

This document relates to the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill (SP Bill 58) as introduced in the Scottish Parliament on 10 October 2019

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

Policy Memorandum

Introduction

1. As required under Rule 9.3.3A of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill introduced in the Scottish Parliament on 10 October 2019. It has been prepared by the Non-Government Bills Unit (NGBU) on behalf of Daniel Johnson MSP, the member who introduced the Bill.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 58–LC);
- a Financial Memorandum (SP Bill 58–FM);
- Explanatory Notes (SP Bill 58–EN).

Policy objectives of the bill

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

4. The Bill:

- creates a new statutory offence of assaulting, threatening, abusing, obstructing or hindering a retail worker; and

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- allows for aggravation of that offence where the retail worker is enforcing a statutory age restriction.

5. By creating a new offence, the Bill provides additional protections for relevant workers, assists in addressing the problems of violence and abuse faced by shop workers and others by reducing such violence, increases awareness of the issues and tensions generated in this sector, and should increase reporting of such violent and abusive incidents.

6. The creation of an aggravation in cases where the offence relates to enforcing a statutory age restriction is of particular significance, as these staff are carrying out their legal obligations in terms of their employment.

7. 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). However, the member believes that the under-reporting of cases of assault or abuse being suffered by retail staff, and the frequency of assault perpetrated against retail workers who are carrying out their legal duty, demonstrates that the current law could be more effective. There is also 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.¹

8. The benefits which would be derived from the Bill would include: an increased awareness of the issues posed by the physical and verbal abuse faced by many retail workers; a possible increase in the reporting of such crimes to the police; and, as a result, a reduction in the number of occasions on which retail workers would have to face this type of verbal abuse or assault. In addition to this, the existence of statutory offences relating to specific classes of victim makes it easier to identify how many individuals have been charged with and prosecuted for relevant offences,

¹ USDAW, Under-Age Sales (2011)
<http://www.usdaw.org.uk/CMSPages/GetFile.aspx?guid=a6949e1a-3a16-4da2-96b3-3a0a9accf87b>

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which would provide an indicator of progress made in reducing the instances of this type of crime.

Background

9. The retail sector is the largest private sector industry in Scotland, employing around 259,350 people.² The areas of the hospitality industry within the scope of the Bill employ around 117,000 people.³ Taken together, these 376,350 workers equate to 6.9% of the Scottish Population.⁴ The Bill therefore covers a significant proportion of the Scottish workforce.

10. Levels of crime against workers in the retail sector and those involved in the sale or supply of age-restricted goods are high and increasing – for example, a survey conducted by the British Retail Consortium (BRC) in 2017 found that there had been a 100% increase since the previous year in the number of incidents of violence with injury against retail workers.⁵ The same report also noted that the instances of violence and abuse against retail workers that year was the second highest recorded. Similarly, the Association of Convenience Stores (ACS) estimate that around 83% of

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<https://www2.gov.scot/Topics/Statistics/Browse/Business/Corporate/tables/07>

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<https://www.gov.scot/Topics/Statistics/Browse/Business/Publications/GrowthSectors/Database> (Table 2.5) For the purposes of this analysis the following hospitality workers that fall within the scope of the Bill have been counted; hotels and similar accommodation (50,000), restaurants and mobile food service activities (79,000), and beverage serving activities (36,000) making a total of 165,000 (Published June 2019).

⁴ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2018>

⁵ British Retail Consortium, 2017 Retail Crime Survey (2018)
https://brc.org.uk/media/249703/2017-crime-survey-short-story_fa_63_v11.pdf

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staff had experienced verbal abuse.⁶ The Scottish Grocers Federation's (SGF) Scottish Crime Report 2018 recorded that 99% of respondents had endured physical and/or verbal abuse whilst working in-store within the previous year.⁷ The same data shows that refusal of sale and checking for proof of identity, particularly in relation to the sale of alcohol or tobacco, acts as a major trigger point for aggressive behaviour from members of the public. Statistics published by the Union of Shop, Distributive and Allied Workers (USDAW) showed that the average Scottish shopworker is verbally abused, threatened or assaulted over 20 times a year. The same data showed that in 2018, 70% of shopworkers in Scotland experienced verbal abuse, 42% were threatened by a customer, and that each day 18 workers were assaulted.⁸

11. USDAW's "Freedom from Fear" report noted that in 33% of cases, the enforcement of a statutory age restriction was the trigger for the violent behaviour⁹ and the member is also of the view that this is a major trigger point for such behaviour. The requirement to ask for proof of age falls to the individual worker. When selling age-restricted goods and services the worker performing the sale can be liable to prosecution if the buyer is found to be under the legal age requirement.¹⁰ Workers are personally liable if they sell to a young person and face a fine of up to £5,000 or imprisonment for a term up to three months.

