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Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill: consideration prior to stage 3

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This Member's bill, as amended at Stage 2, seeks to: (a) create a new statutory offence of assaulting, threatening or abusing a retail worker; and (b) allow for the aggravation of that offence where the retail worker is enforcing a statutory age restriction.



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About this briefing

This briefing looks at parliamentary consideration of the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill ('the Bill') prior to Stage 3.

The Bill as amended at Stage 2 would establish a new statutory offence of assaulting, threatening or abusing a retail worker. This is a change from the Bill as introduced, which also included the elements of "obstruct or hinder" in the definition of the offence.

The Bill would also allow for the aggravation of that offence where the retail worker is enforcing a statutory age restriction.

The main issues that the Economy, Energy and Fair Work Committee's Stage 1 report highlighted as possible further changes going into Stage 3 are:

- the inclusion of a defence of "reasonableness";
- the definition of "retail worker";
- and the aggravation being extended to other offences.

About the Bill

Key dates and documents

The Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill is a Member's Bill. It was introduced by Daniel Johnson MSP on 10 October 2019.

The [Bill and related documents are available on the Protection of Workers \(Retail and Age-restricted Goods and Services\) \(Scotland\) Bill page](#) on the Scottish Parliament's website.

A [SPICe briefing on the Bill as introduced](#) ¹ provides more detailed information on the Bill's provisions and the context for the proposed offence.

The Economy, Energy and Fair Work Committee (the "Economy Committee") was designated as lead committee for Stage 1 and Stage 2 scrutiny of the Bill. [Details of the Committee's consideration of the Bill can be found on its web pages.](#)

What the Bill does

The Bill aims to increase the protection for workers in the retail sector by:

- creating a new statutory offence of assaulting, threatening or abusing a retail worker;
- allowing for the aggravation of that offence where the retail worker is seeking to enforce a statutory age restriction (for example, the restriction on selling alcohol to young people).

With the removal of 'obstructing and hindering' from the proposed offence, the behaviour which the Bill would cover is generally covered by existing offences which are not restricted to particular classes of victim (e.g. common law assault and the statutory offence of threatening or abusive behaviour).

Consideration at Stage 1

The Economy Committee was responsible for Stage 1 scrutiny of the Bill. It held three oral evidence sessions:

- 3 March 2020 - with stakeholders including retail consortiums, trade unions and legal organisations;
- 6 May 2020 - with Ash Denham MSP, the Minister for Community Safety;
- 13 May 2020 - with Daniel Johnson MSP, the member in charge of the Bill.

The Committee published its Stage 1 report² on 30 June 2020.

The Scottish Government responded³ to the report on 18 September 2020.

The Stage 1 debate took place on 24 September 2020⁴. Members from all parties supported the Bill. There was a consensus that retail workers provide a vital service and that attacks against retail workers should be condemned. There was a general hope expressed that the passage of the Bill would help to highlight the need for action in protecting retail workers from abuse. Members welcomed the Scottish Government's commitment to promote reporting of offences through an awareness campaign.

There was wide support for removing the sections of the Bill relating to "obstructing and hindering," as these elements were felt to set too low a bar of criminality. There was also discussion of the need to add a defence of "reasonableness" to the Bill at Stage 2.

Members welcomed the section of the Bill adding an 'aggravated' offence where a retail worker was carrying out legally required checks on age. There were those, however, who felt that this aggravation should also be extended to other offences.

There was some debate about the maximum penalties contained in the Bill of 1 year in prison and a £10,000 fine. Some Members felt that this was too low, however others pointed out that this was in line with existing legislation. They also pointed out that more serious offences would be covered by existing legislation that had higher penalties.

MSPs unanimously supported the general principles of the Bill.

Consideration at Stage 2

The Economy Committee [considered the Bill at Stage 2 on 17 November 2020](#) ⁵.

There were five amendments submitted at Stage 2, all submitted by Daniel Johnson MSP. They related to removing the "obstruct or hinder" elements from the definition of the offence and throughout the rest of the Bill.

Removal of "obstruct or hinder"

In the Stage 1 report, the Economy Committee highlighted concerns about the possibility of a person who obstructs or hinders a retail worker being guilty of a criminal offence.

The Scottish Government, in their response to the committee report, said that the removal of these elements of the Bill were required before they could support the Bill through the legislative process.

The concerns raised were mainly focussed on the suggestion that the act of obstructing or hindering a retail worker was not serious enough to be considered a criminal act.

At Stage 2 there was unanimous support for the amendments that removed the "obstruct or hinder" elements of the Bill. Ash Denham MSP, Minister for Community Safety, spoke in support of the proposed amendments, as did a number of committee members.

