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Economy, Energy and Fair Work Committee Comataidh Eaconamaidh, Lùth is Obair Chothromach

Stage 1 Report on the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill



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Contents

Membership changes	1
Introduction	2
Committee consideration	2
Background and policy objectives of the Bill	4
Protection of Workers (Scotland) Bill 2010	4
Why retail workers?	6
Definition of retail workers and exclusion of other public-facing workers	7
Proposed offence	9
Obstruct and hinder	11
Reasonableness	14
Enforcement and under-reporting	15
Penalties	17
Aggravation	18
Data collection	19
Education, training and raising awareness	21
Employer responsibility	23
Committee conclusions and recommendations	24
Annex A	25

Economy, Energy and Fair Work Committee

Remit: To consider and report on economy and fair work matters falling within the responsibilities of the Cabinet Secretary for Economy, Fair Work and Culture; matters relating to the digital economy within the responsibilities of the Cabinet Secretary for Finance, and matters relating to energy falling within the responsibilities of the Minister for Energy, Connectivity and the Islands.



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Membership changes

1. The membership of the Committee changed during the course of this piece of work. Rhoda Grant MSP joined the Committee on 5 May 2020, replacing Jackie Baillie MSP.

Introduction

2. The Committee would like to thank retail workers for the important role they have always played in Scotland's communities and commend them for their work providing essential services during the COVID-19 crisis. It should be noted at the outset that this Stage 1 report is largely informed by evidence taken before the outbreak.ⁱ Any legislative measures taken must be long-standing and offer the best solution to ensure that retail workers feel valued and safe in their workplace both now and after the current restrictions ease.
3. The Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill (the Bill) was introduced in the Scottish Parliament by Daniel Johnson MSP on 10 October 2019.¹ The accompanying Policy Memorandum explains that the Bill:
 - ” 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.²
4. 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; and
 - providing for the aggravation of that offence where the retail worker is enforcing a statutory age restriction.

Committee consideration

5. The Committee received 17 responses to its call for views. The Scottish Co-operative Party also ran a campaign which resulted in a further 20 responses being submitted to the Committee.
6. Three panels of witnesses gave evidence to the Committee on 3 March. Due to COVID-19 related social distancing measures the Committee agreed to postpone its remaining evidence sessions until 6 and 13 May when it heard from the Minister for Community Safety and Daniel Johnson MSP, the Member in Charge of the Bill. The majority of evidence which informs this Stage 1 report was therefore taken before the COVID-19 outbreak. Details of these written submissions and evidence sessions are included in the annexes.
7. As part of the Scottish Youth Parliament's planned 71st National Sitting, Members of the Committee were due to ask Members of the Scottish Youth Parliament for their

ⁱ The majority of evidence was taken before the COVID-19 outbreak, including the Committee's call for views and evidence sessions with stakeholders and representative bodies. Oral evidence sessions with the Minister for Community Safety and Daniel Johnson MSP were held while COVID-19 related travel and lockdown restrictions were in place (via online remote Committee meetings).

views on the Bill and how it might impact young people. The Sitting was cancelled due to COVID-19, but views were gathered through an online survey, in which 287 people participated (aged 12 to 25). Responses were summarised in a note to the Committee.³

8. The Committee also felt it was important to hear the views of retail workers and members of the public. In February, the Scottish Parliament's Engagement and Outreach teams set-up a 'pop-up Parliament' stand in the Piazza Shopping Centre in Paisley. They asked retail workers and shoppers what they thought about the Bill and a summary of these views was also produced.⁴
9. As with all Bills, the Finance and Constitution Committee invited written evidence on the estimated financial implications of the Bill as set out in its accompanying Financial Memorandum. No responses were received. There are no delegated powers contained within the Bill.
10. The Committee is grateful to all those who provided evidence which helped to inform its scrutiny of the Bill.

Background and policy objectives of the Bill

11. The retail sector and the areas of the hospitality industry within the scope of the Bill employ more than 375,000 workers proportional to 6.9% of the Scottish population.⁵
12. The new statutory offence criminalises "obstructing or hindering" a retail worker for the first time. Other elements of the new statutory offence overlap with existing common law offences (assault and breach of the peace) and existing statutory offences (threatening or abusive behaviour).⁶
13. The Policy Memorandum notes that levels of crime against workers in the retail sector, including those involved in the sale or supply of age-restricted goods, are high and increasing. The Member believes that retail workers seeking to uphold the law, by asking for proof of age, should be provided with additional protection. This is the reason for the inclusion of the proposed statutory aggravation.⁷
14. The Policy Memorandum also says that the benefits of the Bill would include a reduction in violence, increased awareness of the issues and an increase in reporting to the police.
15. The Member considered whether the aims of the Bill could be achieved by alternative legislative and non-legislative approaches. The Policy Memorandum indicates that non-legislative options such as a high-profile publicity campaign and Joint Working Agreements were explored. However, Daniel Johnson MSP felt that these measures would not satisfy the aims of the proposal. He also consulted on the possibility of creating multiple offences, but decided that the creation of a single new statutory offence, with the aggravation of that offence where it related to the enforcement of a statutory age restriction, was the simplest and clearest way to frame the legislation.⁸

Protection of Workers (Scotland) Bill 2010

16. In June 2010, Hugh Henry MSP introduced the Protection of Workers (Scotland) Bill, which proposed to create a specific statutory offence of assault on public-facing workers.⁹
17. The 2010 Bill had similarities to the current Bill, but was both wider and narrower in its focus. 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.¹⁰
18. The Economy, Energy and Tourism Committee considered the Bill at Stage 1. It noted strong support for the basic principles, but questioned whether legislation was needed. It suggested that the Bill would only deal with behaviour already covered

by common law assault. It recommended that alternative action be taken and that the 2010 Bill should not be agreed to. The Scottish Parliament disagreed to the general principles and the Bill did not progress to become law.¹¹

Why retail workers?

