Economy, Energy and Tourism Committee

9th Report, 2010 (Session 3)

Stage 1 Report on the Protection of Workers (Scotland) Bill
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CONTENTS

Introduction 1
  Background 1
  Purpose of the Bill 1
  Committee consideration 1

Background to the Bill 3
  The consultation process 3

The General Principles of the Bill: Key Issues 5
  Policy intention 5
  General reaction to the Bill 5
  Providing a deterrent 5
  Equity 6
  Enforcement 7
  Hindrance and obstruction 8
  The scale of the problem and under-reporting 9
  Existing provisions 10
  Emergency Workers (Scotland) Act 2005 11
  Analysis of the effectiveness of the EWA 12

Alternative approaches 15
  Preventative measures 15
  Sentencing and prosecution guidelines 16
  Definition of worker 16
  Definition of assault 17
  Definition of member of the public 18
  Subordinate Legislation Committee Report 19
  Financial Memorandum 19
  Policy Memorandum 19

Conclusion on the general principles of the bill 20
Economy, Energy and Tourism Committee

Remit and membership

Remit:

To consider and report on the Scottish economy, enterprise, energy, tourism and all other matters falling within the responsibility of the Cabinet Secretary for Finance and Sustainable Growth apart from those covered by the remits of the Transport, Infrastructure and Climate Change and the Local Government and Communities Committees.

Membership:

Ms Wendy Alexander
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Marilyn Livingstone
Lewis Macdonald
Stuart McMillan
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Committee Clerking Team:

Clerk to the Committee
Stephen Imrie

Senior Assistant Clerk
Joanna Hardy

Assistant Clerk
Diane Barr
The Committee reports to the Parliament as follows—

INTRODUCTION

Background

1. The Protection of Workers (Scotland) Bill¹ (SP Bill 47) (“the Bill”) was introduced to the Scottish Parliament by Hugh Henry MSP on 1 June, 2010. The Bill was accompanied by Explanatory Notes² (SP Bill 47-EN), including a Financial Memorandum, and a Policy Memorandum³ (SP Bill 47-PM). The Explanatory Notes have been prepared by Hugh Henry MSP and the Policy Memorandum has been prepared by Govan Law Centre on behalf of Hugh Henry MSP.

2. On 9 June 2010, under Rule 9.6 in the Parliament’s Standing Orders, the Parliament agreed that the Economy, Energy and Tourism Committee (“the Committee”) be appointed as the lead committee to consider and report on the general principles of the Bill at Stage 1.⁴

Purpose of the Bill

3. The Bill proposes to create a specific statutory offence of assault on a worker whose employment involves dealing with members of the public. By creating a specific offence, the Bill seeks to highlight the problem of assaults on a particular group of people and to provide a deterrent to those who might otherwise commit acts of violence against them.

¹ Protection of Workers (Scotland) Bill. Available at: http://www.scottish.parliament.uk/s3/bills/47-ProtecWorkers/index.htm
³ Protection of Workers (Scotland) Bill, Policy Memorandum. Available at: http://www.scottish.parliament.uk/s3/bills/47-ProtecWorkers/b47s3-introd-pm.pdf
⁴ S3M-6527 Bruce Crawford on behalf of the Parliamentary Bureau: Designation of Lead Committee
Committee consideration

4. The Committee issued a call for evidence on 9 July, 2010, and received a total of 12 written submissions. Copies of the written submissions are attached in Annexe D.

5. The Committee agreed its approach to evidence-taking on 15 September, 2010, and took evidence at 4 meetings. Extracts from the minutes of the oral evidence sessions are attached in Annexe B and the Official Reports of the oral evidence sessions are attached in Annexe C. The Committee would like to express its thanks, both to those who submitted written evidence, and to those who took part in the oral evidence sessions.
6. During the passage of the then Scottish Executive’s Emergency Workers (Scotland) Bill in 2005, it was argued by some that statutory protection should be extended to other public service workers and/or to other workers providing a service to the public. These proposals were rejected by the Scottish Ministers at the time.

