This document relates to the Protection of Workers (Scotland) Bill (SP Bill 47) as introduced in the Scottish Parliament on 1 June 2010

PROTECTION OF WORKERS (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Protection of Workers (Scotland) Bill introduced in the Scottish Parliament on 1 June 2010. It has been prepared by the Govan Law Centre on behalf of Hugh Henry MSP, the member in charge to the Bill, to satisfy Rule 9.3.3A of the Parliament’s Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 47–EN.

POLICY OBJECTIVES OF THE BILL

2. The Bill would create a new offence of assaulting a worker whose employment involves dealing with members of the public to any extent (but only where the worker is physically present in the same place as members of the public and is either interacting directly with, or providing a service to, the public). The offence covers assaults while such workers are acting in the course of their work and assaults that take place at other times but which relate to their work. The objective of this Bill is to protect these workers by applying principles similar to those applied in the Emergency Workers (Scotland) Act 2005 (the “EWA”). This Bill has the potential to reduce crimes of violence and reduce physical and mental injury against such workers.

3. Violent assaults against workers serving the public in Scotland are an all too common phenomenon. While progress has been made in strengthening criminal penalties for assaults against some workers, too many still lack sufficient protections at work and statistics show a continued increase in these attacks for many working people.

4. In 2005 the EWA introduced tougher criminal penalties for those who assault, hinder or obstruct specified emergency service workers in the course of their work. While this constitutes progress and there is widespread support for this Act, there is recognition that many other workers who provide a service to the public are not covered. It is legitimate to ask why a nurse would be covered but a bus driver would not be. After all, if a bus service is withdrawn as a result of an assault a whole community suffers not just the driver; similarly shop closures due to persistent attacks on staff can leave whole communities isolated. If a train driver is assaulted there is a danger to passengers and the public as well as a potential loss of service. There are countless examples of workers who provide vital public services who are vulnerable because of their occupation. And many of these examples demonstrate how the wider public could be adversely affected by the withdrawal of services following an assault.
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5. The penalties in this Bill mirror those of the EWA, as proposed in the member’s original consultation document. The penalties are a maximum jail term of 12 months and/or a monetary fine of £10,000 (note that these are the current penalties under the EWA, after a 2008 modification order, not the original EWA penalties). The Bill provides for summary conviction only, although more serious offences may still be tried under solemn procedure under the common law of assault.

6. The tougher penalties contained within the EWA appear to have acted as a deterrent and to have contributed to a reduction in the number of assaults, therefore, contributing to the achievement of the public policy objectives of the Act. Concurrent with a reduction in the number of assaults against those covered by the terms of the EWA, there has been a parallel increase in the number of convictions under the Act. Between 2005/06 and 2006/07 the number of convictions rose from 54 to 200.¹

7. While shop workers and local government workers have experienced a general upward trend in the number of assaults, there has been a simultaneous reduction in the number of assaults perpetrated against those health workers covered by the EWA. According to figures provided by UNISON, in 2007/08 the number of assaults of health workers fell by more than 1,000 from the previous year. Many health workers are covered by the EWA and as such it could be suggested that this decline can be attributed to the EWA being a successful deterrent against assaults.

8. There are a wide variety of occupations which involve interaction, whether directly or indirectly, with members of the public. This interaction is also a point of exposure. Most of the time these roles can be personally fulfilling for the workers, allowing an opportunity to serve their communities and the public. However, increasingly too many these workers are victims of assault. And, while there is widespread support for the EWA, there is recognition that many other workers who provide a public service are not adequately protected. This point was made by trade unions during the Parliament’s consideration of the EWA. With assaults against such workers increasing, it is vital that we demonstrate that an assault upon these workers is unacceptable.

9. In 2007/08 the total number of physical assaults against public sector workers in Scotland was 32,263. This number included 9,121 assaults on local government workers, representing an increase of 3,000 on the previous year’s figures for assaults on local government workers².

10. The Bill applies to the private sector as well as public sector workers. In 2007, the British Retail Crime Survey Report detailed a 50 per cent increase in physical assaults against shop workers compared to 2006³. An Usdaw survey showed that nearly one third of shops experienced at least one physical assault against staff in 2007⁴. The retail sector has seen among the highest increases in assaults upon its workforce.

¹ S3W-20209 – Margaret Mitchell (Central Scotland) (Con) (Date Lodged Tuesday, January 27, 2009)
² Unison Scotland, (2008)
³ British Retail Crime Survey 2008
⁴ Usdaw “Voices from the Frontline: Revisited” 2007
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11. By introducing a specific offence with associated penalties, the policy objective of the Bill is to protect workers who serve the public by providing a deterrent to those who might otherwise commit acts of violence against them. For those who are not deterred from such acts of violence, the Bill provides appropriate penalties.

