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Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill

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



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Executive Summary

This Member's bill aims to increase the protection for workers in the retail sector by:

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

Much of the behaviour covered by the proposed offence is already 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). However, the inclusion of obstructing and hindering would allow for the prosecution of behaviour which is not criminal under current laws protecting the public in general.

Where the proposed aggravation was found to apply, the offence would be recorded as so aggravated and the aggravation would be taken into account in sentencing (possibly leading to a more severe sentence).

Arguments advanced in favour of the proposals in the Bill include:

- passing the legislation would send a message to retail workers, their employers, customers and those involved in the criminal justice system (e.g. the police and prosecutors) that the behaviour covered is not to be tolerated
- such a message may encourage retail workers to report abuse and employers to improve preventative measures; as well as deterring those who might act in an abusive manner
- retail workers should enjoy the same legal protection that emergency workers already have from being obstructed or hindered
- retail workers seeking to enforce a statutory age restriction are upholding the law in the wider public interest and thus deserve special legal protection (e.g. by means of the proposed aggravation)

Arguments against the proposals include:

- the overlap with existing offences means that the proposals, in so far as they relate to assaulting, threatening or abusing a worker, do not significantly extend current legal protections
- to the extent that obstruction and hindering a retail worker is not already covered by existing offences, it is not serious enough to justify criminal sanctions
- a wide range of circumstances not set out in legislation, including the fact that an offence was committed against a victim in the course of their work, can already be highlighted as potential aggravating factors

Introduction

Current Bill

The [Protection of Workers \(Retail and Age-restricted Goods and Services\) \(Scotland\) Bill](#) (the Bill) was introduced by Daniel Johnson MSP on 10 October 2019. ¹ The [policy memorandum](#) (para 3) notes that it: ²

“ aims to increase protection for workers in the retail sector and those applying or enforcing a statutory age restriction in relation to the sale or supply of goods or services”

It seeks to do this by:

- creating a new statutory offence of assaulting, threatening, abusing, obstructing or hindering a retail worker engaged in retail work
- providing for the aggravation of that offence where the retail worker is enforcing a statutory age restriction

Much, but not all, of the behaviour covered by the proposed offence is already covered by existing common law and statutory offences which are not restricted to specific classes of victim (e.g. common law assault and the statutory offence of threatening or abusive behaviour).

Despite the overlap with existing offences, the policy memorandum argues that all the elements of the new offence will help enhance protection for retail workers. For example, by:

- helping to increase awareness of the physical and verbal abuse faced by retail workers
- encouraging action to tackle such behaviour, including reporting to the police
- facilitating the collection of data on offences against retail workers

The Bill provides that the new offence:

- could be prosecuted under summary procedure only
- would carry a maximum sentence of imprisonment for up to 12 months and/or a fine of £10,000 (other penalties such as community payback orders would also be available)

Where the prosecution considered that offending behaviour covered by the Bill might justify a higher sentence, there would still be the option of instead prosecuting other existing offences under solemn procedure. Solemn procedure is used for more serious offences.

As well as setting out a new statutory offence, the Bill provides for the aggravation of that offence where the retail worker is enforcing a "statutory age restriction" (a legal constraint making it an offence to sell or supply goods or services to a person under a specified age).

In cases where it was found to apply, the offence would be recorded as so aggravated and the aggravation would be taken into account in sentencing.

Daniel Johnson [consulted on a draft proposal for the Bill](#) from January to April 2018.³ A [summary of consultation responses](#), prepared by Daniel Johnson and the Scottish Parliament's Non-Government Bills Unit, was published in May 2018.⁴

In November 2019 the Economy, Energy & Fair Work Committee published a [call for views on the Bill as introduced](#),⁵ with responses sought by the end of January 2020. [Responses are available online](#).⁶

The proposals set out in the Bill could form part of a wider drive to protect retail workers. A response from Usdaw, to the Committee's call for views, welcomes the Bill whilst arguing that it:

“ will only provide one part of the solution to the overall issues faced by retail workers. Usdaw is incredibly keen to ensure that, once implemented, the provisions within the Bill are enforced through effective community policing that focuses on the requirements of the retail sector and retail workforce.”

It also highlights the importance of partnership work across the industry to protect retail workers. A response from GMB Scotland argues that employers should be legally obliged to take additional action to protect retail workers.

The [Scottish Government has indicated that it will not be supporting the Bill](#).⁷ In doing so, it draws a distinction between different elements of the proposed offence:

- assaulting, threatening or abusing a retail worker - it argues that the degree of overlap with existing offences means that this would not significantly expand current legal protection
- obstructing or hindering a retail worker - it acknowledges that this would cover behaviour that is not currently criminal but argues that this would be in relation to matters which are not serious enough to justify criminal sanctions

Protection of Workers (Scotland) Bill 2010

In June 2010, Hugh Henry MSP introduced the [Protection of Workers \(Scotland\) Bill](#) (the 2010 Bill).⁸ Also a Member's bill, it provided for a specific statutory offence relating to assaults on people whose work brings them into face-to-face contact with members of the public.

It fell after the Scottish Parliament disagreed to its general principles in December 2010 and so did not become law.

