



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Economy, Energy and Fair Work Committee

**Wednesday 6 May 2020**

**Session 5**



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**ECONOMY, ENERGY AND FAIR WORK COMMITTEE**

**11<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*Michelle Ballantyne (South Scotland) (Con)

**DEPUTY CONVENER**

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

**COMMITTEE MEMBERS**

\*Colin Beattie (Midlothian North and Musselburgh) (SNP)

\*Rhoda Grant (Highlands and Islands) (Lab)

\*Alison Harris (Central Scotland) (Con)

\*Dean Lockhart (Mid Scotland and Fife) (Con)

\*Richard Lyle (Uddingston and Bellshill) (SNP)

\*Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Ash Denham (Minister for Community Safety)

Daniel Johnson (Edinburgh Southern) (Lab)

Philip Lamont (Scottish Government)

**CLERK TO THE COMMITTEE**

Alison Walker

**LOCATION**

Virtual Meeting



**Scottish Parliament**  
**Economy, Energy and Fair Work**  
**Committee**

*Wednesday 6 May 2020*

*[The Convener opened the meeting at 09:36]*

**Decision on Taking Business in**  
**Private**

**The Convener (Michelle Ballantyne):** Good morning. I welcome members, the minister, her official and those joining us online to the 11th meeting in 2020 of the Economy, Energy and Fair Work Committee. This is the first meeting that the committee has conducted remotely, and I thank the broadcasting team and all the committee clerks for making it possible.

I welcome Rhoda Grant as a new member, and I officially thank Jackie Baillie, the outgoing member, for her work on the committee. I wish her all the best in her new role.

This morning, we will consider the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill, which is a member's bill from Daniel Johnson. Daniel is joining us and will be able to ask questions at the end of our evidence-taking session.

The first item on the agenda is a decision on taking business in private. The committee is asked to take item 3 on today's agenda in private. The committee is also asked to agree that consideration of its protected trust deeds inquiry report, its stage 1 report on the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill and its work programme be taken in private at future meetings.

Given the complexities of a group discussion by videoconference, I will assume that everyone agrees unless they say otherwise. No objections have been raised, so the committee agrees to take that business in private.

**Protection of Workers (Retail and**  
**Age-restricted Goods and**  
**Services) (Scotland) Bill: Stage 1**

09:37

**The Convener:** Agenda item 2 is our main item of business, and is a continuation of our evidence taking on the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill. We previously took evidence on the bill on 3 March. I am pleased to welcome our witnesses, Ash Denham, the Minister for Community Safety, and her adviser, Philip Lamont, head of the criminal law, practice and licensing unit in the Scottish Government's criminal justice division. I invite the minister to make a short opening statement.

**The Minister for Community Safety (Ash Denham):** Good morning.

I start by recognising the key role that retail workers play in local communities and in the Scottish economy. During the coronavirus outbreak, the contribution that they are making has only been emphasised to us all as the retail trade helps communities across Scotland to get through these challenging times. It is right that retail workers should be protected by our criminal laws.

The committee has heard evidence on a range of criminal conduct that retail workers can be exposed to, which can involve verbal abuse, threatening and abusive behaviour and physical attacks, including spitting. Clearly, such conduct is completely unacceptable, and perpetrators should be held to account.

A wide range of existing criminal laws is in place. Examples include the offence of threatening or abusive behaviour and the offence of assault. Those existing laws give courts discretion to impose maximum penalties far in excess of those that are proposed in the bill.

Of course, legislation needs to have a practical effect. Daniel Johnson's bill is very well intentioned. However, the new offence contained in the bill largely restates existing, more general offences, but with lower penalties. The Scottish Government's view is that, where the new offence seeks to extend the law, it does so in a way that sets too low a threshold for criminality in respect of the new hindering and obstructing offences.

Obviously, enforcement of the law is for Police Scotland, the Crown Office and, ultimately, the criminal courts. As Police Scotland said in its evidence on 3 March, the bill would not change the enforcement of the law in respect of threats

against and abuse of retail workers, as Police Scotland already takes those issues seriously.

More can always be done to ensure that measures are in place to encourage the reporting of violence against and abuse of retail workers so that a clear message is sent to perpetrators that such conduct is wrong. However, creating new laws that replicate existing laws, or extending the law in a way that lowers the threshold for criminality to hindering or obstructing a retail worker, does not seem to be the answer to helping to keep retail workers safe.

However, I will follow all the evidence to the committee with interest, and I will, of course, reflect carefully on the committee's report when it is produced.

**The Convener:** Thank you, minister.

I move on to questions from members. I will invite each member to ask their question and then I will go to the minister. I will come back to each member for follow-up questions or points of clarification. Once each member has asked all their questions, I will move on to the next member, until every member has had the opportunity to speak. I will take supplementary questions from any member if they are points of clarification or if they drill down on a specific point. We have gone over how to do that.

I ask everyone to keep questions and answers succinct and to give broadcasting staff a few seconds to operate your microphone before you begin to ask a question or provide an answer.

We will start with Alison Harris.

**Alison Harris (Central Scotland) (Con):** Good morning, minister. Representatives of retail workers and businesses have presented evidence that points to a serious problem of abuse. Does the Scottish Government agree with that evidence?

