or

(b) an employee, subsidiary or agent of the body corporate;

“subsidiary”, in relation to a body corporate, has the same meaning as it has in the Companies Act 2014.

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### **Certain proceedings only by or with consent of Director of Public Prosecutions**

14. Where a person is charged with an offence under *section 7, 8 or 10*, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by or with the consent of the Director of Public Prosecutions.

### **Search warrants**

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15. (1) If a judge of the District Court is satisfied by information on oath of a member that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an offence under *section 7, 8 or 10* is to be found in any place, the judge may issue a warrant for the search of that place and any persons found at that place.

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(2) A search warrant under this section shall be expressed, and shall operate, to authorise a named member, accompanied by such other members or persons or both as the member thinks necessary—

(a) to enter, at any time within one week of the date of issue of the warrant, on production if so requested of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,

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(b) to search it and any persons found at that place, and

(c) to examine, seize and retain anything found at that place, or anything found in possession of a person present at that place at the time of the search, that that member reasonably believes to be evidence of, or relating to, the commission of an offence under *section 7, 8 or 10*, as the case may be.

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(3) The authority conferred by *subsection (2)(c)* to seize and retain anything includes, in the case of a document or record, authority—

(a) to make and retain a copy of the document or record, and

(b) where necessary, to seize and, for so long as is necessary, retain any computer in which any record is kept.

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(4) A member acting under the authority of a search warrant under this section may—

(a) operate any computer at the place that is being searched or cause any such computer to be operated by a person accompanying the member for that purpose, and

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(b) require any person at that place who appears to the member to have lawful access to the information in any such computer—

- (i) to give to the member any password necessary to operate it and any encryption key or code necessary to unencrypt the information accessible by the computer,
  - (ii) otherwise to enable the member to examine the information accessible by the computer in a form in which the information is visible and legible, or 5
  - (iii) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.
- (5) A member acting under the authority of a search warrant under this section may, for the purpose of investigating the commission of an offence under *section 7, 8 or 10*, as the case may be, require any person at the place to which the search warrant relates 10 to—
  - (a) give to the member his or her name and address, and
  - (b) provide such information to the member as he or she may reasonably require.
- (6) The Police (Property) Act 1897 or, where appropriate, section 25 of the Criminal Justice Act 1951 shall apply to property which has come into the possession of the 15 Garda Síochána under this section as that Act or that section, as the case may be, applies to property which has come into the possession of the Garda Síochána in the circumstances mentioned in the Act concerned.
- (7) A person who—
  - (a) obstructs or attempts to obstruct a member acting under the authority of a search 20 warrant under this section,
  - (b) fails to comply with a requirement under *subsection (4)(b) or (5)*, or
  - (c) in relation to a requirement under *subsection (5)*, gives a name and address or provides information which the member has reasonable cause for believing is false or misleading in a material respect, 25
 shall be guilty of an offence.
- (8) A person guilty of an offence under *subsection (7)* shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.
- (9) The power to issue a warrant under this section is without prejudice to any other 30 power conferred by statute to issue a warrant for the search of any place or person.
- (10) In this section—
  - “computer” includes a personal organiser or any other electronic means of information storage and retrieval;
  - “computer at the place that is being searched” includes any other computer, whether 35 at the place being searched or at any other place, which is lawfully accessible by means of that computer;
  - “member” means a member of the Garda Síochána who falls within paragraph (a) of the definition of “member” in section 3(1) of the Garda Síochána Act 2005.



## Forfeiture

16. (1) The court by or before which a person is convicted of an offence under *section 7, 8 or 10* may order any material shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or otherwise disposed of in such manner as the court may determine. 5
- (2) A court shall not order material to be forfeited under this section if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him or her to show cause why the order should not be made.
- (3) An order under this section shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired. 10

## PART 3

### OFFENCES AGGRAVATED BY HATRED

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## Amendment of Criminal Damage Act 1991

17. The Criminal Damage Act 1991 is amended—

(a) in section 1—

(i) in subsection (1), by the insertion of the following definitions:

“ ‘*Act of 2023*’ means the *Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Act 2023*; 20

‘hatred’ has the meaning it has in *section 2(1)* of the *Act of 2023*;

‘protected characteristic’ has the meaning it has in *section 2(1)* of the *Act of 2023*;”

(ii) in subsection (3)— 25

(I) by the substitution of “an offence under section 2, 2A, 3(a) or 4(a)” for “an offence under section 2, 3(a) or 4(a)”, and

(II) by the substitution of “sections 2, 2A, 3(a) and 4(a)” for “sections 2, 3(a) and 4(a)”,

and 30

(iii) in subsection (3A), by the substitution of “an offence under section 2, 2A, 3(a) or 4(a)” for “an offence under section 2, 3(a) or 4(a)”,

(b) by the insertion of the following section after section 2:

### “Damaging property aggravated by hatred

2A. (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 2 which is aggravated by hatred for the purposes of this section. 35

