



Coalition Against Hate Crime Ireland

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

The Coalition Against Hate Crime Ireland is made of 22 civil society organisations representing communities commonly targeted by hate crime and hate speech in Ireland: Age Action Ireland, Belong To, Doras, Dublin LGBTQ+ Pride, Immigrant Council of Ireland, Inclusion Ireland, Independent Living Movement Ireland, Intersex Ireland, Irish Council for Civil Liberties, Irish Network Against Racism, Irish Traveller Movement, LGBT Ireland, LGBT Travellers, Nasc – Migrant and Refugee Rights Centre, National LGBT Federation, National Traveller Women's Forum, National Women's Council, National Youth Council of Ireland, Outhouse, Pavee Point Traveller & Roma Centre, Sports Against Racism Ireland, Transgender Equality Network Ireland (TENI). The Coalition is supported by expert advisors Prof. Amanda Haynes, Dr. Lucy Michael and Prof. Jennifer Schweppe.

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The following list of amendments found consensus among the members.
Any omission does not reflect automatic endorsement over the remaining provisions.

Introduction

The Coalition against Hate Crime Ireland has been campaigning for the review of the Prohibition of Incitement to Hatred Act 1989 and the introduction of hate crime legislation for several years. We regard the absence of such legislation as a significant gap in Irish law. We therefore **strongly welcome this Bill, calling for its introduction as a matter of urgency**, and look forward to continued engagement on the issues of extreme hate speech and hate crime – beyond the scope of the legislation – as well as other forms of hate speech. If we are going to tackle the very roots of hate, we must go beyond criminal law. Given that criminal law should only be used as a last resort, particularly when tackling society wide issues, we call on Government to commit to developing a comprehensive **National Action Plan Against Hate** to tackle hate crime and hate speech. Among other actions, there must be a firm commitment to educational measures, awareness raising, improved monitoring, reporting, data gathering and improved victim support. Proper implementation measures to ensure the legislation is effective should also be put in place. A widespread public awareness campaign should be undertaken when the Bill becomes law.

General Principles

The Bill amends the Prohibition of Incitement to Hatred Act 1989 and creates new offences in Irish criminal law. Given the potential impact on other rights, including the right to freedom of expression and the right to a fair trial, as well as the need to ensure general rule of law principles are respected, the Coalition considers that the following principles should underpin this legislation:

1. Provisions must be drafted in a clear and precise manner to ensure that all persons understand where the threshold is between criminal and noncriminal speech and behaviour.
2. Government must provide a clear rationale and decision-making framework for the inclusion and exclusion of ‘protected characteristics’, aggravated offences, penalties, and other core elements of the legislation.
3. The legislation should be consistent with relevant national and European legislation including the Digital Services Act and the Online Safety and Media Regulation Act 2022; it should be compliant with national, regional and international human rights law, and should be consistent with the Criminal Justice (Victims of Crime) Act 2017.
4. The law must not disproportionately interfere with other relevant rights such as the right to freedom of expression, the right to a fair trial and procedural rights.

Our pre-legislative scrutiny submission is available [here](#).

Part 1 – Preliminary and General

	Subject	Bill's current text	Rationale for change	Coalition's proposed amendment/action
1	Introduce review of legislation	None	<p>The Bill should include a requirement for a comprehensive review of the legislation, to be started no later than 5 years after its commencement, as well as a consultative monitoring mechanism. This would allow an assessment of its efficacy and operation, ensuring that all relevant stakeholders – including human rights organisations and impacted communities – are involved. This was previously recommended by the Coalition, as well as by the Joint Oireachtas Justice Committee (rec n11 of the Committee PLS report).</p> <p>For reference: a similar provision can be found in the <u>GENDER RECOGNITION ACT 2015</u>.</p> <p>This provision should be drafted in a way that does not delay in any way the commencement of the legislation.</p>	<p>Add new section in Part 1: Review of Operation of Act</p> <p>The Minister shall—</p> <p>(a) not later than 5 years after this Act comes into operation, commence a review of the operation of this Act, and</p> <p>(b) not later than 12 months after the commencement of the review, make a report to each House of the Oireachtas of the findings made on the review and of the conclusions drawn from the findings.</p>
2	References to Framework Decision in Part 1	<p><i>2. (1) In this Act— “Framework Decision” means 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, the text of which is set out for convenience of reference in the Schedule; ...</i></p> <p><i>(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.</i></p>	<p>References to the Framework Decision are unnecessary and have the potential to create confusion. Criminal law must be written in a manner which is precise, and references to the Framework Decision in section 2 create an unconstitutional level of uncertainty in the legislation. Given that the uncertainty relates to the definitions at the heart of the Bill that is, the understanding of hatred around which the entire Bill pivots, and the definitions of protected characteristics, we believe that this is a fatal flaw which must be immediately addressed. It can and should be remedied simply by removing references to the Framework Decision in section 2. All terms defined by reference to the Framework decision are also defined in the Bill, therefore we recommend that the former are omitted.</p>	<p>Section 2(1): Delete reference to Framework Decision</p> <p>Section 2(2): Delete</p>

