Hugh Henry MSP introduced the Protection of Workers (Scotland) Bill in the Parliament on 1 June 2010. This Members’ Bill seeks to create a specific statutory offence relating to assaults on people whose work brings them into face-to-face contact with members of the public.

The Bill as introduced would not extend the scope of the criminal law – any behaviour which could be prosecuted under the proposed offence could also be prosecuted under existing criminal offences (e.g., the common law offence of assault). However, by creating a specific offence, the Bill seeks to highlight the problem of assaults on a particular group of people.

This briefing considers the proposals in the Bill, including how they compare with existing common law and statutory offences dealing with assault.
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EXECUTIVE SUMMARY

The Bill provides for a specific statutory offence relating to assaults on people whose work brings them into face-to-face contact with members of the public. By doing so, it seeks to highlight the problem of assaults on such workers and provide them with additional protection. It would not, however, extend the scope of the criminal law – any behaviour which could be prosecuted under the proposed offence could also be prosecuted under existing criminal offences (eg the common law offence of assault).

The proposed statutory offence would cover a segment of all the assaults which can be prosecuted under common law assault. It could only be used where one of the following applies:

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

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

The Bill provides that the new offence can only be prosecuted under summary procedure, with a maximum custodial sentence of 12 months and/or a fine of up to £10,000. A conviction for the existing common law offence of assault attracts the same maximum sentences when prosecuted in the summary sheriff courts. However, common law assault may also be prosecuted under solemn procedure where the maximum sentences are higher.

The documents published along with the Bill seek to draw parallels between its provisions and the protections currently provided by the Emergency Workers (Scotland) Act 2005. Those covered by the provisions of the 2005 Act include police officers, firefighters, ambulance workers, doctors and nurses.

The Bill and 2005 Act are similar in that they both provide for statutory offences of assaulting particular types of workers, with those offences being prosecuted under summary procedure only and attracting maximum custodial sentences of 12 months and/or fine of up to £10,000. The two are different in various ways, including the fact that the 2005 Act also makes it an offence to obstruct or hinder a relevant worker.
INTRODUCTION

The Protection of Workers (Scotland) Bill (the Bill) was, together with explanatory notes and a policy memorandum, introduced in the Parliament on 1 June 2010 by Hugh Henry MSP. It seeks to create a specific statutory offence dealing with assaults on people whose work brings them into contact with members of the public. By creating a specific criminal offence, the Bill seeks to highlight the problem of assaults on this particular group of people.

Proposals for legislation in this area were consulted on last year – Workers (Aggravated Offences) (Scotland) Bill: Public Consultation (Henry 2009a). A summary of responses was published later in the year – Proposed Workers (Aggravated Offences) (Scotland) Bill: Summary of Consultation Responses (Henry 2009b).

A parliamentary debate on the protection for workers (Scottish Parliament 2010a) was held shortly before the introduction of the Bill. During that debate, Hugh Henry referred to the protection afforded to emergency workers under the Emergency Workers (Scotland) Act 2005 (considered later in this briefing), before going on to argue that such protection should be extended to other workers who serve the public:

“The time is right to draw on the benefit of our experience and take the next step, by ensuring that all workers who are assaulted while they are serving the public receive the same level of support as we give to emergency workers. That is the least that we can do for the people who work to serve us.” (col 26384)

During the debate, the Justice Secretary paid tribute to the work of Hugh Henry in promoting the protection of workers, but was more cautious in relation to whether further criminal offences are needed:

“The Crown Office and Procurator Fiscal Service and the courts take very seriously cases that involve attacks on people who were going about their daily working lives. We expect no less of the courts, which deliver. The common law of assault and the common law of breach of the peace offer protection to everyone in Scotland, including public-facing workers. Depending on the seriousness of the offence, maximum penalties all the way up to life imprisonment are available. In a recent case, an assault on a Glasgow taxi driver resulted in sentences of six years and 45 months being handed out to the two assailants. It is not clear that the proposed bill can provide for tougher sentences, given the range of penalties that are already available under the common law. However, as I said, we will carefully study the detail of the bill when we see it.” (col 26386)