19. 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 Bill 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).
20. The current Bill deals with retail workers, with a particular focus on those involved in the sale of age-restricted goods and services. Witnesses raised significant concerns about a long history of unacceptable treatment of retail workers by some members of the public.
21. The Union of Shop, Distributive and Allied Workers (Usdaw) noted that according to its 2018 survey, 70% of Scottish shopworkers experienced verbal abuse, 42% were threatened by a customer and 18 are assaulted every day.¹² Daniel Johnson MSP told the Committee that Usdaw have reported a doubling of violent and abusive incidents against shopworkers during the COVID-19 restriction period.¹³
22. It was noted by organisations such as the Scottish Grocers Federation and the Co-operative Group that retail workers have come to expect threatening and abusive behaviour as "part of the job". The Policy Memorandum refers to an acceptance of a culture of aggression which is reflected in the low-levels of incident reporting to the police.¹⁴
23. Witnesses provided vivid lived-experience accounts of the deplorable treatment endured by some retail workers. Dr Cheema of the Scottish Grocers Federation said:

” When I came to Scotland in 1988, I was shocked by the torrent of abuse that I received... I have been spat at, called names, threatened, attacked and had my tyres slashed and my windows broken.¹⁵
24. Others noted research which likened some of the attacks that shopworkers face with post-traumatic stress disorder. Paul Gerrard of the Co-operative Group highlighted that if a retail worker is attacked in their place of work, they will need to return to the place of their trauma. He said:

” We never normally ask anyone who has suffered such trauma to go back to the place where they suffered it.¹⁶
25. The Scottish Women's Convention highlighted the high numbers of women who work in retail and argued that many workplaces fail to take account of the threat of sexually motivated verbal and physical abuse and harassment of employees.¹⁷
26. It was also argued that policy interventions such as Minimum Unit Pricing and Challenge 25 mean that retail workers have a role in enforcing the law, which has triggered higher levels of abuse, but has not been accompanied by any additional support or protection for workers.¹⁸

27. When shoppers and retail workers in Paisley were asked about specific situations where retail workers face abuse from customers, Challenge 25 and asking for ID was highlighted. There were other scenarios, such as problems with self-scan checkouts, reduced items, shoplifting and refunds, where retail workers also faced abusive behaviour. ¹⁹ GMB Scotland cited an incident where a shop worker "was basically set upon, as if by a pack of wolves" when trying to put reduced price food items out on the shelf. ²⁰
28. Witnesses presented a compelling case of the scale and seriousness of aggressive and abusive behaviour against retail workers. The Committee believes that this is completely unacceptable and must be addressed. The Committee looked at how this can be addressed within the context of this Bill and other measures discussed in evidence.

Definition of retail workers and exclusion of other public-facing workers

29. 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 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.

However, it suggests:

” 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. ²¹

30. For some witnesses, the differentiation between retail workers and other public-facing workers was unjustified. Several witnesses who supported the premise of the Bill suggested that its provisions be extended to include other workers.
31. In the 2010 Protection of Workers Bill, introduced by Hugh Henry MSP, the definition of workers was much broader and included all public-facing workers. Daniel Johnson MSP explained that by focusing on retail workers, he was seeking to bring clarity to who would have protection. He said that the 2010 Bill had been criticised for being too broad and unclear. ²²
32. The Glasgow Committee of the United Private Hire Drivers Branch of the IWGB Union told the Committee that similar provisions should be extended to private hire drivers and other transport workers. It noted that "the levels of violence and aggression directed towards our members is truly appalling." ²³

33. The Law Society of Scotland also referred to the treatment of NHS staff in England and the joint working approach taken to address these concerns. The Association of Chief Police Officers, the Crown Prosecution Service and NHS Protect have a joint working agreement to reduce the problem of violence and anti-social behaviour that affects the NHS. The Law Society of Scotland highlighted similarities between NHS workers and retail staff who work across different premises often with lone workers and 24 hours a day, 365 days a year cover.²⁴ It was suggested that taking a similar approach in the retail sector could be more effective in tackling problem behaviour than the introduction of new legislation.
34. The Law Society of Scotland suggested that a retail worker asking for proof of age is not dissimilar to other workers who must ensure compliance with the law, such as health and safety officers or trading standards officers.²⁵ However, these officers are normally recognised as law-enforcement workers and retail workers are not.
35. Unite Scotland also felt the focus on retail workers was problematic, as was the definition. It suggested that most public-facing workers are at an increased risk of assault. It highlighted security guards, nightclub bouncers, bus and taxi drivers who all face abuse at work. Issues were also highlighted around the distinction between hospitality workers who are covered in the current scope of the Bill and others who are not. Unite Scotland noted that one member of staff could move from a hotel reception, where they would not be considered a retail worker, to the hotel bar, where they would. The same abusive customer and member of staff could be present in both scenarios.²⁶
36. However, other stakeholders suggested that the definitions contained within the Bill were already too broad. The Scottish Grocers Federation noted that the Bill covers workers in gambling premises, skin piercing and tattoo premises, cosmetic clinics, sunbeds and financial institutions. It argued that the Bill should focus on a narrower concept of retail work, where there is a greater evidence base to support legislative change.²⁷
37. The Committee heard contradictory views about the scope of the Bill from key bodies representing retail workers; some felt the definition of retail workers was too broad, while others felt it was too narrow. The Committee invites 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 for addressing this could be to add a regulation making power to the bill to allow the definition to be amended over time, where needed.