3	Definition of “hate” and use of “hate” (not “hatred”) in Part 3	None	<p>The legislation and its accompanying explanatory memorandum use both terms “hate” and “hatred” when describing the offences and sentencing provisions set out in Part 3 of the Bill: for example, the title of the Bill uses the term “hate offences” while the offences themselves are restricted to applying in the context of “hatred” only.</p> <p>There is a key difference in how “hate” and “hatred” are utilised in legislation internationally. The term ‘hatred’ is used in the Prohibition of Incitement to Hatred Act 1989 which this Bill seeks to replace and is commonly used across jurisdictions and internationally with respect to those offences which are, to use the language of the Council of Europe Recommendation on Hate Speech, “expressions of hate speech subject to criminal liability.” The term “hatred” is used commonly with respect to incitement to hatred offences, where it is important to have a high threshold for criminality in order to ensure restrictions on speech do not contravene the right to freedom of expression, as protected by ECHR Article 10.</p> <p>The term “hate”, on the other hand, is commonly used internationally to describe the offences to which Part 3 of the Bill relates – hate crimes. We recommend that the definitions section be amended to include a definition of ‘hate’, and that references to “hatred” in Part 3 are replaced with “hate”. The term “hatred” should be restricted in its operation to those offences set out in Part 2 of the Bill, in other words incitement to hatred offences.</p> <p>“Hate” is recognised as an ambiguous term that requires interpretation and thus is typically defined in legislation. Internationally, hate crime legislation variously defines “hate” as including, for example, a combination of bias, prejudice, intolerance, contempt, ill-will, enmity, or hostility towards a characteristic. The proposed definition is drawn from the recommendations of the Northern Ireland Independent Review of Hate Crime legislation: “A hate crime may be defined as a criminal act perpetrated against individuals or communities with protected characteristics</p>	<p>Insert new paragraph in section 2(1): ‘hate’ includes bias, prejudice, contempt, hostility and bigotry.</p> <p>Replace all references to “hatred” in Part 3 with “hate”. The term “hatred” should be restricted in its operation to those offences set out in Part 2 of the Bill.</p>
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			based on the perpetrator's hostility, bias, prejudice, bigotry or contempt against the actual or perceived status of the victim or victims." The Coalition regards this definition as inclusive of the forms of hate which are most commonly directed at the protected characteristics. The Consultation Paper of the Law Commission of England and Wales also notes that the inclusion of contempt aligns with the character of the hostility experienced in disablist crimes. The wording also reflects the Oireachtas Joint Justice Committee recommendation on the inclusion of "contempt" (rec n 5 or PLS report) as well as the need to include "bias" and "hostility" (rec n 15 PLS report).	
4	Definition of "hatred"	<i>2.(1) "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.</i>	<p>This definition changed from the General Scheme. We question whether this circular definition will be helpful for interpretation, given that the term 'hatred' itself remains undefined. A clearer, more precise definition that will assist in interpreting the scope of the incitement offences in Part 2 should be added. We recommend that this definition is grounded in international standards. Our suggested wording is based on the definition in the Camden Principles on Freedom of Expression also used by the Council of Europe Commission against Racism and Intolerance (ECRI) and approved by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression: <i>"Hatred" is a state of mind characterized as intense and irrational emotions of opprobrium, enmity and detestation towards the target group;</i></p> <p>This definition also re-introduces reference to real or presumed belonging to a group, as originally included in the General Scheme.</p>	<p>Replace current definition with</p> <p><i>"hatred" means a state of mind characterised as intense and irrational emotions of enmity or detestation against a person or a group of persons in the State or elsewhere on account of their membership or presumed membership of a group defined by reference to protected characteristics, or any one of those characteristics".</i></p>
5	Definition of "Incitement"	None	The Bill currently lacks a definition of "incitement". To ensure provisions are drafted in a clear and more precise manner, and assist in interpreting the scope of the incitement offences in Part 2, a definition should be added. As stressed by ECRI, with the lack of clarity and precision there is likely to be an absence of legal certainty as to the scope of the conduct that is prohibited. Our suggested wording is based on the	Insert new paragraph in section 2(1): <i>"incitement" means behaviour towards, or communications about, a person or a group of persons that create a serious risk of discrimination, hostility or violence against persons belonging to or being presumed as</i>