Other contributions to the debate, recognising the seriousness of the problem but questioning the need for new offences in this area, included ones from John Lamont MSP:

“Of course, at certain points in history, we need to send out powerful messages that certain behaviour is not acceptable. Clearly, there can be an important role for any legislator in sending out that message. As a general rule, however, we should not use legislation simply as a tool to send out a message.” (col 26391)

And Robert Brown MSP:

“As Hugh Henry said, the Liberal Democrats, when in government, supported the passage of the Emergency Workers (Scotland) Bill. That legislation was a focused response to a particular problem. One of the challenges is to determine whether
further legislation on the matter would be a focused response or a scattergun response that did not have the same effect.” (col 26392)

Contributions to the debate in favour of further legislation included one from Karen Whitefield MSP:

“The passing of the Emergency Workers (Scotland) Act 2005 clearly demonstrated that Scottish society will not tolerate violence against workers who provide our emergency services. It sent out a clear message and, according to Unison, it appears to be having a positive effect. (...) It is time to extend the measures to include all workers who have face-to-face contact with the public. They deserve to know that Scottish society will not tolerate verbal or physical violence against workers. They deserve the same level of protection that emergency workers now enjoy.” (col 26402)

THE PROPOSED NEW OFFENCE AND COMMON LAW ASSAULT

Scope of the offences

The Bill as introduced would not extend the scope of the criminal law. Any behaviour which could be prosecuted under the proposed offence could also be prosecuted under existing criminal offences – in particular, the common law offence of assault.

The statutory offence would cover a segment of all the assaults which can be prosecuted under common law assault, with the statutory offence being restricted to the circumstances set out in section 1 of the Bill. Thus, the statutory offence could only be used where one of the following applies:

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

In addition, the worker’s employment must have included at least some face-to-face involvement with members of the public. In other ways the definition of a worker is quite broad (eg apparently covering the self employed and voluntary workers as well as paid employees).

Section 1(1) of the Bill also refers to the assault being carried out by “a member of the public”. The Bill does not elaborate on who this might exclude from the scope of the offence. However, given the use of the phrase “members of the public” in the definition of a worker (see section 1(3)) one possible interpretation is that it would, for example, exclude co-workers. It would be for the courts to provide an authoritative ruling on the matter.

The above restrictions on the proposed statutory offence would add to the elements which the prosecution would have to prove for any assault. In some cases, this might be relatively straightforward. In cases where the prosecution felt unable to prove all of the elements of the statutory offence, it might opt to prosecute for the broader common law offence.
Penalties

Section 2 of the Bill provides that the proposed statutory offence can only be prosecuted under summary procedure, with a maximum custodial sentence of 12 months and/or a fine of £10,000 (the current “prescribed sum”).

A summary conviction for the existing common law offence of assault attracts maximum sentences of:

- justice of the peace courts – imprisonment of 60 days and/or a fine of £2,500
- sheriff courts – imprisonment of 12 months and/or a fine of £10,000

However, common law assault may also be prosecuted under solemn procedure where the maximum sentences are:

- sheriff courts – imprisonment of five years and/or an unlimited fine
- High Court – life imprisonment and/or an unlimited fine

Given the fact that the proposed statutory offence can only be prosecuted under summary procedure, very serious assaults on workers (where prosecution under solemn procedure is justified) would still be prosecuted under the common law offence.