12. As these workers are upholding the law, the member believes they must be provided with the protection of the law.

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https://www.acs.org.uk/sites/default/files/acs_crimerreport2019_online_version.pdf (Page 6)

⁷ Scottish Grocers Federation, The Scottish Crime Report 2018 (2018), p. 6
<https://drive.google.com/file/d/1Qktu7OfTfxvkyqM9HH7fYyQ7CfJw3H96/view>

⁸ <http://www.usdaw.org.uk/About-Us/News/2019/Apr/A-Scottish-shopworker-is-abused,-threatened-or-ass>

⁹ <http://www.usdaw.org.uk/2018FFFReport> (Refusing alcohol 11%, age related sales 22% Page 5)

¹⁰ Licensing (Scotland) Act 2005, section 102
<https://www.legislation.gov.uk/asp/2005/16/section/102>

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“Challenge 25”

13. A 2011 amendment to the Licensing (Scotland) Act 2005 introduced a new mandatory age-verification policy (as a licence condition) in relation to the sale of alcohol on licensed premises.¹¹ Under the policy, anyone appearing to be under the age of 25 must be challenged by staff to produce identification and verify their age (i.e. prove they are at least 18) before being sold alcohol. Challenge 25 was extended to cover the sale of tobacco in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016.¹² In a 2014 report, published by the Retail of Alcohol Standards Group, it was estimated that 23% of the UK population (11 million people) had been challenged for proof of identity when buying alcohol as a result of Challenge 25 or similar schemes.¹³

Other vulnerable workers

14. There are a number of other specific groups in these sectors who would be classed as particularly vulnerable and who are covered by the Bill, such as those who work alone, delivering products which require proof of age before they are handed over, to customers' homes.

The impact of offensive behaviour

15. In terms of the impact of intimidating behaviour or physical assault on staff while performing their legal duty at work, this can lead to harmful effects on psychological welfare and physical wellbeing. In the UK, 7% of all reported workplace injuries are as a result of accidents categorised as “acts of violence”.¹⁴

¹¹ Licensing (Scotland) Act 2005, Schedule 3, section 9A

<https://www.legislation.gov.uk/asp/2005/16/schedule/3>

came into effect in October 2013.

¹² Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 Section 3 3) <http://www.legislation.gov.uk/asp/2016/14/section/3/enacted>

¹³ Retail of Alcohol Standards Group, Rising to the Challenge: A report into the application and impact of Challenge 25, (RASG, 2014), p. 15

<http://www.wsta.co.uk/publications-useful-documents/65-rising-to-the-challenge-a-report-into-the-application-and-impact-of-challenge-25/file>

¹⁴ <http://www.hse.gov.uk/statistics/overall/hssh1718.pdf> (Page 7)

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16. Such behaviour may also impact on businesses. If an enterprise develops a reputation for being a place where staff are subjected to violence or abuse by members of the public, there could also be a serious effect on the business itself, including higher rates of absenteeism and higher staff turnover.

17. There may also be added costs of property damage, employing door staff or installing new security systems in an attempt to tackle abuse and violence.

Under-reporting

18. 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.¹⁵ Reasons for this low figure included: an acceptance of a culture of aggression; believing that it is normal for customers to become violent or aggressive when their age is questioned; fear of being perceived as incompetent and unable to deal with the job; and lack of confidence in the police response.¹⁶

“Special treatment” for the retail sector?

19. The member 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.

20. 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.

¹⁵ Allen, T. & Rudkin, E., An analysis of abuse and violence towards retail staff when challenging customers for ID (Under Age Sales, 2017), p. 4

¹⁶ Dawson, C., Research on violence reduction report, (The Security Industry Authority, 2015), p. 1
<https://www.sia.homeoffice.gov.uk/Documents/research/sia-violence-reduction-report.pdf>

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21. There is also precedent for legislation to give protection to specific groups of workers.

22. The Emergency Workers (Scotland) Act 2005 (“the 2005 Act”)¹⁷ made it an offence to assault, obstruct or hinder an emergency services worker while acting in that capacity. This covers the police, the Scottish Fire and Rescue Service, ambulance staff, doctors, nurses and midwives. The 2005 Act also made it an offence to assault, obstruct or hinder certain other workers whilst they are dealing with an emergency situation. These include prison officers, coastguards, social workers (while taking certain actions relating to child protection) and mental health officers. The maximum penalty for either offence is imprisonment for up to 12 months, a fine of up to £10,000, or both. The total number of charges reported to the Crown Office and Procurator Fiscal Service (COPFS) under the 2005 Act since its introduction is 8,251.¹⁸

23. Section 22 of the UK Borders Act 2007¹⁹ makes it an offence to assault an immigration officer. A person found guilty under this section is liable on summary conviction to imprisonment for up to 12 months, or to a fine of up to £5,000, or both.

24. Section 31 of the Commissioners for Revenue and Customs Act 2005²⁰ makes it an offence for anyone to obstruct HMRC officers whilst they are performing their duties. Section 32 gives HMRC officers further legal protection from assault to supplement the common law offence. The maximum penalty for these offences is imprisonment for up to six months or a fine (of up to £5,000 for assault or £1,000 for obstruction), or both.

¹⁷ Emergency Workers (Scotland) Act 2005, section 1
<https://www.legislation.gov.uk/asp/2005/2/section/1>

¹⁸ As of 5 October 2017. Source: COPFS, 2017 via SPICe.