			<p>definition used by the Council of Europe Commission against Racism and Intolerance (ECRI), as adapted from the Camden Principles and also used in a similar wording by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression:</p> <p>UN Rabat Plan of Action and <u>Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression</u>: ‘incitement’ refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.</p> <p>General Policy Recommendation No. 15 on Combating Hate Speech, ECRI: “incitement” shall mean statements about groups of persons that create an imminent risk of discrimination, hostility or violence against persons belonging to them.</p> <p><u>Camden Principles</u>: The term ‘incitement’ refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.</p> <p>In relation to the application of the definition of hatred to the incitement offences, we are concerned that as currently drafted the legislation criminalises incitement to the emotion of hatred, without clearly defining a threshold of seriousness that could lead to a criminal offence. Incitement to hatred should only reach the criminal threshold where such incitement is connected to a potentially harmful act. ECRI has stated that to reach the threshold of criminality, hate speech should be connected to an intention or reasonable expectation that acts of violence, intimidation, hostility or discrimination will result from the speech. This is crucial in order to prevent a disproportionate impact on freedom of expression. The inclusion of a definition of incitement was also recommended by IHREC at a pre-legislative scrutiny stage.</p>	<p><i>belonging to such groups on the basis of their protected characteristics.</i></p>
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			The definition also re-introduces reference to real or presumed belonging to a group, as originally included in the General Scheme.	
6	Definition of “gender”	<i>Section 3(2)(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</i>	While the expansive definition of “gender” is to be welcomed, the use of the term “preferred” gender is incorrect, suggesting that gender is a preference. The term “transgender” does not necessarily include non-binary identities. Non-binary people are recognised and addressed in the state’s National LGBTI+ Inclusion Strategy and LGBTI+ national Youth Strategy.	Replace current definition with: <i>“3(2)(d) “gender” means the gender of a person or the gender which a person expresses or with which the person identifies and includes male, female, transgender, non-binary and a gender other than those of male and female”.</i>
7	Definition of “sexual orientation”	Section 3(2)(i) “sexual orientation” has the same meaning as it has in section 2(1) of the Equal Status Act 2000	Remove reference to flawed Equal Status Act (ESA) definition and introduce a strong definition of sexual orientation into Irish law, which is currently lacking. We flag that the need to review and update the current definition in the ESA has been <u>recently debated in the Seanad</u> . Our suggested wording is grounded in the definition provided by <u>Neary, Irwin-Gowran and McEvoy (2017)</u> and updates existing language.	Section 3(2)(i): replace current definition with: Sexual orientation refers to emotional, romantic, and/or sexual attraction to men, women, and non-binary people. It includes heterosexual, lesbian, gay, bisexual, pansexual and asexual.
8	Use of term “variations of sex characteristics” and definition	3(1)(h) “sex characteristics” 3(2)(f) references to sex characteristics shall be construed as references to the physical and biological features of a person relating to sex	“Variations of sex characteristics” is the terminology of choice of Intersex Ireland, the only intersex-led support organisation in Ireland. While all individuals have sex characteristics, ‘variations of sex characteristics’ more specifically references intersex people.	Section 3(1)(h): Insert “variations of” before “sex characteristics” Section 3(2)(f): Insert “variations of” before “sex characteristics”; Therefore, add text in red: 3(1)(h) variations of sex characteristics Replace current definition in 3(2)(f) with: <i>“references to variations of sex characteristics shall be construed as references to the physical and biological features of a person relating to sex.”</i>
9	Explicit inclusion of migrants in section 3 (new protected characteristic)	Not referred to in the legislation	The increase in far-right activity in Ireland involving hostility towards people with migrant status demonstrates that individuals are in some serious instances subject to	Section 3(1): Insert new paragraph “migration status”.

