

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

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## Explanatory notes

### Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are 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. They have been prepared by the Non-Government Bills Unit 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);
- a Policy Memorandum (SP Bill 58–PM).

3. The Explanatory Notes are intended to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

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## The Bill

4. The Bill seeks to increase the protection given by criminal law for retail workers by:

- creating a new statutory offence of assaulting, threatening, abusing, obstructing or hindering a retail worker; and
- creating a statutory aggravation to that offence where the retail worker is enforcing a statutory age restriction.

5. The Bill is in eight sections.

6. Section 1 establishes the offence of assaulting, threatening, abusing, obstructing, or hindering a retail worker. Section 2 further defines behaviour that constitutes threatening or abusing a retail worker, and behaviour that constitutes obstructing or hindering such a worker. Section 3 provides for a defence to a charge of obstructing or hindering a retail worker.

7. Section 4 provides for the offence to be aggravated where the offending behaviour occurred because the retail worker was enforcing a statutory age restriction. Section 5 defines “retail worker” and section 6 defines “retail premises” and “retail work”. Sections 7 and 8 deal with commencement and the Bill’s short title.

## Commentary on sections

### **Section 1 – Offence of assaulting etc. retail worker**

8. Section 1(1) makes it an offence for a person to assault, threaten, abuse, obstruct or hinder another person who is a retail worker (as defined in section 5), and who is engaged, at the time of the offence, in retail work (as defined in section 6(2)).

9. Section 1(2) provides that the offence is only committed if the person who carried out the assault, threat, abuse, obstruction or hindrance knew, or ought to have known, that the person was a retail worker and was engaged, at the time, in retail work. Otherwise, no offence under subsection (1) is committed (although the behaviour may, of course, still constitute an offence – such as the common-law offence of assault).

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10. Section 1(3) specifies the maximum penalties for committing the offence created by section 1(1) – namely, imprisonment for up to 12 months or a fine of the “prescribed sum” (defined in subsection (5)), or both. The “prescribed sum” is currently £10,000<sup>1</sup>. The section 1(1) offence can only be prosecuted summarily (without a jury, in the Justice of the Peace or sheriff court).

11. Section 1(4) allows evidence from a single source to be sufficient to establish that a person is a retail worker or is engaged, at the time, in retail work, for the purposes of subsection (1). This removes the normal requirement for all evidence in criminal matters to be corroborated. (Other essential elements of the offence require corroboration in the normal way.)

## **Section 2 – Behaviour constituting an offence under section 1**

12. Section 2 provides clarification of the meaning of “threatening or abusing” a retail worker, and “obstructing or hindering” such a worker under section 1.

13. By virtue of subsections (1) and (2), the offence of threatening or abusing a retail worker can be committed by someone issuing verbal threats, and by a single action. In these respects, behaviour constituting the new offence is liable also to constitute the existing offence of threatening or abusive behaviour under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

14. Subsection (3) makes clear that impeding a retail worker from carrying out the retail work the worker is engaged in constitutes an offence under section 1(1) only if done intentionally. Subsection (4) makes clear that obstructing or hindering need not involve physically blocking the retail worker’s path but could also be effected non-physically (such as by distracting the worker vocally) or by action directed at objects that the retail worker needs to use, such as a delivery vehicle, measuring device or computer.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1995/46/section/225>

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### **Section 3 – Defence to charge of obstructing or hindering a retail worker**

15. Section 3 creates a defence to a charge of obstructing or hindering a retail worker under section 1 where the person charged is able to demonstrate that the behaviour was, in the particular circumstances, reasonable. This might be the case if, for example, the person was not aware that the place they were standing blocked the retail worker's access to another part of the premises, or if the person, by engaging the retail worker in legitimate conversation, held that worker back from serving the next customer.

### **Section 4 – Aggravation in relation to enforcement of age restriction**

16. Under section 4, an offence under section 1 can become an aggravated offence if the assault, threat, abuse, obstruction or hindrance occurred because the retail worker was enforcing a statutory age restriction (subsection (2)). In order to establish that the offence is so aggravated, the prosecutor must specify the aggravation in the complaint (that is, the document that sets out what the accused person is charged with) and prove it in court (for which evidence from a single source is sufficient) (subsections (1) and (3)).

17. If the accused is convicted of the aggravated offence, it must be stated in court and recorded that it was so aggravated, and the aggravation must be taken into account in sentencing. This may, but need not, increase the penalty imposed; and the court must state the extent of any difference in penalty and the reason for it, or that there is no difference and the reason for that (subsection (4)).

18. Section 4(5) defines "enforcement" of a statutory age restriction broadly, covering all the steps that a retail worker would be expected to take to establish whether a customer is above the relevant age limit. This means (for example) that in proceedings for assault on a retail worker, it would be possible to demonstrate aggravation of the offence not just where the assault was triggered by the retail worker refusing to sell alcohol to the customer, but also where the trigger was the initial request to provide proof of age.