The offence provided for in the 2010 Bill bore similarities to that provided for in the current Bill. It was, however, both wider and narrower in various respects. For example:

- it was wider in that it would have covered workers other than retail workers (e.g. bus drivers and traffic wardens)

- it was narrower in that it would have been limited to assault

The Economy, Energy and Tourism Committee took evidence on the 2010 Bill, with its [stage 1 report](#) noting "strong support for the basic principle that the rights of those who provide a service to the public should be respected" (para 82).⁹ However, it questioned whether legislation was needed.

In recommending that the 2010 Bill should not be agreed to, the stage 1 report (para 64) instead recommended that other action be taken:

“ The Committee is of the view that the introduction and application of both sentencing and prosecution guidelines in relation to assaults on workers providing a public service would be beneficial in tackling the perception that aggravating circumstances are not taken seriously. Any such introduction should be linked to a high-profile publicity campaign.”

During the [stage 1 debate](#) (col 31859), the Cabinet Secretary for Justice outlined why the Scottish Government did not support the 2010 Bill.¹⁰ He noted that:

“ No one disagrees that workers who serve the public deserve protection. What the stage 1 scrutiny has revealed, however, is that there is disagreement on how best that can be achieved. It is important to be clear about the effect that the bill would have if it were passed. It would take a bit of the existing common law of assault and replicate it as a new statutory offence. It would not extend the criminal law in any way and it would not, therefore, extend new protections at all. ”

Further information is provided on the Scottish Parliament's [web page for the 2010 Bill](#).¹¹

Level of Abuse of Workers

The report [Taking Stock of Violence in Scotland](#), published in 2019 by the Scottish Centre for Crime & Justice Research, includes information on workplace violence (chapter 9).¹² It states that most data relates to public sector workers, especially emergency workers. In relation to other workers, it notes (p 51) that:

“ Beyond the public sector, workplace violence is even less visible, partly because it is not often acknowledged as violence at all. This means there is limited monitoring or research.”

It adds that some research indicates that "the public regard some public-facing workers as legitimate targets of abuse, believing that it goes with the job" (p 51). On this issue, a response from Usdaw, to the Economy, Energy & Fair Work Committee's call for views on the Bill, states that:⁶

“ Our evidence shows that the violence and abuse that retail workers face is persistent, perennial and compounded by an attitude that it is actually not that serious and that it constitutes a part of the job that should be expected and accepted.”

The [Scottish Crime & Justice Survey 2017-18](#), published in 2019 by the Scottish Government, provides some analysis of the level of abuse experienced by adults employed in public facing roles (p 108-109).¹³ It estimates that, in 2017-18, 4% of such adults experienced physical abuse and 34% verbal abuse when dealing with the public at work. In relation to those who did experience verbal abuse, it adds that 32% said they experienced at least one verbal abuse incident per week and 45% said they did not report the latest incident to their employer. It also reports that (p 109):

“ Just over half of adults (54%) who worked in roles dealing with the public said they had not had any formal training or assistance at work to help deal with a situation where people are behaving aggressively towards them. ”

In relation to public sector workers, UNISON Scotland conducts an annual survey of violence at work, with the latest version published last year - [Violence at Work: A Survey of UNISON Employers in Scotland 2019](#).¹⁴

With regard to retail workers, the British Retail Consortium produces an annual retail crime survey, with the most recent being the [2019 Retail Crime Survey](#).¹⁵ It highlights three triggers underlying violence and abuse directed at retail workers:

- intentional use of violence to assist with theft
- behaviour in response to age-related sales challenges (including when required by law)
- intoxicated (drugs and/or alcohol) behaviour

The Scottish Grocers Federation publishes information on crime affecting convenience retailers. Its [Scottish Crime Report 2019](#) states that 99% of respondents had experienced incidents of abuse when asking for proof of age:¹⁶

In its response to the Economy, Energy & Fair Work Committee's call for views, the Co-op Group expresses concerns about increasing levels of violence, saying that it "is clear to us that violence and abuse towards shop workers is at levels never before seen".

Further information is provided in the Usdaw report on [Surveys of Violence and Abuse against Shop Staff in 2018](#).¹⁷ It includes data on the levels of verbal abuse, threats and physical assaults experienced by workers. It also comments on triggers for violence and abuse, and on under-reporting of incidents.

Proposed Offence

Overview

The current Bill seeks to create a new statutory offence of assaulting, threatening, abusing, obstructing or hindering a retail worker engaged in retail work. It would only apply where the offender knew, or ought to have known, that the victim was a retail worker engaged in such work.

In setting out the offence, the Bill provides additional detail on what amounts to "threatening or abusing" and "obstructing or hindering". It also includes definitions of "retail worker" and "retail work".

Much of the behaviour covered by the proposed offence is already covered by existing common law and statutory offences which are not restricted to specific classes of victim. The Bill's policy memorandum (para 7) notes that:

“ Although the Bill criminalises, for the first time, obstruction or hindering of a retail worker, other elements of the new offence overlap with existing common law offences of assault and breach of the peace, or existing statutory offences (threatening or abusive behaviour). ”

Instances of the proposed offence could involve more than one of the elements of assault, threaten, abuse, obstruct or hinder. However, just one would be necessary. Given this, the offence might be used to prosecute obstructing or hindering a retail worker where that behaviour would not be criminal under current laws.

