



SRC Response to the Consultation on the proposed Protection of Workers (retail and age-restricted sales etc.) (Scotland) Bill

INTRODUCTION

1. Retail is an exciting, diverse and dynamic industry undergoing transformational change. The Scottish Retail Consortium ('SRC') is at the forefront of enhancing, assisting, informing and shaping it. Our mission is to make a positive difference to the retail industry and to the customers it serves. Our broad range of stakeholders demonstrates how retailing touches almost every aspect of our culture. The SRC leads the industry and works with our members to shape debates and influence issues and opportunities that will help make that positive difference. We care about the careers of people who work in our industry, the communities retail touches and competitiveness as a fundamental principle of the industry's success – our 3Cs.
2. The SRC publishes leading indicators on Scottish retail sales, footfall and shop vacancies in town centres, as well as an annual crime survey. We also hold policy positions which are informed by our 200-strong membership and determined by the SRC's Board.
3. Retail is the largest public sector employer in Scotland with over 240,000 workers. The industry is one of the largest sectors of the Scottish Economy, with the potential to grow by £3 billion over the next five years to a total turnover of £28 billion. Despite the structural change the industry is going through, it will continue to play a vital and valued role in communities across Scotland.
4. A thriving retail industry is good for jobs, for investment¹, for tax revenues, for keeping down prices for consumers, for communities and even for our pensions². The industry is also one of the most innovative. This is evidenced over recent years through significant new investment in store formats and layouts including online, in-store technology and order points, home delivery and distribution capabilities, click and collect services, digital customer loyalty and payment arrangements, and new and refreshed own-brand products.
5. The SRC welcomes the opportunity to respond to this consultation.

¹ 14 per cent of private sector investment comes from the retail sector e.g. buildings, vehicles, software and hardware

² 4 per cent of dividends into pension funds come from the retail industry

General Comments on Worker Protection

6. We support additional legal protections for retail colleagues. Whilst we see more arguments for statutory aggravation than a specific new offence, both options in the consultation paper are intended to deliver that protection and culture change, and would be welcome.
7. The most recent British Retail Consortium Crime Survey³ found a worrying growth in severe violent incidents against staff. BRC members reported that career criminals intentionally use violence and abuse when challenged over stealing. The increasingly common requirements for retail colleagues to age-check and refuse sales, is also triggering increasing violence and threats. The rate of these incidents of violence with injury has doubled since the previous year to six per 1000 members of staff. The overall rate of violence and abuse is at more than 40 per 1,000 members of staff. This is despite our members having expended record sums on crime prevention and staff protection, spending, on average, in 12 weeks what they did in the whole of the previous year (itself a record).
8. The SRC believe violent or abusive behaviour towards shop staff in Scotland is wholly and utterly unacceptable. Retail workers should be able to work free from fear of violence, intimidation or abuse. Each person harmed is not only a valued colleague but also a voter and a member of their community and family. The harm from these incidents spreads, including parents and children worried about their loved ones every time they go to work.
9. This is a serious issue and we all have an interest in seeing the perpetrators dealt with firmly.
10. The SRC believes this legislative proposal offers an opportunity to revisit the law and ensure it is fit for purpose and that the sentences handed down are stiff enough to offer a sufficient deterrent.

Specific Responses to the Consultation

11. The SRC is strongly supportive of the aims behind the proposals in this consultation: providing proportionate protection of retail workers and penalties for those who use violence and abuse against vulnerable colleagues. It is clear far too many retail workers are faced with distressing situations, and in several cases, particular threats.
12. We therefore support the process of raising the debate on this issue, and looking in more detail about how the police and criminal justice system can do more to protect vulnerable shopworkers.
13. Furthermore, the nature of the retail industry is changing. Stores are operating with fewer workers, and the rise of digital shopping means retail workers are now visiting customer homes, and are away from the security of working with colleagues in a

³ BRC Crime Survey: March 8th 2018 https://brc.org.uk/media/249703/2017-crime-survey-short-story_fa_63_v11.pdf

store. Consequently, it's right there is an examination of the legal framework to ensure these and other workers are also protected.