Proposed offence

38. The 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.
39. 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).
40. The Scottish Government's Memorandum states that "the way in which the new offence operates can broadly be split into two distinct parts; namely criminalisation of conduct that is already criminal and criminalisation of conduct that is not already criminal."²⁸ The Scottish Government argues that the degree of overlap with existing offences (assaulting, threatening and abusing) means that the new offence would not significantly expand current legal protection.
41. The Crown Office and Procurator Fiscal Service does not believe that further legislation is needed either. It disputed that the current legal framework prevents it from being able to respond appropriately to reports of problematic behaviour in retail premises.²⁹
42. The Minister for Community Safety noted that existing laws also give courts discretion to impose maximum penalties, which exceed those proposed in the Bill.³⁰
43. In evidence, Police Scotland said that "in relation to the incident itself, there would be no significant change in how we [the police] go about our business".³¹
44. The Minister for Community Safety stressed that laws should be changed where there is a gap between existing laws and the policy intention. However, many of the proposed elements of this Bill are already covered by provisions in existing criminal law.³²
45. Despite these existing offences, Daniel Johnson MSP did not think that the importance of legislation being used to send a public message should be underestimated. He told the Committee:
- ” By passing laws, hopefully we communicate our priorities to the public and ensure that the law operates in a way that reflects the seriousness of the crimes that are perpetrated and the duties and obligations that we place on people.³³
46. The Policy Memorandum argues that all the elements of the new offence will help enhance protection for retail workers despite overlap with existing offences. 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.³⁴

47. The responsibilities of shop workers have changed as different policies are introduced by Government. The Committee reflected on how the challenges arising as a result of retail workers being required to enforce COVID-19 related social distancing measures could be captured within the Bill. Daniel Johnson MSP suggested that because the statutory offence covers assault and abuse in broad terms, this would include incidents arising from the enforcement of social distancing measures. Therefore, he argued that the general drafting of the statutory offence was helpful in capturing other public health functions and not just age-restrictions.³⁵ It is worth noting, however, that the statutory aggravation would not apply in these circumstances.

48. The Committee notes that the assault, threaten and abuse elements of the proposed offence overlap with existing offences. The Committee has explored the potential impact of a specific offence covering retail workers and the associated aggravation later in the report, as well as the proposed obstruct and hinder elements of the offence.

Obstruct and hinder

49. As outlined, the Bill creates a new statutory offence of assaulting, threatening, abusing, obstructing or hindering a retail worker. As stated in the Policy Memorandum, obstructing or hindering a person does not normally constitute an offence, so this element of the offence is additional to current provisions in common or statute law.³⁶
50. The Bill states that a person can only be guilty of obstructing or hindering where there is behaviour which intentionally prevents or impedes the retail worker from working. However, it is not limited to physical interference and may involve action directed at any vehicle or equipment used by the retail worker.
51. The Policy Memorandum notes that the Member was keen to cover situations where a member of the public refuses to leave the premises after being told that they cannot buy alcohol. The scope of "obstructing and hindering" was therefore kept deliberately broad to allow for a range of circumstances.³⁷
52. The Scottish Government's Memorandum notes that under the Emergency Workers (Scotland) Act 2005, it is an offence to, amongst other things, obstruct or hinder an emergency worker or those assisting emergency workers. This new offence would extend that approach to retail workers.
53. For some witnesses, the inclusion of obstructing and hindering as offences in the Emergency Workers (Scotland) Act legitimises its inclusion in the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill. Others drew a distinction between emergency situations, where lives could be put at risk if an emergency worker is prevented from carrying out their role, and the role of retail workers.³⁸
54. Police Scotland said it felt uncomfortable with a direct comparison being drawn between retail workers and emergency workers. Superintendent Thomson told the Committee that:

” My powers and duties as a police constable are enshrined in law, and are primarily for prevention of crime and protection of life.³⁹

Superintendent Thomson added that the change in legislation would not be accompanied by any additional powers to the retail worker. In comparison, he noted that:

” If somebody obstructs or hinders me while I am at the locus, I can arrest them. I have a power that supports that.⁴⁰

55. Daniel Johnson MSP explained that the Emergency Workers (Scotland) Act is effective and has been used 200-300 times a year. He believes that were similar measures to be applied to retail workers, they would also be used.⁴¹
56. The Crown Office and Procurator Fiscal Service noted:

” behaviour which causes an obstruction to or hinders a retail worker could currently constitute an offence, namely breach of the peace or a section 38 offence, providing there was evidence to support the fact that an individual was caused fear or alarm or that a reasonable person would have been caused fear and alarm by the behaviour. ⁴²

57. It was not aware of any cases which were serious enough to warrant being considered a criminal offence, but that occurred in isolation of other factors, such as shouting or swearing, which would be prosecuted under current offences. ⁴³

58. Some witnesses were confused about the type of incidents that would be covered by the new offence. There was concern that somebody refusing to leave a shop until a refund was granted, would also have committed a crime. For the Law Society of Scotland, to "hinder" should not amount to a criminal offence in these circumstances. It highlighted its concerns that a customer legitimately complaining about services or goods could be seen as hindering a retail worker. It noted:

” We suggest that “hindering” which may be legitimate in other legislation should be removed from the draft. ⁴⁴

59. The Committee heard that the criminalisation of nuisance behaviour could lower the threshold of criminality and had the potential to have an adverse impact on the future life chances of young people in particular. Police Scotland suggested that non-punitive measures may be more appropriate. ⁴⁵ Superintendent Thomson noted:

” As we have seen in other areas, criminalisation of children is not always the best outcome in relation to the life chances of an individual and their ability to carry on their life without going back to offending. I believe that there is more value in providing an opportunity for a child to do something else. That could be through a referral to an appropriate third sector organisation or other organisation that can assist with the child’s offending behaviour, with a view to changing the behaviour, rather than putting the child in front of the court and imposing a punitive measure. ⁴⁶