The above discussion focuses on the maximum penalties which a court is able to impose. The maximum sentence for the proposed statutory offence does not exceed that available under the common law. However, there might be an expectation that sentences handed out for the statutory offence would, in practice, generally exceed those imposed for similar common law assault charges (prosecuted under summary procedure) which do not involve attacks on workers providing services to the public. It would appear from the policy memorandum published along with the Bill that this is intended:

“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.” (para 12)

It may be argued that this outcome is achievable (and may at least in some cases already be achieved) under existing laws. Certainly, it is the case that the criminal courts can take a wide range of factors relating to the victim (eg vulnerability), the offender (eg previous convictions) and the offence (eg impact on the victim and others) into account when determining the appropriate sentence for a common law assault conviction. This line of argument was highlighted by Bill Aitken MSP in the above mentioned parliamentary debate on the protection for workers:

“As I have often said, the courts understand the extent of the problem and appreciate that people in many working situations are entitled to more protection and that sanctions against those who assault such people should be commensurate with the difficulty that has been caused. I repeat that we tend to fail to recognise that the

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1 Criminal cases are prosecuted under either solemn or summary procedure. Solemn procedure is used for more serious cases. Trials under solemn, but not summary, procedure are conducted with a jury. Solemn cases are prosecuted in the High Court (most serious cases) and the sheriff courts. Summary cases are prosecuted in the sheriff courts and in the justice of the peace courts (least serious cases).

2 When presided over by stipendiary magistrates, justice of the peace courts have the same sentencing powers as summary sheriff courts.
courts take full cognisance of the circumstances in disposing of cases and act accordingly.” (Scottish Parliament 2010, col 26417)

**RELATED STATUTORY OFFENCES**

The documents published along with the Bill seek to draw comparisons between its provisions and the protections currently provided by the Emergency Workers (Scotland) Act 2005. The [explanatory notes to the 2005 Act](#) state that it:

“seeks to protect emergency workers and to safeguard the delivery of emergency services. The Act creates new offences in relation to assaulting, obstructing or hindering someone who is providing emergency services, or someone who is assisting an emergency worker who is responding to emergency circumstances. The Act also creates similar offences in respect of health workers on hospital premises and persons assisting such workers.” (para 3)

The definition of emergency worker in the 2005 Act includes police officers, firefighters, ambulance workers, doctors and nurses. Police officers and firefighters are also covered by provisions in:

- section 41 of the Police (Scotland) Act 1967 – includes an offence of assaulting, resisting, obstructing, molesting or hindering police officers
- section 39 of the Fire (Scotland) Act 2005 – includes an offence of assaulting, obstructing or hindering firefighters carrying out certain duties

The rest of this section considers some of the similarities and differences between the provisions in the Bill and the existing statutory offences highlighted above – in particular the offences set out in the Emergency Workers (Scotland) Act 2005.

**Obstruction and/or hindrance of workers**

The consultation paper preceding the Bill suggested that legislation might be used to:

“create a new offence of assaulting, obstructing or hindering someone who is acting in their capacity as a worker while providing a face to face service to the public” (Henry 2009a, p 5).

It included a specific question on whether obstruction and/or hindrance should be included within the offence. The Bill as introduced only makes assault an offence. In this respect, the Bill is different from the other statutory provisions mentioned above (all of which also cover obstructing and hindering).

One of the arguments presented in favour of the provisions now set out in the Emergency Workers (Scotland) Act 2005 was that the obstruction and hindering elements of the proposed offences would assist in the prosecution of actions which might otherwise be difficult to prosecute under existing common law offences. In its [Stage 1 Report on the Emergency Workers (Scotland) Bill](#), the Justice 1 Committee (2004) stated that:

“The Committee has given careful consideration to the potential of the bill to provide emergency workers with additional legal protection from assault and obstruction when responding to emergency circumstances, and to make a difference to the level of attacks on emergency workers. The Committee believes that this is a fundamental
test which the legislation must pass if it is to be considered to achieve the Executive’s stated policy intention.” (para 84)

The Justice 1 Committee went on to report that the existing common law appeared capable of covering the vast majority of situations which might be covered by the proposals in that bill, but concluded that:

“The Committee supports the Emergency Workers (Scotland) Bill, which aims to protect emergency workers, and persons assisting them, from assault and obstruction when dealing with emergency circumstances as it considers that the Bill will add, at the margins, to existing common law and statutory provisions.” (para 110)

