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Economy, Energy and Fair Work Committee
Scottish Parliament

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Dear Gordon

Thank you for producing the Committee's comprehensive Stage 1 report on the Protection of Workers (Retail and Age-Restricted Products) (Scotland) Bill.

No one should underestimate the valuable role that retail workers play in our communities and the Committee's report makes this extremely clear. The challenging situation we all find ourselves in at this time of Covid-19 has only served to highlight even more this important work in servicing the needs of communities across Scotland.

I am grateful to the work of the Committee members and Committee clerks for the diligent manner in which you have approached this important area of the criminal law in respect of offences committed against retail workers. I am also grateful to those that provided evidence to the Committee to assist in the preparation of this report. Finally, I am grateful to Daniel Johnson MSP for bringing forward this Bill and the work of those supporting him in preparing the detailed provisions and accompanying documentation.

Ahead of the forthcoming Stage 1 debate later this month, a response to individual recommendations contained in your report aimed at the Scottish Government is provided below.

I hope this is helpful.



Ash Denham
Minister for Community Safety

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<p>2. The Committee would like to thank retail workers for the important role they have always played in Scotland's communities and commend them for their work providing essential services during the COVID-19 crisis. It should be noted at the outset that this Stage 1 report is largely informed by evidence taken before the outbreak. Any legislative measures taken must be long-standing and offer the best solution to ensure that retail workers feel valued and safe in their workplace both now and after the current restrictions ease.</p>	<p>We note and support these views.</p>
<p>28. Witnesses presented a compelling case of the scale and seriousness of aggressive and abusive behaviour against retail workers. The Committee believes that this is completely unacceptable and must be addressed. The Committee looked at how this can be addressed within the context of this Bill and other measures discussed in evidence.</p>	<p>We note and support these views.</p>
<p>37. The Committee heard contradictory views about the scope of the Bill from key bodies representing retail workers; some felt the definition of retail workers was too broad, while others felt it was too narrow. The Committee invites the Member in Charge of the Bill to consider how these differences in opinion could be resolved and whether flexibility is needed to capture the changing nature of retail work. One option for addressing this could be to add a regulation making power to the bill to allow the definition to be amended over time, where needed.</p>	<p>We have no specific view to offer, though it will be helpful to be aware how Mr Johnson may consider the suggestion of providing for an enabling power within the Bill.</p>
<p>48. The Committee notes that the assault, threaten and abuse elements of the proposed offence overlap with existing offences. The Committee has explored the potential impact of a specific offence covering retail workers and the associated aggravation later in the report, as well as the proposed obstruct and hinder elements of the offence.</p>	<p>We note these views and our views in relation to these specific areas is given in respect of certain recommendations below.</p>
<p>63. The Committee believes that it should be made clear to members of the public that any form of deliberately difficult and aggressive behaviour against retail workers</p>	<p>As was indicated during my evidence during Stage 1, we consider that criminalisation of behaviour amounting to hindering or obstructing a retail worker is</p>