60. Daniel Johnson MSP explained that his motivation to include the obstruct and hinder element of the offence was to capture negative behaviours early before they escalated into something much more severe. He also wanted to acknowledge that "when shop workers ask for proof of age, they are carrying out the serious and, indeed, solemn act of upholding the law. When a person interrupts, obstructs or hinders that process, they are doing something quite serious." ⁴⁷

61. However, Daniel Johnson MSP also acknowledged that witnesses had raised concerns with the Committee and that the drafting of these provisions could be improved. He told the Committee:

” I recognise that, as the provision is currently framed, it is quite broad. The obstructions that are set out apply to the broad duties of retail workers and not just to those that relate to age restrictions. Therefore, I recognise the issues that have been raised...I am very open to amending the provision in question, restricting its scope or otherwise altering it. I do not believe that that part of my Bill is of central or critical importance. The really critical aspect is the statutory aggravation provision.⁴⁸

62. The inclusion of obstructing and hindering in the Bill is problematic for the Scottish Government. The Minister told the Committee that she could not support the Bill in its current form and the obstruction and hindering element of the proposed offence set too low a threshold for criminality. However, the Minister said that she would be happy to work with the Member in Charge of the Bill to see how this could be resolved in terms of the aggravation.⁴⁹

63. The Committee believes that it should be made clear to members of the public that any form of deliberately difficult and aggressive behaviour against retail workers will not be tolerated. However, the Committee shares concerns raised about the practical impact of including "obstruct and hinder" as an offence against retail workers and believes that this could be open to misinterpretation as currently framed in the Bill.

64. The Committee notes that the Scottish Government also has concerns about the obstruct and hinder element of the proposed offence. We welcome the Minister's willingness to hold conversations with the Member in Charge of the Bill on what changes could be made to the Bill to address these concerns. The Committee also notes the indication given in evidence that the Member in Charge would hold discussions with the Minister on the role an aggravator could play in addressing negative behaviour towards retail workers. These matters are covered later in this report.

Reasonableness

65. The Scottish Government's Memorandum noted its concerns around the drafting of the threaten and abuse element of the new offence against retail workers. It highlighted that the Bill is similar to the offence of threatening or abusive behaviour in the Criminal Justice and Licensing (Scotland) Act 2010 ('section 38 offence'), but with some subtle differences.⁵⁰ It highlighted that, in contrast to the section 38 offence, there is no requirement for the behaviour to be likely to cause a reasonable person fear or alarm.⁵¹
66. Daniel Johnson MSP suggested that the focus should be on the intention of the perpetrator (to cause fear or alarm) rather than on the reaction of the victim. He noted that there are examples of comparable offences in other legislation.⁵²
67. The Scottish Government also had concerns that the scope of the criminal law is further broadened by the lack of reasonableness defence. This would mean that even if the court took the view that the behaviour was, in the particular circumstances, reasonable, an offence would still have been committed.⁵³ It noted that a member of the public could be responding to abusive or threatening behaviour by the retail worker, and the Bill would not currently allow the person to raise the reasonableness defence.⁵⁴
68. With regard to the obstructing and hindering elements of the offence, a reasonable defence has been included. Daniel Johnson MSP clarified that this was to allow for circumstances where obstructing the retail worker was inadvertent. He said it was possible to envisage a scenario where the obstruction of a retail worker was "not motivated by an ill-will" but it is difficult to envisage a situation "where it might ever be 'reasonable' to intentionally threaten or abuse a retail worker."⁵⁵
69. Daniel Johnson MSP added that "if a 'reasonable' defence is thought to be necessary, it would be very easy to add that to the Bill through amendments at stage 2 or stage 3."⁵⁶
70. The Committee recognises the Scottish Government's concerns regarding the lack of reasonableness defence in the Bill as drafted and recommends that this is given further consideration at Stage 2.

Enforcement and under-reporting

71. Linked to the enforcement of current laws, is the perceived under-reporting of incidents to the police and the seriousness with which retail workers believe that the police treat these incidents.
72. The Policy Memorandum notes that in a survey conducted by Under Age Sales, only 26% of retailers who had experienced abuse when asking for proof of identity stated that they reported these incidents to the police.⁵⁷
73. Several reasons were suggested for this lack of reporting, including:
- a lack of support from employers;
 - a perception that nothing happens because the police do not take incidents involving retail workers seriously;
 - a fear among workers that they will lose their jobs if they report abuse;
 - the belief that it is normal and part of the job;
 - an acceptance of the culture of aggression.
74. Police Scotland told the Committee that all reported complaints of threats, intimidation and violence towards retail workers are taken seriously and are thoroughly investigated.⁵⁸
75. The Co-operative Group said that from its experience, when incidents are reported, the police response is determined by whether the incident meets specific threat and harm thresholds regardless of whether the incident involves violence. It said that this means "the police response can take many hours to arrive, if they arrive at all. If the offender has left the scene, the police reduce the grading of the incident but do not take the impact on the victim following the incident into account." The Co-operative Group suggested it was not uncommon for colleagues reporting incidents to be on hold for 20-30 minutes at a time and said that "this then reduces the likelihood of incidents being reported in the future due to the unacceptable delays in answering."⁵⁹
76. The Scottish Co-operative Party said that if retail workers felt that abuse, threats and violence against them were taken more seriously, there would be an increase in reporting.⁶⁰ However, Paul Gerrard suggested that across the UK, two thirds of issues that are reported to the police result in no police attendance.⁶¹ He acknowledged that police resources are limited and he felt that incidents in shops were not a priority.⁶²
77. The Federation of Small Businesses noted that according to its research, the majority of businesses do not report crimes.⁶³
78. Usdaw said that in its opinion current laws are not being enforced.⁶⁴

79. Witnesses hoped that the Bill would increase reporting and make incidents involving retail workers a greater priority for the police.