**Ash Denham:** Clearly, there are instances of abuse, and any attack on a retail worker is unacceptable, as are threats of abuse towards retail workers. Members will be aware that there are no official national statistics on offences against retail workers. The victim's occupation is not recorded in offences of assault or of threatening or abusive behaviour.

I am sure that the committee is aware of surveys that have been carried out by trade unions that give a sense of the scale of incidents in the retail trade. A detailed survey completed by the Union of Shop, Distributive and Allied Workers—USDAW—of those in retail who have suffered violence and threats paints a picture of trends that have, I would say, fluctuated over recent years. There does not seem to be a clear overall trend.

We would all recognise that Scotland is a much safer place than it was about a decade ago. The Scottish Government is committed to investing in funding for violence-prevention initiatives. However, we are not at all complacent, even though some of those initiatives have been very successful—I am sure that the committee is aware of initiatives such as the Scottish Violence Reduction Unit and others. We are carrying on with investments in such projects. Other initiatives that the committee may be aware of include No Knives, Better Lives, Mentors in Violence Prevention and the navigators programme. Those programmes are extremely important, and the Government will continue to invest in them.

We are all clear that retail workers are entitled to be able to carry out their work free from any type of abuse. When they experience abuse, they should report that to the police; there is protection available to them under existing laws.

09:45

**Alison Harris:** I have a question on the enforcement of existing offences. There is a perception that the justice system does not take the abuse of retail workers seriously, that the reporting of incidents does not lead to prompt police action and that cases are not prosecuted or, if they are prosecuted, they result in light sentences. We have received conflicting evidence on that subject. Will you comment on that, please?

**Ash Denham:** I would concur that this is a serious matter, and I think that all the justice partners would agree that they take it seriously. The committee will understand that these are operational matters that are clearly for Police Scotland, the Crown Office and the judiciary, and I will not pass specific comment on how those organisations use their independent powers. However, I listened carefully to the evidence that was given to the committee on the subject, and I think that it is fair to say that there was a difference between the views that were expressed by Police Scotland on the one hand and those expressed by the representatives of the retail trade on the other. I reiterate that Police Scotland said in its evidence—I am paraphrasing—that it treats the matter as a priority.

With all crimes, there are often different perceptions of the response of different organisations in the justice system. Of course, there will always be individual incidents where the expressed policy of Police Scotland is, unfortunately, not delivered. However, the police were clear that they prioritise violent incidents and antisocial behaviour, and that certainly includes incidents where retail workers are the victims.

The Crown Office, which is responsible for prosecuting cases, said in its evidence that, when cases are reported to it that are criminal, it takes them “very seriously”. Once cases reach court, sentencing is a matter for the independent court. I am not aware of any specific evidence that shows that sentencing is not operating effectively, but I am sure that the Scottish Sentencing Council would be happy to consider any further evidence that the committee has in that area.

**Alison Harris:** Thank you, minister.

**The Deputy Convener (Willie Coffey):** I think that we may have lost the connection with the convener for a moment. I invite Richard Lyle, who is next on our list, to ask his questions.

**Richard Lyle (Uddingston and Bellshill) (SNP):** I begin by declaring that I am a member of the cross-party group on independent convenience stores and that one of my first jobs was as a grocery manager.

Is it reasonable to argue that passing the bill would help to send a clear message that the abusive behaviour that it deals with will not be tolerated?

**Ash Denham:** The challenge for the committee is to consider whether the sending of a message is an appropriate primary function of changes to the criminal law. In assessing that, I invite the committee to recall the evidence that Police Scotland gave to the committee in March. The witness from Police Scotland said that, if the bill was passed,

“there would be no significant change in how we go about our business.”—[*Official Report, Economy, Energy and Fair Work Committee*, 3 March 2020; c 7.]

The Scottish Government’s view is that, obviously, legislation needs to have practical effect for it to be progressed, and, if that practical effect is accompanied by the sending of a message, that is a secondary benefit. I am sure that the committee will look in detail at all the proposals in the bill and assess whether they would add value to the operation of the criminal law.

The policy memorandum says that the benefits of the bill would include

“increased awareness of the issues”

and an increase in reporting to police. Both those things would be extremely beneficial, but it is for the committee to reflect on whether the right way to achieve those benefits is to change the law. That is the question that you need to grapple with.

**Richard Lyle:** Grocery workers, like national health service workers, are on the front line. Having been a grocery manager, I pay tribute to them for what they are doing. During the current coronavirus pandemic, many retail workers are

doing vital work in difficult—sometimes very difficult—circumstances. Given their front-line role, will the Scottish Government reconsider its position on the bill? If not, what does the Government propose?

**Ash Denham:** That is a really good point. Retail workers are carrying out an important service for us all at this time, and they are key workers—I am acutely aware of that. Every time that I venture out to the supermarket, I see people sitting cheerfully on the checkout who know that they are probably putting themselves at risk to make sure that we all have the services that we need.

The Scottish Government is clear that the full force of the law can be used against anybody who assaults, threatens or abuses a retail worker. That is true today during the coronavirus outbreak, and it was true last week, in January and last year as well.

