

VIOLENCE THREATS ABUSE

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PROPOSED PROTECTION OF WORKERS (RETAIL AND AGE-RESTRICTED SALES ETC.) (SCOTLAND) BILL

A draft proposal for a Bill to increase the protection for workers in the retail sector and those applying or enforcing an age-restriction in relation to the sale or supply of goods or services.

Consultation by Daniel Johnson MSP
Edinburgh Southern

January 2018

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FOREWORD BY DANIEL JOHNSON MSP

More people work in shops than in any other part of the private sector. It is a job that a huge proportion of people do at some point in their lives and is often the first experience of work someone will have. Yet for such an important and significant type of work, there is a serious problem of violence and abuse that has failed to be addressed by successive governments and is getting worse.



My proposal is to put this right. I want to bring forward a bill that ensures crimes against shop workers are taken seriously, that they receive better protection from the law, that recognises their responsibilities and that provides a clear and lower threshold at which obstructive, abusive or threatening behaviour is considered a crime and can be prosecuted.

As detailed in this consultation document, abuse and violence against shop workers has become commonplace. Trade unions and employers' organisations agree and there is growing consensus that it is an issue that requires further action. More alarmingly, these incidents are becoming normalised for shop workers who are simply not reporting these crimes to the police. When they do, many feel their reports are not followed up or bargained away at court, if cases even reach that stage.

Denial of sale or service is increasingly felt by some to justify abuse, harassment or even violence against staff simply trying to do their job. The sale of age-restricted goods, particularly alcohol and tobacco, necessitates asking for proof of age. When this leads to denial of sale it can be a major trigger for many of these incidents. That is why this proposal also covers those selling age-restricted goods and services who are not in a shop setting – for example bar staff, door staff and supermarket delivery drivers.

The requirement to ask for proof of age falls to the individual worker. Failure to ask for proof of age could result in the worker being fined or prosecuted. My argument is that if workers are upholding the law, we must provide them with the protection of the law.

Making it an offence to obstruct someone upholding statutory age-restrictions (such as Challenge 25) would be a useful tool for targeting violence against shop workers and others. Firstly, it would create a clear and early threshold. Rather than having to wait for a situation to escalate, any interference with a shopworker or member of bar staff carrying out their legal duty would be a crime. This would enable effective action to be taken at the earliest point. Secondly, it would extend the protection of the law to those we oblige to uphold it. This is an important point of reciprocity.

An alternative approach of creating a statutory aggravation (rather than a new offence) could achieve similar aims. On this approach, the fact that a worker was upholding a statutory age-restriction when he or she became the victim of an offence would have to be taken into account in sentencing.

Everybody should enjoy safety and security at work. That is important whether you work in an office, a pub or on the shop floor. For too many people abuse and violence has become 'just part of the job'. This bill would offer much needed protection for thousands of Scottish workers.

I hope you agree and support the proposals set out in this document.

A handwritten signature in blue ink that reads "Daniel". The script is cursive and fluid.

Daniel Johnson MSP
January 2018

1. EXECUTIVE SUMMARY

Everyone deserves a safe working environment, free from violence or abuse. Those who work in public facing environments, such as retail workers and those who sell age-restricted products like alcohol, are particularly vulnerable to violence or abuse when they are doing their jobs. Within these workplaces, violence or abuse is often triggered by the sale of age-restricted goods or services.

A recent survey conducted by the British Retail Consortium (BRC) has shown that incidents of violence or verbal abuse against those who work in retail have been increasing.¹ Within these workplaces, the sale of age-restricted goods and services have proven to be a major trigger point for violence and verbal abuse of staff. In the sale of items such as alcohol or tobacco, workers are required to uphold the law that prohibits the sale of such items without the production of valid identification proving the customer is over the necessary age.

We ask workers in shops, supermarkets, pubs, and bars to uphold the law by not selling any prohibited items to people who do not meet the legal age requirement. Not only do we rely on these workers to perform age-verification checks on a regular basis but also we hold the individual worker personally liable if they fail to do so. The law rightly punishes workers who fail to uphold their statutory responsibilities, but those same workers can also be fearful of performing age-verification checks.

This proposal would also create new offences designed to protect any worker, including those involved in the sale or supply of age-restricted goods and services. The proposal could alternatively create a new statutory aggravation of assaulting or abusing workers fulfilling their legal obligation to uphold or enforce such age-restrictions.

What is the problem?

The number of incidents of violence or verbal abuse suffered by workers has significantly increased.

The 2016 survey conducted by the BRC found that there had been a 40% increase year-on-year in the number of incidents of violence or verbal abuse against retail workers.² The Scottish Grocers Federation's (SGF) Scottish Crime Report 2017 recorded that 92% of respondents had endured physical and/or verbal abuse whilst working in-store within the last year.³

92%
of retail workers have endured physical and/or verbal abuse whilst at work.

The same data shows that refusal of sale and checking for ID, particularly alcohol or tobacco, acts as a major trigger point for aggressive behaviour from members of the public.⁴

There have been a large number of changes to the law around the sale of age-restricted goods and services. In particular, the introduction of the Challenge 25 age-verification policy has brought many more people into a situation where they are asked for ID. This in turn may be responsible for part of the increase in violence and verbal abuse.

¹ British Retail Consortium, *2016 Retail Crime Survey* (2017), p.6 https://brc.org.uk/media/116322/10081-brc-retail-crime-survey-2016_v6.pdf

² Ibid

³ Scottish Grocers Federation, *The Scottish Crime Report 2017* (2017), p. 6 <http://www.scottishshop.org.uk/images/SGF-Crime-Report-Guidance-2017.pdf>

⁴ Ibid

What does this Bill aim to do?

By creating new offences, the proposed Bill aims to address the problem of violence and verbal abuse by:

- i. **REDUCING VIOLENCE** and verbal abuse of workers in the retail sector and those involved in the sale or supply of age-restricted goods and services;
- ii. **INCREASING AWARENESS** of the issues and tension generated in retail and the sale or supply of age-restricted goods and services and the violence or verbal abuse that often occurs as a result;
- iii. **INCREASING REPORTING** of violence or verbal abuse against staff and businesses.

How will the Bill achieve these aims?

This consultation sets out potential changes to the criminal law to strengthen protections for workers in the retail sector and those selling or supplying age-restricted goods or services. The changes outlined could operate independently or together.

The main option put forward is to create new offences that would cover any of the following:

- i. assaulting a worker in the retail sector;
- ii. assaulting a worker involved in the sale or supply of age-restricted goods or services;
- iii. abusing, harassing, threatening or obstructing a worker involved in the sale or supply of age-restricted goods or services. (This would cover verbal abuse, verbal or non-verbal threats, harassment and intimidation.)

As an alternative, this consultation document explores the option of creating a new statutory aggravation for offences against a worker involved in the sale or supply of age-restricted goods or services.

The Bill will define offences (or aggravations) relating to goods and services which are age-restricted under statute (i.e. where a worker is required by law – and not just as a matter of, for example, company policy – to ask for proof of age). Among others, it would cover shop workers, bar and pub staff, supermarket delivery drivers and door staff.

This Bill will complement the existing age-restrictions to allow workers to feel more confident selling age-restricted goods and services and highlight the legal responsibility that these workers have when at work.

2. HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal that I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders, which can be found on the Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation. The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

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Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An online copy is available on the Scottish Parliament's website (www.parliament.scot) and at www.notpartofthejob.com



3. BACKGROUND

The retail sector is the largest private sector industry, employing 245,000 Scots, which accounts for 9% of total employment. The accommodation and food industry employs 190,000 people (7% of total employment).⁵ This proposal therefore covers a significant proportion of the Scottish workforce.

Due to the scale of these industries and the large number of people that work in these sectors, the retail and hospitality workforces include many different types and levels of work. Within both industries, there are a significant number of employees who would generally be classified as low paid. There are also a number of other specific groups in these sectors who would be classed as particularly vulnerable such as lone workers, those who work unsociable hours (such as in 24-hour convenience stores), and those who come into regular contact with drunk or intoxicated customers (such as bar or pub staff).

The scale of these industries means that the workers in retail and hospitality also transcend demographic boundaries, and workers come from all socio-economic, racial, ethnic, age, gender, and equalities groups in society.