			hostility on this ground specifically, rather than on the basis of their nationality, race, colour or other characteristics already protected in the Bill. We note that the Victims' Directive, which makes special reference to victims of hate crime, establishes rights which "are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality" (10). Likewise, the Istanbul Convention applies to women with migrant status (see Article 4).	Section 3(2): Insert new paragraph, "references to "migration status" include references to persons seeking international protection, persons with refugee status, persons with permission to remain and persons with any other regular or irregular migrant status."
10	Protected characteristics referred to in the offence of condonation, denial or gross trivialisation of genocide, etc., against persons on account of their protected characteristics	8(3) In this section— "protected characteristic", in relation to a person or a group of persons, means any of the characteristics specified in paragraph (a), (b), (d), (e) or (f) of the definition of that term in section 3(1);	The protected characteristics referred to in the offence of condonation, denial or gross trivialisation of genocide, etc., against persons on account of their protected characteristics section exclude some of the key protected characteristics referenced under the Rome Statute of the International Criminal Court. The omissions are nationality and gender. We consider there is no need to limit the range of protected characteristics in this section and all protected characteristics could be relevant. However, at a minimum we recommend aligning this section with the protected characteristics provided for in S.7 of the Rome Statute, namely by adding nationality and gender.	Amend current text in section 8(3) as follows: "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);".
	Part 2: Incitement to violence or Hatred			
	Subject	Bill's current text	Rationale for change	Coalition's proposed amendment/action
11	Offence of incitement to violence or hatred against persons on account of their protected characteristics: strengthen freedom of expression defence and remove the defences for certain 'discourses'	<i>7(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—</i> <i>(a) a reasonable and genuine contribution to literary, artistic, political, scientific, religious or academic discourse,</i>	Given the risk of misinterpretation and misuse by influential people with public platforms, who should not be subject to a lower standard when it comes to incitement to hatred, the certain "discourses" defences should be removed. If the Freedom of Expression provision is properly worded, explicitly referencing the Irish Constitution and the European Convention on Human Rights, we see no reason for additional defences for particular discourses. We consider that the defences in S. 7 (3) as currently worded are open to misinterpretation and risk providing a shield to those who seek to incite violence or hatred from a public platform. As	Substitute current text with: 7 (3) In any proceedings for an offence under this section, it shall be a defence to prove that the material concerned or, insofar as appropriate, the behaviour concerned was, in the particular circumstances, reasonable or consisted solely of — (a) a statement that is the subject of the defence of absolute privilege, or

	<p><i>(b) a statement that is the subject of the defence of absolute privilege, or</i></p> <p><i>(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.</i></p> <p>AND</p> <p><i>Protection of freedom of expression</i></p> <p><i>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.</i></p>	<p>addressed by ECRI, “politicians, religious and community leaders and others in public life have a particularly important responsibility in this regard because of their capacity to exercise influence over a wide audience”.</p> <p>In parallel, section 11 (Protection of Freedom of Expression) should be revised to explicitly reference the right to freedom of expression (not just in its title). An explicit reference to the ECHR has been made in the <u>equivalent Scottish legislation</u>, in addition to a stand-alone freedom of expression provision that is similar to the new provision in this Bill.</p> <p>The Joint Committee on Justice also recommended that the defences should be re-evaluated and more clearly defined, particularly the provision of using political discourse as defence (Rec n2 PLS report).</p>	<p>(b) material or behaviour, as the case may be, that is necessary for any other lawful purpose, including law enforcement or the investigation or prosecution of an offence.</p> <p>7 (4) For the purpose of subsection (3) in determining whether material or behaviour was reasonable, particular regard must be had to the importance of the right to freedom of expression by virtue of Article 40.6.1.i of the Constitution of Ireland and Article 10 of the European Convention on Human Rights, including the general principle that the right applies to the expression of information or ideas that offend, shock or disturb.</p> <p>Delete:</p> <p>2(6)(1) “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.</p> <p>Add to current text:</p> <p><i>Protection of Freedom of expression</i></p> <p><i>(11) In line with the right to freedom of expression, 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</i></p>
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				<i>criticism of matters relating to a protected characteristic.</i>
1 2	Offence of incitement to violence or hatred against persons on account of their protected characteristics: provide rationale for penalties	<p>Current Bill:</p> <p><i>6(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— (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, to the public or a section of the public.</i></p> <p><i>7(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 (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.</i></p> <p>General Scheme:</p> <ul style="list-style-type: none"> - Communication offence: <i>A person guilty of an offence under paragraph 1 shall be liable – (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both,</i> 	<p>All penalties must meet the principle of proportionality. The penalty for distribution of relevant material has increased from 2 years, as provided for in the General Scheme, to 5 years in this Bill, where the offences of communication and distribution have been incorporated under the same offence. We question the rationale for this significant increase, noting that the Framework Decision at Article 3 (2) refers to the need to ensure that incitement offences are punishable of “a maximum of at least between 1 and 3 years”.</p>	Provide rationale for change.

