

Speech

Opening speech by Minister Helen McEntee on the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022

From [Department of Justice \(/en/organisation/departments-of-justice/\)](/en/organisation/departments-of-justice/)

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An Garda Síochána reported a 29% increase in reported ‘hate crimes’ in 2022 compared to the previous year. The most prevalent discriminatory motives for hate crimes last year were race, sexual orientation and nationality.

June is Pride Month, and it comes just after an appalling attack against a young member of the LGBT+ community in my own county. Last year saw similar horrendous acts in Sligo, Dublin and Cork. Targeting of immigrants, people with disabilities and members of the Traveller community, because of who they are, is shockingly and tragically frequent.

It’s hard to believe that despite increasing instances of hate crime and general support from the public to criminalise such acts, Ireland doesn’t yet have hate crime laws in place and will be one of the last countries in Europe to enact such legislation.

And while we have had legislation in place against hate speech for almost 35 years, it has been ineffective, limited and largely discredited.

We bear a responsibility, as legislators, to do our utmost to provide for a safe, fair and inclusive country for all; reflecting our modern Ireland.

The overwhelmingly positive passage of this Bill through the Dáil has made me very optimistic that the legislation is victim-centred, timely and clear in the protections it provides for those most seriously affected by hate crime and hate speech.

The Bill has been broadly welcomed across the political spectrum as well as by the large and diverse array of representative organisations of those minority groups that we are seeking to protect.

And while there has been much valuable and positive discussion and reflection since the government announced its intention to legislate in this area; it has unfortunately also been subject to deliberate misinformation and distortion, including from fringe commentators and US-based social media personalities.

In framing our discussion in this House, I hope you will keep in mind that the core purpose of developing this legislation is to ensure that vulnerable and minority communities can feel safe.

Nobody deserves to be targeted for the intrinsic and unchangeable characteristics of their identity. To do so is cowardly, callous and contemptuous and should be open to prosecution.

The increase in hate crime is not limited to Ireland, but rather is a broader phenomenon globally; often fuelled and amplified by social media and the politicisation of certain media outlets that attempt to use so-called 'Culture Wars' to reach a wider audience.

The approach we have taken in developing this Bill has been to develop an evidence-based, fit for purpose and legally prudent approach to legislating for hate-based offences in Ireland, in line with EU and international good practice.

Development of this legislation is underpinned by an extensive public consultation and research process that began in 2019.

This included a short public survey; detailed written submissions; seven independently facilitated discussion workshops around the country; and a series of meetings with stakeholder groups, civil society, academics, law enforcement professionals and other experts.

The first-hand testimony and lived experiences that emerged from the facilitated workshops and meetings with victims groups was particularly insightful, profound and devastating. It provided much-needed awareness-raising of the true hostility and fear faced by vulnerable and minority communities in Ireland.

I have no qualms in standing up against those who criticise this Bill, who say that hate speech and hate crime don't exist in Ireland. Most of those proclaiming the loudest don't seem to have taken the time to read the Bill, to understand that it doesn't seek to infringe on their rights to say offensive things. Nor do they seem to understand that hate speech is already a crime in Ireland.

This legislation was developed with the objective of providing that the individuals who target victims because of their association with a particular identity characteristic can be identified, and prosecuted. This is a requirement of the EU Framework Decision we must transpose.

There has been some recent discussion around the terminology used in this legislation. Throughout its development, particular attention has been given to the persons, or groups of persons, designated under the protected characteristics as set out in Section 3 of the Bill.

These are; race; colour; nationality; religion; national or ethnic origin; descent; gender; sex characteristics; sexual orientation; and disability.

These protected characteristics which underpin the legislation were selected on the basis of the public consultation and submissions from key stakeholders. These are the characteristics most commonly targeted for hate-based offences in our country.

The meaning given to these protected characteristics in the Bill are for the specific purpose of this legislation. We are not seeking to change existing statutory definitions as some have claimed.

Indeed, it is very common in legislation to have different meanings for terms in different Acts, depending on the specific purpose of the legislation in question.

The meaning of “gender” as a protected characteristic in the Bill expressly provides for gender expression or identity in order to include transgender and non-binary persons. This is in line with international good practice and was a strong recommendation from stakeholders.

Similarly, the addition of “sex characteristics” and “descent” as protected characteristics was to ensure that the Bill is as inclusive as possible; to include intersex persons and people of Jewish descent or mixed race, further to recommendations from minority communities.

During the Dáil debates, there was some discussion about defining “hatred” in the Bill.

On the strong advice of the Office of the Attorney General, we have not sought to limit the definition of the widely understood concept of “hatred” beyond its ordinary and everyday meaning.