¹⁹ UK Border Act 2007, section 22

<https://www.legislation.gov.uk/ukpga/2007/30/section/22>

²⁰ Commissioners for Revenue and Customs Act 2005, section 31
<https://www.legislation.gov.uk/ukpga/2005/11/section/31>

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Previous relevant proposed and enacted legislation

25. The development of the Bill's policy revisited a number of the issues raised in terms of previous relevant legislation, in particular, the Protection of Workers (Scotland) Bill 2010²¹ ("the 2010 Bill") and the Emergency Workers (Scotland) Act 2005.²²

Protection of Workers (Scotland) Bill 2010

26. The aims of the current Bill are similar to those of a Bill introduced by the then MSP Hugh Henry on 1 June 2010. That Bill provided for a specific statutory offence relating to assaults on people whose work brought them into face-to-face contact with members of the public. By doing so, it sought to highlight the problem of assaults on such workers and provide them with additional protection. It did not, however, extend the scope of the criminal law – any behaviour which could be prosecuted under the proposed offence could also be prosecuted under existing criminal offences (for example, the common law offence of assault).

Emergency Workers (Scotland) Act 2005

27. At the time of the passage of the 2010 Bill, parallels were drawn between its provisions and the protections provided by the 2005 Act. Those covered by the provisions of the 2005 Act include police officers, firefighters, ambulance workers, doctors and nurses.

28. Both the 2010 Bill and the 2005 Act provided for statutory offences of assaulting particular types of workers, with those offences being prosecuted under summary procedure only and attracting a fine of up to £10,000 or a maximum custodial sentences of 12 months. Differences included the fact that the 2005 Act also made it an offence to obstruct or

²¹ Protection of Workers (Scotland) Bill 2010

<http://www.parliament.scot/parliamentarybusiness/Bills/22548.aspx>

²² Emergency Workers (Scotland) Act 2005:

<http://www.legislation.gov.uk/asp/2005/2/contents> and its accompanying documents:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25295.aspx>

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hinder a relevant worker, which would also be an offence in terms of the current Bill.

Progress of the 2010 Bill

29. At Stage 1, while it was generally agreed that there was a problem (of public-facing workers facing assault), most members disagreed that the 2010 Bill was the appropriate way of addressing that problem and the general principles of the Bill were not agreed to.

30. The main arguments against the 2010 Bill were:

- that it would apply to a very large and ill-defined group, with no clear rationale for the distinction between those it protected and those it did not;
- that even in relation to those it was intended to protect, it actually made no legal difference (compared with the common law of assault and the penalties available for that); and
- the fact that common law of assault and common law of breach of the peace offer protection to everyone.

31. Other arguments against the Bill related to the lack of clarity of a number of definitions, namely those relating to: “worker”, “member of the public” and what constitutes an assault.

Addressing earlier criticisms

32. To address some of the perceived issues, particularly in relation to the wide scope of workers covered, the current Bill narrows the applicability of the new offence to retail workers, particularly those required to enforce a statutory age restriction.

33. Those in the latter category (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

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be prosecuted (instead of, or as well as, that worker's employer or the licence-holder).²³

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.

Statutory offence under the 2010 Bill

35. The proposed statutory offence under the 2010 Bill covered a segment of all the assaults which could be prosecuted under the common law of assault. It could only be used where one of the following applied:

- a worker was assaulted in the course of his/her employment and the offender either knew or ought to have known that the worker was acting in the course of his/her employment; or
- a worker was assaulted by reason of his/her employment and the assault was at least partly motivated by malice towards the worker by reason of his/her employment.

36. In addition, the worker's employment must have included at least some face-to-face involvement with members of the public.

Penalties in 2010 Bill and existing penalties

37. As indicated earlier, the 2010 Bill provided that the proposed statutory offence could only be prosecuted under summary procedure, with a fine of £10,000 (the current "prescribed sum") or a maximum custodial sentence of 12 months.

38. That was the same as the maximum penalty for the existing common law offence of assault if prosecuted summarily in the sheriff court.

39. However, common law assault may also be prosecuted under solemn procedure where the maximum sentences are imprisonment for five years or an unlimited fine (or both) for cases prosecuted in the sheriff court, and

²³ Licensing (Scotland) Act 2005, section 102 (1)
<https://www.legislation.gov.uk/asp/2005/16/section/102>

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life imprisonment or an unlimited fine (or both) for cases prosecuted in the High Court.

40. At the time the Emergency Workers (Scotland) Act became law in 2005, it provided for a maximum sentence of nine months' imprisonment, or a fine of £5,000 (or both). This was a higher maximum sentence than could then be imposed under summary procedure (in the sheriff court) in relation to a conviction for common law assault – which was imprisonment for three months (six months where the offender had a previous conviction for an offence inferring personal violence), or a fine of up to £5,000 (the “prescribed sum” at the time).²⁴

41. The Criminal Proceedings etc. (Reform) (Scotland) Act 2007²⁵ increased the maximum custodial sentences which could be imposed by the sheriff court on summary conviction (regardless of whether it was a repeat offence), and also raised the maximum custodial penalty under the 2005 Act, in each case to 12 months. The result was that, from December 2007, the 2005 Act no longer allowed higher penalties to be imposed than were available (on summary conviction) in cases prosecuted under common law.

42. In this context, the 2010 Bill did not propose higher penalties than were already available under common law. Indeed, since the proposed statutory offence could only be prosecuted under summary procedure, very serious assaults on workers (where prosecution under solemn procedure could have been justified) would still have required to be prosecuted under the common law offence.