Despite the overlap with existing offences, the policy memorandum argues that all the elements of the new offence will help enhance protection for retail workers. For example, by:

- helping to increase awareness of the physical and verbal abuse faced by retail workers
- encouraging action to tackle such behaviour, including reporting to the police
- facilitating the collection of data on offences against retail workers

A response from the Scottish Grocers Federation, to the Economy, Energy & Fair Work Committee's call for views, argues that the proposed offence would: ⁶

“ make clear that the Scottish Government and Scottish Parliament recognises that offences against retail workers are serious”

Whilst the Scottish Trades Union Congress states that:

“ the creation of such an offence will send a clear message to employers, retail workers and customers that abuse is not part of the job. Furthermore, it will act as a clear deterrent to anyone minded to assault, threaten, abuse, obstruct or hinder a retail worker.”

In relation to the adequacy of current offences, the Crown Office & Procurator Fiscal Service (COPFS) says that:

“ COPFS recognises the impact of violence, threats and abuse committed against anyone in the course of their employment. However, we would dispute any suggestion that the current legal framework prevents COPFS from being able to respond appropriately to reports of that type of behaviour. COPFS does not consider that there is a need to introduce the proposed legislation.”

However, the policy memorandum highlights the fact that there are existing examples of statutory offences, providing protection for particular groups of workers, which also overlap with offences applying more generally. These include the offences set out in the [Emergency Workers \(Scotland\) Act 2005](#) (the 2005 Act). The [explanatory notes](#) (para 3) published along with the 2005 Act state that it: ¹⁸

“ seeks to protect emergency workers and to safeguard the delivery of emergency services. The Act creates new offences in relation to assaulting, obstructing or hindering someone who is providing emergency services, or someone who is assisting an emergency worker who is responding to emergency circumstances. The Act also creates similar offences in respect of health workers on hospital premises and persons assisting such workers.”

The definition of emergency worker in the 2005 Act includes police officers, firefighters, ambulance staff, doctors and nurses. Police officers are also protected by similar offences in section 90 of the Police and Fire Reform (Scotland) Act 2012.

It would be possible to prosecute the offence in the Bill under summary procedure only. This replicates the approach in the 2005 Act. In practice, the vast majority of criminal court cases are dealt with under summary procedure - a little over 94% of those concluded in 2018-19. ¹⁹ More serious offences are prosecuted under solemn procedure.

Assault

The proposed offence would cover the assault of a retail worker engaged in retail work. Such behaviour could also be prosecuted under the existing common law offence of assault.

Offences in the [Emergency Workers \(Scotland\) Act 2005](#) (the 2005 Act) also cover behaviour which could be prosecuted as common law assault. Thus, as noted in the Bill's policy memorandum, the idea of having a statutory offence covering the assault of particular groups of workers, even though that behaviour could be prosecuted under the more general common law offence of assault, has been adopted in the past.

The Scottish Government has published [statistics on the number of people prosecuted for offences under the 2005 Act](#) (e.g. 195 people were prosecuted in 2017-18). ²⁰ Given that all the relevant offences cover obstructing and hindering as well as assault, the figures do not distinguish between cases which involved all or only some of these elements. The Crown Office & Procurator Fiscal Service has advised that it does not hold statistical data allowing cases under the 2005 Act involving only assault, or only obstructing and hindering, to be separately identified.ⁱ

The above statistics also provide figures for people prosecuted for assaulting, resisting, obstructing or hindering the police under section 90 of the [Police and Fire Reform \(Scotland\) Act 2012](#). The Crown Office & Procurator Fiscal Service also advised that prosecutors will generally use the offences under this legislation, in preference to the 2005 Act, where there is an allegation of a police officer being assaulted, obstructed or hindered.

Threaten or Abuse

The proposed offence would also cover threatening or abusing a retail worker engaged in retail work. The Bill states that such behaviour is only covered if the perpetrator intends to cause fear or alarm or is reckless as to whether it would cause fear or alarm.

Again, such behaviour would generally be covered by existing offences, in particular the offence of threatening or abusive behaviour created by section 38 of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (the 2010 Act). The definition of that offence, and of threatening or abusive behaviour in the Bill, are similar.

However, the offence in the 2010 Act is wider in that it is not restricted to retail workers. In addition, it can be prosecuted under both summary and solemn procedures.

Other differences include the following elements of the offence in the 2010 Act:

- 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 provide for a defence of reasonable behaviour, but only in relation to obstructing or hindering

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](#) (p 3) questions the justification for these differences in approach.⁷

Obstruct or Hinder

Finally, the proposed offence would cover obstructing or hindering a retail worker engaged in retail work. The Bill states that a person can only be guilty of this where there is behaviour which intentionally prevents or impedes the retail worker. On the other hand, it is not limited to physical interference and may involve action directed at any vehicle or equipment used by the retail worker.

The Bill's policy memorandum (para 61) notes that:

ⁱ Communication with author January 2020.

“ The member [who introduced the Bill] recognises there may be some doubt as to the scope of which 'obstructing or hindering' behaviours would be likely to be caught by this offence. The member believes, however, that the wide range of behaviours that could potentially fall into this category give the courts some latitude to take the circumstances of each case into account.”