- (2) An offence under section 2 committed by a person is aggravated by hatred for the purposes of this section if—
- (a) where there is a specific victim of the offence—
- (i) at the time of committing the offence, or immediately before or after doing so, the person demonstrates hatred towards the victim, and 5
- (ii) the hatred is on account of the victim's membership or presumed membership of a group defined by reference to a protected characteristic,
- or 10
- (b) whether or not there is a specific victim of the offence, the offence is motivated (wholly or partly) by hatred towards a group of persons on account of the group being defined by reference to a protected characteristic.
- (3) It is immaterial whether or not an accused person's hatred is also on account (to any extent) of any other factor. 15
- (4) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a class B fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment— 20
- (i) in case the offence under section 2 that the person commits is arson under subsection (1) or (3) of that section or an offence under subsection (2) of that section (whether arson or not), to a fine or imprisonment for life or both, or
- (ii) in case the offence under section 2 that the person commits is an offence other than one referred to in subparagraph (i), to a fine or imprisonment for a term not exceeding 12 years or both. 25
- (5) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 2. 30
- (6) For the purposes of subsection (2)(a), the person to whom the property concerned belongs or is treated as belonging for the purposes of this Act shall be regarded as the victim of an offence under section 2 of damaging that property.
- (7) In this section— 35
- ‘membership’, in relation to a group, includes association with members of the group;
- ‘presumed’ means presumed by the person who commits an offence under section 2.”,
- (c) in section 6(1), by the substitution of the following paragraph for paragraph (a): 40

“(a) an offence under section 2(1), including such an offence when committed aggravated by hatred for the purposes of section 2A,”

and

(d) in section 7, by the insertion of the following subsection after subsection (2):

“(2A) In this section, references to an offence under section 2 shall include references to such an offence when committed aggravated by hatred for the purposes of section 2A.”. 5

### **Amendment of Criminal Justice (Public Order) Act 1994**

**18.** The Criminal Justice (Public Order) Act 1994 is amended—

(a) in section 3, by the insertion of the following definitions: 10

“ ‘Act of 2023’ means the *Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Act 2023*;

‘hatred’ has the meaning it has in *section 2(1)* of the *Act of 2023*;

‘protected characteristic’ has the meaning it has in *section 2(1)* of the *Act of 2023*;”, 15

(b) by the insertion of the following section after section 3:

#### **“Aggravation of certain offences by hatred**

**3A.** (1) An offence committed by a person is aggravated by hatred for the purposes of sections 6A, 7A, 11A and 18A if—

(a) where there is a specific victim of the offence— 20

(i) at the time of committing the offence, or immediately before or after doing so, the person demonstrates hatred towards the victim, and

(ii) the hatred is on account of the victim's membership or presumed membership of a group defined by reference to a protected characteristic, 25

or

(b) whether or not there is a specific victim of the offence, the offence is motivated (wholly or partly) by hatred towards a group of persons on account of the group being defined by reference to a protected characteristic. 30

(2) It is immaterial whether or not an accused person’s hatred is also on account (to any extent) of any other factor.

(3) In this section—

‘membership’, in relation to a group, includes association with members of the group; 35

‘presumed’ means presumed by the person who commits an offence under section 6A, 7A, 11A or 18A, as may be appropriate.”,

(c) by the insertion of the following section after section 6:

**“Threatening, abusive or insulting behaviour in public place aggravated by hatred**

**6A.** (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 6 which is aggravated by hatred for the purposes of this section. 5

(2) A person who is guilty of an offence under this section shall be liable on summary conviction to a class C fine or to imprisonment for a term not exceeding 6 months or to both.

(3) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 6.” 10

(d) by the insertion of the following section after section 7:

**“Distribution or display in public place of material which is threatening, abusive, insulting or obscene aggravated by hatred**

**7A.** (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 7 which is aggravated by hatred for the purposes of this section. 15

(2) A person who is guilty of an offence under this section shall be liable on summary conviction to a class C fine or to imprisonment for a term not exceeding 6 months or to both. 20

(3) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 7.”

(e) in section 8, by the insertion of the following subsection after subsection (1): 25

“(1A) In subsection (1)(a), the reference to a person acting in a manner contrary to the provisions of section 6 or 7 shall include a reference to a person acting in a manner contrary to the provisions of the section concerned when aggravated by hatred for the purposes of section 6A or 7A, as may be appropriate.” 30

(f) by the insertion of the following section after section 11:

**“Entering building, etc., with intent to commit an offence aggravated by hatred**

**11A.** (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 11 which is aggravated by hatred for the purposes of this section. 35

(2) A person who is guilty of an offence under this section shall be liable on summary conviction to a class B fine or to imprisonment for a term not exceeding 9 months or to both.