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19. Section 4 (5) provides a definition for “statutory age restriction”. It is framed so as to include situations where the offence is set out in one enactment and the age specification in another. For example, section 11 of the Fireworks Act 2003 creates the offence of breaching firework regulations but it is the regulations themselves which impose the age restriction on sale. Under the Interpretation and Legislative Reform (Scotland) Act 2010, “enactment” includes any provision of an Act of (the UK) Parliament, an Act of the Scottish Parliament, a statutory instrument (made by or on behalf of a Minister in the UK Government) or a Scottish statutory instrument (made by or on behalf of one of the Scottish Ministers).

## **Section 5 – Meaning of “retail worker”**

20. Section 5(1) defines “retail worker” as any person whose usual place of work is retail premises, together with any person who, despite not usually working in retail premises, carries out retail work (as defined in section 6). In either case, a person can count as a retail worker if the person is an employee of the business, an owner of the business, or someone who works in the premises through agency arrangements. It is irrelevant whether a person receives payment for their work (subsection (2)). Accordingly, someone working without payment in a family business or volunteering in a charity shop could still be a “retail worker”.

21. Section 5(1)(c) deals with the specific case of people making deliveries from retail premises (such as supermarket staff fulfilling home deliveries) and ensures that they also qualify as “retail workers”.

22. Section 5(3) ensures that the prosecution does not need to prove that the accused person knew, or ought to have known, which of the categories mentioned in section 5(1)(b) the retail worker fell into. For example, in proceedings for assault against a shop-owner, it is enough for the prosecutor to establish, under section 1(2), that the accused knew (or ought to have known) that the person assaulted was a retail worker (and was engaged, at the time, in retail work) without also having to prove that the accused knew (or ought to have known) whether the person assaulted was an owner of the retail business, an employee or an agency worker.

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## **Section 6 – Meaning of “retail premises” and “retail work”**

23. Section 6 defines the terms “retail premises” and “retail work” for the purposes of the Bill.

24. Subsection (1) defines “retail premises” so as to cover premises used wholly or mainly for the sale and supply of goods, on a retail basis, to members of the public. This will include all shops other than wholesale outlets that sell exclusively (or largely) to relevant tradespersons, or other outlets that are only open (or mainly open) to specific people, such as members of a club.

25. Subsection (2) defines “retail work” to cover, firstly, any work done in retail premises by those for whom that is their usual place of work. So, for example, the “retail work” done in a shop includes all the work done by the shop staff, whether or not the work is directly concerned with selling (for example, in a supermarket, work re-stocking shelves as well as work at the checkout). The definition also covers work done by those whose usual place of work is not retail premises, if the work is in connection with the sale or supply of goods, on a retail basis, to the public. This would cover some work in high-street premises that (wholly or mainly) sell or supply services rather than goods (such as a hairdresser or vet) – but only work involving the sale of goods (such as hair-gel or veterinary medicines). It would also cover work not done in premises at all, if it involves the sale of goods to the public (e.g. by a door-to-door seller or street-trader).

26. In addition, the definition covers work in premises not used wholly or mainly for the supply of goods if the work involves the sale or supply of goods or services to which a statutory age restriction applies. So, for example, in a hotel that includes (as a small part of the premises) a public bar, the staff serving alcohol in the bar would be doing “retail work”, but most other hotel staff (including reception staff, porters and cleaners) would not.

27. Under subsection (3), retail workers making deliveries from retail premises (e.g. a supermarket) count as doing retail work only during the period when they are at the customer’s premises (regardless of whether they succeed, while there, in making a delivery), and not (for example) while travelling between the supermarket and the delivery address.

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28. Section 6(4) clarifies that working in premises includes working on any land forming part of that premises. As a result, those doing “retail work” include, for example, the supermarket worker in the car park collecting trolleys; the staff performing a “meet and greet” function at the entrance to a department store; and a greengrocer selling fruit or vegetables from trestle tables set up on the pavement outside the shop.

29. Examples of non-retail work would be: work in a high-street solicitors firm (which sells or supplies services rather than goods); work in wholesale-only premises (such as a cash-and-carry) or a private members’ club; and work carried out by tradespersons (such as plumbers or electricians) in the customer’s home or workplace (unless the workplace counts as retail premises and the tradespersons are working in-house).

## **Section 7 – Commencement**

30. This section provides that sections 1 to 4, which create the new offence and aggravation (together with section 5(4), which relates to prosecution of the offence) come into force 6 months after Royal Assent. The other provisions (including the main definitions) come into force the day after Royal Assent. The effect is that only behaviour taking place at least 6 months after Royal Assent could constitute an offence under section 1.

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