And that:

“ The member was keen to cover the situation where a member of the public refuses to move on after being refused the sale of alcohol and the retail worker is prevented from doing their job and serving the next customer. Indeed, he thinks that this sort of conduct happens on a regular basis in a retail context and should be a core focus of his proposal. This type of conduct would not fit into 'threatening or abusive' behaviour but would be covered by 'obstructing or hindering'.”

In relation to obstructing and hindering, the Bill provides that it is a defence to show that the behaviour was reasonable in the particular circumstances. This defence does not apply to other elements of the offence (i.e. assaulting, threatening or abusing).

The inclusion of obstructing or hindering would allow for the prosecution of behaviour which is not criminal under current laws. The Bill's policy memorandum (para 7) argues that there is:

“ a case for better protection against lower-level types of behaviour that would not constitute an assault under common law or threatening or abusive behaviour under existing statute law”

The policy memorandum highlights this proposed extension of the criminal law when contrasting the provisions of the current Bill with those rejected by the Scottish Parliament in the Protection of Workers (Scotland) Bill (the 2010 Bill).

As discussed earlier, the [2010 Bill](#) sought to create a specific statutory offence relating to assaults on people whose work brings them into face-to-face contact with members of the public. It did not seek to criminalise obstructing or hindering such workers. One of the reasons put forward for rejecting the 2010 Bill was that it would not have extended the range of behaviour covered by the criminal law.

Whilst obstructing or hindering a person does not normally constitute an offence, it is an offence under some statutes, including the [Emergency Workers \(Scotland\) Act 2005](#) (the 2005 Act). The workers covered by the 2005 Act include police officers, firefighters, ambulance staff, doctors and nurses. At least part of the case for including obstruction and hindering in the 2005 Act was that such behaviour can put lives at risk where it involves emergency workers. The Justice 1 Committee's 2004 [stage 1 report on the Emergency Workers \(Scotland\) Bill](#) (para 60) noted that:²¹

“ In evidence to the Committee, the Minister stated that 'the difference between the workers to whom the Bill refers and other workers is that obstructing the workers in the Bill puts other people's lives at risk'.”

Although obstructing and hindering were not covered by the 2010 Bill, the preceding [consultation paper](#) included a question on whether they should be.²² The [summary of consultation responses](#) (p 5) noted that there was support for making obstructing or hindering an offence (18 out of 25 responses on the topic), but also that:²³

“ Five [responses] argued that it should be restricted to assault principally on the grounds that hindering or obstructing a public facing worker was a less serious issue than hindering or obstructing an emergency worker. Two further respondents noted that in situations where a worker is hindered or obstructed, unlike an emergency worker, they have the option to withdraw service. ”

The issue was also addressed in the Economy, Energy and Tourism Committee's [stage 1 report](#) on the 2010 Bill. ⁹ It highlighted both support for and concerns about the possibility of amending the 2010 Bill to include obstructing and hindering, concluding that (para 35):

“ The Committee notes that the addition of hindrance and obstruction could go some way to answering the criticism made by some of the Bill that it simply criminalises that which is already criminal under the common law. However, the Committee also recognises that any such amendment would require very careful consideration.”

As already noted, the [Scottish Government has indicated that it will not be supporting the Bill](#). ⁷ In relation to obstructing or hindering a retail worker it argues that, in so far as such behaviour does not amount to a crime under existing offences, the proposals in the Bill would seek to criminalise behaviour which is not serious enough to justify criminal sanctions (para 18):

“ There is no obvious policy justification for requiring the involvement of the criminal justice system in dealing with undoubtedly irritating matters that retail workers have on occasion to deal with in terms of customer interactions where the conduct in question does not amount to assault, breach of the peace or threatening or abusive behaviour (when, of course, existing laws can be used as necessary).”

Responses to the Economy, Energy & Fair Work Committee's call for views on the Bill expressing support for the Bill's approach to obstructing and hindering include one from the Scottish Trades Union Congress. ⁶ It argues that the proposed defence of reasonable behaviour will achieve an appropriate balance between the protection of workers and of wider civil liberties.

Retail Worker Engaged in Retail Work

The offence would apply where the victim is a retail worker engaged in retail work.

"Retail worker" and "retail work" are defined in the Bill, along with the related term "retail premises". In defining these terms, the Bills seeks to cover people working in a variety of situations.

Retail work does not necessarily involve serving customers (e.g. a person stacking shelves in a supermarket would be involved in retail work).

A response from the Scottish Retail Consortium, to the Economy, Energy & Fair Work Committee's call for views, questions whether it is right to limit any additional legal protection to those engaged in retail work at the time of the offence. ⁶ In doing so, it suggests a scenario where a retail worker is attacked after work because of a refusal to serve a customer earlier in the day. It may be noted that the approach taken in the 2010 [Protection of Workers \(Scotland\) Bill](#) may have covered this type of situation. As well as

applying to public-facing workers assaulted in the course of their employment, it would have made it a statutory offence to assault such workers (at some other time) by reason of their employment. The latter would have considered the motivation for the assault.