(3) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 11.” 40

(g) by the insertion of the following section after section 18:

**“Assault with intent to cause bodily harm or commit indictable offence aggravated by hatred**

**18A.** (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 18 which is aggravated by hatred for the purposes of this section. 5

(2) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a class B fine or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 7 years or to both. 10

(3) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 18.”,

and 15

(h) in section 24(5), by the insertion of—

(i) “6A,” after “6,”,

(ii) “7A,” after “7,”,

(iii) “11A,” after “11,” and

(iv) “, 18A” after “18”. 20

**Amendment of Non-Fatal Offences against the Person Act 1997**

**19.** The Non-Fatal Offences against the Person Act 1997 is amended—

(a) in section 1(1), by the insertion of the following definitions:

“ ‘Act of 2023’ means the *Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Act 2023*; 25

‘hatred’ has the meaning it has in *section 2(1)* of the *Act of 2023*;

‘protected characteristic’ has the meaning it has in *section 2(1)* of the *Act of 2023*.”,

(b) by the insertion of the following section after section 1:

**“Aggravation of certain offences by hatred 30**

**1A.** (1) An offence committed by a person is aggravated by hatred for the purposes of sections 2A, 3A, 4A, 5A, 9A, 10A and 13A if—

(a) where there is a specific victim of the offence—

(i) at the time of committing the offence, or immediately before or after doing so, the person demonstrates hatred towards the victim, and 35

(ii) the hatred is on account of the victim's membership or presumed membership of a group defined by reference to a protected characteristic,

or

(b) whether or not there is a specific victim of the offence, the offence is motivated (wholly or partly) by hatred towards a group of persons on account of the group being defined by reference to a protected characteristic. 5

(2) It is immaterial whether or not an accused person's hatred is also on account (to any extent) of any other factor. 10

(3) In this section—

'membership', in relation to a group, includes association with members of the group;

'presumed' means presumed by the person who commits an offence under section 2A, 3A, 4A, 5A, 9A, 10A or 13A, as may be appropriate." 15

(c) by the insertion of the following section after section 2:

**“Assault aggravated by hatred**

**2A.** (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 2 which is aggravated by hatred for the purposes of this section. 20

(2) A person guilty of an offence under this section shall be liable on summary conviction to a class B fine or to imprisonment for a term not exceeding 9 months or to both.

(3) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 2." 25

(d) by the insertion of the following section after section 3:

**“Assault causing harm aggravated by hatred**

**3A.** (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 3 which is aggravated by hatred for the purposes of this section. 30

(2) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a class B fine or to imprisonment for a term not exceeding 12 months or to both, or 35

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 7 years or to both.

(3) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 3." 40

(e) by the insertion of the following section after section 4:

**“Causing serious harm aggravated by hatred**

**4A.** (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 4 which is aggravated by hatred for the purposes of this section. 5

(2) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or to imprisonment for life or to both.

(3) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 4.”, 10

(f) by the insertion of the following section after section 5:

**“Threats to kill or cause serious harm aggravated by hatred**

**5A.** (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 5 which is aggravated by hatred for the purposes of this section. 15

(2) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a class B fine or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 12 years or to both. 20

(3) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 5.”,

(g) by the insertion of the following section after section 9: 25

**“Coercion aggravated by hatred**

**9A.** (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 9 which is aggravated by hatred for the purposes of this section.

(2) A person guilty of an offence under this section shall be liable— 30

(a) on summary conviction, to a class B fine or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 7 years or to both.

(3) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 9.”, 35

(h) by the insertion of the following section after section 10:

**“Harassment aggravated by hatred**

- 10A.** (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 10(1) which is aggravated by hatred for the purposes of this section.
- (2) Subsections (3) to (5) of section 10 shall, with any necessary modifications, apply to an offence under this section as they apply to an offence under subsection (1) of that section. 5
- (3) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or 10
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 12 years or to both.
- (4) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 10(1).”, 15

and

- (i) by the insertion of the following section after section 13:

**“Endangerment aggravated by hatred**

- 13A.** (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 13 which is aggravated by hatred for the purposes of this section. 20
- (2) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a class B fine or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 9 years or to both. 25
- (3) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 13.”.

**Hatred against persons on account of their protected characteristics as aggravating factor in sentencing for certain offences 30**

- 20.** (1) Without prejudice to any other enactment or rule of law and subject to *subsections (2) and (3)*, a court shall treat as an aggravating factor hatred against a person or a group of persons on account of their protected characteristics or any of those characteristics on the part of a person in the commission of an offence to which this section applies for the purposes of determining the sentence to be imposed on the person for that offence. 35
- (2) Accordingly, the court shall (except where the sentence for the offence concerned is one of imprisonment for life or where the court considers there are exceptional



- circumstances justifying its not doing so) impose a sentence that is greater than that which would have been imposed in the absence of such a factor.
- (3) The sentence imposed shall not be greater than the maximum sentence permissible for the offence concerned.
- (4) Where a greater sentence is imposed by a court pursuant to this section, the court shall state and record in the proceedings— 5
- (a) the fact that the greater 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 greater sentence is imposed.
- (5) An offence to which this section applies means an offence other than an offence under any of the following provisions: 10
- (a) *sections 7, 8 and 10*;
- (b) section 2A (inserted by *section 17*) of the Criminal Damage Act 1991;
- (c) sections 6A, 7A, 11A and 18A (inserted by *section 18*) of the Criminal Justice (Public Order) Act 1994; 15
- (d) sections 2A, 3A, 4A, 5A, 9A, 10A and 13A (inserted by *section 19*) of the Non-Fatal Offences against the Person Act 1997.