Retail is also a changing industry that has had to adapt to meet the demands of the twenty-first century. With the increasing popularity of online retail, there has been a surge in the number of retail workers being employed as delivery drivers. The expectation of convenience has led to many more shops and supermarkets staying open for longer hours and an increase in 24-hour retail. The automation of sale with the use of self-service checkout machines has also decreased the number of staff required to work in store at any one time. Each of these trends has the potential to increase vulnerability for workers (for further discussion of this, see Section 4, The Changing Nature of Retail).

It is important that the contribution of retail and hospitality to Scotland's success is understood and the frontline work of the hundreds of thousands of employees recognised. The difficulties these workers have to deal with and particular vulnerabilities they face as a result of dealing with the general public should be addressed.

⁵ Scottish Parliament Information Centre (SPICe), *Scotland's Employment by Industry and Geography* (2017), p.10 <https://sp-bpr-en-prod-cdn.azureedge.net/published/2017/10/13/Scotland-s-Employment-by-Industry-and-Geography/SB%2017-71.pdf>

4. A PROBLEM ON THE RISE

Violence and Abuse in Retail

Any violence or abuse in the workplace is unacceptable. Despite this, there has been a startling increase in the level of violence and verbal abuse perpetrated against retail workers whilst at work.

In a survey conducted by the Scottish Grocers Federation (SGF), 92% of respondents said that they had been a victim of violence or abuse whilst working in-store in 2016. One in ten of these respondents reported that violence or abuse happened on a daily basis and half of respondents claimed that violence or abuse occurred at least every month.⁶

363%

Increase in rate of violence or verbal abuse against staff in the last four years.

UK-wide statistics show a 40% year-on-year increase in the number of violent and abusive incidents against retail workers.⁷

This is part of a decade-long rise recorded in annual surveys conducted by the British Retail Consortium (BRC). These reports show that rates of violence and abuse against retail workers are now at the highest they have ever been in the last 10 years. There has been a 363% increase in the number of violent or abusive incidents against retail workers since 2011-12 according to the annual BRC survey.⁸

In response to these figures, Helen Dickinson OBE, Chief Executive of the BRC called for “stronger cooperation between industry, the government, law enforcement, and the private security industry” to change the direction of this trend.⁹

Figure 1¹⁰



⁶ Scottish Grocers Federation, *The Scottish Crime Report 2017* (2017), p. 6 <http://www.scottishshop.org.uk/images/SGF-Crime-Report-Guidance-2017.pdf>

⁷ British Retail Consortium, *2016 Retail Crime Survey* (2017), p.6 https://brc.org.uk/media/116322/10081-brc-retail-crime-survey-2016_v6.pdf

⁸ Data extracted from Retail Crime Surveys undertaken by BRC from 2005 – 2017

⁹ Business Reporter, 'Retailers face rise in cyber crime and violence against staff' (2 February 2017) <https://business-reporter.co.uk/2017/02/02/retailers-face-rise-cyber-crime-violence-staff/>

¹⁰ Data extracted from Retail Crime Surveys undertaken by BRC from 2005 – 2017

Violence and Abuse in On-Trade Sales and the Night Time Economy

Crime is a significant feature of the night time economy, comprising primarily pubs, clubs, restaurants, and late-night retail outlets such as supermarkets and petrol stations. Violence is regarded by those working in the night time economy as commonplace, difficult to prevent, and getting worse.¹¹ More than 80% of door staff are believed to have been subjected to violence, and 75% of companies employing security guards have had staff attacked.¹²

In 2005, the then Scottish Executive released a report relating to violence against public-facing workers. In this report, 24% of respondents identified bar staff at particular risk of physical violence during the course of their work and 29% believed bar staff were at particular risk of verbal abuse.¹³

The Scottish Crime and Justice Survey (SCJS)

Each year the Scottish Government collects and records information about crime, such as where it occurs and information about the victim. Up until 2008/09 the SCJS also included findings specifically about workplace abuse experienced by those in public facing roles. Of respondents who worked in public-facing roles, 35% said that they had experienced either verbal or physical abuse, or both, in the course of doing their job, with 30% of these respondents saying that incidents occurred on a weekly basis.¹⁴

The 2008/09 SCJS also reported that employees were more likely to report the incident in cases of physical violence (77%) than verbal abuse (54%). Those who did not report abuse said that they believed that verbal abuse was 'just part of the job' (53%) or that it was 'not worth the bother' (30%).

35%
of respondents to the SCJS
said that they had experienced
either verbal or physical
abuse, or both, whilst in
public-facing roles.

Despite the important data that was collected by the SCJS up until 2008/09, the Scottish Government has ceased publishing information about violence or abuse suffered by workers in public facing environments.¹⁵ In November 2017, Jamie Hepburn MSP, the Minister for Employability and Training, confirmed that the Scottish Government would resume publishing this information in the survey from 2018.¹⁶

¹¹ Dawson, C., *Research on violence reduction report*, (The Security Industry Authority, 2015), p. 76 <https://www.sia.homeoffice.gov.uk/Documents/research/sia-violence-reduction-report.pdf>

¹² Ibid p. 1

¹³ Office of Chief Researcher, *Violence Against Workers 2004-2005 Pre- and Post-Campaign Evaluation*, (Scottish Executive Social Research, 2005), p.8 <http://www.gov.scot/Resource/Doc/76169/0019016.pdf>

¹⁴ MacLeod, P., Page, L., Kinver, A. & Iliasov, A., *2008/09 Scottish Crime and Justice Survey: First Findings* (Scottish Government Social Research, 2009) , p. 75-76 <http://www.gov.scot/Resource/Doc/296333/0092084.pdf>

¹⁵ Ibid, p.77-78

¹⁶ The Scottish Parliament, *Official Report Meeting of the Parliament 7 November 2017*, (The Scottish Parliament, 2017), Column 83 <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11174&mode=pdf>

Trigger Points for Violence or Abuse

Respondents to the SGF Crime Report 2017 reported that there were two major trigger points for physical or verbal confrontations between workers and members of the public:

- (i) the refusal of sale and
- (ii) when staff asked for proof of age.¹⁷

There are other trigger points for confrontation, such as approaching shoplifters, and dealing with customers who are drunk.¹⁸

In a survey conducted by Under Age Sales in 2016/17, it was estimated that, in the UK, there were 6,000 incidents every day of workers experiencing physical or verbal abuse as a direct result of asking customers for ID in order to purchase age-restricted goods or services.¹⁹

“I refused the sale as the customer had no ID. He pushed me against the wall and went on to assault the security guard.” (Anonymous respondent to Usdaw survey)

“I asked for ID from some young girls. They got very abusive, threatened to damage my car and pushed hard against me when walking away.” (Anonymous respondent to Usdaw survey)

“I was asked if I was stupid because I would not sell cigarette papers and lighters to under 18's ... the majority of people don't believe you need ID to purchase these products.” (Anonymous respondent to Usdaw survey)

In response to this statistic, Jean Irving, licensing and alcohol harm reduction spokesperson for the National Police Chiefs Council, said:

“Retailers play a critical role in preventing children from accessing alcohol, tobacco, fireworks, knives and other age-restricted products, and they should never fear carrying out the legal requirement of asking for ID from someone they suspect is underage. Doing so serves our local communities in preventing wider anti-social behaviour and crime.”²⁰

In 2010, Usdaw surveyed their members and found that 65% of shopworkers had been subjected to verbal abuse as a result of asking for ID and 43% of all incidents of abuse resulted from shopworkers asking customers for proof of age or refusing a sale of an age-restricted product.²¹ John Hannett, Usdaw General Secretary, commented that “it is clear that too many shopworkers are facing abuse on a daily basis as they are forced to police the sale of age-restricted products. Incidents of physical violence are still all too common.”²²

When selling age-restricted goods and services the worker, not the business, performing the sale is liable to prosecution if the buyer is found to be under the legal age requirement.²³

¹⁷ Scottish Grocers Federation, *The Scottish Crime Report 2017* (2017), p. 6 <http://www.scottishshop.org.uk/images/SGF-Crime-Report-Guidance-2017.pdf>