Usual place of work is retail premises

A core group of workers covered by the Bill would consist of people whose usual place of work is retail premises. Such people, where carrying out any work in those premises, would by definition be retail workers engaged in retail work. The Bill defines retail premises as:

“premises that are used wholly or mainly for the sale or supply of goods, on a retail basis, to members of the public”

This category of worker is intended to cover people working in a wide range of shops and other retail outlets, including ones where workers might experience higher levels of abuse (e.g. convenience stores, petrol stations, pubs and fast food outlets).

The definition of retail premises refers to places which are "used wholly or mainly for the sale or supply of goods". Although not defined in the Bill, the term "goods" generally refers to corporeal (tangible) moveable property (e.g. clothing and items of food and drink).

A distinction may be drawn between goods and services. The latter are generally activities provided by other people (e.g. plumbers, bus drivers and hair dressers). In practice, a business may provide a mix of goods and services. For instance:

- restaurants and pubs – sell food and/or drink but also provide a setting in which these can be consumed
- cinemas – provide a setting in which people can watch films but may also sell food and drink
- hotels – provide somewhere to sleep but may have within them restaurants and bars

Bearing in mind that the definition includes the phrase "wholly or mainly", a place may still be retail premises although the business located there provides both goods and services – provided it is primarily concerned with the sale or supply of goods. The Bill's policy memorandum (para 69) suggests that pubs would be treated as retail premises. On the other hand, it appears to suggest that hotels and nightclubs would not (paras 68 and 71), although this may depend on the particular circumstances.

The definition also requires that the premises are used wholly or mainly for sale or supply of goods "on a retail basis, to members of the public". The Bill's [explanatory notes](#) (para 24) indicate that this would not include: ²⁴

“wholesale outlets that sell exclusively (or largely) to relevant trades persons, or other outlets that are only open (or mainly open) to specific people, such as members of a club”

Although the Bill refers to work in retail premises, it goes on to clarify that this includes "working on any land forming part of the premises". The policy memorandum (para 70) provides the example of a supermarket worker collecting trolleys in the store car-park. However, people working close to the premises might be excluded (e.g. door staff working for a pub if on a public pavement and thus beyond the threshold of the premises).

The definition of retail worker is not limited to employees (e.g. it could also include the self-employed, agency workers or people doing voluntary work).

Other retail workers

People whose usual place of work is not retail premises may still be covered by the Bill provided they do retail work. In this context, the Bill defines retail work as work in connection with:

“ (i) the sale or supply of goods, on a retail basis, to members of the public, or (ii) the sale or supply of services (including facilities for gambling) in respect of which a statutory age restriction applies”

The first category, relating to the sale or supply of goods, reflects the fact that retail work may be carried out in premises that are mainly used for other purposes or not in premises at all. Examples highlighted in the Bill's policy memorandum (paras 68 and 69) include:

- people working in a shop or bar which forms part of larger mostly non-retail premises (e.g. covering hotel workers selling drinks but not hotel reception staff or porters)
- train staff selling drinks from a trolley (but not those selling or checking tickets)ⁱⁱ
- door-to-door salespersons and street traders

The second category extends the definition of retail work beyond goods to work in connection with the supply of services in respect of which a statutory age restriction applies. The Bill defines "statutory age restriction" as:

“ a provision in an enactment making it an offence to sell or supply goods or services to a person under an age specified in that or another enactment”

In relation to services subject to a statutory age restriction, examples in the policy memorandum (para 68) include gambling (e.g. in betting shops or amusement arcades) and tattooing/piercing.

The extension of the definition of retail work, to cover the supply of services to which a statutory age restriction applies, does not require that the alleged offence occurred in response to the worker seeking to enforce such a restriction. So, for example, a person working in a betting shop could be covered if facing abuse for refusing to serve a customer on some basis other than being under age. This differs from the proposed statutory aggravation which does require that the "behaviour constituting the offence occurred because of the enforcement of a statutory age restriction".

Delivery of goods

The Bill seeks to clarify the position of people delivering goods to members of the public, with the policy memorandum (para 68(iv)) stating that it covers:

ⁱⁱ The policy memorandum (para 71) notes that tickets are tokens for a service rather than goods.

“ any person who delivers goods from retail premises, while at the delivery location (but not while travelling between the retail premises and that location), such as a delivery driver for a supermarket, fulfilling online orders”

The Bill provides that the definitions of "retail worker" and "retail work" cover people delivering goods from retail premises to members of the public. This is subject to provision that they are covered only whilst at the place of delivery. So, they would not be covered by the Bill when travelling to or from that place - perhaps on the basis that other offences would be more appropriate in such situations (e.g. road traffic offences or common law assault to deal with road rage incidents).

The delivery of goods must be from "retail premises", which the Bill defines as:

“ premises that are used wholly or mainly for the sale or supply of goods, on a retail basis, to members of the public”

These could be the premises of a business that sells online only, although some online businesses might not have premises that are used wholly or mainly for the sale or supply of goods (e.g. smaller eBay sellers operating from their homes).

In practice, the delivery of retail goods to members of the public may be carried out by:

- people working directly for the retail business selling the goods (e.g. a person employed by a supermarket or fast food outlet to make deliveries to customers)
- people who provide delivery services to a range of customers (e.g. Royal Mail, Deliveroo, Yodel and other couriers)

The possible application of the Bill to the second group of workers may depend upon the interpretation of the Bill, in particular where it states that the definition of retail worker includes "a person who delivers goods from retail premises". Would this cover a person who mainly makes other types of delivery? If a number of people are involved in the delivery chain, is the person who takes the retail goods to the final destination covered?