## PART 4

### AMENDMENTS OF OTHER ENACTMENTS

- Amendment of Schedule to Criminal Law (Jurisdiction) Act 1976** 20
- 21.** The Schedule to the Criminal Law (Jurisdiction) Act 1976 is amended—
- (a) by the substitution of the following paragraph for paragraph 6A:
- “6A. Any offence under the following provisions of the Criminal Damage Act 1991—
- (a) subsections (1) and (4) or subsections (2) and (4) of section 2 25  
(arson);
- (b) section 2A insofar as it relates to an offence of arson under section 2 (referred to in paragraph (a)) that is aggravated by hatred for the purposes of section 2A (arson aggravated by hatred).”
- and 30
- (b) in paragraph 7, by the insertion of the following subparagraph after subparagraph (a):
- “(aa) section 4A (causing serious harm aggravated by hatred);”.

**Amendment of First Schedule to Extradition (Amendment) Act 1994**

- 22.** The First Schedule to the Extradition (Amendment) Act 1994 is amended— 35

- (a) in paragraph 6, by—
  - (i) the insertion of the following subparagraph after subparagraph (a):
    - “(aa) section 3A (assault causing harm aggravated by hatred);”,
    - and
  - (ii) the insertion of the following subparagraph after subparagraph (b):
    - “(ba) section 4A (causing serious harm aggravated by hatred);”,
    - and
- (b) by the substitution of the following paragraph for paragraph 11:
  - “11. Any offence under the following provisions of the Criminal Damage Act 1991—
    - (a) section 2(2) (damaging property with intent to endanger life or being reckless as to danger to life);
    - (b) section 2A insofar as it relates to an offence under section 2(2) that is aggravated by hatred for the purposes of section 2A (damaging property with intent to endanger life or being reckless as to danger to life aggravated by hatred).”.

**Amendment of Schedule to Bail Act 1997**

**23.** The Schedule to the Bail Act 1997 is amended—

- (a) in paragraph 7, by—
  - (i) the insertion of the following subparagraph after subparagraph (a):
    - “(aa) section 3A (assault causing harm aggravated by hatred);”,
  - (ii) the insertion of the following subparagraph after subparagraph (b):
    - “(ba) section 4A (causing serious harm aggravated by hatred);”,
  - (iii) the insertion of the following subparagraph after subparagraph (c):
    - “(ca) section 5A (threats to kill or cause serious harm aggravated by hatred);”,
  - (iv) the insertion of the following subparagraph after subparagraph (g):
    - “(ga) section 9A (coercion aggravated by hatred);”,
  - (v) the insertion of the following subparagraph after subparagraph (h):
    - “(ha) section 10A (harassment aggravated by hatred);”,
    - and
  - (vi) the insertion of the following subparagraph after subparagraph (i):
    - “(ia) section 13A (endangerment aggravated by hatred);”,
- (b) in paragraph 8, by the insertion of the following subparagraph after subparagraph (a):

“(aa) section 18A (assault with intent to cause bodily harm or commit indictable offence aggravated by hatred);”,

and

- (c) in paragraph 18, by the insertion of the following subparagraph after subparagraph (a):

5

“(aa) section 2A (damaging property aggravated by hatred);”.

**Amendment of Second Schedule to Criminal Justice (Safety of United Nations Workers) Act 2000**

24. The Second Schedule to the Criminal Justice (Safety of United Nations Workers) Act 2000 is amended—

10

- (a) in Part I, in paragraph 4, by—

- (i) the insertion of the following subparagraph after subparagraph (a):

“(aa) section 2A (assault aggravated by hatred);”,

- (ii) the insertion of the following subparagraph after subparagraph (b):

“(ba) section 3A (assault causing harm aggravated by hatred);”,

15

- (iii) the insertion of the following subparagraph after subparagraph (c):

“(ca) section 4A (causing serious harm aggravated by hatred);”,

- (iv) the insertion of the following subparagraph after subparagraph (d):

“(da) section 5A (threats to kill or cause serious harm aggravated by hatred);”,

20

and

- (v) the insertion of the following subparagraph after subparagraph (f):

“(fa) section 13A (endangerment aggravated by hatred);”,

and

- (b) in Part II, in paragraph 2, by the insertion of the following subparagraph after subparagraph (a):

25

“(aa) section 2A (damaging property aggravated by hatred);”.

**Amendment of section 3 of Criminal Justice (Public Order) Act 2003**

25. Section 3 of the Criminal Justice (Public Order) Act 2003 is amended by the insertion of—

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- (a) “6A,” after “6,” and

- (b) “7A,” after “7.”