KEY ASPECTS OF THE BILL

12. The EWA is based on the principle that particular workers require stronger criminal protections due to the exposure and vital role emergency service workers perform. The intention of this Bill is to apply a similar logic, and the same penalties, to other workers who work in exposed and/or important roles for the good of the general public and for the communities they serve. The extension of this logic is not to imply a comparison between these workers and emergency service workers and the roles they perform for the general public. The core rationale of this Bill is that the roles of workers who provide services to the public are nonetheless socially important and that the increasing number of assaults committed against such workers makes it imperative that they receive tougher criminal protections from assault.

13. For example shop workers, workers in cafes, taxi drivers, bus drivers, train drivers, postal workers, social workers, or teachers are all carrying out services which benefit the community. If they had to stop providing these services, because of an assault, the whole community would suffer, as well as the worker who is assaulted. For example, in the case of a train driver or bus driver, it could lead to major disruption of services and lead to a loss in revenue which could threaten future service provision. It could further lead to the perception that public transport is unsafe, again affecting passenger numbers and revenue.

14. To secure a conviction under the Bill, it would be necessary to prove that the victim falls within the definition of “worker”. In addition, it would have to be shown that:
   - the victim was acting in the course of his or her duty at the time of the alleged offence and that the accused knew or ought to have know that, or
   - the offence was committed by reason of the victim’s employment and that the accused was motivated by malice towards the victim by reason of the victim’s employment.

15. The member has given consideration to whether proof of knowledge on the part of the accused may be more problematic for a “worker” as opposed to an “emergency worker”, making the evidential burden of proof greater. Arguably this could make it more difficult to secure a conviction.

16. In the majority of cases it would not be problematic to identify someone whose work involves dealing or interacting with members of the public or providing a service to the public. Shop workers can often be identifiable through a uniform, identity badge or location in a store. Similarly bus drivers or train drivers can be identified by uniform or where they are situated in a vehicle. Postal workers can be identified by uniform. In the case of social workers, care worker or teachers, identification through uniform may not be so easy. Nevertheless there can be little doubt about who they are to those they are directly serving (which is often the point of confrontation).
17. The provisions of the Bill come into force 6 months after Royal Assent.

CONSULTATION

18. The consultation was launched on 22 June 2009 and ended on 25 September 2009. As well as being made available on the Scottish Parliament’s website, the consultation document was issued initially to organisations and individuals with an interest in the issue and recipients were encouraged to bring the consultation to the attention of others. Further copies were issued on request as well as being downloaded from the Scottish Parliament’s website.

19. The main areas covered in the consultation were; what workers should be covered under the Bill, how effective the EWA has been, what the penalties should be in the Bill, in what ways will the Bill extend equal opportunities, and whether hindrance and/or obstruction of workers be proposed in the same way in this Bill as it is in the EWA.

20. The seven questions of the consultation were:

- Q1. My proposal is to apply the proposed Bill to workers who provide a face to face service to the public. Are there any other groups of worker that you think should be captured in the Bill?
- Q2. How effective have you found the Emergency Workers Act 2005?
- Q3. Do you think there will be additional costs associated with this Bill and in what areas will they arise?
- Q4. Are the penalties proposed in this document sufficient, and if not, what penalties would you propose?
- Q5. Do you have any other comments or views on extending the tougher penalties contained in the Emergency Workers Act 2005, to workers providing a face to face service to the public?
- Q6. In what ways will the proposed Bill extend equal opportunity provisions and should it go further?
- Q7. Should hindrance and/or obstruction of the workers specified in this proposal be included in this proposed Bill in the same way as is in the Emergency Workers Act?

21. There were 192 responses, broken down as follows: 92 were from individuals, 64 were from trade unions or declared members of trade unions, 15 were from local authorities, 6 were from health bodies, 5 were from transport bodies, 4 were from legal bodies, 2 were from police and fire representative bodies, 1 was from an MSP and 1 was from a community council. A summary of the consultation responses is available on the Scottish Parliament’s website.

22. 177, or 92%, supported the member’s proposal, with 6 (3%) expressing opposition and 9 (5%) offering neither support nor opposition to the proposal.

23. The overwhelming support for proposal was provided in the main by trade unions, trade union activists, local councils and transport bodies. The Scottish Law Commission also supported the proposal, as did NHS boards and one MSP.
24. Trade unions based their support for the proposed Bill on the sharp rise in assaults being committed against the various workers they represent who work in professions which entail working for, with or around members of the public and/or the general public. Many trade unions also argued that despite the EWA’s successes, it was defined too narrowly and that additional workers need stronger protection under the law.