If people delivering a wider range of items are covered (e.g. Royal Mail postal workers), this would only be where delivering retail goods (e.g. not when delivering letters, bills, junk mail or gifts sent by individuals).

Focus on the Retail Sector

In seeking to protect retail workers, the Bill aims to cover people working in a variety of situations. However, people working in many other roles, including ones which regularly bring them into face-to-face contact with the public, would not be covered. The Bill's policy memorandum (para 19) notes:

“ The member [who introduced the Bill] is aware that some may question why the retail sector should be selected for 'special treatment' and the protection of a specific law when many of the arguments could also be made for other sectors.”

Examples of non-retail workers who might be particularly vulnerable to abuse from members of the public include bus and taxi drivers, traffic wardens and ticket inspectors on trains.

In support of the Bill's focus on retail workers, the policy memorandum (para 20) notes that:

“ Of prime importance is the argument that workers who are required to ask for proof of age are upholding the law in the wider public interest and, for this reason, must be provided with the protection of the law.”

A response from the Scottish Grocers Federation, to the Economy, Energy & Fair Work Committee's call for views on the Bill, states that: ⁶

“ Since 2016, our SGF Retail Crime Report has consistently shown that refusal of sale and requests for ID are amongst the most common and persistent triggers for incidences of violence and abuse towards staff.”

Of course, the protection provided by the proposed offence is not restricted to those selling goods, or providing services, covered by a statutory age restriction. It applies to retail goods more generally.

Other responses to the Committee call for views include one from Unite Scotland recommending the extension of the proposed offence to cover other public-facing workers (e.g. within the hospitality and transport sectors).

Penalties

The Bill provides that the new offence:

- could be prosecuted under summary procedure only
- would carry a maximum sentence of imprisonment for up to 12 months and/or a fine of £10,000 (other penalties such as community payback orders would also be available)

The maximum penalties are the same as the general limits on the sentencing powers of a sheriff court dealing with a case under summary procedure.

In addition, both the limitation to summary procedure only and the maximum penalties replicate the approach in the [Emergency Workers \(Scotland\) Act 2005](#).

Where the prosecution considered that offending behaviour covered by the Bill might justify a higher sentence, there would still be the option of instead prosecuting other relevant offences under solemn procedure (e.g. common law assault or the statutory offence of threatening or abusive behaviour). Solemn procedure is used for more serious offences.

It may also be noted that the presumption against the use of short custodial sentences, set out in section 204 of the [Criminal Procedure \(Scotland\) Act 1995](#), has since July 2019, applied to periods of imprisonment of 12 months or less. Section 204(3A) states that:

“ A court must not pass a sentence of imprisonment for a term of 12 months or less on a person unless the court considers that no other method of dealing with the person is appropriate.”

Proposed Aggravation

Overview

As well as setting out a new statutory offence, the current Bill provides for the aggravation of that offence where the retail worker is enforcing a statutory age restriction. The policy memorandum (para 48) notes that:

“ The Bill provides for a new statutory aggravation which may be applied in cases where there is evidence that the assault, threat or abuse, obstruction or hindrance appears to be directly connected to the retail worker applying or enforcing a statutory age restriction in relation to the sale or supply of goods or a service.”

In cases where it was found to apply, the conviction would be recorded as so aggravated and the aggravation would be taken into account in sentencing. This could lead to a more severe sentence than would otherwise be the case, although this would still have to be within the limits set out for the new offence in the Bill (e.g. a maximum custodial sentence of 12 months).

As well as the possible impact on the sentence imposed, the recording of the offence as involving the statutory age enforcement aggravation could help facilitate the collection of information on the level of abuse faced by retail workers in such circumstances.

Sentencing

The Scottish Sentencing Council's website notes, under the heading of [Introduction to Sentencing](#), that judges take decisions on sentencing "based on what the law says and the unique circumstances of each case".²⁵ As it explains, the judge:

- must first see whether the law sets out minimum or maximum sentences for the offence
- will then decide which factors are relevant and should be taken into account in the case, and consider how much weight to give to each one

It gives the following examples of factors which might be relevant in determining the appropriate sentence in a particular case:

- type of crime / seriousness of crime
- whether the person has admitted guilt
- how the crime affected a victim
- other convictions for crimes the person has committed in the past
- the offender's age and circumstances (including health issues)
- relevant sentencing guidelines

Factors that are likely to make a sentence more severe are called "aggravating". Those that are likely to make it less severe are called "mitigating".

Although such factors do not have to be set out in legislation, this is an approach which is sometimes taken. The Bill seeks to add to the list of existing statutory aggravating factors.

