

# Heads of Criminal Law (Hate Crime) Bill 2015

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# Heads of Criminal Law (Hate Crime) Bill 2015

## PART 1

### Head 1 – Short Title and Commencement

Provide that:

1. The Act may be cited as the Criminal Law (Hate Crime) Act 2015
2. The Act will come into operation upon the date of its passing.

### Head 2 – Definitions

Provide that:

“bias aggravated offence” means an offence created by this Act under sections 3-9;

“bias” means hatred, hostility, bias, prejudice or contempt;

“bias element” means either a bias motivation or a demonstration of bias

“membership” in relation to a protected group includes association with, or presumed association with, members of that group;

“presumed membership” means presumed by the offender;

“protected group” includes individuals who are identified on the basis of their race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, membership of the Traveller or Roma communities, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health;

“Roma” is understood as inclusive of Roma, Sinti, Kale, Gypsies, Romanichels, Boyash, Ashkali, Egyptians, Yenish, Dom and Lom.

## PART 2

### Head 3 – Amendment of the Criminal Justice Act 1990

#### 1. The amendment of the Act by the insertion of section 3A as follows:

3A Bias motivated murder and attempt

It is an offence to murder a person, or an attempt to commit any such murder, where the offence is motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group.

## Head 4 – Amendment of the Non-Fatal Offences Against the Person Act 1997

### 1. The amendment of the Act by the insertion of section 2A as follows:

#### 2A Bias aggravated assault

(1) A person shall be guilty of the offence of bias aggravated assault who, without lawful excuse, intentionally or recklessly –

(a) directly or indirectly causes force to or causes an impact on the body of another, or

(b) causes another to believe on reasonable grounds that he or she is likely immediately to be subjected to any such force or impact,

without the consent of the other **where the offence is motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group.**

(2) In subsection 1(a), ‘force’ includes –

(a) application of heat, light, electric current, noise or any other form of energy, and

(b) application of matter in solid liquid or gaseous form.

(3) No such offence is committed if the force or impact, not being intended or likely to cause injury, is in the circumstances such as is generally acceptable in the ordinary conduct of daily life and the defendant does not know or believe that it is in fact unacceptable to the other person.

(4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding €2,500 or to imprisonment for a term not exceeding 6 months or to both.

### 2. The amendment of the Act by the insertion of section 3A as follows:

#### 3A Bias aggravated assault causing harm

(1) A person who assaults another causing him or her harm **where motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group** shall be guilty of an offence.

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

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding €2,500 or to both, or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or to both.

### 3. The amendment of section 4 of the Act by the insertion of section 4A as follows:

#### 4A Bias aggravated causing serious harm

(1) A person who intentionally or recklessly causes serious harm to another **where motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group** shall be guilty of an offence.

(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 both.

#### **4. The amendment of the Act by the insertion of section 10A as follows:**

##### **10A Bias aggravated harassment**

(1) Any person who, where motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group, without lawful authority or reasonable excuse, by any means including by use of the telephone, harasses another by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence.

(2) For the purposes of this section a person harasses another where –

(a) he or she, by his or her acts intentionally or recklessly, seriously interferes with the other's peace and privacy or causes alarm, distress or harm to the other, and

(b) his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other's peace and privacy or cause alarm, distress or harm to the other.

(3) Where a person is guilty of an offence under subsection (1), the court may, in addition to or as an alternative to any other penalty, order that the person shall not, for such period as the court may specify, communicate by any means with the other person or that the person shall not approach within such distance as the court shall specify of the place of residence or employment of the other person.

(4) A person who fails to comply with the terms of an order under subsection (3) shall be guilty of an offence.

(5) If on the evidence the court is not satisfied that the person should be convicted of an offence under subsection (1), the court may nevertheless make an order under subsection (3) upon an application to it in that behalf if, having regard to the evidence, the court is satisfied that it is in the interests of justice so to do.

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

(a) on summary conviction to a fine not exceeding £1,500 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.”

## **Head 5 Amendment of the Criminal Justice (Theft and Fraud Offences) Act 2001**

### **1. The amendment of the Act by the insertion of section 4A as follows:**

#### **4A Bias aggravated theft**

(1) Subject to section 5, a person is guilty of bias aggravated theft if he or she dishonestly appropriates property without the consent of its owner and with the intention of depriving its owner of it where the theft is motivated (wholly or partly) by bias against

members of a protected group based on their membership, or their presumed membership, of that group.