80. The Committee was concerned to hear that there is a perception that the abuse of retail workers is not taken seriously by the police and that current laws are not being enforced. The Committee believes that employers and employees must be encouraged to report crimes. This legislation would heighten awareness of these issues, but action should be taken regardless of the outcome of this Bill. The Committee invites the Scottish Government to work directly with its justice partners to address any enforcement issues directly and ensure that these matters are given the priority they deserve.

Penalties

81. There is a perception that threatening and abusive behaviour against retail workers is not taken seriously by the justice system. Some respondents suggested that the problem went beyond police enforcement and was also reflected in the sentencing of those offenders who are prosecuted. The Co-operative Group noted that recent data from the Centre for Social Justice suggests that the average sentence served by offenders who are prosecuted is 26 days.⁶⁵
82. The Law Society of Scotland disputed this. Gillian Mawdsley said:
- ” I did not find in my work any suggestion that, where such offences are being convicted, there is light sentencing. That particular aspect could be addressed if it were a problem, because clearly there are rights of appeal with regard to sentencing.⁶⁶
83. The Crown Office and Procurator Fiscal Service claimed that all reported cases of criminal offences committed against people at work are taken very seriously. It noted that:
- ” Whilst the implementation of the proposed statutory aggravation might assist in recording the number of offences committed against a retail worker in the specific circumstances of enforcement of an age restriction, there will be no compulsion on the judge to impose any additional sentence.⁶⁷
84. Superintendent Thomson told the Committee:
- ” It is deplorable if anyone working in the retail trade feels that they are likely to be a victim and is afraid. That is not acceptable and that abusive situation must be eradicated and prevented. We will do everything in our power to do that. However, we need to think about the outcome. I am not sure that going through a criminal process and going to court will necessarily prevent such crimes from taking place.⁶⁸
85. The Minister for Community Safety noted that the proposals in the Bill for sentencing are less stringent than current legislation, but existing provisions would remain and could still be used by the prosecution.⁶⁹

Aggravation

86. Section 4 of the Bill seeks to create a new statutory aggravation. This would allow for the aggravation of the offence set out in the Bill where the retail worker was enforcing a statutory age restriction.
87. According to the Policy Memorandum, courts will generally impose higher penalties (within the range available to them) where aggravating factors apply. However, even where the statutory aggravation applies, sentencing powers would still be restricted to those set out for the proposed offence in the Bill.
88. Daniel Johnson MSP told the Committee:

” when retail workers ask for proof of age they are acting as agents of the law; that is a critical point, which needs recognition in law.⁷⁰

For Mr Johnson this acknowledgement of the legal role that retail workers carry out in asking for proof of age, through the statutory aggravation, is a critical aspect of the Bill.⁷¹

89. The aggravation proposed in the Bill relates to the enforcement of statutory age restrictions. Witnesses told the Committee that there are 248 age-restricted products where workers are expected to restrict sale and supply.⁷² Workers are liable for prosecution where they fail to carry out the appropriate checks on age-restricted goods and services, which many witnesses argued, gave these workers different responsibilities from other public-facing roles. The Scottish Grocers Federation highlighted the serious personal consequences for retail workers who do not enforce age-restrictions:

” I was told that abuse of a retail worker is a low-level crime. Is it really? Let us say that a retailer breaks the law by giving out an age-restricted product to someone when they should not. A low-level worker on the national minimum wage who earns between £8 and £9 an hour will be fined £5,000, yet abusing a retail worker is a low-level crime. Is it really?⁷³

90. Usdaw's 'Freedom from Fear' report highlighted that in 33% of cases, the enforcement of a statutory age restriction was the trigger for violent behaviour.⁷⁴ The Co-op estimated that 15% of incidents in its stores escalated from shopworkers challenging the sale of age-restricted goods⁷⁵ and the Scottish Beer and Pub Association agreed that there was an increase of abusive incidents when Challenge 25 was introduced.⁷⁶
91. Whilst there was broad agreement that the principle of the proposed aggravation was a good one, the Committee heard differing views on how it should be applied.
92. The Scottish Retail Consortium is in favour of a statutory aggravation being applied to all types of violent crime against a retail worker, regardless of the scenario. It believes that this would result in greater prosecution and heavier sentencing.⁷⁷

93. The Minister indicated that it may be worth considering some form of aggravation in relation to the sale of age-restricted goods and services. The Minister "put on record that the Government would be open to looking at the suggestion" of an aggravation relating to age-restricted goods and services, which would "send a message about the kind of criminality that takes place when retail workers check age in order to ensure that they sell products only to people who are entitled to buy them." ⁷⁸
94. The Committee recognises that workers who enforce statutory age restrictions on the sale and supply of goods and services are upholding the law. The Committee also recognises that the sale of these goods and services can act as a trigger for acts of violence and abuse.
95. The Committee agrees that an aggravation could be applied where a retail worker is undertaking a statutory duty. The Committee recommends 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. The Committee further recommends that such protection should be included in any future legislation which places such statutory duties on workers.