## **Amendment of Criminal Justice (Terrorist Offences) Act 2005**

**26.** The Criminal Justice (Terrorist Offences) Act 2005 is amended—

- (a) in Part 1 of Schedule 2—
  - (i) in paragraph 2, by—
    - (I) the insertion of the following subparagraph after subparagraph (a): 5  
“(aa) section 3A (assault causing harm aggravated by hatred);”,
    - (II) the insertion of the following subparagraph after subparagraph (b):  
“(ba) section 4A (causing serious harm aggravated by hatred);”,  
and
    - (III) the insertion of the following subparagraph after subparagraph (e): 10  
“(ea) section 13A (endangerment aggravated by hatred);”,  
and
  - (ii) by the substitution of the following paragraph for paragraph 5:  
“5. Any offence under any of the following provisions of the Criminal  
Damage Act 1991: 15  
(a) section 2 (damaging property);  
(b) section 2A (damaging property aggravated by hatred).”,  
and
- (b) in Part 1 of Schedule 6—
  - (i) in paragraph 2, by— 20
    - (I) the insertion of the following subparagraph after subparagraph (a):  
“(aa) section 2A (assault aggravated by hatred);”,
    - (II) the insertion of the following subparagraph after subparagraph (b):  
“(ba) section 3A (assault causing harm aggravated by hatred);”,
    - (III) the insertion of the following subparagraph after subparagraph (c): 25  
“(ca) section 4A (causing serious harm aggravated by hatred);”,  
and
    - (IV) the insertion of the following subparagraph after subparagraph (f):  
“(fa) section 13A (endangerment aggravated by hatred);”,  
and 30
  - (ii) in paragraph 6, by the insertion of the following subparagraph after  
subparagraph (a):  
“(aa) section 2A of the Criminal Damage Act 1991 (damaging property  
aggravated by hatred);”.

**Amendment of Schedule 3 to Criminal Justice Act 2006**

27. Schedule 3 to the Criminal Justice Act 2006 is amended—

(a) in paragraph 1, by—

(i) the insertion of the following after “section 6 (threatening, abusive or insulting behaviour in public place)”: 5

“section 6A (threatening, abusive or insulting behaviour in public place aggravated by hatred)”,

and

(ii) the insertion of the following after “section 11 (entering building, etc., with intent to commit an offence)”: 10

“section 11A (entering building, etc., with intent to commit an offence aggravated by hatred)”,

and

(b) in paragraph 2, by—

(i) the insertion of the following after “section 2 (assault)”: 15

“section 2A (assault aggravated by hatred)”,

(ii) the insertion of the following after “section 3 (assault causing harm)”: 15

“section 3A (assault causing harm aggravated by hatred)”,

(iii) the insertion of the following after “section 9 (coercion)”: 15

“section 9A (coercion aggravated by hatred)”, 20

and

(iv) the insertion of the following after “section 10 (harassment)”: 15

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

**Amendment of Schedule 2 to Criminal Justice Act 2007**

28. Schedule 2 to the Criminal Justice Act 2007 is amended, in paragraph 2, by— 25

(a) the insertion of the following subparagraph after subparagraph (a):

“(aa) section 4A (causing serious harm aggravated by hatred);”,

and

(b) the insertion of the following subparagraph after subparagraph (b):

“(ba) section 5A (threats to kill or cause serious harm aggravated by hatred);” 30

### **Amendment of Schedule 3 to Broadcasting Act 2009**

29. Schedule 3 to the Broadcasting Act 2009 is amended by the substitution of the following paragraphs for paragraphs 4 and 5:

*“Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Act 2023* 5

4. Online content by which a person communicates material or behaves in a manner contrary to *section 7(1) of the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Act 2023* (material or behaviour likely to incite violence or hatred against persons on account of their protected characteristics). 10
5. Online content by which a person communicates material or behaves in a manner contrary to *section 8(1) of the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Act 2023* (material or behaviour that condones, denies or grossly trivialises genocide, etc., against persons on account of their protected characteristics).” 15

### **Amendment of Schedule to Criminal Procedure Act 2010**

30. The Schedule to the Criminal Procedure Act 2010 is amended—

- (a) in paragraph 10, by the insertion of the following subparagraph after subparagraph (a): 20

“(aa) section 4A (causing serious harm aggravated by hatred);”

and

- (b) by the addition of the following paragraph after paragraph 20:

“20A. An offence under section 2A of the Criminal Damage Act 1991 (damaging property aggravated by hatred).” 25

### **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”. 30

### **Amendment of Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012**

32. The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 is amended—

- (a) in Schedule 1, in paragraph 18, by— 35

- (i) the insertion of the following subparagraph after subparagraph (a):

“(aa) section 3A (assault causing harm aggravated by hatred);”

(ii) the insertion of the following subparagraph after subparagraph (b): “(ba) section 4A (causing serious harm aggravated by hatred),”	
(iii) the insertion of the following subparagraph after subparagraph (c): “(ca) section 5A (threats to kill or cause serious harm aggravated by hatred),”	5
and	
(iv) the insertion of the following subparagraph after subparagraph (d): “(da) section 13A (endangerment aggravated by hatred),”	
and	
(b) in Schedule 2, by the substitution of the following paragraph for paragraph 11:	10
“11. An offence under any of the following provisions of the Non-Fatal Offences against the Person Act 1997—	
(a) section 3 (assault causing harm),	
(b) section 3A (assault causing harm aggravated by hatred).”	
<b>Amendment of Schedule to Taxi Regulation Act 2013</b>	15
<b>33.</b> Part 2 of the Schedule to the Taxi Regulation Act 2013 is amended—	
(a) in paragraph 2, by the substitution of “section 18, 18A or 19(1)” for “section 18 or 19(1)”,	
(b) in paragraph 3, by the substitution of “(other than section 2, 2A or 16)” for “(other than section 2 or 16)”, and	20
(c) by the insertion of the following paragraph after paragraph 9:	
“9A. An offence under section 2A of the Criminal Damage Act 1991 insofar as it relates to an offence under section 2(2)(b) of that Act that is aggravated by hatred for the purposes of section 2A of that Act.”	
<b>Amendment of section 5 of Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016</b>	25
<b>34.</b> Section 5(5)(c) of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 is amended by the insertion of “6A,” after “6,” and the insertion of “7A,” after “7.”	
<b>Amendment of section 2 of Criminal Justice (Victims of Crime) Act 2017</b>	
<b>35.</b> Section 2(1) of the Criminal Justice (Victims of Crime) Act 2017 is amended, in paragraph (d) of the definition of “protection measure”, by the substitution of “section 10 or 10A of the Non-Fatal Offences against the Person Act 1997” for “section 10 of the Non-Fatal Offences against the Person Act, 1997”.	30