(2) For the purposes of this section a person does not appropriate property without the consent of its owner if—

(a) the person believes that he or she has the owner's consent, or would have the owner's consent if the owner knew of the appropriation of the property and the circumstances in which it was appropriated, or

(b) (except where the property came to the person as trustee or personal representative) he or she appropriates the property in the belief that the owner cannot be discovered by taking reasonable steps,

but consent obtained by deception or intimidation is not consent for those purposes.

(3) (a) This subsection applies to a person who in the course of business holds property in trust for, or on behalf of, more than one owner.

(b) Where a person to whom this subsection applies appropriates some of the property so held to his or her own use or benefit, the person shall, for the purposes of subsection (1) but subject to subsection (2), be deemed to have appropriated the property or, as the case may be, a sum representing it without the consent of its owner or owners.

(c) If in any proceedings against a person to whom this subsection applies for theft of some or all of the property so held by him or her it is proved that—

(i) there is a deficiency in the property or a sum representing it, and

(ii) the person has failed to provide a satisfactory explanation for the whole or any part of the deficiency,

it shall be presumed, until the contrary is proved, for the purposes of subsection (1) but subject to subsection (2), that the person appropriated, without the consent of its owner or owners, the whole or that part of the deficiency.

(4) If at the trial of a person for theft the court or jury, as the case may be has to consider whether the person believed—

(a) that he or she had not acted dishonestly, or

(b) that the owner of the property concerned had consented or would have consented to its appropriation, or

(c) that the owner could not be discovered by taking reasonable steps,

the presence or absence of reasonable grounds for such a belief is a matter to which the court or jury shall have regard, in conjunction with any other relevant matters, in considering whether the person so believed.

(5) In this section—

“appropriates”, in relation to property, means usurps or adversely interferes with the proprietary rights of the owner of the property;

“depriving” means temporarily or permanently depriving.

(6) A person guilty of theft is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

**2. The Amendment of the Act by the insertion of section 6A as follows:**

## 6A Bias aggravated making gain or causing loss by deception

(1) A person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception induces another to do or to refrain from doing an act where motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group is guilty of an offence.

(2) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both.”

## Head 6 Amendment of the Criminal Damage Act 1991

### 1. The Amendment of the Act by the insertion of section 2A as follows:

#### 2A Bias motivated damaging property

(1) A person who, where motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group, without lawful excuse damages any property belonging to another intending to damage any such property or being reckless as to whether any such property would be damaged shall be guilty of an offence.

(2) A person who, where motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group, without lawful excuse damages any property, whether belonging to himself or another –

(a) intending to damage any property or being reckless as to whether any property would be damaged, and

(b) intending by the damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered,

shall be guilty of an offence.

(3) A person who, where motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group, damages any property, whether belonging to himself or another, with intent to defraud shall be guilty of an offence.

(4) A person guilty of an offence under this section shall be liable –

(a) on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 12 months or both, and

(b) on conviction on indictment –

(i) in case the person is guilty under subsection (2), to a fine or imprisonment for life or both,

(ii) in case the person is guilty of any other offence under this section, to a fine not exceeding €17,500 or imprisonment for a term not exceeding 10 years or both.

(5) For the purposes of this section a person is reckless if he has foreseen that the particular kind of damage that in fact was done might be done and yet has gone on to take the risk of it.

## 2. The Amendment of the Act by the insertion of section 2B as follows:

2B Damaging property with a demonstration of bias

(1) A person who without lawful excuse damages any property belonging to another intending to damage any such property or being reckless as to whether any such property would be damaged, and who at the time of committing the offence, or immediately before or after doing so, demonstrates towards the victim of the offence bias based on the victim's membership, or presumed membership of a protected group, shall be guilty of an offence.

(2) A person who without lawful excuse damages any property another –

(a) intending to damage any property or being reckless as to whether any property would be damaged, and

(b) intending by the damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered,

and who at the time of committing the offence, or immediately before or after doing so, demonstrates towards the victim of the offence bias based on the victim's membership, or presumed membership of a protected group, shall be guilty of an offence.

(3) A person who damages any property with intent to defraud and who at the time of committing the offence, or immediately before or after doing so, demonstrates towards the victim of the offence bias based on the victim's membership, or presumed membership of a protected group, shall be guilty of an offence.