Data collection

96. The Committee heard that the inclusion of a statutory aggravation could improve data collection on incidents involving retail workers. This would help monitor crime-levels in this area.
97. Police Scotland confirmed that it does not routinely collate and report on incidents where a retail worker is the victim of a crime, and it does not routinely collate and report on incidents specific to retail premises. ⁷⁹
98. Whilst it is not current practice to record crime in this way, Police Scotland did feel that having improved monitoring would help it understand the circumstances and frequency of these offences. This could help identify any emerging threats and ensure early intervention. It said this enhanced recording of crimes could involve including an appropriate marker on cases involving retail workers. It suggested that a statutory aggravation was not needed to make these kind of changes. ⁸⁰
99. The Law Society of Scotland suggested that having more information would also help them understand "whether there has been a failure to report, failure by the police, failure by the Crown Office and Procurator Fiscal Service or failure by the courts." ⁸¹
100. Some witnesses felt that the new statutory aggravation would improve data recording. Dr Cheema of the Scottish Grocers Federation told the Committee that race crimes began to be recorded after the Race Relations (Amendment) Act was introduced in 2000. ⁸²
101. The Minister for Community Safety was open to considering how data collection could be improved. She told the Committee:

” We do not currently have that disaggregated data by occupation. We would always be interested in considering whether there is other data that we could collect or that we should be collecting that would be helpful. I would certainly be open to the Committee’s views on that. If the Committee thinks that the Government should be looking at that, I would certainly give an undertaking that we will look at that.⁸³

102. The Committee welcomes the Minister's offer to work with Police Scotland and its justice partners to explore how data collection could be improved in relation to the recording and monitoring of criminal incidents in retail premises. The Committee notes that the proposed statutory offence and proposed aggravation may create opportunities for improved data collection, which the Committee would welcome.
103. The Committee further notes that this will not improve the collection of data on other workers or differentiate between different types of retail premises, which would also be beneficial. The Committee therefore recommends that other improvements to data collection are also considered by the Scottish Government and its justice partners.

Education, training and raising awareness

104. A key motivation for the Bill is the perceived impact it would have on raising awareness of the scale and seriousness of violent and abusive behaviour against retail workers. Witnesses told the Committee that this awareness-raising is needed for members of the public, retail staff, retail employers and the police.
105. Several respondents and witnesses believed that the Bill would act as a deterrent and show retail workers that their jobs are valued.⁸⁴
106. The Scottish Trades Union Congress said:
- ” 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.⁸⁵
107. The Federation of Small Businesses said:
- ” Naturally, a change in the law in and of itself is limited in its ability to change behaviours. However, if it is matched with a smart, well-resourced marketing campaign, we are confident that more workers, including the self-employed, would speak out and report the violence and abuse they face on a regular basis.⁸⁶
108. The Association of Convenience Stores agreed that the creation of a new statutory offence would only be as effective as how well it is communicated to the public and how well it is enforced by the justice system.⁸⁷ The majority of respondents thought that a publicity campaign would be beneficial and the Law Society of Scotland said there was an "overwhelming need for enhanced provision of education, training and awareness-raising of the issue to the public".⁸⁸
109. When shoppers and retail workers in Paisley were asked about the Bill, most people thought there would be increased reporting of abusive behaviour but only if stores were able to display posters and the new laws were publicised well to increase awareness.⁸⁹ GMB Scotland said that simply putting up posters in stores to raise awareness of current offences could be effective. It noted that this has made a difference on public transport.⁹⁰
110. The Minister for Community Safety agreed that it would be useful to raise awareness among retailers and staff, to encourage reporting, and among the public as a more general deterrent. The Minister indicated that the Scottish Government would definitely consider how best to raise awareness in these areas.⁹¹
111. Daniel Johnson MSP told the Committee:

” I note that in response to previous attempts to introduce such legislation, the argument has been made that a campaign should be formed, and yet nothing has happened. It is not an either/or situation. Passing my Bill into law would not preclude running an information campaign—indeed, such a campaign would greatly help, and I suggest that we do both.⁹²

112. The Committee agrees that there should be enhanced provision of education, training and awareness-raising of the abuse and intimidation experienced by retail workers. There must be cultural change to deter aggressive behaviour and give retail workers the recognition that they deserve. The Committee recommends that the Scottish Government engages with retailers and its justice partners to design an awareness-raising campaign aimed at retail workers, retail employers and the public.

Employer responsibility

113. Employers also have a duty of care towards their staff and a responsibility to do what they can to minimise crime in their stores or premises. The Committee heard evidence to suggest that some employers could do more to support their staff and encourage a safer working environment.
114. The Scottish Trade Union Congress suggested that consideration could be given to a duty on employers to take all reasonable steps to protect workers from harassment.⁹³
115. The Co-op Group told the Committee about the steps it has taken to improve employee safety. This included the use of store tablets and computers, guards, fog and smartwater systems, iCCTV, panic buttons and body-worn cameras. The Co-op has employed a security partner who compiles evidence to be submitted to the police after an incident. This includes taking witness statements, liaising with the police and working with the Crime Prosecution Service (particularly when incidents involve repeat offenders).⁹⁴
116. However, the Co-op noted the level of resource needed to offer this level of support. Paul Gerrard told the Committee:
- ” A big business such as the Co-op can afford to spend the equivalent of £8,000 a year, on average, on security measures in a store, but my worry is that many of the most at-risk stores—the small, family-run independents—do not have that resource.⁹⁵
117. GMB Scotland said that there were numerous examples of guards being removed from entrances and exit points to stock shelves, due to staff shortages.⁹⁶
118. The Committee notes evidence regarding the under-reporting of crimes towards retail workers and the important role employers play in encouraging a safe working environment for their staff. The Committee suggests that the responsibilities of employers could also be considered by an awareness raising campaign.

