



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 17 November 2020

Session 5



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Pàrlamaid na h-Alba

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ECONOMY, ENERGY AND FAIR WORK COMMITTEE
35th Meeting 2020, Session 5

CONVENER

*Gordon Lindhurst (Lothian) (Con)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Maurice Golden (West Scotland) (Con)

*Rhoda Grant (Highlands and Islands) (Lab)

Alison Harris (Central Scotland) (Con)

*Richard Lyle (Uddingston and Bellshill) (SNP)

Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

THE FOLLOWING ALSO PARTICIPATED:

Ash Denham (Minister for Community Safety)

Fiona Hyslop (Cabinet Secretary for Economy, Fair Work and Culture)

Daniel Johnson (Edinburgh Southern) (Lab)

John Mason (Glasgow Shettleston) (SNP) (Committee Substitute)

Graham Simpson (Central Scotland) (Con) (Committee Substitute)

Graham Watson (Scottish Government)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
Economy, Energy and Fair Work
Committee

Tuesday 17 November 2020

[The Convener opened the meeting at 09:30]

Interests

The Convener (Gordon Lindhurst): Good morning and welcome to the 35th meeting of the Economy, Energy and Fair Work Committee in 2020.

We have apologies from Alison Harris and Gordon MacDonald. John Mason is attending as Gordon's substitute and Graham Simpson is attending instead of Alison Harris. I invite Graham Simpson to declare any relevant interests.

Graham Simpson (Central Scotland) (Con): I have no relevant interests to declare.

Protection of Workers (Retail and
Age-restricted Goods and
Services) (Scotland) Bill: Stage 2

The Convener: Agenda item 2 is consideration of the Protection of Workers (Retail and Age-restricted Good and Services) (Scotland) Bill at stage 2.

I warmly welcome Daniel Johnson, the member in charge of the bill, who will present and move his amendments. I also welcome Ash Denham, Minister for Community Safety.

This is the first time that the committee has conducted stage 2 proceedings in a hybrid meeting. If there are any votes on the amendments, I will ask those who are in the room to raise their hands in the usual fashion and will ask members who are joining us remotely to vote by using the chat box in the BlueJeans platform. If that situation arises, I will then read out the votes to aid the recording and transparency. The clerks will record any result, which I will then read out.

If any member who is here in person wishes to take part in the debate, they should indicate that in the usual way by catching my attention. Any member who is joining us remotely should indicate that they wish to speak by typing an R in the BlueJeans chat box. Although members could use the WhatsApp group, it would be easiest if we could stick to the BlueJeans chat function.

If any of the four members who are joining us remotely has any technical problems, they should contact me or the clerks so that we can suspend the meeting until we regain connectivity. That should be clear to everyone as we have had hybrid meetings before.

Section 1—Offence of assaulting etc retail worker

The Convener: We move to consideration of the amendments. Amendment 1, in the name of Daniel Johnson, is grouped with amendments 2 to 5.

Daniel Johnson (Edinburgh Southern) (Lab): I thank the committee for its focus and work on my bill and its supportive work on the stage 1 report. I also thank the minister for her constructive engagement.

Amendment 1 refers to section 1(1), which makes it

“an offence for a person to assault, threaten, abuse, obstruct or hinder another person ... who is a retail worker”

as defined in section 5, and

“who is engaged, at the time, in retail work”

as defined in section 6(2).

Amendment 1 removes the terms “obstruct or hinder” from the offence. The terms “obstruct” and “hinder” involve behaviour that intentionally prevents or impedes a retail worker from carrying out their duties. Those are the elements of the offence that have drawn the most negative comment. I recognise the issues raised by the committee and the minister at stage 1. Amendment 1, along with others in the group, removes that element from the bill.

The original intention behind the inclusion of those terms was to catch a situation where, for example, a member of the public refuses to move on after being refused the sale of alcohol, so that the retail worker is prevented from doing their job and moving on to the next customer.