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<p>will not be tolerated. However, the Committee shares concerns raised about the practical impact of including "obstruct and hinder" as an offence against retail workers and believes that this could be open to misinterpretation as currently framed in the Bill.</p> <p>64. The Committee notes that the Scottish Government also has concerns about the obstruct and hinder element of the proposed offence. We welcome the Minister's willingness to hold conversations with the Member in Charge of the Bill on what changes could be made to the Bill to address these concerns. The Committee also notes the indication given in evidence that the Member in Charge would hold discussions with the Minister on the role an aggravator could play in addressing negative behaviour towards retail workers. These matters are covered later in this report.</p>	<p>too low a threshold for criminal sanctions to be available. In order for the Scottish Government to support the Bill through its parliamentary legislative process, we consider that these elements of the offence should be removed from the Bill at Stage 2.</p> <p>We have discussed this approach with Mr Johnson as the Member in Charge of the Bill and we understand Mr Johnson would be content with such a course of action in light of the concerns that have been expressed by the Committee themselves as well as the Scottish Government.</p> <p>If there is to be an offence of assault, threaten or abuse a retail worker, we consider there is no compelling case for the induction of a statutory aggravation for offences committed against retail workers over and above that. While there are some policy merits in the use of statutory aggravations in the criminal law, in the context of the confines of this Bill we consider the operation of the specific offence will, amongst other matters, ensure data is able to be available in future as to the extent of offending against retail workers in the same way as data is available for offences against emergency workers.</p>
<p>70. The Committee recognises the Scottish Government's concerns regarding the lack of reasonableness defence in the Bill as drafted and recommends that this is given further consideration at Stage 2.</p>	<p>For the threatening or abusing elements of the offence that are likely to remain in the Bill, we would wish for a reasonableness defence to be added for these elements. We will continue to discuss the Bill with Mr Johnson including how best this could be done via amendments at Stage 2.</p>
<p>80. The Committee was concerned to hear that there is a perception that the abuse of retail workers is not taken seriously by the police and that current laws are not being enforced. The Committee believes that employers and employees must be encouraged to report crimes. This legislation would heighten awareness of these issues, but action should be taken regardless of the outcome of this Bill. The Committee invites the Scottish Government to work directly with its justice partners to</p>	<p>We will develop an awareness raising campaign to highlight the importance of reports being made when retail workers are attacked, threatened or abused during the course of their work. This will likely focus on smaller retail outlets such as convenience stores where staff may feel more vulnerable and will seek to ensure this is in place for around the time when the Bill's provisions, if passed, will come into force. The Scottish Government has also been engaging directly with the main</p>

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<p>address any enforcement issues directly and ensure that these matters are given the priority they deserve.</p>	<p>supermarket chains to understand the corporate policies and approaches in place to protect staff at work and ensure reports are made.</p> <p>In respect of enforcement of the law, this is an operational matter for Police Scotland. In evidence, Police Scotland were clear they treated reports of attacks, threats and abuse against retail workers seriously. However, we are happy to assist in any way we can in ensuring Police Scotland continue to treat incidents against retail workers with sufficient priority.</p>
<p>94. The Committee recognises that workers who enforce statutory age restrictions on the sale and supply of goods and services are upholding the law. The Committee also recognises that the sale of these goods and services can act as a trigger for acts of violence and abuse.</p> <p>95. The Committee agrees that an aggravation could be applied where a retail worker is undertaking a statutory duty. The Committee recommends that such an aggravation could apply in relation to offences outlined in this Bill and to existing offences which apply where retail workers are enforcing age-restrictions. The Committee further recommends that such protection should be included in any future legislation which places such statutory duties on workers.</p>	<p>We note the views offered. Extending the aggravation to apply to existing offences would need a change in the Bill. We would view such a change as not being essential, but would note it would ensure more serious offences of assault (where common law of assault would be used) and more serious cases of threatening or abusive behaviour (where existing statutory offence of threatening or abusive behaviour would be used) would have the aggravation available to be used which would, amongst other matters, allow for more comprehensive data to be collected over time as to the extent of incidents specifically occurring during age verification procedures.</p>
<p>102. The Committee welcomes the Minister's offer to work with Police Scotland and its justice partners to explore how data collection could be improved in relation to the recording and monitoring of criminal incidents in retail premises. The Committee notes that the proposed statutory offence and proposed aggravation may create opportunities for improved data collection, which the Committee would welcome.</p> <p>103. The Committee further notes that this will not improve the collection of data on other workers or differentiate between different types of retail premises, which would also be beneficial. The Committee</p>	<p>We notes the views offered.</p> <p>A specific offence of assault, threat or abuse of a retail worker would help ensure data is recorded for crimes recorded, prosecutions progressed, convictions achieved and disposals imposed for conduct where a sentence of up to 12 months is considered appropriate (the maximum penalty as provided for in the Bill). It should be noted that where, say, a serious assault on a retail worker takes place, the common law of assault would be used to prosecute and that will not change as a result of this Bill.</p>