¹⁸ Quotes from Usdaw, *Under-Age Sales*, (Usdaw, 2011) <http://www.usdaw.org.uk/CMSPages/GetFile.aspx?guid=a6949e1a-3a16-4da2-96b3-3a0a9accf87b>

¹⁹ Allen, T. & Rudkin, E., *An analysis of abuse and violence towards retail staff when challenging customers for ID* (Under Age Sales, 2017), p. 3

²⁰ Talking Retail, *Thousands of local shop staff abused over ID checks*, (Talking Retail, 2017)

<https://www.talkingretail.com/news/industry-news/thousands-local-shop-staff-abused-id-checks-29-03-2017/>

²¹ Retail of Alcohol Standards Group, *Rising to the Challenge: A report into the application and impact of Challenge 25*, (RASG, 2014), p. 8 <http://www.wsta.co.uk/publications-useful-documents/65-rising-to-the-challenge-a-report-into-the-application-and-impact-of-challenge-25/file>

²² Usdaw, *Under-Age Sales*, (Usdaw, 2011), p. 7 <http://www.usdaw.org.uk/CMSPages/GetFile.aspx?guid=a6949e1a-3a16-4da2-96b3-3a0a9accf87b>

²³ Licensing (Scotland) Act 2005: Section 102, <https://www.legislation.gov.uk/asp/2005/16/section/102>

Challenge 25

A 2011 amendment to the Licensing (Scotland) Act 2005 introduced a new mandatory age-verification policy in relation to the sale of alcohol on licensed or temporarily licensed premises.²⁴ Under the policy, anyone appearing to be under the age of 25 must be challenged by staff to produce identification and verify their age (i.e. prove they are at least 18) before being sold alcohol. Challenge 25 was extended to cover the sale of tobacco in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill 2016. In a 2014 report, published by the Retail of Alcohol Standards Group, it was estimated that 23% of the UK population (11 million people) had been challenged for ID when buying alcohol as a result of Challenge 25 or similar schemes.²⁵

When Challenge 25 was introduced, Patrick Browne, Chief Executive of the Scottish Beer and Pub Association, said: “This will see many more customers asked for identification for the first time, particularly in pubs and clubs.”²⁶ The new rules dictating the sale of alcohol and the requirements of Challenge 25 may well have contributed to the notable rise in incidences of violence and verbal abuse experienced by staff when asking for ID or refusing sale.

In 2012, 76% of respondents to a survey conducted by the SGF answered that they had experienced violence or verbal abuse after challenging a customer for proof of age in the last year. In 2017, five years after the introduction of Challenge 25, this rose to 92% of respondents answering that they had experienced violence or verbal abuse.²⁷

“You’ve suddenly got to make a decision on the spot. Somebody’s been in the queue for let’s say a couple of minutes and then you’ve got to decide within like a split second if they look over 25.”

(Anonymous respondent to Usdaw survey of members)

“A lot of people don’t understand because the way they see it is ‘the law says I can buy it if I am over 18’ and they can’t understand how they might be 23 or 24 and they are still being asked for ID because they don’t understand that the store has a ‘Think 25’ policy.”

(Anonymous respondent to Usdaw survey of members)

The Changing Nature of Retail

The changing nature of the retail industry has also led to the workforce coming under new pressures when dealing with the sale of age-restricted products. The push for retail convenience has led to many more shops and supermarkets staying open for longer hours, often late into the evening, and a notable increase in the number of 24-hour retailers. A by-product of this change is the increase in lone workers who are far more vulnerable to violence or abuse, particularly at unsociable hours when shops are quiet and there may be more customers who are drunk.

Over the last decade or so there has also been a huge increase in the use of self-service checkout machines in automated sales – particularly in the biggest retail chains. As a result of this, there are often fewer staff members working at any one time which puts more pressure on difficult or stressful situations when they

²⁴ Licensing (Scotland) Act 2005, Schedule 3, Section 9A <https://www.legislation.gov.uk/asp/2005/16/schedule/3>
Came into effect in October 2013.

²⁵ Retail of Alcohol Standards Group, *Rising to the Challenge: A report into the application and impact of Challenge 25*, (RASG, 2014), p. 15 <http://www.wsta.co.uk/publications-useful-documents/65-rising-to-the-challenge-a-report-into-the-application-and-impact-of-challenge-25/file>

²⁶ Challenge 25, *News* (Challenge 25, 2011) <http://www.challenge25.org/news.html>

²⁷ Scottish Grocers Federation, *The Scottish Crime Report 2017* (2017), p. 6 <http://www.scottishshop.org.uk/images/SGF-Crime-Report-Guidance-2017.pdf>

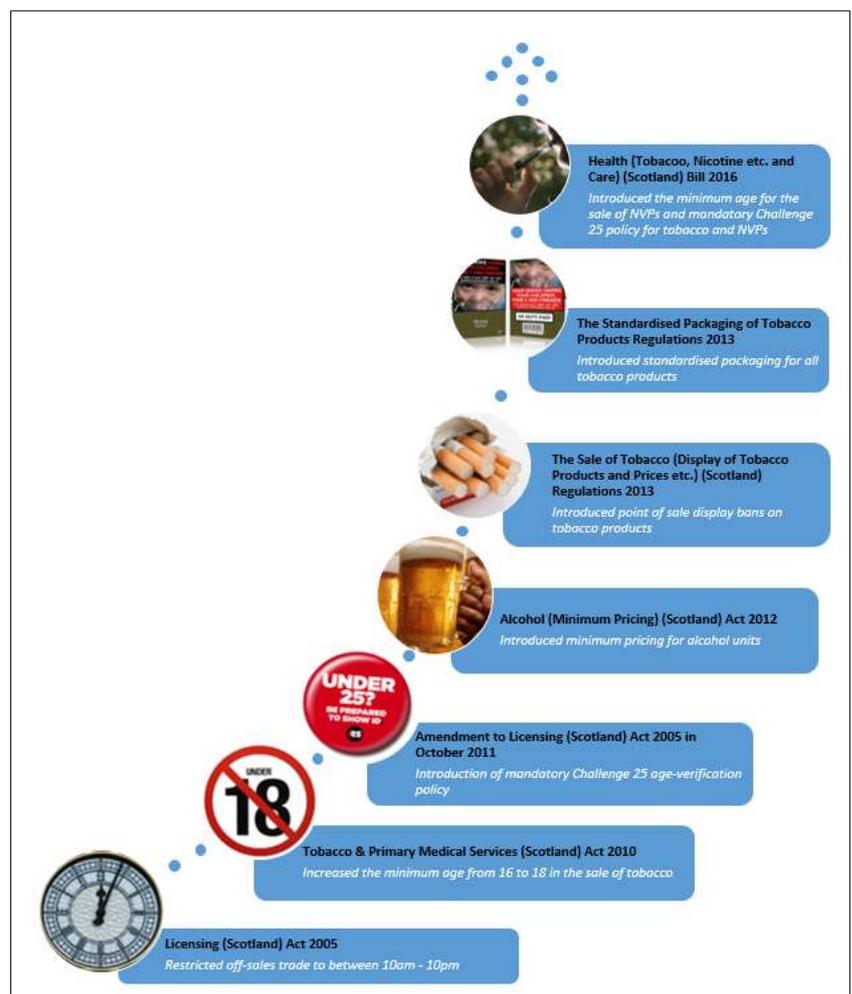
Quotes from Usdaw, *Under-Age Sales*, (Usdaw, 2011) <http://www.usdaw.org.uk/CMSPages/GetFile.aspx?guid=a6949e1a-3a16-4da2-96b3-3a0a9accf87b>

do arise. A second consequence of this change has been the extension of age-verification challenges to the entirety of the general public. Now that machines are being used to sell items, they are automatically programmed to stop any sale involving any age-restricted product regardless of the purchaser's age, pending approval by a member of staff. These automatic warnings mean everyone faces age-verification challenges that prolong and delay their shopping. This could act as another trigger point for violence or abuse against workers.