Committee conclusions and recommendations

119. The Committee welcomes the introduction of the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill by Daniel Johnson MSP.
120. The Committee heard that retail workers are subject to unacceptable violence, threats and aggression every working day. The Committee does not question the levels of abuse described, the seriousness of that abuse or the need for something to be done. The Committee is particularly sympathetic to the argument that workers who enforce statutory age restrictions on the sale and supply of goods and services have specific responsibilities, which are different from the responsibilities of other retail workers.
121. The Committee invites Daniel Johnson MSP to work with the Scottish Government to reflect on the Committee's recommendations in this report and address its reservations about the Bill at Stage 2. We draw particular attention to those paragraphs where we have invited the Member to consider amendments (paragraphs 37 regarding the definition of retail worker, paragraph 64 in relation to the obstruct and hinder elements of the proposed offence and paragraph 70 regarding a reasonableness defence).
122. The Committee also invites the Scottish Government to reflect on what further action could be taken to support retail workers, through greater incident reporting (paragraph 80), improved data collection (paragraphs 102 and 103) and a national awareness-raising campaign (paragraph 112 and 118). The Committee also welcomes the Minister's offer to consider an aggravator (paragraphs 64 and 95).
123. Overall, the Committee supports the general principles of the Bill and recommends to Parliament that they be agreed to.

Annex A

Extracts from the minutes of the Economy, Energy and Fair Work Committee; associated written and supplementary evidence; correspondence, and work by other Committees

Minutes of Meetings

Extracts from the minutes of the Economy, Energy and Fair Work Committee and associated written and supplementary evidence

Minutes of Meetings

7th Meeting, Tuesday 3 March 2020

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

Bill: The Committee took evidence on the Bill at Stage 1 from—

- Gillian Mawdsley, Policy Executive, Law Society of Scotland;
- Ian Thomson, Superintendent, Safer Communities, Police Scotland;
- Dr Pete Cheema OBE, Chief Executive, Scottish Grocers' Federation;
- Ewan MacDonald-Russell, Head of Policy and External Affairs, Scottish Retail Consortium;
- Paul Togneri, Senior Policy Manager – Scotland, The Scottish Beer and Pub Association;
- Paul Gerrard, Campaigns and Public Affairs Director, Co-operative Group;
- Stewart Forrest, Scottish Divisional Officer, Usdaw;
- Robert Deavy, Organiser, GMB Scotland.

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

Bill (in private): The Committee considered the evidence heard at today's meeting.

11th Meeting, Wednesday 6 May 2020

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

Bill: The Committee took evidence on the Bill at Stage 1 from—

- Ash Denham, Minister for Community Safety, and Philip Lamont, Head of Criminal Law, Practice and Licensing Unit, Criminal Justice Division, Scottish Government.

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

Bill (in private): The Committee considered the evidence heard at today's meeting.

13th Meeting, Wednesday 13 May 2020

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

Bill: The Committee took evidence on the Bill at Stage 1 from—

- Daniel Johnson MSP, Member in charge of the Bill, Andrew Mylne, Head of Non-Government Bills Unit, and Kenny Htet-Khin, Solicitor, Scottish Parliament.

3. Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill (in private): The Committee considered the evidence heard at today's meeting.

18th Meeting, Tuesday 9 June 2020

2. Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report, various changes were agreed to, and the Committee agreed to consider a revised draft in private at a future meeting.

19th Meeting, Tuesday 16 June 2020

4, Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill (in private): The Committee considered a revised draft Stage 1 report, various changes and arrangements for its publication were agreed to, and the Committee agreed to approve the report by correspondence.

Written Evidence

- [Scottish Women's Convention](#)
- [Scottish Grocers' Federation](#)
- [United Private Hire Drivers, Glasgow](#)
- [Scottish Retail Consortium](#)
- [Unite Scotland](#)
- [Crown Office and Procurator Fiscal Service](#)
- [Police Scotland](#)
- [Scottish Co-operative Party](#)
- [Scottish Trades Union Congress](#)
- [Federation of Small Businesses](#)
- [StoneHawk](#)
- [Association of Convenience Stores Limited](#)
- [Co-operative Group](#)
- [Usdaw](#)
- [Law Society of Scotland](#)
- [UK Hospitality](#)
- [GMB Scotland](#)

- [It's not part of the job - Scottish Co-operative Party](#)

The following sent submissions via the Scottish Co-operative Party's campaign.

- [Cian Ireland](#)
- [David Brown](#)
- [Donald Reid](#)
- [Finlay MacRae](#)
- [Ann Jones](#)
- [Marjory Smith](#)
- [Timothy Collins](#)
- [Lynn Freebairn](#)
- [Billy McAndrew](#)
- [Maureen Edwards](#)
- [Daniel Anderson](#)
- [Eddie Thorn](#)
- [Jacqueline Orme](#)
- [Rita Miller](#)
- [Catherine Wykes](#)
- [Stephen Curran](#)
- [Esther Clark](#)
- [Stewart Kerr](#)
- [Bryan Pottinger](#)
- [George Hannah](#)

Supplementary Evidence

- [Police Scotland](#)
- [Co-operative Group](#)

Engagement

On the 27 to 29 February, the Scottish Parliament's Engagement and Outreach teams set-up a "pop-up Parliament" stand in the Piazza Shopping Centre in Paisley. They asked retail workers and shoppers what they thought about the Bill. A note summarising the points raised was considered as evidence, contributing to the Committee's work.

- [Note from pop-up consultation in Paisley](#)

The Scottish Youth Parliament asked young people how they felt about the Bill through an online survey. The responses were compiled in a summary.

- [Scottish Youth Parliament - summary of responses](#)

Correspondence

The Non-Government Bills Unit wrote to the Committee with the Equality Impact Assessment (EQIA) for the Member's Bill.

- [Equality Impact Assessment](#)

The Scottish Government provided a memorandum to assist consideration of the Bill.

- [Scottish Government Memorandum](#)

Daniel Johnson, the Member in Charge of the Bill wrote to the Committee on 1 June 2020.