(4) A person guilty of an offence under this section shall be liable –

(a) on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 12 months or both, and

(b) on conviction on indictment –

(i) in case the person is guilty under subsection (2), to a fine or imprisonment for life or both,

(ii) in case the person is guilty of any other offence under this section, to a fine not exceeding €17,500 or imprisonment for a term not exceeding 10 years or both.

(5) For the purposes of this section a person is reckless if he has foreseen that the particular kind of damage that in fact was done might be done and yet has gone on to take the risk of it.

## 3. The amendment of the Act by the insertion of section 3A as follows:

3A Bias motivated threat to damage property

A person who, where motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group, without lawful excuse makes to another a threat, intending that that other would fear it would be carried out –

(a) to damage any property belong to that other or a third person, or

(b) to damage his own property in a way which he knows is likely to endanger the life of that other or a third person,  
shall be guilty of an offence and shall be liable –

- (i) on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 12 months of both, and
- (ii) on conviction on indictment, to a fine not exceeding €17,500 or imprisonment for a term not exceeding 10 years or both.

#### **4. The amendment of the Act by the insertion of section 3A as follows:**

3B Threat to damage property with a demonstration of bias

A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out –

- (c) to damage any property belong to that other or a third person, or
- (d) to damage his own property in a way which he knows is likely to endanger the life of that other or a third person,

and who at the time of committing the offence, or immediately before or after doing so, demonstrates towards the victim of the offence bias based on the victim's membership, or presumed membership of a protected group shall be guilty of an offence and shall be liable –

- (iii) on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 12 months of both, and
- (iv) on conviction on indictment, to a fine not exceeding €17,500 or imprisonment for a term not exceeding 10 years or both.

### **Head 7 Amendment of the Criminal Law (Rape) Act 1981**

#### **1. The amendment of the Act by the insertion of section 2A as follows:**

2A Bias aggravated rape

(1) A man commits bias aggravated rape if –

- (a) he has sexual intercourse with a woman who at the time of the intercourse does not consent to it, and
- (b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it, and
- (c) he was motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group

and references to bias aggravated rape in this Act and any other enactment shall be construed accordingly.

(2) It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed.



## Head 8 Amendment of the Criminal Law (Rape) (Amendment) Act 1990

### 1. The amendment of the Act by the insertion of section 2A as follows:

#### 2A Bias aggravated sexual assault

(1) The offence of indecent assault upon any male person and the offence of indecent assault upon any female person where motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group, shall be known as bias motivated sexual assault.

(2) (a) A person guilty of bias motivated sexual assault shall be liable on conviction on indictment –

(i) in case the person on whom the assault was committed was a child, to imprisonment for a term not exceeding 14 years; and

(ii) in any other case, to imprisonment for a term not exceeding 10 years.

(c) In this subsection 'child' means a person under 17 years of age.

(3) Bias aggravated sexual assault shall be a felony.

### 2. The amendment of the Act by the insertion of section 3A as follows:

#### 3A Aggravated sexual assault aggravated by bias

(1) In this Act 'aggravated sexual assault aggravated by bias' means a sexual assault that involves serious violence or the threat of serious violence or is such as to cause injury, humiliation or degradation of a grave nature to the person assaulted where motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group.

(2) A person guilty of aggravated sexual assault aggravated by bias shall be liable on conviction on indictment to imprisonment for life.

(3) Aggravated sexual assault aggravated by bias shall be a felony.

### 2. The amendment of the Act by the insertion of section 4A as follows:

#### 4A Bias aggravated rape under section 4

(1) In this Act 'bias aggravated rape under section 4' means a sexual assault that includes

(a) penetration (however slight) of the anus or mouth by the penis, or

(b) penetration (however slight) of the vagina by any object held or manipulated by another person

where the sexual assault is motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group.

(2) A person guilty of bias aggravated rape under section 4 shall be liable on conviction on indictment to imprisonment for life.

## Head 9 Amendment of the Criminal Justice (Public Order) Act 1994

### 1. The amendment of the Act by the insertion of section 5A as follows:

5A Bias motivated disorderly conduct in a public place

(1) It shall be an offence for any person in a public place to engage in **bias motivated offensive conduct** -

(a) between the hours of 12 o'clock midnight and 7 o'clock in the morning next following, or

(b) at any other time, after having been requested by a member of the Garda Síochána to desist.

(2) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding €1000.