Many people today buy their shopping online which means that the retail industry has had to extend its workforce to include thousands of delivery drivers. If a customer purchases age-restricted goods online, it is the delivery driver's legal duty to verify the age of the purchaser upon delivery. Unfortunately, these drivers are particularly vulnerable to violence or abuse as they are not protected by being in a shop with other staff, customers and security measures. It is important that the challenges facing retail and the sale of age-restricted goods and services are understood and that all workers – at whatever location they are encountering customers – are protected when carrying out their legal obligation.

This example represents why part of the proposal extends to all workers with a role in applying or enforcing age-restrictions, even if they were not themselves engaged in a sale or retail transaction.

Over the past 10 years, there have been a number of changes around the sale of age-restricted goods and services – particularly alcohol and tobacco products.²⁸ These new burdens on workers, who are responsible for enforcing and maintaining the legal requirements of sale, continue to affect the levels of violence or verbal abuse that workers are faced with. For example, when the ban on smoking in enclosed public spaces was introduced in 2006 there was a notable rise in workers and staff who were subjected to violence and verbal abuse after asking customers to stop smoking inside.²⁹



²⁸ Graph above shows some recent changes to legislation regarding alcohol and tobacco.

²⁹ <http://www.personneltoday.com/hr/one-in-10-hospitality-staff-suffer-violence-or-verbal-abuse-from-customers-flouting-smoking-ban>

5. AGE-RESTRICTIONS

Age restrictions are placed on an array of goods and services that can cause harm to young people or others around them. A summary of age-restricted goods and services can be found in Annex A.

The responsibility for upholding age restrictions falls upon the worker involved, rather than the business.³⁰

6. THE EFFECT OF VIOLENCE AND VERBAL ABUSE

Impact on workers

If staff face violence or abuse whilst performing their legal duty at work, there are a number of potentially harmful impacts.

Violence or abuse at work can have a negative effect on the psychological welfare and physical wellbeing of workers. This may leave workers unable to return to work due to physical injury or fear of attack. In Great Britain, there were 4,697 injuries to employees in 2015, where the kind of accident was 'physical assault/act of violence', representing 6.5% of all reported workplace injuries. Of this figure, there was one death.³¹

Workers may lose confidence as a result of these attacks or fear of attacks. This may leave workers feeling under-confident around challenging future customers for ID. This in turn could lead to workers being disciplined, and indeed criminal charges. Workers are personally liable if they sell to a young person and face a fine of up to £5,000 and/or imprisonment for a term up to 3 months.³²

"A customer threatened to jump over the counter and to smash my face in."
(Anonymous respondent to Usdaw survey of members)

The total number of people charged with offences regarding selling age-restricted good to young people has fallen sharply in recent years, but the threat of prosecution remains.³³

The scale of the problem of violence and verbal abuse facing workers led Usdaw to launch their 'Freedom From Fear' campaign in 2002 and its annual 'Respect for Shopworkers Week'. This campaign aims to raise awareness of the violence, threats, and verbal abuse that workers experience and to give workers the confidence to report any abuse they suffer.³⁴ In March 2017 John Hannett, Usdaw's General Secretary, said "life on the frontline of retail can be pretty tough for many shopworkers and there is still a lot to do to help protect them."³⁵



³⁰ Licensing (Scotland) Act 2005: Section 102, <https://www.legislation.gov.uk/asp/2005/16/section/102>

³¹ Health and Safety Executive, *Violence at work*, <http://www.hse.gov.uk/statistics/causinj/violence/index.htm>

³² Licensing (Scotland) Act 2005: Section 102, <https://www.legislation.gov.uk/asp/2005/16/section/102>

³³ The total numbers of charges relating to sale of age-restricted good is in Annex B

³⁴ <https://www.usdaw.org.uk/freedomfromfear>

Quotes from Usdaw, *Under-Age Sales*, (Usdaw, 2011) <http://www.usdaw.org.uk/CMSPages/GetFile.aspx?guid=a6949e1a-3a16-4da2-96b3-3a0a9accf87b>

³⁵ Usdaw, *Usdaw welcomes retailers joining a call to protect 6,000 shopworkers abused every day* (Usdaw, 2017), <https://www.usdaw.org.uk/About-Us/News/2017/Mar/Usdaw-welcomes-retailers-joining-a-call-to-protect>

Impact on businesses

As well as the clear impact on workers, if a business develops a reputation for being a place where staff are subjected to violence or abuse by members of the public there could also be a serious effect on the business itself.

Sustained abuse or assault against workers could result in the loss of staff and higher staff turnover. It is estimated that each non-fatal injury costs £8,200, though only some of this cost is to the business itself.³⁶

A business may develop a negative reputation in the community as a result of continued violence and verbal abuse of staff which may lead to decreasing sales.

There may also be added costs of property damage, employing door staff or installing new security systems in an attempt to tackle abuse and violence.

“A customer got angry by being asked for ID and broke our advertising board outside.”

(Anonymous respondent to Usdaw survey of members)

Greg Ferguson, Profit Protection Manager at Scotmid said that:

“Violence in the workplace has a major impact on the operation of any business and has a direct link to colleague

engagement, absence from work, colleague turnover and customer service. It is therefore in everyone’s interest that as an employer we do everything possible to keep our workforce as safe as possible at all times.”³⁷

³⁶ Health and Safety Executive, *Costs to Great Britain of workplace injuries and new cases of work-related ill health – 2015/16*, <http://www.hse.gov.uk/statistics/cost.htm>

³⁷ Quotes from Usdaw, *Under-Age Sales*, (Usdaw, 2011) <http://www.usdaw.org.uk/CMSPages/GetFile.aspx?guid=a6949e1a-3a16-4da2-96b3-3a0a9accf87b>

Scottish Grocers Federation, *The Scottish Crime Report 2017* (2017), p. 5 <http://www.scottishshop.org.uk/images/SGF-Crime-Report-Guidance-2017.pdf>

Incentive not to challenge customers

Another worrying effect of the violence and verbal abuse of workers involved in the sale of age-restricted goods and services is to reduce the likelihood of the worker feeling confident enough to challenge customers in the future.³⁸

Respondents to the SRC report revealed that after facing violence or verbal abuse a third of retail workers were less confident in asking for ID.

This fact raises worrying concerns that age-restriction laws may not be enforced due to workers' fears of abuse when they are upholding legal requirements of controlled goods and services. As a result of the abuse of workers, young people may therefore have increased access to alcohol, tobacco, and other age-restricted goods and services.

1/3

of workers reported being less confident in asking for ID after being assaulted or verbally abused.

Under-reporting

"You've got to basically just bite your tongue, just wait for them to finish having a rant and just point out to them, you know I'm sorry but it is my job, I have to ask you."

(Anonymous respondent to Usdaw survey of members)

There is a clear and concerning upward trend in the physical and verbal abuse experienced by workers when upholding the legal age requirements of certain products and services. It is particularly concerning that many instances of abuse appear to go unreported by victims.

In a survey conducted by Under Age Sales, only 26% of retailers who have experienced abuse when asking for ID say they reported these incidents to the police.³⁹ There are a number of reasons why workers involved in the sale of age-restricted goods and services under-report incidents of violence or verbal abuse:

- a. *an acceptance of a culture of aggression* – many people mistakenly accept verbal abuse as 'part of the job' believing that it is normal for customers to become violent or aggressive when their age is questioned.
- b. *fear of being perceived as incompetent and unable to deal with the job* – studies on the effects of work-related violence find that self-blame is common among victims and so they do not report incidences of abuse.
- c. *lack of confidence in the police response* – there is a belief that a worker's complaint may not be dealt with seriously by the police or that the police can or will do nothing.⁴⁰

³⁸ This issue has been widely reported on in the news. For example, <https://www.thesun.co.uk/news/3241311/shopkeepers-letting-underage-yobs-buy-beer-cigarettes/>

³⁹ Allen, T. & Rudkin, E., *An analysis of abuse and violence towards retail staff when challenging customers for ID* (Under Age Sales, 2017), p. 4

⁴⁰ Dawson, C., *Research on violence reduction report*, (The Security Industry Authority, 2015), p. 1
<https://www.sia.homeoffice.gov.uk/Documents/research/sia-violence-reduction-report.pdf>

For those who did report, 57% either did not receive a response from the police or were unsatisfied with the response they did receive. It is clear that more has to be done to encourage workers to report the abuse they receive whilst carrying out their legal duties at work and to improve the police response to reports.⁴¹

“If you ask people for ID you get sworn at. I’ve seen a bottle get thrown at another cashier and I just don’t think it’s fair for people to have to take that abuse. I know there are security guards but sometimes the security guard turns a blind eye and he won’t back you up. Sometimes you haven’t got a manager who will back you up, and even if they do, sometimes they are not there. When you’re taking the abuse and you’ve got to just stand there and take it, you’re thinking I don’t get paid enough for this.”