		<p>or on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.</p> <p>- Distribution offence: A person guilty of an offence under paragraph (3) shall be liable – 6 (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years, or both.</p>		
1 3	<p>Offences of preparing or possessing material likely to incite violence or hatred against persons on account of their protected characteristics:</p> <ol style="list-style-type: none"> 1. Reintroduce criminal threshold contained in similar offence in 1989 Act; 2. Clarify intention to make public 	<p><i>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 (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</i></p>	<p>We note that this offence was not included in the General Scheme of the Bill. We ask Government to explain the rationale for its introduction, given the implications for the right to privacy and the right to the inviolability of the home.</p> <p>As it stands, the offence may not meet the required threshold for criminal behaviour and may constitute a disproportionate interference with the right to private life. This is because it does not require a clear intention of making the material public and international standards are clear that the public element is a key requirement of an incitement offence. The wording “with a view to” making material public significantly lowers the threshold from an ‘intention’ to make material public, which encompasses a degree of imminence. We recommend that the wording ‘with a view to the material being communicated to the public or a section of the public’ in 10(1)(a) is amended to read ‘with a clear and serious intention of communicating the material to the public or a section of the public’.</p> <p>The similar offence in the 1989 Act had a much higher threshold as it required that the material would cause</p>	<p>Make following changes:</p> <ul style="list-style-type: none"> Replace the wording ‘with a view to the material being communicated to the public or a section of the public’ in 10(1)(a) with “with a clear and serious intention of communicating the material to the public or a section of the public.” Insert after “material” in 10(1)(a) “which is threatening, abusive or insulting”. Remove “or being reckless as to whether such violence or hatred is thereby incited.” From s.10(1)(b). <p>10(1) would then read:</p> <p>(a) prepares or possesses material which is threatening, abusive or insulting that is likely to incite violence or hatred against a person or a group of persons on account of their protected characteristics or any of those characteristics with a clear and</p>

		<p><i>violence or hatred is thereby incited.</i></p> <p><i>(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).</i></p>	<p>harassment, alarm or distress. This is therefore a significant reduction of the threshold for conviction, and we call for the 1989 Act threshold to be reintroduced.</p> <p>We also note that the introduction of the element of ‘recklessness’ also lowers the threshold from the 1989 Act. We call for the removal of reference to recklessness in this section.</p> <p>We also express alarm at s.10(3) which creates a presumption that a person in possession of certain materials that would constitute an offence under s.10(1) has committed that offence where it is “reasonable to assume that the material was not intended for the personal use of the person”. Assumptions should not play a part in criminal proceedings, rather the prosecution should have to prove that the material was not intended for the personal use of the person, as per the ordinary standard of proof in criminal proceedings—beyond reasonable doubt. We therefore suggest deleting s. (10)3.</p> <p>We further note that this offence is not required by the Framework Decision, nor is it referenced by ECRI or in the recent Council of Europe Committee of Ministers Recommendation on Combating Hate Speech.</p>	<p>serious intention of communicating the material to the public or a section of the public, whether by himself or herself or another person, and</p> <p>(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.</p> <ul style="list-style-type: none"> • Delete section 10(3)
1 4	Caution in relation to the new powers of search for An Garda Síochána	Entire Section 15	<p>This section on search warrants was not in the General Scheme. We are concerned about this provision for three reasons:</p> <ol style="list-style-type: none"> 1. the threshold for the offence of preparing or possessing material as it stands is very low, and combined with this search power could constitute a disproportionate interference with the right to privacy and the constitutional protection of the inviolability of the home. 2. most existing search powers in legislation apply only to offences that would attract up to 5 years in prison. The provision on preparation or possession attracts 	Provide a rationale for this section.