It is the definition which has been used by the Courts, the Gardaí and the DPP. I am advised that defining it further at this juncture could risk prosecutions collapsing and victims being denied justice. Furthermore, it has been an established term on the statute book for several decades, as it carries over from the definition of hatred in the Prohibition of Incitement to Hatred Act 1989.

That Act, which will be repealed and replaced by this Bill, has been on the Statute Book for nearly 35 years. It has resulted in around 50 convictions in this period; and many of these were successfully appealed.

In updating our incitement or hate speech laws, we have to recognise that there are individuals and groups that are deliberately, and recklessly, spreading hatred in our country without any regard for the people that they are victimising.

However, I should make it clear that no one has a right not to be offended. The right to freedom of expression and freedom of speech are vital rights in any democratic society. These rights are protected by the Irish Constitution and the European Convention of

Human Rights. You have a right to express your convictions and your opinions, no matter how unpopular they might be. You have a right to be divisive and argumentative, a right to offend others and to hold political opinions which are not the mainstream.

Section 11 of the Bill explicitly provides protection for freedom of expression. This section provides that discussion or criticism of matters relating to a protected characteristic does not constitute incitement to hatred in and of itself.

However, freedom of speech is not an absolute right. You don't have a right to shout fire in a crowded theatre. You don't have a right to make defamatory statements. And you don't have a right to incite hatred or violence against individuals.

When a communication incites hatred or violence against others, a very clear line is crossed and such behaviour must be dealt with through effective, and prosecutable, legal recourse.

The incitement offences that currently exist under the 1989 Act are being updated to encompass any communication or behaviour that intentionally or recklessly incites hatred or violence, so that they can be prosecuted more effectively.

The key change here is that we are simplifying the core incitement offence and setting the standard at recklessly or intentionally inciting hatred. Recklessness is a very common feature in criminal law.

This means a person must either have deliberately set out to incite hatred or violence, or knew that there was a risk that what they were doing would incite hatred or violence, and did it anyway.

While still very challenging to prove, including recklessness as part of this offence was widely welcomed during the pre-legislative scrutiny process. It is hoped that it will contribute to more effective implementation of this legislation in comparison with the existing Act.

It is a lesser offence to prepare or possess material (such as posters or leaflets) which is intended, or is likely, to incite violence or hatred, even if the material has not yet been shared or made public. However there would need to be evidence that the person intended -that this material would be made public in order to secure a conviction.

This provision has attracted much attention, with claims that it equates hate speech to “thought crime”.

However, these provisions in relation to preparing or possessing before us today replicate the provisions of the 1989 Act so what we are talking about is not new.

I wish to make it clear that this provision only applies in cases where an individual has a clear intention to disseminate harmful material that would stir up violence or hatred. This would need to be proved in court beyond a reasonable doubt.

This provision is being carried over from the 1989 Act into the new legislation in order to cover situations where material might be intercepted before it is communicated; for example in the case of a person travelling to a rally with far-right posters expressly inciting hatred or violence in their car or backpack.

Again, there has to be clear evidence of intent or likelihood to stir up violence or hatred for a prosecution to be brought under this section.

The burden of proof for preparing and possessing material likely to incite violence or hatred is consistent with what is already on the Statute Book in the 1989 Act. What I am proposing is to maintain this standard, as to do otherwise would make convictions significantly more difficult to secure; even where these offences have clearly taken place.

Reverse burdens of proof, as applied here, are a common feature of criminal legislation. For example, in Section 15(2) of the Misuse of Drugs Act, 1977 a person in possession of a large quantity of a controlled drug is presumed, until the court is satisfied to the contrary, to possess these drugs for the purposes of sale or supply to a third party.

This doesn't affect the protections that we have built into our laws around the presumption of innocence, and the general burden of proof remains on the prosecution to show the facts of the case to the Court.

I reiterate that all of the incitement provisions have been carefully drafted to criminalise only the extreme forms of hate speech that deliberately and recklessly incite or stir up acts of hostility, discrimination or violence. The legislation contains robust safeguards for freedom of expression, such as protections for reasonable and genuine contributions

to literary, artistic, political, scientific or academic discourse, and fair and accurate reporting. This is about criminalising those who deliberately or knowingly put other people in harm's way through their statements and views.

Fundamentally, free speech does not entitle any person or group to cause harm to another.

Similarly, we have a responsibility to tell victims of hate crimes that we are determined to help them and keep them safe from harm, and to let perpetrators know that they will be punished for spreading hatred.

As I mentioned, hate crime causes significant psychological trauma and distress to victims. We have to offer the most vulnerable communities within our society the protections that they need, and give An Garda Síochána and the Director of Public Prosecutions the powers necessary to investigate and prosecute these crimes for what they actually are.

A hate crime happens when someone commits an offence because they have a hatred of a person with a particular personal characteristic.