(Anonymous respondent to Usdaw survey of members)

⁴¹ Quotes from Usdaw, *Under-Age Sales*, (Usdaw, 2011) <http://www.usdaw.org.uk/CMSPages/GetFile.aspx?guid=a6949e1a-3a16-4da2-96b3-3a0a9accf87b>

7. CURRENT LAW AND PRACTICE

Currently the common law of assault and the common law of breach of the peace offer protection to everyone in Scotland, including retail workers and those workers involved in the sale of age-restricted goods and services. Depending on the severity of the offence, maximum penalties all the way up to life imprisonment are available. However, the under-reporting of cases of abuse being suffered by staff (as covered in the previous section) and the frequency of assault perpetrated against workers who are carrying out their legal duty demonstrates that current law could be more effective. There is also a case for better protection against forms of abuse that would not constitute an assault under common law.⁴²

“We are not doing it just to be argumentative or to stop them having a bit of fun or whatever, we are doing it because we have signed to say that it is our responsibility. We are accountable for it and if we do serve it to under-age, it’s us who get fined and can have a criminal record against us.”

(Anonymous respondent to Usdaw survey of members)

The case for new statutory offences

There are three reasons why statutory offences would be preferable to common law alone.

First, statutory offences are simple and easily understandable by both victims and perpetrators of violence or abuse.

Second, such offences may assist in breaking the cycle of under-reporting, and choosing not to prosecute. Creating a statutory offence may encourage reporting and incentivise charges and prosecutions under the offence.

Third, the creation of specific offences sends a clear message that violence and abuse against workers is not acceptable. This could act as deterrent against violence, especially when backed up by a public information campaign.

New statutory offences would sit alongside the current common law.

The case for a new statutory aggravation

A new statutory aggravation would mean that for cases where it was shown the victim was a worker involved in the sale or supply of age-restricted goods or services, the court must take that into account when determining sentence. This should lead, in most cases, to longer custodial sentences or higher fines as a penalty.⁴³

The advantage of this approach would be that it would guarantee higher penalties being applied.

The disadvantage to this approach is that it may not achieve the same clarity and message that a new statutory offence would, and may fail therefore to deal with under-reporting.

⁴² Quotes from Usdaw, *Under-Age Sales*, (Udaw, 2011) <http://www.usdaw.org.uk/CMSPages/GetFile.aspx?guid=a6949e1a-3a16-4da2-96b3-3a0a9accf87b>

⁴³ Statutory Aggravations currently exist for offences aggravated by prejudice, on the basis of religion, race, disability, sexual orientation or transgender identity. There are also statutory aggravations which relate to other factors, such as domestic violence. Scottish Government, *Independent Review of Hate Crime Legislation in Scotland – Consultation – non-technical guide* (Scottish Government, 2017) <http://www.gov.scot/Publications/2017/08/4667>

Other measures that could achieve similar aims

There are a number of other approaches that have been taken or could be taken to improve the protection of workers.

First, the Crown Prosecution Service, the Police and NHS in England have signed a Joint Working Agreement regarding violence and antisocial behaviour in the NHS. This is a voluntary scheme designed to reduce violence and antisocial behaviour affecting NHS workers.⁴⁴ A similar scheme could be used for workers in the retail sector, or hospitality. However, due to the myriad employers involved, this would be unlikely to cover every worker affected by violence or abuse.

Second, there could be stronger enforcement of existing common law, as it refers to these workers. This consultation details the evidence which shows that incidents of abuse and violence are under-reported due to both an acceptance of the culture of aggression, and lack of faith in the police and criminal justice system to deal effectively with cases. Any improvement in police and the Crown Office and Procurator Fiscal Service (COPFS) response to these crimes would be welcome.

The impact of these other measures is not enough, in my view, to satisfy the aims of the proposal.

Other legislation offering similar protection

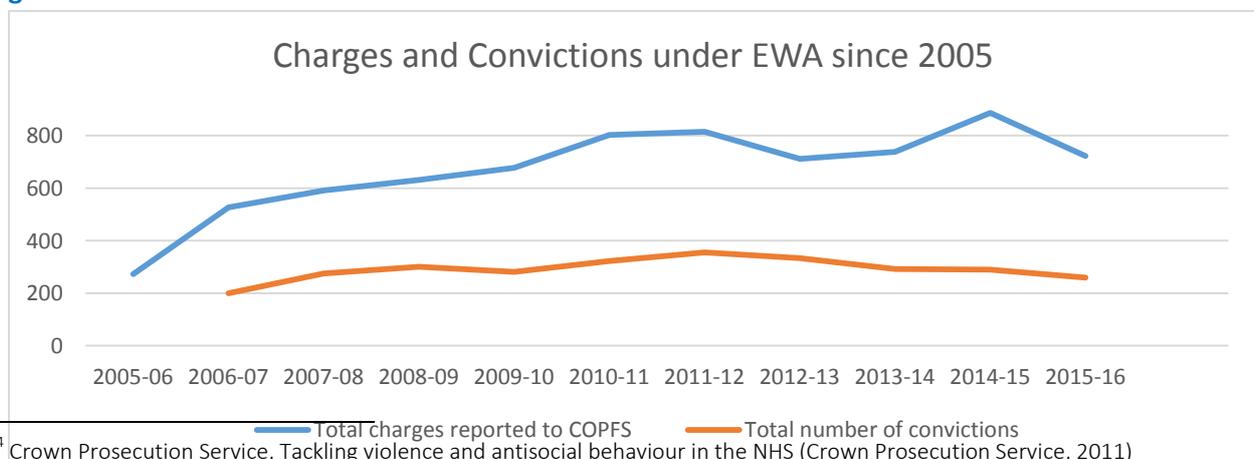
Emergency Workers (Scotland) Act 2005⁴⁵

In preceding years, legislation has been passed that extends protection to groups of workers believed to be particularly prone to suffer incidents of violence or verbal abuse or who are particularly vulnerable.

In 2005, the Emergency Workers (Scotland) Act (EWA) came into force and made the assault of an emergency services worker a statutory offence. It was also made illegal to obstruct or hinder a worker whilst they are dealing with an emergency situation. In the EWA, protection was extended to all workers involved in the “blue light services”, plus nurses, midwives, prison officers, and social workers. The total number of charges under the EWA reported to the COPFS since its introduction is 8,251.⁴⁶

The legislation protecting emergency workers has clearly been successful in bringing about a significant number of convictions of members of the public who verbally abuse or assault workers whilst they are performing their duties in an emergency situation.

Figure 2⁴⁷



⁴⁴ Crown Prosecution Service, Tackling violence and antisocial behaviour in the NHS (Crown Prosecution Service, 2011)

⁴⁵ https://www.cps.gov.uk/publications/agencies/joint_working_agreement.pdf

⁴⁶ Emergency Workers (Scotland) Act 2005 <https://www.legislation.gov.uk/asp/2005/2/contents>

⁴⁷ COPFS, 2017 via SPICe (as of 5 October 2017)

⁴⁷ Figure 2 derived from figures from COPFS, 2017 via SPICe (as of 5 October 2017)

Assault of Immigration Officers⁴⁸

Section 22 of the UK Borders Act 2007 makes it an offence to assault an immigration officer. A guilty person, under this section, is liable on summary conviction to imprisonment (up to 12 months), or a fine of up to £5,000, or both.

Assault or Obstruction of HMRC Officers⁴⁹

Section 31 of the Commissioners for Revenue and Customs Act 2005 makes it an offence for anyone to obstruct HMRC officers whilst they are performing their duties. Section 32 gives HMRC officers further legal protection from assault to supplement the common law offence. The maximum penalty for these offences is imprisonment for 6 months or a fine (of up to £5,000 for assault or £1,000 for obstruction), or both.