A response to the Economy, Energy & Fair Work Committee's call for views on the Bill, from the Crown Office & Procurator Fiscal Service, states that the abuse of a worker is already seen as an aggravating factor without being set out in statute : ⁶

“ The fact that an offence is committed against any victim in the course of their employment is included in prosecution guidance as an aggravating factor to the offence. When making a decision as to which prosecutorial action to take the fact that an offence has been aggravated in this way will be a factor which is taken in to account by the prosecutors. Where appropriate, prior to sentencing, prosecutors will ensure that the judge is aware of the fact that the offence occurred in the course of the victim's employment so that the Judge can take that aggravating factor into account in deciding on the appropriate sentence. ”

Scope of the Proposed Aggravation

A court may hold that the offence set out in the Bill is aggravated if it is proven that the offending behaviour was in response to the retail worker seeking to enforce a statutory age restriction. It would not be sufficient that a product or service was covered by such a restriction, the retail worker must have been seeking to enforce that restriction. For example, a person selling alcohol in a pub could be:

- covered by both the proposed offence and aggravation if facing abuse for refusing to serve a customer who is unable to produce proof of age
- covered by the proposed offence but not the aggravation if facing abuse for refusing to serve a customer who appears to be too intoxicated

The Bill's policy memorandum (para 33) states that retail workers enforcing a statutory age restriction:

“ are at a particularly high risk of assault and the member considers that they merit further protection given that the law is placing them in a position of operational enforcement of the law. For example, a person who sells alcohol to a child or a young person (i.e. a person under the age of 18) commits an offence under section 102(1) of the Licensing (Scotland) Act 2005 – and the law allows the individual worker who carried out the sale to be prosecuted (instead of, or as well as, that worker's employer or the licence-holder).”

It adds that (para 34):

“ This position of enforcement therefore puts the 'retail worker' in a front-line position with potential criminal culpability. As a result, the member considers that they merit further legal protection as an identifiable group.”

The aggravation would only be used in conjunction with the offence set out in the Bill. This differs from some other statutory aggravations where there are no specific limits on the range of offences which might be aggravated.

As discussed earlier, in relation to the definition of retail work, the Bill defines "statutory age restriction" as:

“ a provision in an enactment making it an offence to sell or supply goods or services to a person under an age specified in that or another enactment”

Examples of such restrictions, set out in the Bill's policy memorandum (Annex A), include:

- the sale of alcohol, fireworks, tobacco products and solvents
- access to gambling, tattooing and piercing

Existing Statutory Aggravations

Examples of existing statutory aggravations include those relating to hate crime. The report of an [Independent Review of Hate Crime Legislation in Scotland](#) (para 3.2) noted that:²⁶

“ At the core of the current scheme of hate crime legislation is the model that allows any existing offence to be aggravated by prejudice in respect of one or more of the protected characteristics of race, religion, disability, sexual orientation and transgender identity. (...) It is important to understand that this approach does not involve the creation of new offences; rather, it involves an existing offence, such as an assault, being motivated by, or demonstrating, hostility in respect of one or more protected characteristics.”

Other existing statutory aggravations which may be used in conjunction with a range of offences include ones relating to domestic abuse and serious organised crime.ⁱⁱⁱ An offence may also be aggravated by the fact that it was committed whilst the offender was released on bail in connection with another criminal case.^{iv}

An example of a statutory aggravation which, like the one provided for in the Bill, can be applied to a specific offence only, is set out in section 5 of the [Domestic Abuse \(Scotland\) Act 2018](#). The 2018 Act created a statutory offence of domestic abuse against a partner or ex-partner. It also provided for that specific offence to be aggravated if it involves a child.

Responses to the Economy, Energy & Fair Work Committee's call for views include one from the Scottish Retail Consortium expressing support for increasing legal protection for retail workers, but suggesting a different approach to that taken in the Bill.⁶ Instead, it argues for a new statutory aggravation applying to existing relevant offences (e.g. common law assault) where committed against a retail worker:

iii Under the [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (section 1) and the [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (section 29).

iv Under the [Criminal Procedure \(Scotland\) Act 1995](#) (section 27(3)).

“ We believe the gap in existing legislation is length of sentences, rather than a loophole which stops otherwise criminal or reprehensible behaviour from being prosecuted. Given that, our suggested model would be to have a blanket statutory aggravation for existing offences around violence and harassment of retail workers in all contexts. ”

As noted above, such an approach is taken for a range of existing statutory aggravations (e.g. those relating to hate crime).