**Amendment of Schedule 2 to European Union (Passenger Name Record Data) Regulations 2018**

**36.** Schedule 2 to the European Union (Passenger Name Record Data) Regulations 2018 (S.I. No. 177 of 2018) is amended—

- (a) in paragraph 7, by the insertion of “or 2A” after “2” in the reference to sections of the Criminal Damage Act 1991, and 5
- (b) in paragraph 12—
  - (i) by the insertion of “, 18A” after “18” in the reference to sections of the Criminal Justice (Public Order) Act 1994, and
  - (ii) in the reference to sections of the Non-Fatal Offences against the Person Act 1997, by— 10
    - (I) the insertion of “3A,” after “3,”
    - (II) the insertion of “4A,” after “4,”
    - (III) the insertion of “5A,” after “5,”
    - (IV) the insertion of “,” after “6”, 15
    - (V) the deletion of “or” after “6”, and
    - (VI) the insertion of “or 13A” after “13”.

**Amendment of section 1 of Criminal Law (Extraterritorial Jurisdiction) Act 2019**

**37.** Section 1 of the Criminal Law (Extraterritorial Jurisdiction) Act 2019 is amended, in paragraph (a) of the definition of “relevant offence”, by— 20

- (a) the insertion of “3A,” after “3,”
- (b) the insertion of “4A,” after “4,”
- (c) the insertion of “5A,” after “5,” and
- (d) the insertion of “, 9A” after “9”.



## SCHEDULE

Section 2(1)

COUNCIL FRAMEWORK DECISION 2008/913/JHA OF 28 NOVEMBER 2008 ON COMBATTING CERTAIN FORMS  
AND EXPRESSIONS OF RACISM AND XENOPHOBIA BY MEANS OF CRIMINAL LAW



### **COUNCIL FRAMEWORK DECISION 2008/913/JHA of 28 November 2008**

5

#### **on combating certain forms and expressions of racism and xenophobia by means of criminal law**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 31 and 34(2)(b) thereof, 10

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament <sup>(1)</sup>,

Whereas:

- (1) Racism and xenophobia are direct violations of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles upon which the European Union is founded and which are common to the Member States. 15
- (2) The Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice <sup>(2)</sup>, the Conclusions of the Tampere European Council of 15 and 16 October 1999, the Resolution of the European Parliament of 20 September 2000 on the European Union's position at the World Conference Against Racism and the current situation in the Union <sup>(3)</sup> and the Communication from the Commission to the Council and the European Parliament on the biannual update of the Scoreboard to review progress on the creation of an area of 'freedom, security and justice' in the European Union (second half of 2000) call for action in this field. In the Hague Programme of 4 and 5 November 2004, the Council recalls its firm commitment to oppose any form of racism, anti-Semitism and xenophobia as already expressed by the European Council in December 2003. 20 25
- (3) Council Joint Action 96/443/JHA of 15 July 1996 concerning action to combat racism and xenophobia <sup>(4)</sup> should be followed by further legislative action addressing the need for further approximation of law and regulations of Member States and for overcoming obstacles for efficient judicial cooperation which are mainly based on the divergence of legal approaches in the Member States. 30
- (4) According to the evaluation of Joint Action 96/443/JHA and work carried out in other international fora, such as the Council of Europe, some difficulties have still been 35

1 Opinion of 29 November 2007 (not yet published in the Official Journal).

2 OJ C 19, 23.1.1999, p. 1.

3 OJ C 146, 17.5.2001, p. 110.

4 OJ C 185, 24.7.1996, p. 5.

experienced regarding judicial cooperation and therefore there is a need for further approximation of Member States' criminal laws in order to ensure the effective implementation of comprehensive and clear legislation to combat racism and xenophobia.