The explanatory notes and policy memorandum published along with the Protection of Workers (Scotland) Bill do not comment on the decision not to include obstruction and/or hindrance within the proposed offence. The summary of consultation responses stated that there was support for including obstruction and/or hindrance (18 out of 25 responses on the topic), but also noted that:

“Five [responses] argued that it should be restricted to assault principally on the grounds that hindering or obstructing a public facing worker was a less serious issue than hindering or obstructing an emergency worker. Two further respondents noted that in situations where a worker is hindered or obstructed, unlike an emergency worker, they have the option to withdraw service.” (Henry 2009b, p 5)

Given that the proposals in the current Bill only deal with assaults on workers, something which is clearly already covered by the existing common law offence of assault, it does not (even at the margins) provide additional protection in relation to the scope of what is criminal.

**Penalties**

The Bill is similar to the Emergency Workers (Scotland) Act 2005 in that they both provide for:

- offences which can only be prosecuted under summary procedure
- a maximum custodial sentence of 12 months and/or a maximum fine of £10,000

However, at the time the Emergency Workers (Scotland) Bill was passed by the Parliament, in December 2004, it provided for a higher maximum sentence than could then be imposed under summary procedure in relation to a conviction for common law assault. At that time, the maximum custodial sentences were:

- offences in the Emergency Workers (Scotland) Bill – nine months
- summary conviction for common law assault – three months (six months where the offender had a previous conviction for an offence inferring personal violence)

The Criminal Proceedings etc (Reform) (Scotland) Act 2007 increased the maximum custodial sentences which could be imposed by the summary sheriff courts. The result is that, from December 2007, such courts can impose custodial sentences of up to 12 months in relation to common law assault (irrespective of whether the offender has previous convictions or not) and the offences in the Emergency Workers (Scotland) Act 2005.
ATTACKS ON WORKERS

Scale and nature of the problem

The Scottish Crime and Justice Survey (SCJS) provides some statistical information on workplace abuse – see 2008/09 Scottish Crime and Justice Survey: First Findings (Scottish Government Social Research 2009, paras 4.9.1 – 4.9.6).³ The report notes that it:

“provides information about workplace abuse which, in the context of the SCJS 2008/09 includes incidents of both physical abuse and verbal abuse. The term refers to abuse experienced by someone in the course of their work perpetrated by the general public.” (para 4.9.1)

And that:

“Around three-quarters (74%) of adults in employment spent some time dealing with the general public during the course of their work, either face-to-face or over the telephone.”⁴ (para 4.9.2)

In relation to those adults who had jobs involving face-to-face or telephone contact with the general public, the report states that during the preceding 12 months:

- 34% had experienced verbal abuse
- 7% had experienced physical abuse

In relation to the 7% who had experienced physical abuse in the course of their work (105 interviewees), 29% stated that such abuse occurred at least once a week.

Victims of workplace abuse in the past 12 months were asked if they had reported the most recent incident to an employer. Reporting was more common amongst those who had experienced physical abuse (77%) as opposed to verbal abuse (54%).

The SCJS 2008/09 also provides information on the link between alcohol/drugs and violent crime. Victims were asked whether they thought offenders were under the influence of alcohol or drugs at the time of the offence. The findings refer to all violent crime reported by interviewees, not just that experienced by people in the course of their work. The report states that:

“In 58% of violent crime measured by the SCJS 2008/09, victims said the offender(s) were under the influence of alcohol. This was a higher proportion than found in the BCS [British Crime Survey] in England and Wales in 2008/09 where victims reported that the offender(s) were under the influence of alcohol in 47% of violent crime; (…) The offender(s) was reported to be under the influence of drugs by victims in just over one in four (26%) violent crimes. Once again this is higher than the equivalent

³ The Scottish Crime and Justice Survey (first carried out in 2008/09) is a large-scale continuous survey, based on 16,000 interviews conducted annually with adults (aged 16 or over) living in Scotland, measuring people’s experience and perceptions of crime in Scotland. Previous similar Scottish crime surveys used smaller samples.