			<p>just 2 years, meaning this is a significant expansion of search powers for An Garda Síochána.</p> <p>3. Garda powers of search are being legislated for in a separate Bill- the Garda Síochána (Powers) Bill. Provision in this legislation would pre-empt the outcome of that legislative process.</p> <p>We call on Government to provide a rationale for this section given the above that the Garda Síochána (Powers) Bill will address garda search powers.</p>	
1 5	Inclusion of presumed membership of protected groups in Part 2 (Incitement Offences)	<p>In the Bill:</p> <p><i>7(1) Subject to subsections (2) to (4) and section 11, a person shall be guilty of an offence under this section if— (a) the person— (i) communicates material to the public or a section of the public, or (ii) behaves in a public place in a manner, that is likely to incite violence or hatred against a person or a group of persons on account of their protected characteristics or any of those characteristics, and (b) does so with intent to incite violence or hatred against such a person or group of persons on account of those characteristics or any of those characteristics or being reckless as to whether such violence or hatred is thereby incited.</i></p> <p>Similar language in 7(4), 8(1), 9(1), 1.</p> <p><i>In the General Scheme:</i></p> <p><i>A person is guilty of an offence who – communicates to the public or a section of the public by any means,</i></p>	<p>The General Scheme included references to “real or perceived association with a protected characteristics” in the incitement offences. This reference, removed in the Bill, should be re-introduced. Our suggested language aligns to the language already contained in the Bill in the hate offences (see e.g. Section 2A(2)(11) <i>the hatred is on account of the victim’s membership or presumed membership of a group defined by reference to a protected characteristic</i>).</p>	<p>Add text in red</p> <p><i>7(1) Subject to subsections (2) to (4) and section 11, a person shall be guilty of an offence under this section if— (a) the person— (i) communicates material to the public or a section of the public, or (ii) behaves in a public place in a manner, that is likely to incite violence or hatred against a person or a group of persons on account of their membership or presumed membership of a group defined by reference to protected characteristics, or any one of those characteristics and (b) does so with intent to incite violence or hatred against such a person or group of persons on account of those characteristics or any of those characteristics or being reckless as to whether such violence or hatred is thereby incited.</i></p> <p>Similar changes to be made at 7(4), 8(1), 9(1), 11.</p>

for the purpose of inciting, or being reckless as to whether such communication will incite, hatred against another person or group of people due to their real or perceived association with a protected characteristic.

Part 3: Offences Aggravated by Hatred

	Subject	Bill's current text	Rationale for change	Coalition's proposed amendment/action
1 6	Use of "hate" rather than "hatred" in Part 3	"hatred"	As per discussion in Part 1, above.	Replace all references to "hatred" in Part 3 with "hate".
1 7	New aggravated offences	The Bill creates aggravated offences of a range of offences in the Non-Fatal Offences Against the Person Act 1997; the Criminal Damage Act 1991; and the Criminal Justice (Public Order) Act 1994..	The range of offences to be aggravated in Part 3 are drawn from the Non-Fatal Offences Against the Person Act 1997; the Criminal Damage Act 1991; and the Criminal Justice (Public Order) Act 1994. There is no rationale provided as to why these particular offences are aggravated to the exclusion of others. Internationally, research shows that hate crimes manifest in different ways for different protected characteristics. We have seen in England and Wales, for example, that while racist hate crime most commonly takes the form of offences against the person, criminal damage, and public order offences, in the context of disablist hate crime, fraud and forgery offences, robbery, burglary, and theft and handling offences are more common. Anti-LGBTI+ hate crimes also take the form of sexual assault, blackmail and fraud offences. None of these offence types which internationally are specifically associated with disablist and anti-LGBTI+ hate crime have been created as aggravated offences in this Bill. We advocate that consideration be given to broadening the range of the aggravated offences to include those offences that international research identifies as commonly experienced across all protected characteristics. In particular,	<p>Consideration should be given to the inclusion of aggravated versions of offences under the Criminal Justice (Theft and Fraud Offences) Act 2007, including theft (section 4), making gain or causing loss by deception (section 6), obtaining services by deception (section 7), burglary offences (sections 12, 13), robbery (section 14).</p> <p>Consideration should also be given to the inclusion of further aggravated versions of offences under the Criminal Justice (Public Order) Act 1994 including blackmail, extortion and demanding money with menaces (section 17).</p> <p>Consideration should also be given to the inclusion of further aggravated versions of sexual offences including sexual assault, aggravated sexual assault, rape under section 4, and rape.</p>