The outbreak has emphasised the valuable role that retail workers play and the fact that they are key workers. They are helping communities right across Scotland as we all try to get through this difficult time. My view is that the existing criminal law can and should be used to deal with attacks on retail workers. Our justice partners, such as Police Scotland, have confirmed that they treat such attacks as a priority.

**Andy Wightman (Lothian) (Green):** If you had drafted the Government’s memorandum on the bill this week rather than a month ago, would you have made any changes to it?

**Ash Denham:** No. As I said in my answer to Richard Lyle, we are all realising—if we did not already realise it—how important retail workers are. They are key workers and they are helping us by going to work and keeping going to get us all through this difficult time.

**Andy Wightman:** Paragraph 20 in your memorandum on the bill talks about situations involving a customer reacting in a threatening or abusive way in response to being required to provide age verification. It goes on to talk about food standards and situations in which an authorised officer is obstructed from doing their important regulatory work. The memorandum says that it is important that those officers have protections, because they need to keep the public safe. Do you accept that one thing that the past eight weeks has shown us is that retail workers are responsible for keeping the public safe, too, and, indeed, are expected to police regulations that are made by your Government and passed by the Parliament in relation to things such as physical distancing?

**Ash Denham:** Yes. Clearly, when retail workers are checking people’s ages in relation to the sale of age-restricted products, that can be a trigger for

abuse—we all agree that that is the case. Therefore, such workers require the protection of the law, and that is provided under the existing law. Offences concerning assault, threatening or abusive behaviour and breach of the peace provide that protection.

I refer the committee to the evidence that was given by Police Scotland. One of the key age-restricted products is alcohol, in relation to which powers exist under the Licensing (Scotland) Act 2005. If somebody refuses to leave premises where alcohol is sold, a police officer has the power to ask the person to leave. If they do not leave, they are committing an offence and can be removed by force. Obviously, a police officer has to turn up in order for that type of enforcement to be carried out, but there is protection in the law to deal with such a situation.

From the evidence, I can say that there is an issue with the culture that exists. As we have just discussed, the work of retail workers is important during this time of crisis, as well as in normal times, with regard to public health and the sale of age-restricted products and so on. We need to get across the message that abusive behaviour that is directed at retail workers when they are carrying out their work is completely unacceptable and should be reported so that our justice partners can take action.

**Andy Wightman:** I was talking specifically about the obstructing and hindering issue and the comparison that your memorandum makes with public hygiene officers. I wanted to know whether you think that the act of obstructing and hindering—not the act of assault or abuse—is just as relevant to retail workers enforcing the law in relation to physical distancing as it is to such officers. However, given the pressures of time, I will leave that line of questioning there, although you can come back to it if you like.

Is the Scottish Government's objection to the bill fundamental, or can you see any scope for the bill to be amended at stage 2 in a way that results in a bill that provides additional useful and proportionate changes in the law to protect retail workers?

**Ash Denham:** It is interesting that you used the word "proportionate".

On your point about obstructing and hindering, there is a question for the committee about whether including an offence of obstructing and hindering places the criminal bar too low given the type of activity that would be captured by the provision. That is something for the committee to reflect on.

The Government cannot support the bill in its current format. I would be happy to work with Daniel Johnson and to have conversations about

what could be done about it. I think that he will give evidence to the committee next week, and I will watch that session with great interest to hear the evidence that he puts forward and to learn what he has to say about the shape that the bill is in now.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** From your opening remarks, it was clear that you feel that the proposals in the bill duplicate, or in some cases reduce, the impact of existing legislation. We all accept that retail workers face problematic behaviour. Based on the evidence that has been given so far, do you think there is any aspect of that behaviour that is not covered by current criminal laws?

10:00

**Ash Denham:** That is a key question. Some of the evidence that the committee took points to the view that there is not necessarily a gap in the legislation. Rather, the committee heard issues about raising awareness, the reluctance to report issues to the police and enforcement. In strict legal terms, I do not think that there is a gap in the law, and the proposals in the bill largely replicate existing criminal provision, except for, as the committee is aware, the hindering and obstruction part, which we have discussed in answering a previous question.

**Colin Beattie:** Within that, an area that I have a lot of sympathy for is that of retail workers enforcing the laws on sales of age-restricted goods. Those workers are seeking to uphold the law in the wider public interest. Do they deserve additional protection for that? From the evidence that has been given, that seems like a key area where problems arise—not uniquely, but mostly. Can something perhaps be done to strengthen the powers there?

**Ash Denham:** Currently, when a case progresses to court in which someone has been a victim of criminality as a result of going about their work, the judge will take that into account. However, it might be worth considering the idea of some type of aggravator that would capture the behaviour that you are talking about. That 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. I would be interested to hear the committee's views on that. I wonder whether that could be considered.

**Colin Beattie:** Would you consider dealing with that through the bill?

**Ash Denham:** That is a good question. I would not want to commit right now to saying exactly how that could be progressed. As I said, I will



listen to what Daniel Johnson says when he gives evidence next week, and I will certainly be open to working with him on the issue. If the committee thinks that it is important for us to consider the issue, I put on record that the Government would be open to looking at the suggestion.