- (5) Racism and xenophobia constitute a threat against groups of persons which are the target of such behaviour. It is necessary to define a common criminal-law approach in the European Union to this phenomenon in order to ensure that the same behaviour constitutes an offence in all Member States and that effective, proportionate and dissuasive penalties are provided for natural and legal persons having committed or being liable for such offences. 5  
10
- (6) Member States acknowledge that combating racism and xenophobia requires various kinds of measures in a comprehensive framework and may not be limited to criminal matters. This Framework Decision is limited to combating particularly serious forms of racism and xenophobia by means of criminal law. Since the Member States' cultural and legal traditions are, to some extent, different, particularly in this field, full harmonisation of criminal laws is currently not possible. 15
- (7) In this Framework Decision 'descent' should be understood as referring mainly to persons or groups of persons who descend from persons who could be identified by certain characteristics (such as race or colour), but not necessarily all of these characteristics still exist. In spite of that, because of their descent, such persons or groups of persons may be subject to hatred or violence. 20
- (8) 'Religion' should be understood as broadly referring to persons defined by reference to their religious convictions or beliefs.
- (9) 'Hatred' should be understood as referring to hatred based on race, colour, religion, descent or national or ethnic origin. 25
- (10) This Framework Decision does not prevent a Member State from adopting provisions in national law which extend Article 1(1)(c) and (d) to crimes directed against a group of persons defined by other criteria than race, colour, religion, descent or national or ethnic origin, such as social status or political convictions.
- (11) It should be ensured that investigations and prosecutions of offences involving racism and xenophobia are not dependent on reports or accusations made by victims, who are often particularly vulnerable and reluctant to initiate legal proceedings. 30
- (12) Approximation of criminal law should lead to combating racist and xenophobic offences more effectively, by promoting a full and effective judicial cooperation between Member States. The difficulties which may exist in this field should be taken into account by the Council when reviewing this Framework Decision with a view to considering whether further steps in this area are necessary. 35
- (13) Since the objective of this Framework Decision, namely ensuring that racist and xenophobic offences are sanctioned in all Member States by at least a minimum level of effective, proportionate and dissuasive criminal penalties, cannot be sufficiently achieved by the Member States individually, since such rules have to be common and compatible and since this objective can therefore be better achieved at the level of the European Union, the Union may adopt measures, in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and as set out in 40

Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

- (14) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Articles 10 and 11 thereof, and reflected in the Charter of Fundamental Rights of the European Union, and notably Chapters II and VI thereof. 5
- (15) Considerations relating to freedom of association and freedom of expression, in particular freedom of the press and freedom of expression in other media have led in many Member States to procedural guarantees and to special rules in national law as to the determination or limitation of liability. 10
- (16) Joint Action 96/443/JHA should be repealed since, with the entry into force of the Treaty of Amsterdam, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin <sup>(1)</sup> and this Framework Decision, it becomes obsolete, 15

HAS ADOPTED THIS FRAMEWORK DECISION:

*Article 1*

**Offences concerning racism and xenophobia**

1. Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable: 20
- (a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;
- (b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material; 25
- (c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group; 30
- (d) publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group. 35
2. For the purpose of paragraph 1, Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting. 40

1 OJ L 180, 18.7.2000, p. 22.

3. For the purpose of paragraph 1, the reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin.

4. Any Member State may, on adoption of this Framework Decision or later, make a statement that it will make punishable the act of denying or grossly trivialising the crimes referred to in paragraph 1(c) and/or (d) only if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only. 5

#### *Article 2*

### **Instigation, aiding and abetting** 10

1. Each Member State shall take the measures necessary to ensure that instigating the conduct referred to in Article 1(1)(c) and (d) is punishable.

2. Each Member State shall take the measures necessary to ensure that aiding and abetting in the commission of the conduct referred to in Article 1 is punishable.

#### *Article 3* 15

### **Criminal penalties**

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 1 and 2 is punishable by effective, proportionate and dissuasive criminal penalties.

2. Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1 is punishable by criminal penalties of a maximum of at least between 1 and 3 years of imprisonment. 20

#### *Article 4*

### **Racist and xenophobic motivation**

For offences other than those referred to in Articles 1 and 2, Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties. 25

#### *Article 5*

### **Liability of legal persons** 30

1. Each Member State shall take the necessary measures to ensure that a legal person can be held liable for the conduct referred to in Articles 1 and 2, committed for its benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

(a) a power of representation of the legal person; 35

- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Apart from the cases provided for in paragraph 1 of this Article, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission of the conduct referred to in Articles 1 and 2 for the benefit of that legal person by a person under its authority. 5

3. Liability of a legal person under paragraphs 1 and 2 of this Article shall not exclude criminal proceedings against natural persons who are perpetrators or accessories in the conduct referred to in Articles 1 and 2. 10

4. ‘Legal person’ means any entity having such status under the applicable national law, with the exception of States or other public bodies in the exercise of State authority and public international organisations.

#### *Article 6*

#### **Penalties for legal persons** 15

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities; 20
- (c) placing under judicial supervision;
- (d) a judicial winding-up order.