			consideration should be given to the inclusion of sexual offences and theft and fraud offences as offences commonly experienced by those within the LGBTI+ community and by disabled people.	
18	References to “specific victim”	<i>Section 17 An offence under section 2 committed by a person is aggravated by hatred for the purposes of this section if— (a) <u>where there is a specific victim of the offence</u> — (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, or (b) <u>whether or not there is a specific victim of the offence</u>, 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.</i>	The phrase “specific victim” is not one that has ever been used in Irish legislation to date. If legislators seek to differentiate the manner in which the legislation operates on this basis, they should provide a definition as to what the phrase “specific victim” means. If the phrase “specific victim” is to be interpreted as a “natural person” in line with the Criminal Justice (Victims of Crime) Act 2017, then this should be made clear. The use of different legislative formulae in the legislation between crimes for which there is a specific victim and those for which there are not is theoretically unsound, is not based on good practice, creates an incoherency in the legislation, and will undoubtedly cause confusion in its operation. We recommend that this approach be abandoned.	Remove references to “specific victim” in Section 17, Section 18 and Section 19 If the reference to specific victim is retained, a definition for specific victim should be included in the legislation.
19	Legal test for aggravated sentencing provisions in section 20 should include both motivation and demonstration tests.	<i>20(1) Without prejudice to any other enactment or rule of law and subject to subsections (2) and (3) a court shall, where it is satisfied from the evidence adduced in the proceedings that there was 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</i>	No test with respect to the establishment of the hate element is explicitly named in section 20. Thus, it is entirely unclear exactly what has to be proven here: do the current legislative tests: that the offender was motivated by hatred or demonstrated hatred, apply? Or is a lower standard required, such as that applied in DPP v Elders where the court found that a “racist dimension” should be considered an aggravating factor. The Coalition asserts unanimously that both the demonstration test and the motivation test should be provided for in section 20 in relation to aggravated sentencing. While the Coalition does not have a unanimous position on what test should be used in relation	Section 20(1) insert “ <i>that the offence was motivated (wholly or partly) by hate, or that at the time of committing the offence, or immediately before or after doing so, the offender demonstrated hatred towards the victim</i> ”. Read in conjunction with other suggested amendments on the Section: <i>Without prejudice to any other enactment or rule of law and subject to subsections (2) and (3) a court shall, where it is established beyond a reasonable doubt that</i>

		<i>applies, take that into account as an aggravating factor for the purposes of determining the sentence to be imposed on the person for that offence.</i>	to aggravated offences, the majority of members are in support of both demonstration test and motivation test.	<p><i>(a) the offence was motivated (wholly or partly) by hate on account of the victim's membership or presumed membership of a group defined by reference to a protected characteristic, or</i></p> <p><i>(b) that at the time of committing the offence, or immediately before or after doing so, the offender demonstrated hate towards the victim on account of the victim's membership or presumed membership of a group defined by reference to a protected characteristic, take that into account as an aggravating factor for the purposes of determining the sentence to be imposed on the person for that offence.</i></p>
20	Balance of proof for aggravated sentencing in section 20	<i>20(1) "... a court shall, where it is satisfied from the evidence adduced in the proceedings that there was hatred against a person or a group of persons..."</i>	The ordinary criminal standard of proof should be utilised in section 20, that is, that the hate element should be established beyond a reasonable doubt. Section 20 should apply in all cases where a hate element has been established, either by way of proof beyond a reasonable doubt at trial or by way of a Newton Hearing, or where the defendant pleads guilty to an offence on an agreed set of facts which explicitly includes a statement as to the hate element of the crime. This change should be made in conjunction with the other suggested changes under section 20, including the explicit inclusion of both the demonstration and motivation test.	<p><i>Section 20(1): Replace "it is satisfied from the evidence adduced in the proceedings" with "where it is established beyond a reasonable doubt". Read in conjunction with other suggested amendments on the Section:</i></p> <p><i>Without prejudice to any other enactment or rule of law and subject to subsections (2) and (3) a court shall, where it is established beyond a reasonable doubt that</i></p> <p><i>(a) the offence was motivated (wholly or partly) by hate on account of the victim's membership or presumed membership of a group defined by reference to a protected characteristic, or</i></p> <p><i>(b) that at the time of committing the offence, or immediately before or after doing so, the offender demonstrated hate towards the victim on account of the victim's membership or presumed membership of a group defined by reference to a protected characteristic,</i></p>