(3) In this section, 'bias motivated offensive conduct' means any unreasonable behaviour which, having regard to all the circumstances, is likely to cause serious offence or serious annoyance to any person who is, or might be reasonably be expected to be, aware of such behaviour, **where such behaviour is motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group.**

### 2. The amendment of the Act by the insertion of section 5B as follows:

5B Disorderly conduct in a public place with a demonstration of bias

(1) It shall be an offence for any person in a public place to engage in **offensive conduct involving a demonstration of bias**

(a) between the hours of 12 o'clock midnight and 7 o'clock in the morning next following, or

(b) at any other time, after having been requested by a member of the Garda Síochána to desist.

(2) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding €1000.

(3) In this section, 'bias motivated offensive conduct' means any unreasonable behaviour which, having regard to all the circumstances, is likely to cause serious offence or serious annoyance to any person who is, or might be reasonably be expected to be, aware of such behaviour, **and where, at the time of committing the offence, or immediately before or after doing so, the offender demonstrates bias based on an individual's membership, or presumed membership of a protected group.**

### 3. The amendment of the Act by the insertion of section 6A as follows:

6A Bias motivated threatening, abusive or insulting behaviour in public place

(1) It shall be an offence for any person in a public place to use or engage in any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned **where such words or behaviour are motivated (wholly or partly) by bias against members of a**

protected group based on their membership, or their presumed membership, of that group.

(2) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding €1000 or to imprisonment for a term not exceeding 3 months or to both.

#### **4. The amendment of the Act by the insertion of section 6B as follows:**

6B Threatening, abusive or insulting behaviour in public place with a demonstration of bias

(1) It shall be an offence for any person in a public place to use or engage in any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned where, at the time of committing the offence, or immediately before or after doing so, the offender demonstrates bias based on an individual's membership, or presumed membership of a protected group.

(2) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding €1000 or to imprisonment for a term not exceeding 3 months or to both.

#### **5. The amendment of the act by the insertion of section 15A as follows**

15A Bias motivated violent disorder

(1) Where -

(a) three or more persons who are present together at any place (whether that place is a public place or a private place or both) use or threaten to use unlawful violence, and

(b) the conduct of those persons, taken together, is such as would cause a person of reasonable firmness present at that place to fear for his or another person's safety, and

(c) the conduct of those persons is motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group.

then, each of the persons using or threatening to use unlawful violence shall be guilty of the offence of bias motivated violent disorder.

(2) For the purposes of this section -

(a) it shall be immaterial whether or not the three or more persons use or threaten to use unlawful violence simultaneously;

(b) no person of reasonable firmness need actually be, or likely to be, present at that place.

(3) A person shall not be convicted of the offence of bias motivated violent disorder unless the person intends to use or threaten to use violence or is aware that his conduct may be violent or threaten violence.

(4) A person guilty of an offence of bias motivated violent disorder shall be liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 10 years or to both.

## **6. The amendment of the act by the insertion of section 15B as follows**

15B Violent disorder with a demonstration of bias

(1) Where -

(a) three or more persons who are present together at any place (whether that place is a public place or a private place or both) use or threaten to use unlawful violence, and

(b) the conduct of those persons, taken together, is such as would cause a person of reasonable firmness present at that place to fear for his or another person's safety, **and**

**(c) where, at the time of committing the offence, or immediately before or after doing so, the offender demonstrates bias based on an individual's membership, or presumed membership of a protected group.**

then, each of the persons using or threatening to use unlawful violence shall be guilty of the offence of bias motivated violent disorder.

(3) For the purposes of this section -

(c) it shall be immaterial whether or not the three or more persons use or threaten to use unlawful violence simultaneously;

(d) no person of reasonable firmness need actually be, or likely to be, present at that place.

(3) A person shall not be convicted of the offence of bias motivated violent disorder unless the person intends to use or threaten to use violence or is aware that his conduct may be violent or threaten violence.

(4) A person guilty of an offence of bias motivated violent disorder shall be liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 10 years or to both.

## **7. The amendment of the act by the insertion of section 16A as follows**

16A Bias motivated affray

(1) Where -

(a) two or more persons at any place (whether that place is a public place or a private place or both) use or threaten to use violence towards each other, and

(b) the violence so used or threatened by one of those persons is unlawful, and

(c) the conduct of those persons taken together is such as would cause a person of reasonable firmness present at that place to fear for his or another person's safety, **and**

**(c) the conduct of those persons is motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group**

then, each such person who uses or threatens to use unlawful violence shall be guilty of the offence of bias motivated affray.