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<http://www.parliament.scot/SPICeResources/Research%20briefings%20and%20fact%20sheets/SB10-47.pdf> (Page 8)

²⁵ Criminal Proceedings etc. (Reform) (Scotland) Act 2007, Part 3
<http://www.legislation.gov.uk/asp/2007/6/contents>

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Current law and practice

Assault

Assault at common law

43. The common law crime of assault is committed in Scotland when an individual deliberately attacks another person (directly or indirectly). It cannot be committed accidentally or negligently. The use of threatening gestures to place a person in a state of fear and alarm for their safety can also constitute assault. Whilst verbal threats unaccompanied by menacing gestures may be criminal, they do not constitute assault.

Statutory assault

44. As indicated earlier, a number of statutes supplement the common law on assault in relation to certain classes of victim – such as the Commissioners for Revenue and Customs Act 2005²⁶ which makes it a statutory offence to assault an HMRC officer, or the Emergency Workers (Scotland) Act 2005 (“the 2005 Act”)²⁷ which created the statutory offences of assaulting certain emergency workers and of assaulting certain other workers when they are responding to emergency circumstances.

Threatening or abusive behaviour

45. The Criminal Justice and Licensing (Scotland) Act 2010²⁸ provides that a person commits an offence if the person behaves in a threatening or abusive manner, the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and the person either intends the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm. A person convicted of such an offence is liable, if convicted on indictment (under solemn procedure) to imprisonment for up

²⁶ Commissioners for Revenue and Customs Act 2005, section 32
<https://www.legislation.gov.uk/ukpga/2005/11/crossheading/offences>

²⁷ Emergency Workers (Scotland) Act 2005
<https://www.legislation.gov.uk/asp/2005/2/contents>

²⁸ Criminal Justice and Licensing (Scotland) Act 2010, section 38
<https://www.legislation.gov.uk/asp/2010/13/section/38>

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to 5 years or a fine (or both); and if convicted summarily, to imprisonment for up to 12 months or a fine of up to £10,000 (or both).

Obstructing and hindering

46. Obstructing or hindering a person does not normally constitute an offence, so this element of the offence proposed by the Bill would provide additional protection for retail workers, over and above what is provided already at common law or in statute law.

47. There is precedent for this in the Emergency Workers (Scotland) Act 2005, which made it an offence to obstruct or hinder an emergency worker, and in section 90(2)(a) of the Police and Fire Reform (Scotland) Act 2012,²⁹ which provides that a person commits an offence if the person resists, obstructs or hinders a police officer (or a person assisting such an officer).

Aggravation

48. 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.

Common law

49. The courts routinely take account of the circumstances of each case in sentencing and will generally impose higher penalties (within the range available to them) where aggravating factors apply – just as they will generally impose lower penalties where mitigating factors apply. At common law, aggravating factors include: use of a weapon, injury to the victim, assault of a victim of a particular character – for example, a parent attacking a child, an officer attacking a prisoner, etc.

²⁹ Police and Fire Reform (Scotland) Act 2012, section 90(2)
<https://www.legislation.gov.uk/asp/2012/8/section/90>

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Statutory aggravations

50. In Scots law, statutory aggravations include aggravation of substantive criminal offences in relation to: racial prejudice,³⁰ religious prejudice,³¹ disability prejudice,³² sexual orientation or transgender identity prejudice,³³ abuse of a partner or ex-partner,³⁴ and (in the context of abusive behaviour towards a partner or ex-partner) the involvement of a child.³⁵

51. Each of the relevant statutory provisions is worded similarly, allowing the aggravation to be added to both a complaint and an indictment in relation to any offence (or, in relation to the last aggravation, one specific offence).

52. Only one source of evidence is needed to prove that an offence is aggravated. Where this has been established, the relevant court is under a duty to:

- state on conviction that the offence was aggravated;
- record the conviction in a way that shows the offence was so aggravated; and
- take the aggravation into account in determining the appropriate sentence.

53. Whilst an aggravation must be taken into account in determining sentence, it does not extend the sentencing powers of a sheriff in summary

³⁰ Crime and Disorder Act 1998, section 96
<https://www.legislation.gov.uk/ukpga/1998/37/section/96>

³¹ Criminal Justice (Scotland) Act 2003, section 74
<http://www.legislation.gov.uk/asp/2003/7/section/74>

³² Offences (Aggravation by Prejudice) (Scotland) Act 2009, section 1
<http://www.legislation.gov.uk/asp/2009/8/section/1>

³³ Offences (Aggravation by Prejudice) (Scotland) Act 2009, section 2
<http://www.legislation.gov.uk/asp/2009/8/section/2>

³⁴ Abusive Behaviour and Sexual Harm (Scotland) Act 2016, section 1
<http://www.legislation.gov.uk/asp/2016/22/section/1/enacted>

³⁵ Domestic Abuse (Scotland) Act 2018, section 5
<http://www.legislation.gov.uk/asp/2018/5/section/5/enacted>

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procedure (that is, it does not increase the maximum penalty that may be imposed).

Detail of the bill

Offence and aggravation

54. As detailed earlier, the Bill provides for:

- a new statutory offence of assaulting, threatening or abusing, or obstructing or hindering a retail worker; and
- a statutory aggravation if the assault, threat or abuse, obstruction or hinderance 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 services.

Penalties

55. The maximum penalty for the statutory offence would be, on summary conviction, imprisonment for a maximum of 12 months, or a fine not exceeding the “prescribed sum” (currently £10,000), or both.

56. Evidence from a single source is to be sufficient to establish whether a person was acting in the capacity of a “retail worker” or doing “retail work”.