**Colin Beattie:** That is helpful.

My final question concerns the issue of obstructing and hindering. Obviously, there have been concerns about the interpretation of that provision. From the evidence that I have heard, I have gained the impression that many of the issues in that regard concern sales of age-restricted goods—perhaps not uniquely, but a lot of them. How practical would it be to incorporate into the discussions on age-related restrictions on sales some sort of provision that covers obstruction and hindrance? I am using the words that are used in the bill, although perhaps they are not the right terms. I am talking about situations in which a worker is prevented from doing their duty as a result of trying to enforce the law.

**Ash Denham:** There are a couple of issues there. Clearly, different types of conduct are involved. For example, currently, if someone is standing in the door of a shop, shouting abuse at a shop worker, preventing them from coming in or out of the shop and being threatening or abusive, that—not the obstructing part, but the threatening and abusive part—is already covered under the offence of threatening and abusive behaviour. Criminal protections are already in place to cover that type of conduct. However, if someone is standing in the doorway and is, in a non-aggressive way, obstructing or hindering the work of a retail worker and their comings and goings, the law does not currently cover that. It is up to the committee to decide whether that should merit a criminal sanction.

Other examples that would come under the banner of hindering or obstructing could be someone switching off an electronic till, or someone debating extensively with a retail worker—maybe about a refund—and refusing to move to allow the worker to get on with serving the next customer. Those examples are not currently covered by criminal law, and it is up to the committee to consider whether they should be.

It seems to me that criminalising such behaviour would be a low bar to set. If we are talking about age-restricted products in particular, we might capture more children by reducing the threshold to hindering and obstructing. It is up to the committee to think about whether that is appropriate, but I think that capturing children in the criminal justice system might not be appropriate.

**The Convener:** My apologies, committee—there were a few technical difficulties and I lost

you all for a while. We will move on to Rhoda Grant.

**Rhoda Grant (Highlands and Islands) (Lab):** I cannot help but wonder whether, had this law been in place, the abuse that retail workers have been getting when they are putting in place Covid-19-related restrictions would not have happened, because we would all know that it was unacceptable to do that. If the Scottish Government cannot support the bill, what will it do to protect retail workers when they are carrying out duties that it has imposed?

**Ash Denham:** We need to get out the message that it is not acceptable to abuse retail workers when they are carrying out their job—if anything, the current situation underlines that.

Over the past few weeks, I have spoken to a couple of retail workers. When I thanked one of them for what they are doing, she said, “Oh, it’s so nice to be thanked. A lot of the other customers are being really quite unpleasant.” I think that that is a reflection of how stressed people are—and they are taking it out on completely the wrong people. We need to get out the message that such behaviour is not acceptable.

I return to my earlier point that, although legislation can change perceptions and the culture, if we are trying to raise awareness about the complete unacceptability of that behaviour, is legislation the best way to do that, or is there another way? Maybe there could be a public awareness campaign on a zero-tolerance approach to abusing retail workers, which could utilise the existing criminal provision. Perhaps that would be a way to progress the matter.

**Rhoda Grant:** I believe that retail workers need enhanced protection. We have seen them take abuse as they work on the front line during the epidemic. They are putting their own health in danger to serve the public. We need to protect them properly and not just through the normal criminal law.

Police Scotland’s written evidence states:

“Having an improved understanding of the extent and the circumstances in which these crimes or offences have been committed will better facilitate the monitoring of trends and allow the identification of emerging threats to ensure early intervention and effective harm prevention activity can be undertaken across the retail arena.”

Is the Scottish Government looking at ways to collect data? To return to the current situation, one could have foreseen that retail workers, when they were stopping panic buying and enforcing distancing measures, would get a fair amount of abuse, because they are not subject to any enhanced protection under the law.

**Ash Denham:** Yes, we have seen that. That is quite right. I explained in a previous answer that we do not have the data. 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.

Philip Lamont might be able to give members a little more detail about the types of data that we collect. That might be helpful.

**Philip Lamont (Scottish Government):** As the minister has explained, if someone has committed an assault or their behaviour has been threatening or abusive, the victim's occupation is not currently recorded in the general criminal justice data. That could be considered. It would be for the justice agencies—all those involved in the collection of data across the criminal justice system—to decide how best that could be progressed. The Scottish Government would certainly be happy to consider that.

To pick up on what the minister said earlier about potentially considering a more general statutory aggravation in relation to offences that have been committed against retail workers, one of the benefits of that would be the improvement of record keeping. One of the reasons—it is not the only reason—why we have statutory aggravations across the criminal justice system is to improve the recording of data in certain areas. That is why we have a statutory aggravation in relation to domestic abuse, for example; it allows better data to be recorded and kept. There might therefore be lessons to be learned from other areas on the recording of data if the committee and Daniel Johnson wanted to consider further a more general aggravation.

**Rhoda Grant:** So you are saying that none of the abuse towards retail workers, especially in the current crisis, is currently being monitored or collected in any way.

**Philip Lamont:** It is being monitored in the sense that, whenever an offence has been committed, the police are called out. If the incident was in a retail premises, the police will deal with it and do what they need to do to gather evidence. However, because an assault of a retail worker or a threat made against them is, as with any other occupation, dealt with under the general criminal law, the victim's occupation is not recorded under the current recording standards that are used.