All five amendments were agreed by the Economy Committee.

Unresolved issues discussed at Stage 1

The Economy Committee report at Stage 1 also identified three additional issues with the legislation that they recommended should be addressed. These issues were not the subject of any amendments at stage 2. These issues are:

- the inclusion of a defence of "reasonableness";
- the definition of "retail worker";
- and the aggravation being extended to other offences.

Defence of reasonableness

While the Bill is similar to the offence of threatening or abusive behaviour set out in section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, two of the ways it differs are that:

- for threatening or abusive behaviour to be an offence under section 38 of the 2010 Act it must be "likely to cause a reasonable person to suffer fear or alarm" - the Bill does not include a similar requirement;
- it is a defence under section 38 of the 2010 Act to show that the behaviour was reasonable in the particular circumstances - the Bill does not currently provide for this

either.

Although the offence in the 2010 Act is generally wider in its application, the absence of these two provisions from the Bill raises the possibility that threatening or abusive behaviour could, at least in some cases, be covered by the offence in the Bill where it would not be caught by section 38 of the 2010 Act. A [Scottish Government memorandum on the Bill](#)⁶ questions the justification for these differences in approach.

During Stage 1, the Scottish Government voiced a concern that this lack of a defence of reasonableness meant that even if the court took the view that the behaviour was, in the particular circumstances, reasonable, an offence would still have been committed.

The Economy Committee Stage 1 report noted these concerns and recommended that the inclusion of a defence of reasonableness was given further consideration at later stages of the Bill process.

Definition of retail worker

The Economy Committee heard evidence during the Stage 1 process from a number of sources that debated the definition of retail worker used in the Bill. Some individuals felt that the Bill should be extended to cover a number of other public-facing roles. Others suggested that the definition of retail worker in the Bill was already too broad, and that it should focus on a narrower concept of retail work, where there is a greater evidence base to support legislative change.

The Economy Committee Stage 1 report noted that the views on the definition of retail worker were contradictory. They invited the member in charge of the Bill to consider how these differences in opinion could be resolved and whether flexibility is needed to capture the changing nature of retail work. One option the Economy Committee suggested to address this was to add a regulation-making power to the Bill to allow the definition to be amended over time, where needed.

Aggravation

Section 4 of the Bill allows for the aggravation of the offence in section 1 where a retail worker was seeking to enforce a statutory age restriction. Retail workers are themselves liable to prosecution if they fail to carry out the appropriate checks on age-restricted goods and services. Many witnesses at Stage 1 argued that along with this responsibility should come additional protection for retail workers.

The Economy Committee recommended that:

"such an aggravation could apply in relation to offences outlined in this Bill and to existing offences which apply where retail workers are enforcing age restrictions."(page 19)²

There were no amendments submitted at Stage 2 extending the aggravation to existing offences.

Bibliography

- 1 Scottish Parliament Information Centre. (2020). Protection of Workers (Retail and Age restricted Goods and Services) (Scotland) Bill. Retrieved from <https://sp-bpr-en-prod-cdnep.azureedge.net/published/2020/2/26/Protection-of-Workers--Retail-and-Age-restricted-Goods-and-Services---Scotland--Bill/SB%20-18.pdf> [accessed 6 November 2020]
- 2 Scottish Parliament Economy, Energy and Fair Work Committee. (2020). Stage 1 Report on the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/EEFW/2020/6/30/Stage-1-Report-on-the-Protection-of-Workers--Retail-and-Age-restricted-Goods-and-Services---Scotland--Bill#Membership-changes> [accessed 6 November 2020]
- 3 Letter from Ash Denham MSP, Minister for Community Safety to Gordon Lindhurst MSP, Convener of the Economy, Energy and Fair Work Committee of the Scottish Parliament on 18 September 2020. (2020). Retrieved from https://www.parliament.scot/S5_EconomyJobsFairWork/Inquiries/20200918-SG_Stage_1-response.pdf [accessed 6 November 2020]
- 4 Scottish Parliament. (2020). Official Report Meeting of the Parliament (Hybrid) 24 September 2020. Retrieved from <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12842> [accessed 1 December 2020]
- 5 Scottish Parliament. (2020). Official Report of the Economy, Energy and Fair Work Committee 17 November 2020 . Retrieved from <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12945> [accessed 23 November 2020]
- 6 Scottish Government. (2020). Memorandum by the Scottish Government to the Economy, Energy & Fair Work Committee. Retrieved from https://parliament.scot/S5_EconomyJobsFairWork/Inquiries/20200114-SG_memo_Protection_Workers.pdf [accessed 25 November 2020]

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