Defences

57. The Bill provides a defence to a charge of obstructing or hindering a retail worker if the accused person can show that the obstructing or hindering was, in the particular circumstances, reasonable. Otherwise, the Bill does not provide for any other specific defences, beyond those found within the common law, such as self-defence, insanity or mental disorder, automatism, intoxication, and necessity or coercion.

Where and to whom the provisions will apply

58. The member is well aware of criticisms of the previous 2010 Protection of Workers (Scotland) Bill that it would have applied to an extensive but unclear group of workers, with a perceived lack of justification as to who would be protected and who would not. Partly for these reasons,

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the member is keen to define as clearly as possible which workers will be covered by the new Bill.

59. As well as covering assault of a retail worker, the new offence also covers threatening or abusing, or obstructing or hindering a retail worker. In addition, the offence is aggravated if the assault, threat or abuse, obstruction or hindrance appears to be directly connected to the retail worker applying or enforcing a statutory age restriction (see Annex) in relation to the sale or supply of goods or services.

What is “threatening or abusing”?

60. Although the definition of threatening and abusive behaviour in the Criminal Justice and Licensing (Scotland) Act 2010³⁶ already catches the sort of threatening or abusive behaviour suffered by retail workers in the course of their employment, the member believes that the under-reporting of cases of assault or abuse being suffered by retail staff and the frequency of assault perpetrated against retail workers who are carrying out their legal duty demonstrates that the current law could be more effective and that legislation specific to retail workers is necessary. An example of the behaviour the member wishes to include is where a retail worker challenges someone to produce proof of identity when enforcing a statutory age restriction regarding alcohol and is threatened or abused as a result.

What is obstructing or hindering?

61. The member 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.

62. In order to be convicted of obstructing or hindering a retail worker the accused must have known (or ought to have known) that the person being obstructed or hindered was a retail worker. A precedent for this was set in the Emergency Workers (Scotland) Act 2005 which provided that no

³⁶ Criminal Justice and Licensing (Scotland) Act 2010, section 38
<https://www.legislation.gov.uk/asp/2010/13/section/38>

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offence is committed unless the person knows, or ought to know, that the worker is acting in that capacity.

63. 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”.

64. The member does not wish to necessitate a physical element being present before an offence of “obstruct or hinder” could be advanced. Where a person is refusing to move on in a queue, there is arguably no “physical means” of obstructing or hindering but the policy is to catch this conduct. Another example might be where a retail worker is using equipment – for example, a shopping trolley – and a customer refuses to get out of the way.

65. The term “obstruct or hinder” has been used in other statutory offences. For example, it is an offence under section 90(2) of the Police and Fire Reform (Scotland) Act 2012 to resist, obstruct, or hinder a police officer.³⁷

66. The Emergency Workers (Scotland) Act 2005 also used the term “obstruct or hinder” and specified (in section 4(1)) that a physical element need not be present for an offence to be committed:

“A person may be convicted of the offence ... of obstructing or hindering notwithstanding that it is—

(a) effected by means other than physical means; or

(b) effected by action directed only at any vehicle, apparatus, equipment or other thing or any animal used or to be used by a person referred to in that section.”

³⁷ Police and Fire Reform (Scotland) Act 2012, section 90(2)
<https://www.legislation.gov.uk/asp/2012/8/section/90>

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Who is covered by the Bill's protections?

67. The Bill aims to cover the following key categories of worker:

- shop workers (selling goods of any sort to the public)
- bar workers (selling alcohol to the public)
- other workers whose job involves upholding statutory age-restrictions.

68. More specifically, the Bill covers the following:

(i) any person whose usual place of work is retail premises, while working in those premises (whether as employee, owner or agency staff), such as:

- in a shop, the owner and all other staff, while working in the shop (but not, for example, while travelling to or from work), regardless of whether selling goods is part of their job;
- in a pub, the landlord and all other staff, while working in the pub, regardless of whether selling drinks, food etc. is part of their job;
- in a charity shop, the paid manager and the volunteer staff, while working in the shop;

(ii) any person whose usual place of work is not in retail premises, while selling or supplying goods to the public (whether as employee, owner or agency staff), such as:

- where a shop forms a part of larger non-retail premises (such as the gift shop within a visitor attraction), the worker selling goods in the shop, but not other workers on those premises (such as a visitor guide);
- where a bar forms part of larger, mostly non-retail, premises (such as a hotel), the worker selling drinks in the bar, but not other hotel workers (such as reception staff or porters);
- in high-street premises that primarily deliver a service, rather than sell or supply goods (such as a hairdressing salon), a worker while selling goods (e.g. hair gel) but not while performing the service (e.g. cutting hair);

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- door-to-door salespersons and street traders (whose retail work is not done in premises);
- (iii) any person whose usual place of work is not in retail premises, while selling or supplying age-restricted services to the public (whether as employee, owner or agency staff), such as:
- tanning salon workers;
 - tattoo or piercing establishment workers;
 - a person working in an amusement arcade with gambling machines;
 - betting shop (bookmaker) or bingo hall workers;
- (iv) 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.

69. Retail premises includes all high-street shops, supermarkets, department stores, shopping centres etc, and also includes pubs and bars (drinks counting as “goods”) and petrol stations (fuel also counting as “goods”). A vehicle used wholly or mainly as a shop (such as an ice-cream van) is likely to count as retail premises; but even where a vehicle does not count as retail premises (because it is used primarily to provide a transport service), a person selling goods on the vehicle (e.g. a member of train crew selling drinks from a trolley) would be doing retail work, and so would be protected under the Bill.