**Rhoda Grant:** I think that the bill would be one way of protecting retail workers now and going forward as they carry out the work that is imposed

on them by the Government, and I hope that the Government will take that on board.

**The Convener:** Thank you, Rhoda. I hope that the Scottish Government is listening to what is being said today.

We will now move to Willie Coffey. I thank him for stepping in every time I disappear.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** It is a pleasure, convener.

I want to tease out a little more the issue of obstructing and hindering, which seems to be at the core of the Government's concerns about the bill. Paragraph 29 of the Scottish Government's memorandum to the committee states:

"if the obstruction or hindering was carried out in a threatening or abusive way or ... amounted to an assault or breach of the peace, then the existing criminal law already criminalises such conduct."

Is that a correct interpretation of what the Government is saying?

**Ash Denham:** Yes—that is right. I gave examples earlier. If the obstruction, hindering, getting in a person's way or refusing to move has a threatening or abusive element, that is already covered under the existing criminal provisions.

**Willie Coffey:** Penalties for such offences are already allowed in the criminal law; in fact, those penalties are in excess of the penalties that are proposed in the bill. Does that mean that, if we passed the bill unaltered, we would impose lighter sentences than we already can?

10:15

**Ash Denham:** The proposals in the bill for sentencing are less stringent than the existing legislation, but existing provisions would still remain and the prosecution would be able to use those. If the offence was very serious, I am sure that the prosecution would continue to use those provisions in the event that the bill was passed. I will ask Philip Lamont to give you an overview of how the existing provisions work and how the provisions in the bill differ from them.

**Philip Lamont:** If the bill was passed, in the case of an incident such as an assault on a retail worker, the Crown Office, which decides whether to take forward a prosecution, would have to decide which offence to libel in the prosecution. It would look at what the eventual sentence might be. If there is an incident of threatening or abusive behaviour against a retail worker that the Crown Office thinks is particularly serious, it will most likely libel the general threatening or abusive behaviour offence that exists already, because that carries a maximum sentence of up to five years. The offence in this bill has a maximum

penalty of 12 months. In essence, even if the bill was passed in its current form, more serious incidents of assault, threats or abuse would still be prosecuted under existing laws.

**Willie Coffey:** Minister, in your opening remarks, you mentioned that there might be a case for encouraging more reporting. You also talked about potential aggravation. Might that be a way forward for Daniel Johnson to improve his bill at stage 2 and beyond?

**Ash Denham:** I am sorry Willie, but could you repeat the question? You were breaking up there and I could not quite hear what you were saying.

**Willie Coffey:** I was just asking for the Government's view on how we can better protect workers and retail workers, especially when there are so many respondents who seem to be supportive of the principles of the bill. You mentioned encouraging the reporting of this type of offence and you also talked about having an aggravation. Would that be the way forward at stage 2 and beyond?

**Ash Denham:** Yes. More can always be done and retail workers clearly face problematic behaviour, some of which is covered by existing criminal provisions and some of which is not. A lot of it is undoubtedly very irritating and makes it frustrating when people who are just trying to do their work are facing this type of behaviour.

Awareness raising is key, but I have covered that in detail already. I also believe that employers have a role to play. When staff are being obstructed or hindered and, in the worst cases, attacked or abused, employers have a role to play in keeping their personnel safe and in encouraging reporting. That is really important. They need to encourage reporting so that cases can be passed on to the justice agencies and progressed from there. That, in itself, sends a message. If behaviour escalates and becomes aggressive, the existing laws should be used.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** I just want to pick up on some of the points that you raised about a public awareness campaign. The Law Society told us in evidence that people need to be empowered to know that what they are suffering is criminal, and the Union of Shop, Distributive and Allied Workers said that the public also needs to be educated. If a public awareness campaign is the way forward, who would it be aimed at?

**Ash Denham:** You have raised some really good points. It came out loud and clear to me during evidence that retail workers need to know whether something that is happening to them is problematic and may even be criminal. The level of understanding is probably not what it should be. A campaign to raise the level of awareness would

be useful. Members of the public need to know very clearly that threatening or abusing retail staff is a criminal offence and that they will be held to account for it—you have touched on that point. Raising awareness in this area would also be useful and I think that the Government would definitely consider it.

**Gordon MacDonald:** There are two aspects to food retailing: the small, independent family-run businesses and the chains—I will not mention names, but we know that large supermarket operators are moving into the convenience store market. How can we differentiate between the two? The first group needs protection; the second is large organisations, whose local management, as you have rightly said, might not want to deal with a problem in a store. They want to get the customer out of the door as quickly as possible rather than cause a fuss. We are dealing with two clear groups, so how would we focus on getting the information across to staff and customers in two entirely different settings?

**Ash Denham:** You are right to point out that there are different settings, which have different opportunities and challenges. We need to make sure that larger stores have a culture of reporting. It is important that incidents do not go unreported because such an approach is quicker or easier. That message needs to be got out there.