25. Consultees were also asked to comment on representations received about the scourge of verbal assault at work as well as the role of employers in reducing the potential flashpoints for violence and in improving security measures to this end.

26. Local councils and organisations representing the legal fraternity expressed more qualified support and were more likely to raise issues of legal certainty and costs. From this many questions and issues were raised which need to be addressed.

ALTERNATIVE APPROACHES

27. One option would be to extend the EWA. This would only have limited application as many of the workers who would be covered by the Bill could not be classified as emergency workers, even with a liberal interpretation.

28. Another possibility that might be considered is the creation of a civil remedy along the lines of the Protection from Harassment Act 1997. This enables the victim of harassment to initiate civil proceedings and obtain a non-harassment order against their harasser; the breach of which can give rise to criminal proceedings. The advantage of this course is that it can include harassment by speech or conduct, and that it can be granted where there has been a course of conduct directed towards the victim where each individual instance might be considered insufficiently serious to warrant prosecution. However this approach would mean that the victim would have to apply for the remedy, and from that possible criminal proceedings would be pursued. It was felt this would be less clear, it would not give a suitable sentence, not all cases would be treated as a criminal offence, and it would not be seen to give a sufficient deterrent to attack.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

29. The Bill will have a positive effect on equality by increasing the safety of workers, and safety of the public. People will be more likely to access public services if they feel safer using services. This may have a particular benefit to certain groups such as older people, parents with young children or people with disabilities who may feel more vulnerable.

30. The consultation paper on the proposed Bill sought views on whether any equalities issues arose as a result of the Bill. Those who supported the Bill believed it would have a beneficial effect on equal opportunities, giving workers who provide services to the public equality under the law.
31. This Bill builds on existing legislation protecting workers who experience abuse or harassment on the grounds of possessing a “protected characteristic” (i.e. gender, race, sexual orientation, gender identity, disability, religion or belief and age).

32. Abuse and violence at work is not the same for all workers. We know for example that the abuse directed at women workers is often expressed in sexist language or is experienced as sexual harassment and in extreme cases results in sexual assault. Women continue to occupy the majority of customer-facing roles in retail and public services and this Bill will strengthen the protection already afforded by anti-discrimination legislation.

33. Usdaw noted in the consultation that its research shows that 40% of staff said that they are concerned about sexual harassment and 34% are concerned about racial abuse. Usdaw also have evidence from women and black members that they are particularly vulnerable to violence and abuse at work and can become “targets” of abusive or violent customers. This Bill will contribute to the protection of workers from sexually and racially motivated abuse, even indirectly, whilst doing their jobs.

34. The measures in the Bill are intended to provide additional protection to all individuals who serve the public in the course of their employment. Individuals who experience prejudice on the grounds of race, religion, gender, age, disability or sexual orientation may also be more likely to be victims of antisocial behaviour and violence. The member expects the Bill to promote equal opportunities by enhancing the range of measures available to address this type of prejudice and the unacceptable behaviour which is too often a consequence.

Human rights

35. It is considered that the provisions in the Bill are compatible with the European Convention on Human Rights.

Island communities

36. None of the consultation responses suggested that the Bill contained particular issues for island communities and it is not anticipated that this Bill will have any differential impact on them. The member is confident that island communities will equally benefit from the provisions of the Bill.

Local government

37. Local government will benefit from this Bill at no cost to local authorities. Protecting the workers who provide local authority services will also protect the public services themselves. Protecting the workers also protects public safety. It will assist in bringing further confidence and trust in those who use local authority public services.

Sustainable development

38. This Bill will contribute to stronger sustainable communities. Improving public safety will reduce attacks and intimidation on workers and reduce the number of victims. This in turn
will minimise the impact on local authorities, police, courts and health care services. By reducing the incidence of intimidation and attacks of workers it will add to public confidence in services and play a part in protecting the most vulnerable citizens and achieving social justice.

39. It is unlikely that the Bill will lead to a significant increase in the number of prosecutions for attacks on workers. The impact would be similar to that of the EWA. Cases of assault on workers can at present be prosecuted under common law. It is intended that the Bill will have a deterrent effect, reducing the number of attacks on workers and their equipment. Positive sustainable development effects might therefore be a diminishing of the numbers of imprisoned offenders and a reduction in harm to personnel (with consequent reduction of lost working days as well as personal distress) and in damage to equipment. The safety and security of communities should also be improved. If as a consequence of the Bill workers are better able to provide services, some positive environmental effects may be anticipated.
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