Proposed Model

14. The SRC is supportive of action being taken to protect retail workers. We believe there are merits, but also challenges to both proposals, and we would be more supportive of the creation of a new statutory aggravation.
15. The consultation floats two preferred options: a specific new offence and the creation of relevant statutory aggravation features. Both carry significant advantages over reliance on administrative methods (such as improved policing) alone. Such methods should also be taken forward alongside new legislation. On balance, we think that there are advantages to pursuing a statutory aggravation model over a specific new offence.
16. We foresee some practical issues with the proposal for new offence(s), although do note that these will have been considered to a degree when working up the Emergency Workers (Scotland) Act 2005. These include that:
 - a. the offences being described here are already covered more broadly by existing criminal offences. Abusing a retail worker verbally is covered by breach of the peace, using racial or other slurs is covered by hate crime legislation, whilst any form of physical assault is also covered. The question about whether a new offence is required is a reasonable one;
 - b. flowing from the point above, there is a risk of a specific new offence simply creating confusion amongst prosecutors, police, retail colleagues and the general public. That might, in practice, detract from the clarity of the messaging;
 - c. the new offences would require more elements to be established (e.g. the link to age-related sales) for a conviction than the current, and well-established, ones do. This may mean that it is under-used, and fails to deliver the required step-change.; and
 - d. particularly when linked to the (relative) complexity of the new offence, there is a slightly worrying contradiction around maximum penalties. The new offences would, in common with the 2005 Act, carry a maximum penalty of 12 months imprisonment and/or a fine of £10,000. However, as the consultation paper notes, (the existing) offence of assault carries a maximum penalty of life imprisonment. Whilst the maximum penalty does not wholly determine the sentences which criminals would get in practice, it would have some impacts on individual sentence lengths. In addition, there is the risk of prosecutors charging less serious examples under the new offence and more serious ones under the existing law.
17. We can also foresee advantages to a statutory aggravation measure. First, it appears a more achievable objective, and one that could deliver protection to retail colleagues more quickly. Second, it is likely to be more effective in practice as it would be easier to prove and would be more likely to increase sentences handed down where guilt is established. Third, it would work well within the existing legal framework rather than

creating more cumbersome approach. In particular, the notion of linking the aggravation to occasions where a retail worker faces abuse, such as when withholding the sale of an age-restricted product, deserves closer consideration. Fourth, it could work to increase sentences for incidents across the range of severity, providing a general uplift. Those combination of advantages create a strong argument, and it might be better to pursue that option in the first instance.

Scope considerations

18. There are two main bases for this legislation. First, is that retail is such an important part of the local economy, including employment, and community cohesion. Second, is that in recent years there has been a plethora of initiatives from government which require retail staff to perform checks prior to selling. These measures require front-line retail staff to deliver government policy, but without the protections that those others receive. Whilst we are not arguing that retail colleagues occupy the same space as those public servants, we do believe the situations are comparable and demonstrate that the principle is established. Those considerations explain the scope of the three types of situation which the consultation says should attract additional legal sanctions. They are:

- a. assaulting a retail worker;
- b. assaulting a retail worker (beyond retail) involved in the supply of age-related goods and services; and
- c. abuse etc of a worker (beyond retail) involved in the supply of age-related goods and services.

The consultation sets out a non-exhaustive list of the relevant goods and services.

19. These appear to us to be broadly sensible categories to offer additional protection to (whether as part of a new offence or in terms of aggravations), but wish to raise some issues:

- a. some products are restricted in Scotland by reference to factors other than age, and not by law but as a matter of policy (e.g. explosive pre-cursors). In that example, linked to recent terrorist offences, suspicious purchases must be reported and there is some official suggestion that prospective purchasers should be questioned before a report is made. In such situations (restrictions not linked to age and not in legislation) retail colleagues should have the same protection as where they are, for example, selling tobacco;
- b. similarly, there may be situations in which violence and abuse is triggered not by a refusal to sell but by the enforcement of some other requirement on the criminal imposed by the state, such as not to enter the shop, e.g. as a condition of an individual's bail or a civil interdict. The enhanced protection should extend to those situations; and

- c. clarity is required over “involved in the supply of [age-related]”, which appears to not require a link between the assault and e.g. the (refusal) to sell as drafted (so long as the worker is involved in such sales generally). That may go too far and, similarly to the 2005 Act, there may be sense in (for the purposes of aggravation) linking the assault to the relevant refusal etc so long as that would not be too difficult to make out in practice (which would deter prosecutors). A formulation such as “worker whilst involved in the supply of.....” might strike a sensible balance.
20. In addition to new legislation, the SRC believes more needs to be done to protect retail workers. That should include greater support from the police and criminal justice system and wider awareness raising from government of the seriousness of these crimes and the penalties they incur.
21. The SRC believes when the Scottish Government and Parliamentarians consider further legislation on age-restrictions on sales in the future they should consider whether the measures add significantly to the cumulative burden faced by retail workers and consequently if those measures are proportionate.
22. The SRC is content for this response to be attributed.
23. The SRC believes that the adoption of appropriate new legislation could have positive financial implications for Scottish public services in two ways. First, by supporting retail as an industry it could improve economic growth and employment, increasing tax (and other) income. Second, by creating a more effective deterrent against violence and abuse the change could reduce expenditure on, for example, healthcare provision.
24. The SRC believes that there are arguments that the Bill could strengthen some equality categories, particularly gender and race, for the reasons set out in the consultation paper.
25. The SRC does not anticipate any sustainability issues with this bill.