It is too early for me to say exactly how the Government would do an awareness campaign. The strands would all need to go together, and we would need to discuss them with stakeholders and the public to make sure that we develop something that would be as useful and impactful as possible. I will certainly reflect on the issue.

**Gordon MacDonald:** Thank you, minister. I probably should have mentioned that I am the convener of the cross-party group on independent convenience stores.

**Dean Lockhart (Mid Scotland and Fife) (Con):** Good morning, minister. I will go back to the issue of data and reporting. The committee heard evidence from the Scottish Grocers Federation that the reported number of assaults and attacks on retail workers is just a fraction of what actually happens. Many workers are subject to abuse and attack almost daily. Is that a situation that the minister recognises? Does it increase the need for specific laws and protections in this area?

**Ash Denham:** There is undoubtedly underreporting in this area. As I have said, once something is reported and progressed into the criminal justice system, we are not able to disaggregate by occupation. The point about the absence of data on which to base policy is coming across strongly from the committee, and I will take that issue away and reflect on it further.

**Dean Lockhart:** Thank you very much. I will also go back to the legal analysis. I think that the committee recognises that, from a strict legal perspective, the concerns that are covered by the bill might be largely covered by existing laws. As we considered earlier, legislation often sends a message about the priority of public policy and can change culture.

You mentioned earlier that you think that there will have to be a culture change in this area. Given the role of retail workers on the front line of the Covid-19 crisis, the committee's view is that, although existing legislation might cover the issue from a legal perspective, there is value from a public policy perspective in sending a message to the public that the issue is a policy priority. That might bring about the culture change that you mentioned. Do you see the merits of that secondary aspect of the legislation?

**Ash Denham:** I see that, and I take it on board. There are definitely instances in which legislation has completely turned our culture around. I am sure that members have their own memories of specific laws. As I remember it, the legislation on seat belts and on smoking changed the way we did things. In those areas, the culture was completely changed by introducing legislation.

Perhaps the committee would agree, however, that we are not in exactly the same situation with this bill. In the examples that I mentioned, there was a gap between the law and the policy intention, and the law was changed in order to match that intention. Many of the proposed elements of this bill are already covered by provisions in existing criminal legislation, so there is not a gap in the law per se. However, I very much take on board the committee's interest in doing something about the issue.

I said this earlier, but it bears repeating. The primary benefit that we are looking to get from the bill is a raised awareness that it is unacceptable to attack shop workers, and that there is zero tolerance for such incidents and they should be reported and taken forward. However, is that the primary function of legislation? I will leave the committee with that thought.

As I mentioned earlier, some type of aggravator could potentially be a way forward—it would send a message, but it would not replicate existing provisions. I would be very interested to hear the committee's views on that.

**Dean Lockhart:** That is very helpful, minister.

**The Convener:** Before we move to the next committee member, I want to ask the minister a couple of questions.

First, you have indicated throughout the meeting that you acknowledge that threats against shop

workers are an issue. Throughout our evidence sessions, we have been made aware that the issue is particularly acute in small shops. Women often work in them on their own, for example, and assault might not necessarily be physical, but can involve threatening behaviour, which can cause considerable distress and fear to people who work in small shops. That is particularly the case because the individuals who cause such fear might frequently return to the shop. Given that we are aware of all that, why has the Government not already moved to have some sort of public campaign? Why do we have to have a bill to move the discussion forward?

My second question concerns the police response. The committee heard evidence to suggest that, although the law exists, a shop worker who calls the police about an incident does not get priority under the priority response system that the police operate. How might that be overcome if we do not pursue the bill or if you reject it?

**Ash Denham:** I acknowledge those issues. We can all see that there is a big difference between a lone worker in a small convenience store and 40, 50 or 60 staff working in a large supermarket where there is a security guard. There are instances of threatening behaviour by perpetrators who keep returning to a store, which can be very distressing. I reiterate that threatening behaviour is covered by an offence and should be reported to the police.

On enforcement, the committee heard evidence from Police Scotland in March; it said that it takes such incidents seriously. It is probably fair to say that that is Police Scotland's policy, and that that is what it is striving to do. Police Scotland is doing an incredible job in response to the Covid-19 crisis, and it prioritises those types of incidents. Clearly, however, there will always be individual instances in which the police do not respond in that way.

10:30

I will reflect on what more could be done. I am interested to hear where the committee thinks there could be most impact in how we go forward. It is coming across loud and clear that we need to increase awareness among retail workers and members of the public and, perhaps, among repeat perpetrators who cause so much trouble.

**The Convener:** A lot of that is about messaging and being clear with the public and shopkeepers that there is a zero tolerance policy for such behaviour when they are providing that service. We have heard repeatedly that the behaviour is often linked to licensed products—predominantly alcohol, but also tobacco. That is where there is a problem. Retailers pay a licence fee in order to be

able to stock such products and are expected to uphold the law, as is required under, for example, the Air Weapons and Licensing (Scotland) Act 2015. Since the introduction of the 2015 act, those costs have gone up quite considerably, and the requirements on shops to invest and to do other things in order that they can stock such products have increased. Many retailers feel that they are doing their bit, but are not receiving in return protection for doing the job that the Government has asked them to do. How do you respond to that?