Another example in a similar set of circumstances might be where a retail worker is using equipment, such as a shopping trolley, and the customer refuses to get out of the way. I felt that such types of behaviour would not be caught by other elements of the offence and can lead to escalation. There is a precedent for including the terms “obstruct” and “hinder”; they have been used in other pieces of legislation, such as the Police (Scotland) Act 1967 and the Emergency Workers (Scotland) Act 2005. However, having listened to the concerns of the committee about the practical impact of including “obstruct” and “hinder” as part of the offence, and its belief that those words could be open to misinterpretation, as well as the Scottish Government’s concern that such behaviour is too low a threshold for criminal sanctions to be available, I have, accordingly, lodged these amendments.

The Scottish Government also indicated that, in order for it to support the bill, I should remove those elements of the offence at stage 2. I gave the commitment to do so and hence have lodged these amendments to that end and effect.

The other amendments in the group are consequential and remove the words “obstruct” and “hinder” in the other places that they occur.

Graham Simpson: Will the member take an intervention?

Daniel Johnson: I was just about to close, but I am happy to take the intervention.

Graham Simpson: Thank you for taking the intervention. I am new to the bill, so I am listening with great interest. You described situations where shop workers could be prevented from doing their job and you used the example of somebody getting in the way of a shopping trolley. Do you think that the term “abuse” would cover those situations?

Daniel Johnson: That would be covered in other aspects of my bill. More importantly, the key

issue is the unintended consequences of including “obstruct” and “hinder”; if someone is simply getting in the way, is that behaviour serious enough to warrant criminalisation? There could also be instances where a person who inadvertently gets in the way would be criminalised. That is why I lodged the amendments to remove those elements. I thank Mr Simpson for his intervention.

I move amendment 1.

The Convener: Thank you. Do other members have questions for Mr Johnson or wish to say anything at this stage?

Rhoda Grant (Highlands and Islands) (Lab): I will make a couple of comments. I thank Daniel Johnson for his pragmatic approach; he took on board the committee’s recommendations and lodged these amendments. While we were looking at the bill, we made it clear that, although it is not about people’s reaction to the pandemic, the pandemic brought into clear view the crucial role that retail workers play, and we must ensure that they are safe when carrying out that job. The Union of Shop, Distributive and Allied Workers and the Co-operative Party, of which I am a member, told us about the abuse that some retail workers face, not just during the pandemic, but in normal times. Violence, threats and abuse should never be part of somebody’s job, and that is especially important as we approach the Christmas period, which is renowned for retail workers facing threats and abuse. I believe that the minister and the Scottish Government could play Santa Claus to retail workers by allowing the bill to be passed before the end of this year. I might be pushing my luck, but I am happy to do so.

The Convener: We now have a queue of members who wish to speak, presumably not about Santa Claus.

Richard Lyle (Uddingston and Bellshill) (SNP): I echo Rhoda Grant’s comments and sentiments and thank Daniel Johnson for introducing the bill and amending it by taking out the terms “obstruct” and “hinder”. As someone who was previously a grocery manager, I know only too well what can happen in a shop and, as a former member of USDAW, I have supported the bill from the start. I also echo Rhoda Grant’s hope that the Government will carry the bill forward and give shop workers an early Christmas.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I commend the member for the manner in which he has gone about working with the Scottish Government to resolve the issue. He clearly understood the committee’s concerns and has worked hard to resolve the issue for us. I hope that members will see this as a positive indication of how members’ bills can be brought to committee

and worked on in a spirit of co-operation. I hope that members will support Daniel Johnson's amendments 1 to 5 today.

The Minister for Community Safety (Ash Denham): I am pleased to be here on behalf of the Scottish Government to discuss amendments 1 to 5, lodged by Daniel Johnson. As I indicated at stage 1, the Scottish Government recognises the important role that retail workers play in local communities and the wider Scottish economy. It is right that retail workers should be protected by our criminal laws. As such, Daniel Johnson's bill is well-intentioned and well-timed, given that Covid-19 has helped to shine a light on the important role that retail workers play.