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<p>therefore recommends that other improvements to data collection are also considered by the Scottish Government and its justice partners.</p>	<p>What the Bill will achieve is to significantly improve data available on extent of offences against retail workers. It will not deliver a fully comprehensive set of data e.g. it will not cover more serious offences, but we consider it is an appropriate and significant step forward in what data will be available.</p> <p>In the medium term, we will continue to consider whether other data could be recorded which is useful but also proportionate to the challenges of new recording burdens being placed on independent justice agencies at a time of scarce resources and Covid-19 related priorities.</p>
<p>112. The Committee agrees that there should be enhanced provision of education, training and awareness-raising of the abuse and intimidation experienced by retail workers. There must be cultural change to deter aggressive behaviour and give retail workers the recognition that they deserve. The Committee recommends that the Scottish Government engages with retailers and its justice partners to design an awareness-raising campaign aimed at retail workers, retail employers and the public.</p>	<p>We will develop an awareness raising campaign to highlight the importance of reports being made when retail workers are assaulted, threatened or abused during the course of their work. This will likely focus on smaller retail outlets such as convenience stores where staff may feel more vulnerable and it is intended it could be introduced as this Bill, if passed by Parliament, is implemented.</p>
<p>118. The Committee notes evidence regarding the under-reporting of crimes towards retail workers and the important role employers play in encouraging a safe working environment for their staff. The Committee suggests that the responsibilities of employers could also be considered by an awareness raising campaign.</p>	<p>This will be considered as part of Scottish Government co-ordinated awareness raising activity.</p>
<p>119. The Committee welcomes the introduction of the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill by Daniel Johnson MSP.</p> <p>120. The Committee heard that retail workers are subject to unacceptable violence, threats and aggression every working day. The Committee does not question the levels of abuse described, the seriousness of that abuse or the need for</p>	<p>The Scottish Government considers the Bill as it currently stands is a basis upon which to develop improved laws in this important area. However, Scottish Government support is dependent on the proposed offence of assaulting, threatening, abusing, hindering or obstructing a retail worker being adjusted so that hindering or obstructing no longer forms part of the offence.</p>

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<p>something to be done. The Committee is particularly sympathetic to the argument that workers who enforce statutory age restrictions on the sale and supply of goods and services have specific responsibilities, which are different from the responsibilities of other retail workers.</p> <p>121. The Committee invites Daniel Johnson MSP to work with the Scottish Government to reflect on the Committee's recommendations in this report and address its reservations about the Bill at Stage 2. We draw particular attention to those paragraphs where we have invited the Member to consider amendments (paragraphs 37 regarding the definition of retail worker, paragraph 64 in relation to the obstruct and hinder elements of the proposed offence and paragraph 70 regarding a reasonableness defence).</p> <p>122. The Committee also invites the Scottish Government to reflect on what further action could be taken to support retail workers, through greater incident reporting (paragraph 80), improved data collection (paragraphs 102 and 103) and a national awareness-raising campaign (paragraph 112 and 118). The Committee also welcomes the Minister's offer to consider an aggravator (paragraphs 64 and 95).</p> <p>123. Overall, the Committee supports the general principles of the Bill and recommends to Parliament that they be agreed to.</p>	<p>This would mean a Bill that contains:</p> <ul style="list-style-type: none"> • Specific offence of assaulting, threatening or abusing a retail worker in the course of their work; and • Statutory aggravation for any offence committed against a retail worker in the course of age verification. <p>This approach would ensure the seriousness of offending against retail workers is highlighted through a specific offence, ensure the court when sentencing assesses the need as to whether higher sentences are required in offences against retail workers committed in the context of age verification and allow for better data to be collected over a period of time as to the extent of offending against retail workers and offending in the context of age verification procedures being carried out.</p>

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