**Ash Denham:** I hear that point. Clearly, retail workers have an extremely important role in verifying the age of people who buy age-restricted products. We rely on them to do that for wider societal benefit. You make the point that shopkeepers feel that they are not getting the response that they should. I will reflect on that.

**The Convener:** Thank you. I will go to Daniel Johnson, who is the member who introduced the bill.

**Daniel Johnson (Edinburgh Southern) (Lab):** I begin by thanking the committee for its on-going work on the bill, and by paying tribute to retail workers who are doing a fantastic job right now to keep us safe in ways that I do not think many of us would have anticipated just a few weeks ago. I thank the minister for her constructive approach. I would be more than happy to work with her on the possibility of taking forward the point about aggravators.

What are your reflections on the usefulness of the Emergency Workers (Scotland) Act 2005? About 250 convictions are made each year using that legislation, but according to many accounts, the section 1 offence replicates existing or other offences including common law assault. Given that, is it useful legislation?

**Ash Denham:** Of course it is useful legislation. If the committee will bear with me for a second, I have some notes specifically on that, which I cannot see. Philip Lamont will come in with some detail on that point, then I will follow up in a moment, when I find my piece of paper.

**Philip Lamont:** It is perhaps worth reminding the committee that when Parliament passed the Emergency Workers (Scotland) Act in 2005—I am sure that some members here were in Parliament at the time—there was a lot of debate about whether the bill, which applied only to emergency workers, should be extended to other categories of workers, which Mr Johnson's bill seeks. There was extensive debate. Parliament reflected on the matter and ultimately decided, because of the nature of the work emergency workers do—being asked day in and day out to risk their lives to save others and protect communities—to legislate for

emergency workers and to draw a distinction between them and other categories of workers, including retail and other public-facing workers. That was 15 years ago. There are other types of workers in relation to which we could have a similar debate.

**Ash Denham:** I can come in now—I have found my information.

The Emergency Workers (Scotland) Act 2005 brought in the offence of hindering or obstructing emergency workers because they risk their lives to help others. That means that, if they are hindered or obstructed, it is not only their lives that are put at risk, but those of the people whom they are working to save. At the time, Parliament felt that emergency workers were in a unique position, which is why their position is reflected in law as it is.

**Daniel Johnson:** On public protection, I am sure that people would agree that, even outwith the current circumstances, retail workers perform a critical public safety function through restricting the sale of alcohol and similar products. Along with the 2005 act, section 90 of the Police and Fire Reform (Scotland) Act 2012, section 22 of the UK Borders Act 2007 and section 32 of the Commissioners for Revenue and Customs Act 2005 all provide protection against abuse, assault and hindrance or obstruction in ways that could be said to replicate the common law. The basis of those provisions is the principle that people who are asked to uphold the law should have specific protections in law. Given the important functions that they perform, it is important that such protection is extended to them.

I invite the minister to reflect on that principle. Does she agree that people who uphold the law and provide public protection should receive specific protection in law?

**Ash Denham:** That is a good point, which I take on board. Retail workers perform a very important function on behalf of all members of society in restricting the sale of products such as those that Daniel Johnson mentioned. However, I would not say that what they do falls into the same category as enforcement or emergency work; I can see a difference.

The role of our emergency services workers is unique, so I ask the committee to reflect on that: do members think that there is a difference in what our emergency service workers do to protect us that explains why they have protection under the law? That is not to take away from the fact that retail workers perform an important role, as we all recognise at this time.

**Daniel Johnson:** My final question extends from Colin Beattie's question about compliance. From challenge 25 through to the plastic bag levy,

we have in recent years expected retail workers and staff to implement a number of public policies, as part of their job. Do you agree that when, in the future, we introduce new legislation or policy, we should be careful to ensure that there are legal protections related to the duties that we place on retail workers to administer, over the shop counter, obligations on the public to comply?

**Ash Denham:** I very much take that on board. Daniel Johnson and other members of the committee have made important points about that. I will take them away and reflect on them.

**The Convener:** We have some time in hand, and I know that Andy Wightman is keen to ask a few more questions. If anybody else wishes to ask more questions, let me know.

**Andy Wightman:** I want to follow up on a question that the convener asked about public awareness. The stage 1 report of the Protection of Workers (Scotland) Bill from 2010, which Parliament did not pass, said that the Economy, Energy and Tourism Committee was

“of the view that the introduction and application of both sentencing and prosecution guidelines ... would be beneficial in tackling the perception that aggravating circumstances are not taken seriously. Any such introduction should be linked to a high-profile publicity campaign.”

So, back in 2010 there was awareness that we needed to do more in terms of public awareness. Can you clarify or confirm, as a matter of fact, whether any work on that has been undertaken in the past 10 years? If so, when did it take place and what was the impact?

**Ash Denham:** I have seen the information that you have relayed from that 2010 stage 1 report.

On action that the Scottish Government has taken, we have legislated for and funded the operation of the independent Scottish Sentencing Council. It was established in 2015 with a responsibility to improve transparency and consistency in sentencing. Parliament set it up in such a way that the council decides its own work in respect of producing sentencing guidelines, which Andy Wightman has just raised. The committee might want to think about asking the council whether it is considering guidelines in that area.