70. Anyone whose usual place of work is retail premises counts as a retail worker while working in those premises. This includes when a person is working on land that forms part of those premises (for example, a supermarket worker collecting trolleys in the store car-park).

71. The following are examples of the types of workers who would not be covered:

- workers in high-street premises that sell or supply only services rather than goods (e.g. an estate agent, bank or advice centre);

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- wholesale workers (selling goods or services to tradespeople, for onward retail sale);
- most tradespeople (electricians, plumbers etc), since their usual place of work is not retail premises and they do not do retail work;
- bus drivers selling tickets (which are tokens for a service, rather than goods);
- nightclub door staff (who may be enforcing an age-restriction on entry, but do not themselves sell goods or services subject to a statutory age-restriction).

Enforcing an age restriction

72. A statutory age restriction for the purposes of the Bill includes only age restrictions where the age itself is specified in an enactment. This includes, for example, the age-limit of 18 which applies, under the Licensing (Scotland) Act 2005, to the offence of selling alcohol to under-age persons.

Consultation

73. The member carried out a consultation exercise on a draft proposal, lodged on 19 April 2018, which ran until 20 May 2018. There were 385 responses to the consultation, of which 32 were from organisations (including retailers, trade unions, and third sector bodies) and 353 from individuals (including politicians, professionals and academics).³⁸

74. The vast majority of respondents were in favour of creating a new offence of assault against a worker in the retail sector – with 92% expressing full or partial support for this proposal. The main argument made in favour was that this would be an effective means of reducing the number of assaults against retail workers. It was considered that the creation of a new offence would make clear that such behaviour was unacceptable and would not be tolerated – creating a deterrent effect.

³⁸ The consultation document and summary of consultation responses are available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/107499.aspx>

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75. Those who were less supportive of this proposal said that there was already adequate legislation in place to protect retail workers and that any additional protections should not be limited to those in retail but also cover other public-facing workers.

76. The consultation also asked which would be the best method of responding to assaults on those involved in the sale of age-restricted goods or services – a new statutory offence or a new statutory aggravation. Fifty-eight per cent of respondents considered that the creation of a new offence would be the better option, while 7% favoured a new statutory aggravation, 19% supported either option and 4% supported neither. The remaining respondents were unsure.

Alternative approaches

77. The member considered whether other approaches to meet his policy objectives, such as a high-profile publicity campaign to heighten awareness of the unacceptability of abusing retail workers and those enforcing age-restricted sales and services, would be potential alternatives to legislation. The member felt, however, that such a campaign would not be a sufficient deterrent, in particular in relation to the risks encountered by those workers enforcing statutory age-restrictions, who were carrying out a legal requirement to ensure that purchasers were not under age.

78. In terms of the offences, it was originally proposed that the Bill would create new offences that would cover any of the following:

- assaulting a worker in the retail sector;
- assaulting a worker involved in the sale or supply of age-restricted goods or services; and
- abusing, harassing, threatening or obstructing a worker involved in the sale or supply of age-restricted goods or services (this would cover verbal abuse, verbal or non-verbal threats, harassment and intimidation).

79. As a further alternative, the member also consulted on the option of creating a new statutory aggravation for offences against a worker involved in the sale or supply of age-restricted goods or services. Although the aggravation approach was not the most popular with consultees, Daniel

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Johnson decided that it would be a more effective and proportionate means of achieving his policy objective than the creation of a separate offence.

80. The member also considered other approaches which have been taken or could be taken to improve the protection of workers.

81. The Crown Prosecution Service, the Police and the NHS in England have signed a Joint Working Agreement designed to reduce violence and antisocial behaviour affecting NHS workers in England.³⁹ A similar voluntary scheme could have been used for workers in the retail sector, or hospitality. Due to the myriad employers involved, however, this would be unlikely to cover every worker affected by violence or abuse.

82. There could be stronger enforcement of existing common law, as it refers to these workers. The member was of the view that incidences of assault might be under-reported due to both an acceptance of the culture of aggression, and lack of faith in the police and criminal justice system to deal effectively with cases. Any improvement in police and the COPFS response to these crimes would be welcome.

83. The member was of the view that the impact of these other measures was not adequate to satisfy the aims of the proposal. For this reason, and in order to keep its provisions as simple and easy to understand as possible, he decided on the creation of a single new statutory offence of assaulting, threatening or abusing, or obstructing or hindering, a retail worker. The offence is aggravated if 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 services.

³⁹ Crown Prosecution Service, Tackling violence and antisocial behaviour in the NHS (Crown Prosecution Service, 2011)
https://www.cps.gov.uk/sites/default/files/documents/publications/joint_working_agreement.pdf

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Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

84. The scale and diversity of the retail sector means that retail workers transcend demographic boundaries. However, violence and abuse does appear to affect some groups with protected characteristics disproportionately. The Bill may help safeguard these people in particular.