- [Letter from Daniel Johnson](#)

- 1 The Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill [as introduced]
- 2 Policy Memorandum
- 3 Scottish Youth Parliament, summary of responses
- 4 Note from pop-up consultation in Paisley
- 5 Policy Memorandum
- 6 Policy Memorandum
- 7 Policy Memorandum
- 8 Policy Memorandum
- 9 Protection of Workers (Scotland) Bill 2010
- 10 SPICe Briefing, Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill
- 11 Economy, Energy and Tourism Committee, Stage 1 Report on the Protection of Workers (Scotland) Bill
- 12 Usdaw, written evidence
- 13 EEFW Committee, Official Report, 13 May 2020, col 3
- 14 Policy Memorandum
- 15 EEFW Committee, Official Report, 3 March 2020, col 23
- 16 EEFW Committee, Official Report, 3 March 2020, col 26
- 17 Scottish Women's Convention, written evidence
- 18 The Co-operative Party, written evidence
- 19 Note from pop-up consultation in Paisley
- 20 EEFW Committee, Official Report, 3 March 2020, col 45
- 21 Policy Memorandum
- 22 EEFW Committee, Official Report, 13 May 2020, col 6
- 23 Glasgow Committee of the United Private Hire Drivers Branch of the IWGB Union, written evidence
- 24 Law Society of Scotland, written evidence
- 25 The Law Society of Scotland, written evidence
- 26 Unite Scotland, written evidence

- 27 Scottish Grocers Federation, written evidence
- 28 Scottish Government Memorandum
- 29 Crown Office and Procurator Fiscal Service, written evidence
- 30 EEFW Committee, Official Report, 3 March 2020, col 2
- 31 EEFW Committee, Official Report, 3 March 2020, col 7
- 32 EEFW Committee, Official Report, 6 May 2020, col 15
- 33 EEFW Committee, Official Report, 13 May 2020, col 9
- 34 Policy Memorandum
- 35 EEFW Committee, Official Report, 13 May 2020, col 13-14
- 36 Policy Memorandum
- 37 Policy Memorandum
- 38 Crown Office and Procurator Fiscal Service, written evidence
- 39 EEFW Committee, Official Report, 3 March 2020, col 14
- 40 EEFW Committee, Official Report, 3 March 2020, col 14
- 41 EEFW Committee, Official Report , 13 May 2020, col 8-9
- 42 Crown Office and Procurator Fiscal Service, written evidence
- 43 Crown Office and Procurator Fiscal Service, written evidence
- 44 Law Society of Scotland, written evidence
- 45 Police Scotland, written evidence
- 46 EEFW Committee, Official Report, 3 March 2020, col 7
- 47 EEFW Committee, Official Report , 13 May 2020, col 10
- 48 EEFW Committee, Official Report, 13 May 2020, col 10-11
- 49 EEFW Committee, Official Report, 6 May 2020, col 7-8
- 50 Scottish Government Memorandum
- 51 Scottish Government Memorandum
- 52 Letter to the EEFW Committee from Daniel Johnson MSP on 1 June 2020
- 53 Scottish Government Memorandum
- 54 EEFW Committee, Official Report, 6 May 2020, col 21
- 55 Letter to the EEFW Committee from Daniel Johnson MSP on 1 June 2020

- 56 EEFW Committee, Official Report, 13 May 2020, col 22
- 57 Policy Memorandum
- 58 Police Scotland, written evidence
- 59 The Co-operative Group, written evidence
- 60 The Scottish Co-operative Party, written evidence
- 61 EEFW Committee, Official Report, 3 March 2020, col 25
- 62 EEFW Committee, Official Report, 3 March 2020, col 27
- 63 The Federation of Small Businesses, written evidence
- 64 EEFW Committee, Official Report, 3 March 2020, col 44
- 65 The Scottish Co-operative Party, written evidence
- 66 EEFW Committee, Official Report, 3 March 2020, col 5
- 67 Crown Office and Procurator Fiscal Service, written evidence
- 68 EEFW Committee, Official Report, 3 March 2020, col 7-8
- 69 EEFW Committee, Official Report, 6 May 2020. col 12
- 70 EEFW Committee, Official Report, 13 May 2020, col 4
- 71 EEFW Committee, Official Report, 13 May 2020, col 10-11
- 72 EEFW Committee, Official Report, 3 March 2020, col 23
- 73 EEFW Committee, Official Report, 3 March 2020, col 23
- 74 Usdaw, Freedom From Fear: The true scale of the issue and the under-reporting problem, 2018
- 75 The Co-operative Group, written evidence
- 76 EEFW Committee, Official Report, 3 March 2020, col 24
- 77 Scottish Retail Consortium, written evidence
- 78 EEFW Committee, Official Report, 6 May 2020, col 8-9
- 79 Police Scotland, supplementary written evidence
- 80 Police Scotland, written evidence
- 81 EEFW Committee, Official Report, 3 March 2020, col 5
- 82 EEFW Committee, Official Report, 3 March 2020, col 28
- 83 EEFW Committee, Official Report, 6 May 2020, col 11

- 84 The Scottish Co-operative Party, written evidence
- 85 STUC, written evidence
- 86 The Federation of Small Businesses, written evidence
- 87 The Association of Convenience Stores. written evidence
- 88 Law Society of Scotland, written evidence
- 89 Note from pop-up consultation in Paisley
- 90 EEFW Committee, Official Report, 3 March 2020, col 47
- 91 EEFW Committee, Official Report, 6 May 2020, col 13-14
- 92 EEFW Committee, Official Report, 13 May 2020, col 5
- 93 STUC, written evidence
- 94 The Co-operative Group, written evidence
- 95 EEFW Committee, Official Report, 3 March 2020, col 38
- 96 EEFW Committee, Official Report, 3 March 2020, col 49