I have said that the bill has the potential to ensure that the general public think more about their behaviour when interacting with retail workers, especially in such difficult and challenging times. However, I was clear that the Scottish Government would be able to support the bill only if the "obstruct" and "hinder" elements of the proposed new offence were removed. That is because it was our view that the inclusion of such elements set too low a threshold for criminal sanction. Therefore, I am happy to see the amendments lodged by Daniel Johnson to remove those elements of the offence. Amendments 1 to 5 are quite simple and the Scottish Government considers that they achieve the policy intention of removing the hindering and obstructing elements from the proposed offence. If the amendments are agreed to, it will mean that the bill would state that an offence is committed where a person assaults, threatens or abuses a retail worker when that worker is engaged in their work.

In conclusion, the bill as amended will reduce the prevalence of attacks on and abuse towards retail workers. It will also help to emphasise the importance of the role of retail workers and hopefully will help retail workers to feel safer in their jobs. I urge the committee to vote in favour of amendments 1 to 5, lodged by Daniel Johnson.

Daniel Johnson: I should declare that, like Rhoda Grant, I am a member of USDAW and the Co-operative Party.

I thank the minister for her supportive remarks. I am very pleased to have been able to work so constructively with the Government on the bill. Rhoda Grant was quite correct to say that Covid has shone a spotlight on the important public safety role that retail workers play and the fact that we rely on them to uphold the law. That is why my bill is so important. Rhoda Grant is also correct to say that, at Christmastime, the increased volume of alcohol sales makes such issues far more acute.

I thank Richard Lyle for his support and acknowledge his enthusiasm behind the scenes. Likewise, I thank Willie Coffey for his kind words. The most important role that we play in this Parliament is when we legislate and therefore it is important that we engage in the stage 2 process constructively and pragmatically.

Amendment 1 agreed to.

Amendment 2 moved—[Daniel Johnson]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Behaviour constituting an offence under section 1

Amendment 3 moved—[Daniel Johnson]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Defence to charge of obstructing or hindering a retail worker

Amendment 4 moved—[Daniel Johnson]—and agreed to.

Sections 4 to 8 agreed to.

Long Title

Amendment 5 moved—[Daniel Johnson]—and agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. The bill will now be reprinted as amended at stage 2. Parliament has not yet determined when stage 3 will be held so we do not yet know whether it will be done before Christmas as Rhoda Grant and a number of other members of the committee would wish. Members will be informed of the date in due course, along with the deadline for lodging stage 3 amendments. In the meantime, stage 3 amendments can be lodged with the clerks in the legislation team.

I thank the member in charge of the bill and the minister for joining us this morning.

09:46

Meeting suspended.

09:50

On resuming—

European Union (Withdrawal) Act 2018

Insolvency (Amendment) (EU Exit) (Scotland) Regulations 2020 (SSI 2020/337)

The Convener: Agenda item 3 is on regulations that have been made under the powers that the European Union (Withdrawal) Act 2018 confers on devolved authorities. Under the protocol between the Scottish Parliament and the Scottish Government, the committee is required to consider whether the procedure that is attached to the Scottish statutory instrument is appropriate or should be changed. The regulations are subject to the negative procedure, and the Scottish ministers have suggested that they should be in the low category of the protocol, as they make technical amendments. Further information is contained in committee paper 2. Is the committee content for the SSI to be subject to the negative procedure? It appears that we are content.

Members indicated agreement.

The Convener: Item 4 is also on the regulations, which are SSI 2020/337. The regulations amend the Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019, which address failures of the law to operate effectively and other deficiencies in devolved legislation on cross-border insolvencies that arise from the United Kingdom's withdrawal from the EU. Does any member wish to raise substantive issues? Are we content for the instrument to come into force? As no member has raised any issues, I take it that we are content.

Members indicated agreement.

09:53

Meeting suspended.

10:00

On resuming—

Scottish National Investment Bank plc and South of Scotland Enterprise (Miscellaneous Listings) Regulations 2020 [Draft]

Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2020 [Draft]

Scottish National Investment Bank plc (Miscellaneous Listings) Order 2020 [Draft]

The Convener: Under agenda item 5, the committee will take evidence on three pieces of subordinate legislation that relate to the Scottish National Investment Bank. I welcome the Cabinet Secretary for Economy, Fair Work and Culture, Fiona Hyslop, and her officials, Graham Watson and Ninian Christie, who are joining us remotely.