Philip Lamont can outline the publicity campaign that has been undertaken over the past few years.

**Philip Lamont:** The other element that sat alongside sentencing guidelines that the previous committee looked at during consideration of the Protection of Workers (Scotland) Bill 10 years ago was whether prosecution guidelines should be introduced. It might be helpful to make it clear that that would be a matter for the Lord Advocate—as

this is one for the independent prosecution service. It is not for the Scottish Government to offer a specific view on that matter, although the committee has received, directly from the Crown Office and Procurator Fiscal Service, details in written evidence on how it approaches prosecutions and assesses evidence in cases that involve retail workers.

There has been no specific publicity campaign. A recommendation was made in respect of sentencing guidelines and prosecution guidelines, and a public awareness campaign being tied to their development. Although we now have the independent Scottish Sentencing Council, there are no specific sentencing guidelines on offences against retail workers. As the minister said, the council might wish to consider that and the committee might wish to raise it with the council. The publicity campaign that was proposed would have been tied to development of sentencing guidelines and prosecution guidelines.

The Government is happy to be involved and to reflect on what the committee thinks about that. If there were to be sentencing guidelines—indeed, guidelines in any area—it would be expected that the Sentencing Council would undertake a publicity campaign, because that is how it goes about its business. It always raises awareness of guidelines and does extensive consultation before developing them. That might be something to raise with the council directly.

**Andy Wightman:** Thank you. I have one more question for the minister. According to the Scottish Government’s memorandum, it does not support the bill as it is set out. As a matter of practical law, if—for the sake of argument—the bill were to be passed in its current form, would it be competent? Philip Lamont might be able to answer. Is the bill workable, or are there defects? I am not talking about defects that one would disagree with in policy terms. In practical terms, would it work?

**Ash Denham:** There are some issues around drafting in relation to the reasonableness defence. I ask Philip Lamont to give the committee a little more detail on the impact that that might have.

10:45

**Philip Lamont:** As the committee has heard, the offence in the bill replicates existing laws. One law that it replicates is the offence in section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, which is the threatening or abusive behaviour offence. That contains what is called a reasonableness defence, which means that a person who is charged with an offence of threatening or abusive behaviour can raise a statutory defence in law that their behaviour was reasonable in the circumstances. That exists

because there can be occasions when someone would act in a threatening or abusive way, but in response to a situation or context that makes that behaviour reasonable. In those circumstances, the statutory defence in law in relation to the section 38 offence can be used to ensure that a person is not convicted.

The bill contains no similar defence. That means that a member of the public could, under the bill, be charged with an offence involving threatening or abusive behaviour against a retail worker in what might be a scenario in which they were responding to such behaviour from the retail worker. The bill would not allow the person to raise the reasonableness defence. If the bill progresses in its current form, the committee might, at the very least, wish to consider whether that is how it would want that bit of law to work.

**Rhoda Grant:** I have a brief question. Sale of age-restricted products to people who are under-age is an offence, and the law in that regard is binding on retail workers and businesses. What would happen to a retail worker or business that breached the law on that, perhaps because the worker felt that they were being threatened into doing so?

**Ash Denham:** Philip Lamont will give the detail on that.

**Philip Lamont:** If a person working in a shop felt that they were under undue pressure or influence because of threats or abuse from a member of the public, and that worker ended up selling something and breaching an age-restricted products law, action would be taken only if that became known to the police. If it became known, it would be the police's responsibility to investigate all the circumstances of the offence. Obviously, the police and the COPFS have discretion on whether action would be progressed in the circumstances.

In the scenario that Rhoda Grant described, if the evidence was clear that the shop worker felt that they had no choice but to sell the product because of threats and abuse, even though they suspected that the person was under-age, the police would have discretion. Obviously, the COPFS can prosecute only if doing so is in the public interest; it would have to apply that test carefully before deciding what action, if any, to take in that situation.

**Rhoda Grant:** The worker could be prosecuted, however, and would currently have no protection.

**Philip Lamont:** The protection lies in the discretion that is available to enforcement agencies in applying the law.

**The Convener:** Members have no more questions.

In the current Covid-19 crisis, our retail workers have clearly had to step to the fore, and we owe them thanks. As we are taking evidence on the subject, it is incumbent on us to acknowledge that many retail workers have gone above and beyond the call of duty. They are in the line of danger at the moment, because they are often finding it difficult to keep their distance from people and are having to deal with angry customers. Whatever the outcome in relation to the bill, it is important that retail workers understand that we are looking at the issue seriously and that we recognise the challenges that they face—not only now, but generally—with customers, who can at times be extremely unreasonable.

I thank the minister and Philip Lamont for their time and their evidence. The minister has acknowledged on numerous occasions during the meeting that she has listened to what has been said and to members' questions, and that she will reflect on the issues that have been raised, some of which are serious and affect people's safety and lives. I hope that we will hear back from her on her thoughts. The committee will now discuss the bill, and I am sure that we will have recommendations to make.

That concludes the public part of the meeting. As was previously agreed, we now move into private session. I thank everyone for attending, and I thank those who have been watching. We look forward to seeing you again.

10:50

*Meeting continued in private until 11:38.*





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