⁴⁸ UK Borders Act 2007, Section 22, <https://www.legislation.gov.uk/ukpga/2007/30/section/22>

⁴⁹ Commissioners for Revenue and Customs Act 2005, Section 31, <https://www.legislation.gov.uk/ukpga/2005/11/section/31>

8. DETAIL OF PROPOSED BILL

Through the evidence collected in preparation of this consultation document, my proposal seeks to address the primary issue of violence against workers in the retail sector and those selling or supplying age-restricted goods and services.

In response to the evidence given, this proposed Bill would make it an offence to do any of the following:

- i. assault a worker in the retail sector;
- ii. assault a worker involved in the sale or supply of age-restricted goods or services;
- iii. abuse, harass, threaten or obstruct a worker involved in the sale or supply of age-restricted goods or services. (This would cover verbal abuse, verbal or non-verbal threats or harassment and intimidation)

I propose that the maximum penalties for these offences will be the same as for the Emergency Workers (Scotland) Act 2005, on summary conviction, imprisonment for a period not exceeding 12 months or a fine not exceeding £10,000, or both.⁵⁰

This consultation also seeks views on the alternative approach of creating a new statutory aggravation for offences where the victim of a crime is a worker involved in the sale or supply of age-restricted goods or services.

Who will be affected and how?

My proposal will cover all workers in the retail sector⁵¹, as well as those workers involved in applying or enforcing an age restriction in relation to the sale or supply of age-restricted goods and services.⁵² This would cover, for example, door staff and delivery drivers. These goods and services include:

⁵⁰ Emergency Workers (Scotland) Act 2005, Section 6 <https://www.legislation.gov.uk/asp/2005/2/section/6>

⁵¹ For the purposes of this consultation, a worker in the retail sector should be construed in accordance with the definition of “retail employment” in the Employment Rights Act 1996, Section 17 <https://www.legislation.gov.uk/ukpga/1996/18/section/17>

⁵² A summary list can be found in Annex A

- Aerosol spray paint
- Air weapons and imitation firearms
- Alcohol
- Butane lighter refills
- Cinema Films
- Crossbows
- Caps, cracker snaps, party poppers etc.
- Firearms
- Fireworks
- Gambling
- Knives and articles with a blade or point
- Liqueur confectionery
- National Lottery
- Petrol
- Pets
- Publications considered harmful to children
- Scrap metal purchasing
- Solvents
- Sunbeds
- Tattoos and piercings
- Teeth whitening
- Tobacco and Nicotine Vapour Products
- Video works and video games

My proposal will also indirectly affect employers and customers.

How will it be enforced?

I envisage new statutory offences being enforced like any other criminal offence, through the work of the police and the COPFS. A new statutory aggravation, similarly, would operate in the same way as existing statutory aggravations.

As with any new law, it would be important that both workers and the public understand the parameters of the law and its implications. If implemented this could be supplemented by a public awareness campaign, which may incur some additional costs. This cost should be met by the Scottish Government.

What would be the impact of passing the Bill?

- i. This Bill, if passed, would raise awareness of the issue posed by the physical and verbal abuse faced by many workers.
- ii. It may increase the reporting of such crimes to the police.
- iii. By raising awareness and creating new statutory offences or statutory aggravations, it may reduce the number of occasions on which workers would have to face this type of verbal abuse or assault.

9. EQUALITIES ISSUES

My proposal is intended to protect all workers in the retail sector and those applying or enforcing a statutory age-restriction in relation to the sale or supply of goods or services. This includes instances where acts of violence or abuse involve elements of prejudice or malice relating to the victim's age, race, disability, gender, religion or sexual orientation.

The scale of the retail and hospitality industries means that the workers transcend demographic boundaries. However, violence and abuse does disproportionately appear to affect some demographic groups over others.

Race

People from ethnic minorities can often be subject to attacks or abuse based on their race. Scottish Government statistics show, for example, that in 2013-14, 4,807 racist incidents were recorded by the police in Scotland. The same statistics show that 13.5% of these incidents occurred in a shop.⁵³

Further evidence of racial abuse in the retail sector is highlighted in a survey conducted by Under Age Sales on the selling of age-restricted goods and services. The survey found that 56% of Asian or Asian British workers in the UK reported abuse at least once a month, compared to 31% of White workers.⁵⁴ Additionally, 30% of Asian or Asian British workers in the UK reported being subjected to racial abuse, and 10% reported being physically attacked at least once a month as a result of challenging customers for ID.⁵⁵

Reducing incidents of violence and abuse could offer additional protections to all individuals working in the retail sector, including those from ethnic minorities.⁵⁶

“Racial abuse happens if you stick to your guns and refuse a sale. All sorts of unnecessary and discriminatory comments can be hurled at us as the customer leaves the store... A commercial decision quickly turns personal, there is not enough customer education or consequence in these situations.”

(Anonymous respondent to Under Age Sales 2017 Survey)

Gender

Women are more likely to work in the retail sector (62.2% of retail workers) than men.⁵⁷ However, men are more likely to experience problems as a result of challenging customers for ID: in the UK, 42% of male workers compared with 32% of female workers reported being threatened or abused at least once a month, and men were also more likely than women to be physically attacked or racially abused.⁵⁸

While the above characteristics have been identified as being particularly affected, views on all protected characteristics are welcomed.

⁵³ Racist Incidents Recorded by the Police in Scotland, 2013-14 <http://www.gov.scot/Publications/2015/11/7911>

⁵⁴ Allen, T. & Rudkin, E., *An analysis of abuse and violence towards retail staff when challenging customers for ID* (Under Age Sales, 2017), p. 12 <https://www.underagesales.co.uk/user/Abuse%20and%20Violence%20Report%202.pdf>

⁵⁵ Ibid pp. 16 and 19

⁵⁶ Ibid p. 5

⁵⁷ The Scottish Government, *Assessing the contribution of retailing in Scotland*, (The Scottish Government, 2011) p.16 <http://www.gov.scot/resource/doc/346672/0115337.pdf>

⁵⁸ Allen, T. & Rudkin, E., *An analysis of abuse and violence towards retail staff when challenging customers for ID* (Under Age Sales, 2017), pp. 12, 15 and 18

10. SUSTAINABILITY

A central element of sustainability is the consideration of human needs and wellbeing. My Bill is intended to improve the wellbeing and esteem of workers in the retail sector by allowing them to work in a safer environment, where they are less likely to face or fear, assault or abuse.

Individuals who are subject to abuse may choose to leave their job in order to avoid such situations. By providing added protection to workers and raising awareness of this problem, the Bill could ensure such individuals feel able to remain in employment. It could also lead to people feeling that they could choose to work in the retail sector.

Workers may need to miss work due to physical harm inflicted and personal distress suffered. This loss of working days could have a detrimental effect on their livelihoods for example, by decreasing their likelihood of taking up promotion opportunities. A loss of working days could also have a negative effect on the economy.

A reduction in incidents of assault and abuse will mean that customers will also benefit from a calmer, safer environment. Further to this, if, as a consequence of the Bill, workers are better able to perform their age-verification duties, it will have a positive impact on the community by reducing the number of minors who are able to buy age-restricted goods and services, leading to a reduction in associated social harms.

11. FINANCIAL IMPLICATIONS

While the Bill may not have any significant financial implications apart from those involved in the enforcement of a new criminal offence, there are likely to be some increase in costs for the police and justice system through the increased reporting of crimes and charges.

As with any new law, it would be important that both workers and the public understand the parameters of the law and its implications. If implemented this could be supplemented by a public awareness campaign, which may incur some additional costs. This cost should be met by the Scottish Government.

12. QUESTIONS
PART 1 - ABOUT YOU

1. Are you responding as:

- an individual – in which case go to Q2A
 on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”)

- Politician (MSP/MP/Peer/MEP/Councillor)
 Professional with experience in a relevant subject
 Academic with expertise in a relevant subject
 Member of the public

2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)
 Commercial organisation (company, business)
 Representative organisation (trade union, professional association)
 Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
 Other (e.g. clubs, local groups, groups of individuals, etc.)