For example, if someone was followed leaving an LGBTQ+ venue and then assaulted and shouted at using homophobic slurs, they have been subjected to a hate crime. Another example would be if someone's property is intentionally damaged, or anti-migrant slogans were painted on their property, because they are a member of a migrant community.

Assaulting someone or damaging their property is already a crime. It is the hatred against an individual or group on the part of the perpetrator that makes it a hate crime.

For the purposes of this Bill, there are 12 aggravated offences which can be classified as 'hate crimes'. These vary from very serious offences like assault to violent public order offences or criminal damage.

These offences have been selected as they are the most commonly cited crimes against people on identity grounds.

Where a perpetrator is found guilty of one of these offences that is aggravated by

hatred, a sentence uplift will be applied in comparison to the base offence. It will be a matter for the trial judge to determine the appropriate sentence, however a maximum additional sentence of plus 6 months for a summary conviction and plus 2 years for conviction on indictment will be available; except where already at the maximum possible.

We have built in a safeguard so that where there isn't sufficient evidence to convict a person of the "hate crime" offence, they may still be convicted of the base form of the offence. This avoids the risk that the entire prosecution could fall if the hate element can't be proven. So if a person is assaulted and it isn't a hate crime, there can still be a conviction for assault.

Also included is a general provision under Section 20 of the Bill which provides that where there is evidence of hatred in relation to any offence beyond the 12 specific aggravated offences, hatred can be considered as an aggravating factor at sentencing and the judge would be able to reflect this in the offender's record.

This formalises a process that is already a judicial reality in our courts system and offers the broadest protection possible for victims of offences that are aggravated by hatred.

The proposed test of proof in hate crime cases will be evidence of motivation by hatred against someone with a protected characteristic, and/or a test of demonstration of hatred against someone with a protected characteristic around the time of committing the offence.

The addition of this latter demonstration test stems from the pre-legislative scrutiny conducted by the Oireachtas Joint Committee on Justice.

The Committee strongly recommended that the Bill include a demonstration test in addition to the existing motivation test in the Bill.

This recommendation emerged on the basis of the considerable challenges in proving motivation in hate crimes. Motivation is not required to be proven in most other crimes; rather, the normal legal standard in most crimes is proof that you have committed the crime. The demonstration test allows for this normal standard of proof to be applied in the course of seeking a prosecution for a hate crime.

In the most basic sense, a demonstration test means that a perpetrator demonstrates hatred towards someone with a protected characteristic at the time of an offence being committed; such as through use of prejudiced slurs or graffiti. It is an objective test; that is, what a reasonable person would believe and not the accused's own belief.

Inclusion of the demonstration test was an express recommendation of the Justice Committee in order to ensure that Ireland's new hate crime legislation is effective. Legal experts have noted that without this legal test, there is little point in putting hate crime into statute.

The government approved my recommendation to include the demonstration test in the text of the Bill last July.

This decision came on foot of the Justice Committee's recommendation and following additional research undertaken by my department into how hate legislation has been implemented in practice in other jurisdictions; most notably in the UK.

Contrary to concerns that the demonstration test would lead to a spike in convictions, including for spurious claims, evidence from these jurisdictions shows that the conviction rate for hate crime and the guilty plea rate for hate crimes is at a similar level to that of 'normal' crimes.

In Northern Ireland, for example, where a demonstration test of proof has been in effect for many years, the Public Prosecution Service received 344 files involving hate crime in 2021/2022. Over the same period, over 4,500 hate crimes and hate motivated incidents were reported to the PSNI.

This highlights that there isn't a deluge of hate crime convictions just because this demonstration test exists. Importantly, it centres on the effect the hate crime has had on the victim rather than having to prove the hateful intent and motivation of the offender. It is, after all, the demonstration of hate that causes the additional harm to victims.

I'm aware that this was discussed in the final debate in the Dáil. An example was given about someone making a slur "in the heat of the moment" which could lead to them having a hate crime on their record, and that this could be disproportionate.

Let me be clear, there is nothing disproportionate in how someone feels when being

assaulted or otherwise offended against because of hatred for who they are.

There is a profound difference between how victims of hate crimes feel in comparison to victims of other crimes. We must remember this at all stages of this debate.

It is also important to say that a prosecution cannot be brought forward without the agreement of the Director of Public Prosecutions. This is an important safeguard.

To conclude, I am looking forward to engaging with you in the course of today's discussion.

I recognise that there are many different points of view; with some saying the Bill doesn't go far enough and others that it goes too far. But I can assure you that the Bill is not radical as detractors claim; it is proportionate, evidence-based and in line with legislation in other countries similar to ours.

I hope that I can count on your support to progress this much-needed legislation which has been resoundingly welcomed by all of those whose lives have been impacted by hate speech and hate crime for too long in our country.

I commend this Bill to the House.

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