2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(2) is punishable by effective, proportionate and dissuasive penalties or measures. 25

#### *Article 7*

#### **Constitutional rules and fundamental principles**

1. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles, including freedom of expression and association, as enshrined in Article 6 of the Treaty on European Union. 30

2. This Framework Decision shall not have the effect of requiring Member States to take measures in contradiction to fundamental principles relating to freedom of association and freedom of expression, in particular freedom of the press and the freedom of expression in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability. 35

*Article 8*

**Initiation of investigation or prosecution**

Each Member State shall take the necessary measures to ensure that investigations into or prosecution of the conduct referred to in Articles 1 and 2 shall not be dependent on a report or an accusation made by a victim of the conduct, at least in the most serious cases where the conduct has been committed in its territory. 5

*Article 9*

**Jurisdiction**

1. Each Member State shall take the necessary measures to establish its jurisdiction with regard to the conduct referred to in Articles 1 and 2 where the conduct has been committed: 10
  - (a) in whole or in part within its territory;
  - (b) by one of its nationals; or
  - (c) for the benefit of a legal person that has its head office in the territory of that Member State.
2. When establishing jurisdiction in accordance with paragraph 1(a), each Member State shall take the necessary measures to ensure that its jurisdiction extends to cases where the conduct is committed through an information system and: 15
  - (a) the offender commits the conduct when physically present in its territory, whether or not the conduct involves material hosted on an information system in its territory;
  - (b) the conduct involves material hosted on an information system in its territory, whether or not the offender commits the conduct when physically present in its territory. 20
3. A Member State may decide not to apply, or to apply only in specific cases or circumstances, the jurisdiction rule set out in paragraphs 1(b) and (c). 35

*Article 10*

**Implementation and review**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 28 November 2010. 25
2. By the same date Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established using this information by the Council and a written report from the Commission, the Council shall, by 28 November 2013, assess the extent to which Member States have complied with the provisions of this Framework Decision. 30
3. Before 28 November 2013, the Council shall review this Framework Decision. For the preparation of this review, the Council shall ask Member States whether they have experienced difficulties in judicial cooperation with regard to the conduct under Article 1(1). In addition, the Council may request Eurojust to submit a report, on whether differences between national 35

legislations have resulted in any problems regarding judicial cooperation between the Member States in this area.

*Article 11*

**Repeal of Joint Action 96/443/JHA**

Joint Action 96/443/JHA is hereby repealed. 5

*Article 12*

**Territorial application**

This Framework Decision shall apply to Gibraltar.

*Article 13*

**Entry into force** 10

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 28 November 2008.

*For the Council*

*The President*

M. ALLIOT-MARIE

15

An Bille um Cheartas Coiriúil (Gríosú chun  
Foréigin nó Fuatha agus Cionta Fuatha),  
2022

# BILLE

(mar a ritheadh ag Dáil Éireann)

dá ngairtear

Acht do leasú an dlí a bhaineann leis an toirmeasc ar ghríosú chun foréigin nó fuatha in aghaidh duine nó grúpa daoine mar gheall ar thréithe áirithe (dá ngairtear tréithe cosanta) de chuid an duine nó an ghrúpa daoine agus do dhéanamh socrú maidir le cion arb éard é cinédhíothú, coireanna cogaidh, coireanna in aghaidh na daonnachta agus coireanna in aghaidh na síochána a mhaitheamh nó a shéanadh nó beag is fiú a dhéanamh go mór den chéanna agus, le linn déanamh amhlaidh, do thabhairt éifeacht do Chinneadh Réime 2008/913/CGB ón gComhairle an 28 Samhain 2008 maidir le cineálacha agus léirithe áirithe ciníochais agus seineafóibe a chomhrac trí bhíthin an dlí choiriúil; do dhéanamh socrú maidir le cionta áirithe arna dtomú le fuath san Acht um Dhamáiste Coiriúil, 1991, san Acht um Cheartas Coiriúil (Ord Poiblí), 1994 agus san Acht um Chionta Neamh-Mharfacha in aghaidh an Duine, 1997; chun na geríoch sin, do dhéanamh socrú maidir le leasuithe ar na hachtacháin sin agus ar achtacháin eile agus d'aisghairm an Achta um Thoirmeasc ar Ghríosú chun Fuatha, 1989; do dhéanamh socrú, i leith cionta eile, maidir le fuath in aghaidh duine nó grúpa daoine mar gheall ar thréithe áirithe (dá ngairtear tréithe cosanta) de chuid an duine nó an ghrúpa daoine a bheith ina thromú ar na cionta sin le linn pianbhreitheanna a chur; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

Ritheadh ag Dáil Éireann,

26 Aibreán, 2023

Criminal Justice (Incitement to Violence or  
Hatred and Hate Offences) Bill 2022

# BILL

(as passed by Dáil Éireann)

entitled

An Act to amend the law relating to the prohibition of incitement to violence or hatred against a person or a group of persons on account of certain characteristics (referred to as protected characteristics) of the person or the group of persons and to provide for an offence of condoning, denying or grossly trivialising genocide, war crimes, crimes against humanity and crimes against peace and, in doing so, to give effect to 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; to provide for certain offences aggravated by hatred in the Criminal Damage Act 1991, the Criminal Justice (Public Order) Act 1994 and the Non-Fatal Offences against the Person Act 1997; for those purposes, to provide for amendments of those and other enactments and to repeal the Prohibition of Incitement to Hatred Act 1989; to provide in respect of other offences for hatred against a person or a group of persons on account of certain characteristics (referred to as protected characteristics) of the person or the group of persons to be an aggravating factor in sentencing for those offences; and to provide for related matters.

Passed by Dáil Éireann,

26th April, 2023

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
BÓTHAR BHAILE UÍ BHEOLÁIN, CILL MHAIGHNEANN,  
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