

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM THE GRAND ORANGE LODGE OF SCOTLAND

This submission relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020.

The Grand Orange Lodge of Scotland is the governing body of the Loyal Orange Institution of Scotland, an organization which was founded in Scotland in 1798 and exists *inter alia* to promote the interests of Protestantism and to maintain the legislative integrity of the United Kingdom. The Order would, at the outset, make it clear that it supports freedom of speech, freedom of expression and the right of peaceful public assembly. The Order unequivocally condemns racism, thuggery, xenophobia and discrimination.

We observe that the policy objectives of the Bill are stated as:

This Bill provides for the modernizing, consolidating and extending of hate crime legislation in Scotland. Legislation in this area has evolved over time in a fragmented manner with the result that different elements of hate crime law are located in different statutes, there is a lack of consistence, and the relevant legislation is not as user-friendly as it could be. The new hate crime legislation will provide greater clarity, transparency and consistency.

However, the Grand Orange Lodge of Scotland has a number of concerns regarding the Bill which I would respectfully draw to your attention. The most concerning part of the Bill creates new 'Stirring up hatred' offences. The existing laws cover race, but extending it to cover religion, sexual orientation and transgender identity will have profound consequences for free speech and religious liberty. These new offences could very easily restrict our freedom to exercise the right of freedom of peaceful public assembly and the right of free speech at the large public gatherings often held in conjunction with our larger demonstrations.

As currently drafted, the Bill is particularly dangerous because it does not include the key legal safeguards contained in parallel legislation in England and Wales. Conduct need not be threatening or intended to stir up hatred for an offence to be committed. Instead, the Bill captures any abusive behaviour likely to stir up hatred. An offence could even be unwittingly committed in the privacy of one's own home. There is not nearly enough protection for free speech. Orange Order members, of course, would never support genuinely threatening or abusive behaviour

Politics, religion, sexual ethics and transgender issues are often highly contested in public debate. In a free society we should be able to challenge, criticize and otherwise robustly disagree with the beliefs and actions of others, even in ways that might offend them. We would be better off without any stirring up hatred offences in these areas. However, if they are introduced, strong protections for free speech must be included.

Police Scotland has warned that it could be “burdened with vexatious reports” if free speech provisions are not included.

The Bill does include two clauses to protect freedom of expression on religion (clause 11) and sexual orientation (clause 12). They must be strengthened. On religion, the free speech clause protects discussion, criticism, proselytizing and urging people to “cease practicing their religions”. But a previous offence of stirring up religious hatred had a noticeably stronger safeguard. It specifically protected “expressions of antipathy, dislike, ridicule, insult or abuse” towards religious beliefs or practices. This closely followed the free speech safeguard in the similar law for England and Wales. The Scottish Government has given no justification for watering down this protection.

The stirring up hatred offences cover threatening or abusive behaviour that is intended or likely to stir up hatred against a group. The lowest threshold is therefore *abusive* behaviour *likely* to stir up hatred. No hatred needs to result. A similar offence in England and Wales covering religion and sexual orientation only covers threatening behaviour intended to stir up hatred. This is a much more appropriate threshold. Crucially, there is nothing in the Bill that requires the person even to realise that their behaviour is abusive or likely to stir up hatred. This means the offences can be committed unwittingly.

Our objections and concerns to the Bill may be briefly summarized thus:

- The new stirring up hatred offences could be unwittingly committed by someone who did not intend to stir up hatred or even realise that their words could be considered abusive.
- Political and religious beliefs and views on morality are matters on which people can have vigorous debate and change their minds. A free society must protect this.
- Existing criminal law already covers threatening or abusive behaviour likely to cause fear or alarm. No new law is needed.
- Church services are not excluded. A Sunday sermon where Christ is preached as the only Saviour and all other religions are said to be false, could see the preacher prosecuted for stirring up hatred.
- Offences of stirring up hatred threaten freedom of religion and belief. They may stop people giving an account of what they believe. This is as true for atheists as for religious people.
- Any new stirring up hatred offences should only cover conduct that is intended to stir up hatred. Just because something is *likely* to stir up hatred does not mean the person was aware of this. It is profoundly serious to accuse someone of stirring up hatred, so it must be clear they were doing so deliberately.
- The free speech clause on religion must be stronger to protect more than mere discussion or criticism. People should be free to vigorously challenge religious beliefs.

- There is a serious risk that politically motivated complainants will label disagreement as hatred to try to silence their opponents. Police Scotland has said that free speech clauses are important to prevent it being inundated with vexatious reports.
- The mere threat of prosecution for stirring up hatred may cause many to keep quiet. This is a more subtle but equally dangerous threat to freedom of speech and undermines a free society.
- Lord Bracadale's Independent Review on Hate Crime report, which led to the Bill, stressed the need for a clear distinction between legitimate debate and rabble-rousing. The Bill does not come close to reflecting this.

It is important to bear in mind that our existing laws on the protection of free speech are fit for purpose as threatening and abusive behaviour is already covered by the criminal law. Genuine criminal behaviour in this area can already be prosecuted under the 'threatening and abusive behaviour' offence in Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

To commit an offence under this section, the behaviour must "be likely to cause a reasonable person to suffer fear or alarm". The offender must also either intend to cause fear or alarm or be reckless as to whether they did. Not only does this section make further offences unnecessary, it establishes a clearer threshold for a criminal offence. The vagueness of 'abusive' is still a concern, but the section is less likely to result in someone being unjustly accused because of the reasonable person test and requirement for a perpetrator to be reckless.

Dr Stuart Watson, Lecturer in Criminology at Abertay University described the Bill in the following terms:

"Today Scotland is leading the way in the criminalization of wrong ideas... we face another fight for the most basic of freedoms expected in a democracy" and this would encapsulate the fears of the Grand Orange Lodge of Scotland. We believe that freedom of expression; the right to demonstrate peacefully in public and free speech are central to the health of a democratic society. These allow it to seek truth and object to injustice. Without free speech, a society effectively closes the door to the exchange of ideas that can lead to positive change. We therefore need to be vigilant to protect this vital freedom for future generations.

We would respectfully refer the Justice Secretary to the well reported opinion of Lord Justice Sedley in a recent case in the (English) High Court: "*Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.*"

The Grand Orange Lodge of Scotland would welcome the opportunity to discuss our concerns further with you.

Yours sincerely

Jim McHarg  
Grand Master  
Grand Orange Lodge of Scotland

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