85. People from ethnic minorities can be subject to attacks or abuse based on their race. Scottish Government statistics show, for example, that in 2017-18, 4,419 racist incidents were recorded by the police in Scotland.⁴⁰ Further evidence of racial abuse in the retail sector is highlighted in a survey conducted by Under Age Sales on the selling of age-restricted goods and services. The survey found that 56% of Asian or Asian British workers in the UK reported abuse at least once a month, compared to 31% of White workers. Additionally, 30% of Asian or Asian British workers in the UK reported being subjected to racial abuse, and 10% reported being physically attacked at least once a month as a result of challenging customers for proof of identity.⁴¹

⁴⁰ Developing Information on Hate Crime Recorded by the Police in Scotland (The Scottish Government 2019)
<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/02/developing-information-hate-crime-recorded-police-scotland/documents/developing-information-hate-crime-recorded-police-scotland/developing-information-hate-crime-recorded-police-scotland/govscot%3Adocument>

⁴¹ Allen, T. & Rudkin, E., An analysis of abuse and violence towards retail staff when challenging customers for ID (Under Age Sales, 2017), p. 12
<https://www.underagesales.co.uk/user/Abuse%20and%20Violence%20Report%202.pdf>

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86. Women are more likely to work in the retail sector (62.2% of retail workers) than men.⁴² However, men are more likely to experience problems as a result of challenging customers for proof of identity: in the UK, 42% of male workers compared with 32% of female workers reported being threatened or abused at least once a month, and men were also more likely than women to be physically attacked or racially abused.⁴³

Human rights

87. The Bill should have no adverse impact on human rights. The Bill aims to enhance the rights of retail workers, by providing them with more effective protection, under the criminal law, against behaviours that would infringe their rights.

Island communities

88. The Bill should have no differential impact on island communities.

Local government

89. It is not anticipated that the Bill will have any significant impact on local authorities.

Sustainable development

90. There are various principles in the UK Shared Framework for Sustainable Development adopted by the Scottish Government in 2005 which are of relevance to the Bill, primarily “Ensuring a Strong, Healthy and Just Society – meeting the diverse needs of all people in existing and future

⁴² The Scottish Government, Assessing the contribution of retailing in Scotland, (The Scottish Government, 2011) p.16
<http://www.gov.scot/resource/doc/346672/0115337.pdf>

⁴³ Allen, T. & Rudkin, E., An analysis of abuse and violence towards retail staff when challenging customers for ID (Under Age Sales, 2017), pp. 12, 15 and 18
<https://www.underagesales.co.uk/user/Abuse%20and%20Violence%20Report%202.pdf>

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communities, promoting well-being, social cohesion and creating equal opportunity for all”.

91. Whilst current common and statute law applies to all in the context of assault, it is hoped that creation of the new offence will have the potential to have a deterrent effect and the levels of assault and threatening or abusive behaviour may be reduced as a result of the Bill. With a possible reduction in the number of incidents of such behaviour, workers should be able to work in a safer environment, where they are less likely to be, or fear of being, assaulted or abused, improving their wellbeing. A reduction in incidents of assault and abuse might also mean that customers will also benefit from a calmer, safer environment.

92. Workers may have to be absent from work due to physical harm inflicted and personal distress suffered, and the loss of working days could have a detrimental impact on their livelihoods – for example, by decreasing their likelihood of taking up promotion opportunities. A loss of working days could also have a negative effect on the wider economy.

93. Further to this, if, as a consequence of the Bill, workers are better able to perform their age-verification duties, there could be a positive impact on the community in the form of a reduction in the number of minors who are able to buy age-restricted goods and services, leading to a consequent reduction in associated social harms.

94. It can be argued also that the Bill will help to achieve a more sustainable economy. Individuals who are subject to abuse may choose to leave their job to avoid further abusive situations or be forced to take time off from work due to physical harm inflicted or emotional distress suffered with this loss of working days having a detrimental effect on their income. By providing added protections to workers and raising awareness of the problem, one outcome could be that as these individuals suffer less abuse, they will feel that they can remain employed in the retail industry or need to take less time off. This will both benefit the retail workers as well as the businesses who will feel a reduction in staff costs to cover absences as well as recruitment costs which would have a positive effect on the overall performance of retail businesses.

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95. Similarly, the UN Sustainable Development Goals⁴⁴ contain a number of goals and targets which are of relevance to the Bill:

- Decent work for all and protection of labour rights and the promotion of secure working environments for all workers;
- Ensuring healthy lives and promotion of wellbeing for all – which should also apply to the working environment.

⁴⁴ <https://sustainabledevelopment.un.org/post2015/transformingourworld>

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Annex a

The following table provides a summary of age-restricted goods and services, the statute or statutory instrument that covers this.⁴⁵

Product/Service	Statute (or other source of law)
Aerosol spray paint	Antisocial Behaviour etc. (Scotland) Act 2004 ⁴⁶
Air weapons and imitation firearms	The Firearms Act 1968 ⁴⁷ Violent Crime Reduction Act 2006 ⁴⁸
Alcohol	Licensing (Scotland) Act 2005 ⁴⁹
Butane lighter refills	Cigarette Lighter Refill (Safety) Regulations 1999 ⁵⁰
Crossbows	Crossbows Act 1987 ⁵¹
Caps, cracker snaps, party poppers etc.	Explosives Act 1875 ⁵²
Firearms	The Firearms Act 1968 ⁵³