7. Hugh Henry MSP subsequently secured a parliamentary debate on the topic of protection for workers shortly before the introduction of this Bill. During that debate, Mr Henry MSP referred to the protection afforded to emergency workers under the Emergency Workers (Scotland) Act 2005 (“EWA”) and argued that such protection should be extended to other workers who provide a service to the public—

“The time is right to draw on the benefit of our experience and take the next step, by ensuring that all workers who are assaulted while they are serving the public receive the same level of support as we give to emergency workers.”

8. During the debate, the Cabinet Secretary for Justice, Kenny MacAskill MSP, paid tribute to the work of Hugh Henry MSP in promoting the protection of workers, but stated that he was more cautious in relation to whether further criminal offences were needed—

“The common law of assault and the common law of breach of the peace offer protection to everyone in Scotland, including public-facing workers … It is not clear that the proposed bill can provide for tougher sentences, given the range of penalties that are already available under the common law. However, as I said, we will carefully study the detail of the bill when we see it.”

The consultation process

9. Hugh Henry MSP carried out a consultation between 22 June and 25 September, 2009, on his proposal for a member’s bill to provide similar protection to that available to emergency workers. The initial proposal was for a Workers (Aggravated Offences) (Scotland) Bill to introduce an offence of “assaulting, obstructing or hindering someone who is acting in their capacity as a worker while providing a face to face service to the public”.

10. The consultation paper on his Bill sought views on 7 specific questions, namely:

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• Are there any other groups of worker that you think should be captured in the Bill?

• How effective have you found the Emergency Workers Act 2005?

• Do you think there will be additional costs associated with this bill and in what areas will they arise?

• Are the penalties proposed in this document sufficient, and if not, what penalties would you propose?

• Do you have any other comments or views on extending the tougher penalties contained in the Emergency Workers Act 2005, to workers providing a face to face service to the public?

• In what ways will the proposed Bill extend equal opportunity provisions and should it go further?

• Should hindrance and/or obstruction of the workers specified in this proposal be included in this proposed bill in the same way as is in the Emergency Workers Act?

11. According to the summary of responses to the consultation prepared by Mr Henry MSP, 177 (92%) supported the proposal, 6 (3%) expressed opposition and 9 (5%) offered neither support nor opposition to the proposal.

12. With regards to the inclusion of hindrance and/or obstruction in the Bill, the consultation response document stated that 18 out of the 25 respondents who expressed a view were in support of its inclusion. Those who argued against inclusion did so on the grounds that this was less serious than hindering or obstructing an emergency worker and that workers had the option to withdraw services.

13. After a final proposal had secured cross-party support from 44 MSPs, a revised version of the Bill was introduced by Hugh Henry MSP on 1 June, 2010. The Bill was renamed the Protection of Workers (Scotland) Bill and the offence within it had changed to “assault certain persons in the course of or by reason of their employment”. The obstruction and hindrance provisions that had previously been part of the consultation process had been removed.

14. The Economy, Energy and Tourism Committee considers that the consultation that has been conducted by the member in charge of the Bill on his proposals has been adequate.

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THE GENERAL PRINCIPLES OF THE BILL: KEY ISSUES

Policy intention

15. A key rationale for the introduction of the Bill was the perception that there was insufficient protection for those providing vital services to the general public and communities amid a rise in attacks. The Policy Memorandum suggests that it is workers in certain sectors, who are not covered by the EWA, who are experiencing the increase in assaults. The Bill’s policy memorandum states—

“While shop workers and local government workers have experienced a general upward trend in the number of assaults, there has been a simultaneous reduction in the number of assaults perpetrated against those health workers covered by the EWA.”

16. The member in charge of the Bill suggests that if similar protections to those afforded to emergency workers were available for all workers who dealing face-to-face with the public, this would have a deterrent effect, thereby reducing the number of attacks on workers and their equipment.

17. According to the provisions in the Bill, a worker must be physically present in the same place as members of the public at least some of the time to be covered by the legislation. However, the offence can be committed against that worker at any time while at work, or at any other time if the motivation of the person carrying out the assault relates to the worker’s employment.

