PROTECTION OF WORKERS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Protection of Workers (Scotland) Bill introduced in the Scottish Parliament on 1 June 2010:

   - Explanatory Notes;
   - a Financial Memorandum;
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 47–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by Hugh Henry MSP, who is the member in charge of the Bill, in order 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.

3. 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 schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

4. The Emergency Workers (Scotland) Act 2005 made it an offence to assault a member of the emergency services during the course of his or her employment. The purpose of this Bill is to widen this protection to cover all workers providing services to the public. The main effects of the Bill are to:

- make it an offence to assault any worker, who provides services to the public, during the course of the worker’s employment, and
- make it an offence to assault a worker, who provides services to the public, by reason of the worker’s employment.

COMMENTARY ON SECTIONS

Section 1 – Assault of workers

5. Section 1(1) makes it an offence for a person, defined as a member of the public, to assault a worker during (a) the course of that workers’ employment or (b) by reason of that workers’ employment. If, for example, a person assaults a bus driver on a bus such a person may be found guilty of this offence under section 1(1)(a). If a person assaulted a shop worker following the end of the worker’s shift having previously threatened that worker at their workplace, and carried out the assault in connection with that workers occupation, the person may be guilty of an offence under 1(1)(b).

6. Section 1(2)(a) creates a defence to section 1(1), in that the offence is only committed if the person who carried out the assault knew, or ought to have known, that the person assaulted was acting in the course of his or her employment. He or she may well, however, have committed the common law offence of assault.

7. Similarly, section 1(2)(b) creates a defence to section 1(1). Unless the assault was motivated, in whole or in part, by malice towards the person assaulted because of his or her employment, the person carrying it out will not have committed the offence. Again, he or she may well, however, have committed the common law offence of assault.
8. Section 1(3) defines the term “worker”. A worker is only covered by the Bill if his or her job involves dealing with members of the public. The words “to any extent” make clear that any amount of contact with the public is sufficient to bring the worker within the Bill’s ambit. However, telephone contact, for example, is not covered: the worker must be physically present in the same place as members of the public at least some of the time to be covered. In addition, the worker’s job must involve actual interaction with members of the public (e.g. a ticket collector on a train) or involve the provision of a service to either individual members of the public (e.g. a domestic refuse collector) or to the public in general (e.g. a gardener in a public park). There will be a degree of overlap between these categories in many cases.

9. The conditions in section 1(3) do not all need to be satisfied at the precise time of the assault. The offence can be committed against a ticket collector, for example, even when that person is engaged in other tasks, not necessarily involving interaction with the public. Rather, if the worker’s job satisfies the specific conditions, the offence can be committed against that worker at any time while at work or at any other time if the motivation of the person carrying out the assault relates to the worker’s employment.

10. Section 1(4) allows evidence from a single source to be sufficient to establish that a person is a worker for the purposes of section 1(1). This removes the normal requirement for all evidence in criminal matters to be corroborated.

Section 2 – Penalties

11. Section 2 stipulates the penalty for committing the offences created by the Bill.

Section 3 – Saving for certain offences

12. Existing legislation already makes it an offence to assault police officers and persons assisting police officers in their duties, and to assault or obstruct members of the emergency services. This section confirms, for the avoidance of doubt, that the existing legislation remains in place and is unaffected by the Bill.

Section 4 – Commencement and short title

13. Section 4 provides for the short title and commencement of the Bill, which will come into force 6 months after Royal Assent.

FINANCIAL MEMORANDUM

INTRODUCTION

14. This document relates to the Protection of Workers (Scotland) Bill introduced in the Scottish Parliament on 1 June 2010. It has been prepared by Hugh Henry MSP, who is the
member in charge of the Bill, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

15. This Bill’s objective is to strengthen criminal penalties against those who assault workers who deal with the public.

COSTS ON THE SCOTTISH ADMINISTRATION

16. It is not anticipated that there will be any significant additional on-going costs incurred as a result of the introduction of this Bill. Cases will either continue to be brought under common law assault and an extra charge will be added to the summons under this Bill, or those who would have been charged under common law assault will now be charged under this Bill.

17. It is uncertain how many additional prosecutions will result from this Bill. It is intended that the Bill will have a deterrent effect, reducing the number of attacks on workers serving the public, thereby leading to some savings in resources. Achieving a cost saving as a result of the anticipated deterrent effect is not, however, a primary purpose of the legislation and it is anticipated that any such savings are likely to be relatively minor in the context of the overall criminal justice budget.

18. The member believes that the introduction of this Bill will not result in a sentencing pattern significantly different from the pattern established by the Emergency Workers (Scotland) Act 2005. There may be some increase in custodial sentences but such a matter is for sheriffs to determine.

COSTS ON LOCAL AUTHORITIES

19. There are no anticipated additional costs for local authorities as a result of the Bill.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

20. Individuals who are convicted will be expected to pay any fine imposed on them by a court as a result of that conviction. There are no costs for other bodies or businesses.

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PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

21. On 25 May 2010, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Protection of Workers (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Protection of Workers (Scotland) Bill (SP Bill 47) as introduced in the Scottish Parliament on 1 June 2010

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EXPLANATORY NOTES

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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.