⁴⁵ Based in part on Better Regulation Delivery Office, Age Restricted Products and Services: A Code of Practice for Regulatory Delivery, (Department for Business Innovation & Skills, 2014) p. 30-31
<https://www.underagesales.co.uk/user/Age%20Restricted%20Sales%20Code%20of%20Practice.pdf>

⁴⁶ Antisocial Behaviour etc. (Scotland) Act 2004, section 122,
<http://www.legislation.gov.uk/asp/2004/8/section/122>

⁴⁷ The Firearms Act 1968, section 22 – 24
<https://www.legislation.gov.uk/ukpga/1968/27/section/22>

⁴⁸ Violent Crime Reduction Act 2006, section 33
<https://www.legislation.gov.uk/ukpga/2006/38/section/33>

⁴⁹ Licensing (Scotland) Act 2005: section 102 – 110
<https://www.legislation.gov.uk/asp/2005/16/section/102>

⁵⁰ Cigarette Lighter Refill (Safety) Regulations 1999
<http://www.legislation.gov.uk/uksi/1999/1844/contents/made>

⁵¹ Crossbows Act 1987, section 2
<https://www.legislation.gov.uk/ukpga/1987/32>

⁵² Explosives Act 1875, section 31
<http://www.legislation.gov.uk/ukpga/Vict/38-39/17/section/31>

⁵³ The Firearms Act, section 22 – 24
<https://www.legislation.gov.uk/ukpga/1968/27/section/22>

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Product/Service	Statute (or other source of law)
Fireworks	Fireworks (Safety) Regulations 1997 ⁵⁴ Explosives Act 1875 ⁵⁵ Pyrotechnic Articles (Safety) Regulations 2010 ⁵⁶
Gambling	Gambling Act 2005 ⁵⁷
Knives and articles with a blade or point	Criminal Justice Act 1988 ⁵⁸
Liqueur confectionery	Licensing (Scotland) Act 2005 ⁵⁹
National lottery tickets	National Lottery etc Act 1993 ⁶⁰ National Lottery Regulations 1994 ⁶¹
Petrol	Petroleum (Consolidation) Regulations 2014 ⁶²
Pets	Animal Health and Welfare (Scotland) Act 2006 ⁶³

⁵⁴ Fireworks (Safety) Regulations 1997, section 6

<http://www.legislation.gov.uk/uksi/1997/2294/contents/made> s

⁵⁵ Explosives Act 1875, section 31

<http://www.legislation.gov.uk/ukpga/Vict/38-39/17/section/31>

⁵⁶ The Pyrotechnic Articles (Safety) Regulations 2010: section 15; section 33 – 34 <https://www.legislation.gov.uk/uksi/2010/1554/regulation/33/made>

⁵⁷ The Gambling Act 2005, section 46 – 50

<https://www.legislation.gov.uk/ukpga/2005/19/section/46>

⁵⁸ Criminal Justice Act 1988, section 141A

<https://www.legislation.gov.uk/ukpga/1988/33/section/141A>

⁵⁹ Licensing (Scotland) Act 2005, section 104

<http://www.legislation.gov.uk/asp/2005/16/section/104>

⁶⁰ National Lottery etc Act 1993, section 12

<https://www.legislation.gov.uk/ukpga/1993/39/section/12>

⁶¹ National Lottery Regulations 1994, section 3

<http://www.legislation.gov.uk/uksi/1994/189/regulation/3/made>

⁶² The Petroleum (Consolidation) Regulations 2014, section 12

<https://www.legislation.gov.uk/uksi/2014/1637/regulation/12/made>

⁶³ Animal Health and Welfare (Scotland) Act 2006, section 30

<https://www.legislation.gov.uk/asp/2006/11/section/30>

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Product/Service	Statute (or other source of law)
Solvents	Cigarette Lighter Refill (Safety) Regulations 1999 ⁶⁴
Sunbeds	Public Health etc. (Scotland) Act 2008 ⁶⁵
Tattooing and Piercing	Tattooing of Minors Act 1969 ⁶⁶ Licensing of Skin Piercing and Tattooing Order 2006 ⁶⁷
Teeth whitening	Cosmetic Products (Safety) (Amendment) Regulations 2012 ⁶⁸
Tobacco products, Nicotine Vapour Products	Tobacco and Primary Medical Service (Scotland) Act 2010 ⁶⁹ Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 ⁷⁰

⁶⁴ The Cigarette Lighter Refill (Safety) Regulations 1999:
<http://www.legislation.gov.uk/uksi/1999/1844/contents/made>

⁶⁵ Public Health etc. (Scotland) Act 2008, section 95 – 96
<https://www.legislation.gov.uk/asp/2008/5/section/95>

⁶⁶ Tattooing of Minors Act 1969, section 1
<http://www.legislation.gov.uk/ukpga/1969/24/section/1>

⁶⁷ Civic Government (Scotland) Act 1982, (Licensing of Skin Piercing and Tattooing) Order 2006, Schedules
<http://www.legislation.gov.uk/ssi/2006/43/contents/made>

⁶⁸ Cosmetic Products (Safety) (Amendment) Regulations 2012, Schedules
<http://www.legislation.gov.uk/uksi/2012/2263/made>

⁶⁹ Tobacco and Primary Medical Service (Scotland) Act 2010, section 4 – 6A
<https://www.legislation.gov.uk/asp/2010/3/section/4>

⁷⁰ Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, sections 2-7
<http://www.legislation.gov.uk/asp/2016/14/section/2/enacted>

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