Bibliography

- 1 Scottish Parliament. (2019, October 10). Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill [as introduced] Session 5 (2019) SP Bill 58. Retrieved from [https://www.parliament.scot/S5_Bills/Protection%20of%20Workers%20Bill/SPBill58S052019\(1\).pdf](https://www.parliament.scot/S5_Bills/Protection%20of%20Workers%20Bill/SPBill58S052019(1).pdf)
- 2 Scottish Parliament. (2019, October 10). Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill: Policy Memorandum Session 5 (2019) SP Bill 58-PM. Retrieved from [https://www.parliament.scot/S5_Bills/Protection%20of%20Workers%20Bill/SPBill58PMS052019\(1\).pdf](https://www.parliament.scot/S5_Bills/Protection%20of%20Workers%20Bill/SPBill58PMS052019(1).pdf)
- 3 Johnson, D. (2018, January 19). Proposed Protection of Workers (Retail and Age-restricted Sales etc.) (Scotland) Bill – Consultation. Retrieved from https://www.parliament.scot/S5MembersBills/Consultation_Document_20180117_FINAL.pdf
- 4 Daniel Johnson and the Scottish Parliament Non-Government Bills Unit. (2018, May 24). Proposed Protection of Workers (Retail and Age-restricted Sales etc.) (Scotland) Bill – Summary of Consultation Responses. Retrieved from https://www.parliament.scot/S5MembersBills/daniel_johnson_summary_final.PDF
- 5 Scottish Parliament Economy, Energy & Fair Work Committee. (2019, November 15). Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill - Call for Views. Retrieved from <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/113559.aspx>
- 6 Scottish Parliament Economy, Energy & Fair Work Committee. (2020). Protection of Workers - Written Submissions. Retrieved from <https://parliament.scot/parliamentarybusiness/CurrentCommittees/114454.aspx>
- 7 Scottish Government. (2020, January). 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
- 8 Scottish Parliament. (2010, June 1). Protection of Workers (Scotland) Bill [as introduced] Session 3 (2010) SP Bill 47. Retrieved from [https://www.parliament.scot/S3_Bills/Protection%20of%20Workers%20\(Scotland\)%20Bill/b47s3-introd.pdf](https://www.parliament.scot/S3_Bills/Protection%20of%20Workers%20(Scotland)%20Bill/b47s3-introd.pdf)
- 9 Scottish Parliament Economy, Energy and Tourism Committee. (2010, November 26). Stage 1 Report on the Protection of Workers (Scotland) Bill. Retrieved from <https://archive.parliament.scot/s3/committees/eet/reports-10/eer10-09.htm>
- 10 Scottish Parliament. (2010, December 22). Official Report 22 December 2010 (Session 3) - Protection of Workers (Scotland) Bill: Stage 1. Cols 31855-31888. Retrieved from <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=6093&mode=pdf>
- 11 Scottish Parliament. (n.d.) Protection of Workers (Scotland) Bill - web page. Retrieved from <https://www.parliament.scot/parliamentarybusiness/Bills/22548.aspx>
- 12 Scottish Centre for Crime & Justice Research. (2019, September). Taking Stock of Violence in Scotland. Retrieved from <https://www.sccjr.ac.uk/publications/taking-stock-of-violence-in-scotland/>

- 13 Scottish Government. (2019, March 26). Scottish Crime & Justice Survey 2017-18: Main Findings. Retrieved from <https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/>
- 14 UNISON Scotland. (2019, October). Violence at Work: A Survey of UNISON Employers in Scotland 2019. Retrieved from <https://unison-scotland.org/wp-content/uploads/UNISON-Workplace-Violence-report-2019-1.pdf>
- 15 British Retail Consortium. (2019, March). 2019 Retail Crime Survey. Retrieved from <https://brc.org.uk/media/404253/brc-annual-crime-survey-2019.pdf>
- 16 Scottish Grocers Federation. (2019, February). The Scottish Crime Report 2019. Retrieved from <https://www.scottishshop.org.uk/publications/482-the-scottish-crime-report-2019>
- 17 Usdaw. (2019, March). Surveys of Violence and Abuse against Shop Staff in 2018. Retrieved from <https://www.usdaw.org.uk/2018FFFReport>
- 18 Emergency Workers (Scotland) Act: Explanatory Notes. (2005). Retrieved from http://www.legislation.gov.uk/asp/2005/2/pdfs/aspen_20050002_en.pdf
- 19 Scottish Courts & Tribunals Service. (n.d.) Official Statistics - latest interactive tables and charts. Retrieved from <https://www.scotcourts.gov.uk/official-statistics>
- 20 Scottish Government. (2019, January 28). Criminal Proceedings in Scotland 2017-18 : Persons Convicted for Offences against Emergency Workers. Retrieved from <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Datasets/DatasetsCrimProc/CP1718EWA>
- 21 Scottish Parliament Justice 1 Committee. (2004, September 23). Stage 1 Report on the Emergency Workers (Scotland) Bill. Retrieved from <https://archive.parliament.scot/business/committees/justice1/reports-04/j1r04-10-vol1-01.htm>
- 22 Henry, H. (2009, June 23). Workers (Aggravated Offences) (Scotland) Bill - Public Consultation. Retrieved from https://www.parliament.scot/S3_MembersBills/Draft%20proposals/20090713-FinalConsultationdocumentrevised.pdf
- 23 Henry, H. (2009, December 10). Consultation Responses for Hugh Henry MSPs Proposal for a 'Workers (Aggravated Offences) Bill (Scotland)'. Retrieved from https://www.parliament.scot/S3_MembersBills/Draft%20proposals/Consultationresponses-WorkersBill-HughHenryMSPFinal.pdf
- 24 Scottish Parliament. (2019, October 10). Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill: Explanatory Notes Session 5 (2019) SP Bill 58-EN. Retrieved from [https://www.parliament.scot/S5_Bills/Protection%20of%20Workers%20Bill/SPBill58ENS052019\(1\).pdf](https://www.parliament.scot/S5_Bills/Protection%20of%20Workers%20Bill/SPBill58ENS052019(1).pdf)
- 25 Scottish Sentencing Council. (n.d.) Introduction to Sentencing. Retrieved from <https://www.scottishsentencingcouncil.org.uk/about-sentencing/introduction-to-sentencing/>
- 26 Scottish Government. (2018, May 31). Independent Review of Hate Crime Legislation in Scotland: Final Report. Retrieved from <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/>

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