⁴ The offence provided for in the Bill (see section 1(3)(b)) would only apply to workers whose employment involves them being physically present with one or more members of the public. Thus, telephone contact alone would not be sufficient.
figure from the BCS for England and Wales for the same period (17% of violent crime).” (para 4.5)

Other sources of information about attacks on workers (not necessarily focusing on Scotland) include surveys carried out by trade unions and the Health & Safety Executive. For example, see:

- Union of Shop, Distributive & Allied Workers (USDAW 2009) – One in 10 Shopworkers Physically Assailed
- Health & Safety Executive – Violence at Work

**Measures to tackle the problem**

Staff training and other measures taken by employers, campaigns to influence attitudes and the use of the law (both criminal and civil) may all play a part in tackling the problem of attacks on workers.

In relation to the role of the employer, the website of the Health & Safety Executive (Work-Related Violence – Legal Requirements) notes that employers’ health and safety responsibilities apply to risks from violence, just as they do to other risks from work, and that relevant legislation includes:

> “The Health and Safety at Work etc Act 1974 (HSW Act) – Employers have a legal duty under this Act to ensure, so far as it reasonably practicable, the health, safety and welfare at work of their employees.”

The Health & Safety Executive also publishes advice on how to avoid violence at work – Work-Related Violence: Information. Further information is set out in Managing Occupational Violence and Aggression in the Workplace: Tools and Strategies (NHS Health Scotland 2010).

The Scottish Crime and Justice Survey 2008/09 includes some information on support for workers in public-facing roles. The survey report (Scottish Government Social Research 2009) notes that:

> “All those who spent some time dealing with the general public during the course of their work were asked whether or not they had received any formal training or other assistance to help them deal with situations where members of the general public were behaving aggressively towards them.” (para 4.9.6)

The report includes the finding that 43% of all employees having contact with the general public at work (face-to-face or telephone) had received training or other support to deal with aggressive behaviour. It also states that:

> “figures suggest that employers were more likely to target training and support at those employees most likely to experience workplace abuse. However there were still a relatively large minority of employees who have experienced abuse but who were not offered training or other support.” (para 4.9.6)

Relevant campaigns include those undertaken by USDAW – Freedom from Fear.

In relation to legal action, UNISON Scotland has published a short briefing outlining both civil and criminal remedies – Assaults on Staff Legal Action (2007)
Impact of the Emergency Workers (Scotland) Act 2005

Various statistics are available in relation to the use of the Emergency Workers (Scotland) Act 2005 by the police and prosecution. For example, see the information provided in relation to the following parliamentary questions: S3W-32173 (Scottish Parliament 2010b); S3W-31412 (Scottish Parliament 2010c); S3W-22145 (Scottish Parliament 2009a); and S3W-20209 (Scottish Parliament 2009b).

However, a number of issues mean that it is difficult to draw firm conclusions about the impact of the 2005 Act – in tackling the problem of attacks on emergency workers – using the types of bare statistical information provided in response to the above parliamentary questions. Such issues include:

• prior to the coming into force of the 2005 Act (and indeed subsequent to that point) attacks on emergency workers could be recorded and prosecuted under other offences (eg common law assault and section 41 of the Police (Scotland) Act 1967)
• a lack of robust comparative statistics dealing with attacks on emergency workers (other than police officers) prior to the coming into force of the 2005 Act
• the possible impact of non-legislative measures taken to encourage the reporting and accurate recording of relevant assaults
• the possible impact of non-legislative measures aimed at reducing the number of assaults on emergency workers

The type of formal post-legislative analysis which might address such issues has not, thus far, been carried out.

Even with access to robust evidence on the impact of the 2005 Act, it may be necessary to adopt a cautious approach to using such information in order to predict the likely impact of the proposals set out in the Bill given the fact that the Bill seeks to protect a much larger and more diverse group of workers.
SOURCES


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