3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published. If you choose the second or third option, a name is still required, but it will not be published.

- I am content for this response to be attributed to me or my organisation
 I would like this response to be anonymous (the response may be published, but no name)
 I would like this response to be confidential (no part of the response to be published)

Name/organisation:

4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)

Contact details:

PART 2**Aim and approach**

1. Which of the following best expresses your view of creating a new offence of assault against a worker in the retail sector?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

2. Which of the following would you support as a way to respond to assaults on workers upholding statutory age-restrictions?

- A new statutory offence
- A new statutory aggravation
- Either
- Neither
- Unsure

Please explain the reasons for your response.

3. Which of the following would you support as a way to respond to abuse, harassment, threatening or obstruction of workers upholding statutory age-restrictions?

- A new statutory offence (for all these types of behaviour)
- A new statutory aggravation for threatening or abusive behaviour or harassment; and a new statutory offence of obstructing a worker upholding an age-restriction.

- Neither
- Either
- Unsure

Please explain the reasons for your response.

4. Do you think that there are other steps which could be taken (either instead of, or in addition to, legislation) to achieve the aims of the proposal?

- Yes
- No
- Unsure

Please explain the reasons for your response.

Financial implications

5. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

(a) Government and the public sector

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(b) Businesses

- Significant increase in cost
- Some increase in cost

- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(c) Individuals

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your responses.

6. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

- Yes
- No
- Unsure

Please explain the reasons for your response.

Equalities

7. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected groups (under the Equality Act 2010): race, disability, sex, gender re-assignment, age, religion and belief, sexual orientation, marriage and civil partnership, pregnancy and maternity?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response.

- 8. In what ways could any negative impact of the proposed Bill on equality be minimised or avoided?**

Sustainability of the proposal

- 9. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?**

- Yes
- No
- Unsure

Please explain the reasons for your response.

General

- 10. Do you have any other comments or suggestions on the proposal, for example, other trigger points for violence or abuse, and other workers who should be covered?**

Personal experience

(Optional questions for those who have experience working in retail or age-restricted sales.)

11. Which of the following describes your retail-sector experience (please tick all that apply)?

- Working in premises selling alcohol for consumption on the premises (e.g. pub)
- Working in premises selling alcohol for consumption off the premises (e.g. shop)
- Working in premises selling other age-restricted products (e.g. tobacco, knives etc.)
- Working in other retail premises
- None of the above

12. Which of the following describes your experience of violence or verbal abuse in the retail sector (please tick all that apply)?

- I have been the victim of physical violence
- I have been the victim of verbal abuse
- I have witnessed colleagues being subjected to physical violence
- I have witnessed colleagues being subjected to verbal abuse
- None of the above

13. Please give details of any experience that you would wish to share. (Please avoid naming any other person or giving information that would allow another person to be identified)

13. HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond by answering the questions outlined above and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via Smart Survey, please follow this link:

<http://www.smartsurvey.co.uk/s/ProtectionOfWorkers/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the Data Protection Act 1998. Any information you send in response to this consultation (including personal data and sensitive personal data) will be seen by the MSP progressing the Bill and by specified staff in NGBU, and may be added manually to Smart Survey.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or directly from this link:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

If possible, please submit your response electronically – preferably in MS Word document. Please keep formatting of this document to a minimum, and avoid including any personal data other than your name (or the name of the group or organisation on whose behalf you are responding).

Any additional personal data (e.g. contact details) should be provided in the covering e-mail (or a covering letter).

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain the role of that organisation and how the view expressed in the response was arrived at (for example, whether it reflects an established policy or was voted on by members).

Where to send responses

Responses prepared electronically should be sent by e-mail to:

daniel.johnson.msp@parliament.scot

Responses prepared in hard copy should be sent by post to:

Daniel Johnson MSP
MG.02
Scottish Parliament
Edinburgh EH99 1SP

You may also contact Daniel Johnson's office by telephone on (0131) 348 6462.

Deadline for responses

All responses should be received no later than 20 April 2018.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received on my website.

<https://www.notpartofthejob.com/>

Published responses will normally include the name of the respondent, but other personal data (signatures, addresses and contact details) will not be included.

Copies of all responses will be provided to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member's Bill). NGBU will treat responses in accordance with the Data Protection Act 1998. The summary may cite, or quote from, your response and may name you as a respondent to the consultation – unless your response is marked anonymous or confidential (see below).

I am also obliged to provide copies of all responses to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses (other than confidential responses) available to MSPs or staff on request.

Requests for anonymity or confidentiality

If you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly. You still need to supply your name, but any response treated as anonymous will be published without the name (attributed only to "Anonymous"), and only the anonymised version will be provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.

If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly. If the response is treated as confidential (in whole or in part), it (or the relevant part) will not be published. However, I would still be obliged to provide a complete copy of the response to NGBU, and a copy of any non-confidential parts (i.e. a redacted copy) to SPICe when lodging my final proposal. As the Scottish Parliament is subject to the Freedom of Information (Scotland) Act 2002 (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Scottish Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

In summarising the results of this consultation, NGBU will aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill

may have access to the full text of your response even if it has not been published (or published only in part).

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory statements or material. If I think your response contains such material, it may be returned to you with an invitation to provide a justification for the comments or remove them. If the issue is not resolved to my satisfaction, I may then disregard the response and destroy it.

Data Protection Act 1998

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or confidentiality. I will not publish your signature or personal contact information, or any other information which could identify you and be defined as personal data.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the FOISA. So if the information you send me is requested by third parties the Scottish Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, potentially even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about Freedom of Information can be found at:

www.itspublicknowledge.info.

ANNEX A AGE-RESTRICTED GOODS AND SERVICES

What goods and services are subject to age-restrictions?

The following table provides a summary of age-restricted goods and services, the statute or statutory instrument that covers this.⁵⁹

Product/Service	Statute
Aerosol spray paint	Antisocial Behaviour etc. (Scotland) Act 2004 ⁶⁰
Air weapons and imitation firearms	The Firearms Act 1968 ⁶¹ Violent Crime Reduction Act 2006 ⁶²
Alcohol	Licensing (Scotland) Act 2005 ⁶³
Butane lighter refills	Cigarette Lighter Refill (Safety) Regulations 1999 ⁶⁴
Cinema films	Licensing Act 2003 ⁶⁵
Crossbows	Crossbows Act 1987 ⁶⁶
Caps, cracker snaps, party poppers etc.	Explosives Act 1875 ⁶⁷
Firearms	The Firearms Act 1968 ⁶⁸
Fireworks	Fireworks (Safety) Regulations 1997 ⁶⁹ Explosives Act 1875 ⁷⁰ Pyrotechnic Articles (Safety) Regulations 2010 ⁷¹
Gambling	Gambling Act 2005 ⁷²
Liqueur confectionery	Licensing (Scotland) Act 2005 ⁷³
National lottery	National Lottery etc Act 1993 ⁷⁴ National Lottery Regulations 1994 ⁷⁵
Petrol	Petroleum (Consolidation) Regulations 2014 ⁷⁶
Pets	Animal Health and Welfare (Scotland) Act 2006 ⁷⁷
Publications (considered harmful to children)	Children and Young Persons (Harmful Publications) Act 1955 ⁷⁸
Sale of knives and articles with a blade	Criminal Justice Act 1988 ⁷⁹

⁵⁹ Based in part on Better Regulation Delivery Office, *Age Restricted Products and Services: A Code of Practice for Regulatory Delivery*, (Department for Business Innovation & Skills, 2014) p. 30-31

<https://www.underagesales.co.uk/user/Age%20Restricted%20Sales%20Code%20of%20Practice.pdf>

⁶⁰ Antisocial Behaviour etc. (Scotland) Act 2004, Section 122, <http://www.legislation.gov.uk/asp/2004/8/section/122>

⁶¹ The Firearms Act 1968, Section 22 – 24 <https://www.legislation.gov.uk/ukpga/1968/27/section/22>

⁶² Violent Crime Reduction Act 2006, Section 33 <https://www.legislation.gov.uk/ukpga/2006/38/section/33>

⁶³ Licensing (Scotland) Act 2005: Section 102 – 110 <https://www.legislation.gov.uk/asp/2005/16/section/102>