(2) For the purposes of this section –

(a) a threat cannot be made by words alone;

(b) no person of reasonable firmness need actually be, or be likely to be, present at the place where the use or threat of violence occurred.

(3) A person shall not be convicted of the offence of affray unless the person intends to use or threaten to use violence or is aware that his conduct may be violent or threaten violence.

(4) A person guilty of an offence of bias motivated affray shall be liable—

(a) on summary conviction to a fine not exceeding €1000 or to imprisonment for a term not exceeding 12 months or to both,

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or to both.

## **8. The amendment of the act by the insertion of section 16B as follows**

16B Affray with a demonstration of bias

(1) Where –

(a) two or more persons at any place (whether that place is a public place or a private place or both) use or threaten to use violence towards each other, and

(b) the violence so used or threatened by one of those persons is unlawful, and

(c) the conduct of those persons taken together is such as would cause a person of reasonable firmness present at that place to fear for his or another person's safety, and

(c) where, at the time of committing the offence, or immediately before or after doing so, the offender demonstrates bias based on an individual's membership, or presumed membership of a protected group.

then, each such person who uses or threatens to use unlawful violence shall be guilty of the offence of bias motivated affray.

(2) For the purposes of this section –

(a) a threat cannot be made by words alone;

(b) no person of reasonable firmness need actually be, or be likely to be, present at the place where the use or threat of violence occurred.

(3) A person shall not be convicted of the offence of affray unless the person intends to use or threaten to use violence or is aware that his conduct may be violent or threaten violence.

(4) A person guilty of an offence of bias motivated affray shall be liable—

(a) on summary conviction to a fine not exceeding €1000 or to imprisonment for a term not exceeding 12 months or to both,

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or to both.

## **9. The amendment of the act by the insertion of section 17A as follows**

17A Bias motivated blackmail, extortion and demanding money with menaces

(1) It shall be an offence for any person who, with a view to gain for himself or another or with intent to cause loss to another, makes any unwarranted demand with menaces where such behaviour is motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group.

(2) For the purposes of this section—

(a) a demand with menaces shall be unwarranted unless the person making it does so in the belief—

(i) that he has reasonable grounds for making the demand, and

(ii) that the use of the menaces is a proper means of reinforcing the demand;

(b) the nature of the act or omission demanded shall be immaterial and it shall also be immaterial whether or not the menaces relate to action to be taken by the person making the demand.

(3) A person guilty of an offence under this section shall be liable –

(a) on summary conviction to a fine not exceeding €2,500 or to imprisonment for a term not exceeding 12 months or to both,

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 14 years or to both.

## **10. The amendment of the act by the insertion of section 17B as follows**

17A Blackmail, extortion and demanding money with menaces with a demonstration of bias

17A Bias motivated blackmail, extortion and demanding money with menaces

(1) It shall be an offence for any person who, with a view to gain for himself or another or with intent to cause loss to another, makes any unwarranted demand with menaces where, at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence bias based on the victim's membership, or presumed membership, of a protected group

(2) For the purposes of this section—

(a) a demand with menaces shall be unwarranted unless the person making it does so in the belief—

(i) that he has reasonable grounds for making the demand, and

(ii) that the use of the menaces is a proper means of reinforcing the demand;

(b) the nature of the act or omission demanded shall be immaterial and it shall also be immaterial whether or not the menaces relate to action to be taken by the person making the demand.

(3) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction to a fine not exceeding €2,500 or to imprisonment for a term not exceeding 12 months or to both,
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 14 years or to both.

## **PART 3**

### **Head 10 – Sentencing bias aggravated offences**

Where an individual has been convicted of a bias aggravated offence, the court shall treat the bias element of the offence as an aggravating factor in sentencing the offender.

### **Head 11 – Sentencing bias motivation or demonstration of bias**

(1) Where it is established that any offence was committed which was motivated (wholly or partly) by bias against members of a protected group based on their membership, or their presumed membership, of that group; or where at the time of committing any offence, or immediately before or after doing so, it is established that an offender demonstrated towards the victim of the offence bias based on the victim's membership, or presumed membership of a protected group, this shall be treated as an aggravating factor by the sentencing court.

(2) In sentencing an offender under section 11(1) the court must state in open court that the offence was committed in such circumstances.