				<i>take that into account as an aggravating factor for the purposes of determining the sentence to be imposed on the person for that offence.</i>
2 1	Inclusion of presumed membership of protected groups in section 20	20(1) “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”	Victims of hate crime are regularly misidentified by offenders. For example, Sikhs are subject to Islamophobia. Since the emergence of Covid-19, people of Asian descent are subject to anti-Chinese hostility regardless of their nationality. In the commissioning of a hate crime it is the offender’s prejudice which is in question rather than the actual identity of the victim.	<p>Section 20(1): insert “the victim's membership or presumed membership of a group defined by reference to a” after “on account of”. Read in conjunction with other suggested amendments on the Section:</p> <p><i>Without prejudice to any other enactment or rule of law and subject to subsections (2) and (3) a court shall, where it is established beyond a reasonable doubt that</i></p> <p><i>(a) the offence was motivated (wholly or partly) by hate on account of the victim's membership or presumed membership of a group defined by reference to a protected characteristic, or</i></p> <p><i>(b) that at the time of committing the offence, or immediately before or after doing so, the offender demonstrated hate towards the victim on account of the victim's membership or presumed membership of a group defined by reference to a protected characteristic,</i></p> <p><i>take that into account as an aggravating factor for the purposes of determining the sentence to be imposed on the person for that offence.</i></p>
2 2	Requiring that a section 20 uplift in sentence be included in the record	<i>20(4) Where a greater sentence is imposed by a court pursuant to this section, the court shall state and record in the proceedings— (a) the fact that the greater sentence is</i>	While the Coalition is in favour of the development of an administrative system for monitoring the use of section 20 and the degree of sentence uplift, given that there is no formal record of proceedings in lower courts, and that the intention behind the requirement that such a record be kept	Section 20(4): delete “and recorded”.

		<i>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.</i>	is unclear (that is, whether it is for administrative purposes, or that the section 20 uplift should appear on the criminal record of the offender), the words “and recorded” in section 20(4) should be removed.	
2 3	Rehabilitation and reintegration	<i>20(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 is good reason 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.</i>	Section 20 requires that a “greater” sentence should be imposed where a section 20 finding is made. No mention is made of alternative sentences. There needs to be a recognition of the importance of rehabilitation and reintegration, particularly for those offences for which the maximum penalty is 12 months or less. Using term “greater” suggests that the sentence can only be increased within the parameters of a particular sentence type (e.g., a greater fine) rather than aggravate the sentence (e.g., a term of imprisonment rather than a fine).	Section 20(2) and 20(3): Delete Section 20(4): replace “a greater sentence” with “an aggravated sentence”; replace “the greater sentence” with “the aggravated sentence”; replace “that greater sentence” with “the aggravated sentence”.
2 4	Arbitrariness in the amount that the maximum sentence is increased for aggravated sentences	Some increase by 20%, others by 40%, others by 70%, others by 100%	Those offences which have a lower maximum sentence (e.g., Public Order offences with a maximum sentence of 3 months) have a 100% increase in sentence (to 6 months) while those with a maximum sentence of 10 years are increased by different amounts e.g., 20% (to 12 years). All sentences should be proportionate to the crime committed and any uplift to a sentence should be based on a firm rationale.	Provide rationale for the increase in sentences in Part III.