As the instruments are inextricably linked or bound up together, we intend to consider them together in the first instance. After that, we will make a formal decision on each instrument separately.

I invite the cabinet secretary to make an opening statement on the instruments.

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): Good morning, committee.

The three SSIs that the committee is considering are routine pieces of secondary legislation that concern the audit arrangements for the Scottish National Investment Bank and the application of public bodies duties to the Scottish National Investment Bank and South of Scotland Enterprise. They all fulfil commitments that were made during the passage of the Scottish National Investment Bank Act 2020 and the South of Scotland Enterprise Act 2019.

The Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2020 allows the Scottish National Investment Bank's accounts to be subject to audit by the Auditor General for Scotland. It also disapplies a provision in the Companies Act 2006 that would require the bank to appoint external auditors in addition to its accounts being subject to audit by the Auditor General for Scotland.

The Scottish National Investment Bank plc (Miscellaneous Listings) Order 2020 applies the public sector equality duty and the public body climate change reporting duties to the bank.

The Scottish National Investment Bank plc and South of Scotland Enterprise (Miscellaneous Listings) Regulations 2020 apply the fairer Scotland duty to the bank and to South of Scotland Enterprise. They also apply the Scotland-specific equalities duties to the bank.

For the committee's information, we included South of Scotland Enterprise in the application of the fairer Scotland duty, as the interim guidance to public bodies on the application of the duty is due to be updated in 2021. We therefore wanted to ensure consistency in the legal position by applying the duty to both new bodies before that updated guidance is issued.

I would be happy to answer any questions that the committee may have.

The Convener: Thank you, cabinet secretary. Do committee members have any questions?

Andy Wightman (Lothian) (Green): My understanding, from the information that we have, is that the Scottish National Investment Bank plc (Miscellaneous Listings) Order 2020 will come into force on 26 November. Has Parliament been given the usual 28 days in which to consider it?

Fiona Hyslop: I will refer to my officials—I think that Graham Watson is online—to check the dates of laying. I assume that the same timetabling that applies to other SSIs should be met.

The Convener: Graham Watson has just come online now.

Graham Watson (Scottish Government): Good morning. We lodged all the SSIs together, and the full timetable should be available to the Parliament. I know that the committee moved the schedule forward to ensure that that was the case, and we are grateful for that. Perhaps I can clarify that point and come back to the committee separately on it.

Andy Wightman: Perhaps you could clarify why the SSI comes into force on the day after the day on which it is made, rather than a month or two after that.

Fiona Hyslop: I will go first, then Graham Watson might want to supplement what I say.

Clearly, we want to get the Scottish National Investment Bank established as quickly as we can, according to what we have set out. We are in the final stages of establishing the bank, so it makes sense to ensure that the required provisions are set up.

Graham Watson: I echo the cabinet secretary's words. We will be happy to come back on that point.

The Convener: Do any committee members, either here in the committee room or online, have

any other questions? I do not see anyone indicating that, so we will move on to the next item of business, which is the formal debate on the motions.

Motions moved,

That the Economy, Energy and Fair Work Committee recommends that the Scottish National Investment Bank p.l.c. and South of Scotland Enterprise (Miscellaneous Listings) Regulations 2020 [draft] be approved.

That the Economy, Energy and Fair Work Committee recommends that the Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2020 [draft] be approved.

That the Economy, Energy and Fair Work Committee recommends that the Scottish National Investment Bank p.l.c. (Miscellaneous Listings) Order 2020 [draft] be approved.—[*Fiona Hyslop*]

Motions agreed to.

The Convener: Does the committee agree that I and the clerks should produce a short factual report of the committee's decisions on the three instruments and arrange to have it published?

Members indicated agreement.

The Convener: Very well. I thank the cabinet secretary for her attendance. We move into private session.

10:08

Meeting continued in private until 10:56.

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