⁶⁴ Cigarette Lighter Refill (Safety) Regulations 1999 <http://www.legislation.gov.uk/uksi/1999/1844/contents/made>

⁶⁵ Cinemas Act 1985, Section 1 <http://www.legislation.gov.uk/ukpga/1985/13/section/1>

⁶⁶ Crossbows Act 1987, Section 2 <https://www.legislation.gov.uk/ukpga/1987/32>

⁶⁷ Explosives Act 1875, Section 31 <http://www.legislation.gov.uk/ukpga/Vict/38-39/17/section/31>

⁶⁸ The Firearms Act, Section 22 – 24 <https://www.legislation.gov.uk/ukpga/1968/27/section/22>

⁶⁹ Fireworks (Safety) Regulations 1997, Section 6 <http://www.legislation.gov.uk/uksi/1997/2294/contents/made>

⁷⁰ Explosives Act 1875, Section 31 <http://www.legislation.gov.uk/ukpga/Vict/38-39/17/section/31>

⁷¹ The Pyrotechnic Articles (Safety) Regulations 2010: Section 15; Section 33 – 34

<https://www.legislation.gov.uk/uksi/2010/1554/regulation/33/made>

⁷² The Gambling Act 2005, Section 46 – 50 <https://www.legislation.gov.uk/ukpga/2005/19/section/46>

⁷³ Licensing (Scotland) Act 2005: Section 104 <http://www.legislation.gov.uk/asp/2005/16/section/104>

⁷⁴ National Lottery etc Act 1993, Section 12 <https://www.legislation.gov.uk/ukpga/1993/39/section/12>

⁷⁵ National Lottery Regulations 1994, Section 3 <http://www.legislation.gov.uk/uksi/1994/189/regulation/3/made>

⁷⁶ The Petroleum (Consolidation) Regulations 2014, Section 12

<https://www.legislation.gov.uk/uksi/2014/1637/regulation/12/made>

⁷⁷ Animal Health and Welfare (Scotland) Act 2006, Section 30 <https://www.legislation.gov.uk/asp/2006/11/section/30>

⁷⁸ Children and Young Persons (Harmful Publications) Act 1955, Section 2 <https://www.legislation.gov.uk/ukpga/Eliz2/3-4/28/section/2>

⁷⁹ Criminal Justice Act 1988, Section 141A <https://www.legislation.gov.uk/ukpga/1988/33/section/141A>

or point	
Scrap metal purchasing from persons under the age of 16	Civic Government (Scotland) Act 1982 ⁸⁰
Solvents	Common Law ⁸¹
Sunbeds	Public Health etc. (Scotland) Act 2008 ⁸²
Tattooing & Piercing	Tattooing of Minors Act 1969 ⁸³ Licensing of Skin Piercing and Tattooing Order 2006 ⁸⁴
Teeth whitening	Cosmetic Products (Safety) (Amendment) Regulations 2012 ⁸⁵
Tobacco products, Nicotine Vapour Products	Tobacco and Primary Medical Service (Scotland) Act 2010 ⁸⁶ Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 ⁸⁷
Video works and video games	Video Recordings Act 1984 ⁸⁸

⁸⁰ Civic Government (Scotland) Act 1982, Section 34 <https://www.legislation.gov.uk/ukpga/1982/45/section/34>

⁸¹ Know the Score, *Volatile Substance Abuse*, (Scottish Executive, 2005), p. 8
<http://www.gov.scot/Publications/2003/10/18381/28166>

⁸² Public Health etc. (Scotland) Act 2008, Section 95 – 96 <https://www.legislation.gov.uk/asp/2008/5/section/95>

⁸³ Tattooing of Minors Act 1969, Section 1 <http://www.legislation.gov.uk/ukpga/1969/24/section/1>

⁸⁴ Civic Government (Scotland) Act 1982, (Licensing of Skin Piercing and Tattooing) Order 2006, Schedules
<http://www.legislation.gov.uk/ssi/2006/43/contents/made>

⁸⁵ Cosmetic Products (Safety) (Amendment) Regulations 2012, Schedules <http://www.legislation.gov.uk/uksi/2012/2263/made>

⁸⁶ Tobacco and Primary Medical Service (Scotland) Act 2010, Section 4 – 6A
<https://www.legislation.gov.uk/asp/2010/3/section/4>

⁸⁷ Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, Sections 2-7
<http://www.legislation.gov.uk/asp/2016/14/section/2/enacted>

⁸⁸ The Video Recordings Act 1984, Section 11. <http://www.legislation.gov.uk/ukpga/1984/39/section/11>

ANNEX B PROSECUTIONS FOR SELLING AGE-RESTRICTED GOODS AND SERVICES TO MINORS

People proceeded against for selling age-restricted goods and services to minors, where main charge											
Main crime/offence	Charge/Legislation	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Restriction of offensive weapons	CRIMINAL JUSTICE ACT 1988 SECTION 141A(1)	-	2	2	2	-	1	-	-	-	-
Selling loose cigarettes	CHILDREN AND YOUNG PERSONS (PROTECTION FROM TOBACCO) ACT 1991	-	-	-	-	-	-	1	-	-	-
Offences involving tobacco and persons under 18	CHILDREN AND YOUNG PERSONS (SCOTLAND) ACT 1937 SECTION 18(1)	7	11	15	32	17	14	-	-	-	-
	TOBACCO AND PRIMARY MEDICAL SERVICES (SCOTLAND) ACT 2010 S6(1)	-	-	-	-	-	2	4	5	5	3
	TOBACCO AND PRIMARY MEDICAL SERVICES (SCOTLAND) ACT 2010 SECTION 4(1)	-	-	-	-	-	1	-	3	2	2
Offences involving selling spray paint to children	ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004 SECTION 122(1)	-	-	1	-	-	-	-	-	-	-
Sale of gunpowder or other explosives to children; supply of fireworks to persons under 18	EXPLOSIVES ACT 1875 SECTION 31 & 39	-	1	-	-	-	-	-	-	-	-
	THE FIREWORKS (SAFETY) REGULATIONS 1997 REGULATION 6(1)	10	3	1	4	2	-	-	-	1	1
Sale of imitation firearm to person under 18	FIREARMS ACT 1968 SECTION 24A(2)	-	-	-	-	-	1	-	-	-	-
Sale of drink to	LICENSING (SCOTLAND) ACT 1976 SECTION 67 & 68(1)	48	59	103	62	16	1	-	-	-	-

person under 18	& (7)										
	LICENSING (SCOTLAND) ACT 1976 SECTION 68(1) & (7)	40	51	99	54	20	2	-	-	-	-
	LICENSING (SCOTLAND) ACT 2005 SECTION 102(1)	-	-	-	23	57	41	42	28	13	7
	LICENSING (SCOTLAND) ACT 2005 SECTION 103(1)	-	-	-	4	13	6	4	3	1	-
	LICENSING (SCOTLAND) ACT 2005 SECTION 106(2)	-	-	-	-	1	-	-	-	2	1
	LICENSING (SCOTLAND) ACT 2005 SECTION 108(3)(a)	-	-	-	-	2	1	2	-	1	-
	LICENSING (SCOTLAND) ACT 2005 SECTION 108(3)(a)	-	-	-	-	-	1	-	-	-	-
	LICENSING (SCOTLAND) ACT 2005 SECTION 103(1)& 141B	-	-	-	-	-	-	-	2	-	5
LICENSING (SCOTLAND) ACT 2005 SECTION 102(1)& SECTION 141B	-	-	-	-	-	-	-	-	-	2	
Video Recordings Act 1984 (not elsewhere classified)	VIDEO RECORDINGS ACT 1984 SECTION 11(1)	-	-	8	-	-	5	-	-	-	-
Betting	BETTING, GAMING AND LOTTERIES ACT 1963 SECTION 21(1)(a)	1	-	-	-	-	-	-	-	-	-
Tattooing of persons under 18	TATTOOING OF MINORS ACT 1969 SECTION 1	1	-	4	2	6	6	6	4	7	-
Total prosecutions		107	127	233	183	134	82	59	45	32	21⁸⁹

⁸⁹ SPICe, based on Scottish Government Criminal Proceedings database