18. According to the Financial Memorandum, “It is intended that the Bill will have a deterrent effect, reducing the number of attacks on workers serving the public, thereby leading to some savings in resources”.

General reaction to the Bill

19. The majority of responses to the Committee’s call for written evidence welcomed the intent of the Bill as an attempt to provide additional protection for workers providing a service to the public. However, not all agreed that the introduction of this Bill was the best method of achieving that aim. Additionally, many respondents sought greater clarity in terms of more detailed definitions for a worker, a member of the public and what constituted an assault. In oral evidence to the Committee, many witnesses requested that the Bill be more focused, to assist the police in determining which offence the person is to be charged with and for the Crown in prosecuting.

Providing a deterrent

20. A key argument advanced by those supporting the Bill is that the Scottish Parliament would, by passing it, provide a deterrent by sending out a strong public policy message that assaults on workers providing a service to the public are taken seriously and will not be tolerated. The Committee heard evidence from both employers and unions on the need for a change in the current public perception

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10 Policy Memorandum, paragraph 7.
11 Financial Memorandum, paragraph 17.
that there appears to be no sanction for abusing a worker if they are unhappy with
the service they have received. Jackson Cullinane, of Unite the Union, explained—

“The bill is trying to address the thought and the culture that exists among
some members of the general public that somebody who provides a public
service to them is an easy target and, if they do not get 100 per cent
satisfaction from that person, they can take out their anger on them and
abuse them.”12

21. Sam Jennings, Health and Safety Manager at Capability Scotland, told the
Committee—

“We feel that the bill could act as a deterrent, with campaigning and publicity,
and that we could use it to step in at an early stage and say to people that if
their behaviour continued, we had the option of prosecuting.”13

Equity

22. Another key argument raised by the Bill’s supporters is that all workers who
provide a service to the public should be treated equally, regardless of their
profession and that there should be similar legislation for those workers providing
a service to the public as there is for those providing emergency services.
However, the Committee heard conflicting views on this issue.

23. David Dalziel, Chief Fire Officers Association Scotland, told the Committee,
for example, that all workers do not face the same threat of assault as those in the
emergency services—

“We have less opportunity to walk away than workers in static situations such
as those in benefits offices who have screens, CCTV and security guards.
We cannot take all of that to incidents. The case can be made that there is a
difference between us.”14

24. Another viewpoint was that equity already existed in terms of the sentences
that could be imposed under common law assault or EWA legislation. When the
provisions of the EWA came into force, they provided for a maximum custodial
sentence of nine months. Given that the offences in the EWA are prosecuted
under summary procedure, this represented a higher maximum than was available
at that time for a summary conviction of common law assault, where the maximum
sentence was three months (or six months where the offender had a previous
conviction for an offence inferring personal violence). However, more recently the
Criminal Proceedings etc (Reform) (Scotland) Act 2007 has increased both sets of
penalties so that a conviction for an offence under the EWA and a summary
conviction for common law assault both carry a maximum custodial sentence of 12

12 Scottish Parliament Economy, Energy and Tourism Committee, Official Report, 22 September
2010, Col 4010.
13 Scottish Parliament Economy, Energy and Tourism Committee, Official Report, 29 September
2010, Col 4068.
2010, Col 4013.
months. It was, therefore, argued by some giving evidence to the Committee that there is already equity within current law.

25. The member in charge of the Bill, Hugh Henry MSP, argued that some workers who are not covered by the EWA can find themselves dealing with emergency situations as part of their role, for example, when dealing with a train derailment the police and fire service staff are covered by the EWA, but the train staff are not. Mr Henry told the Committee that this did not seem equitable. Julie McComasky, Head of Human Resources at First ScotRail, agreed—

“Given that an assault or attempted assault can cause an emergency situation, it does not really seem fair that those workers do not have the same protection.”

26. The Committee agrees that although the Bill does not introduce any additional, more severe penalty, a public policy message that abuse or assault of workers whilst dealing with the public is unacceptable is nonetheless important.

Enforcement

27. A number of witnesses raised issues relating to how the proposed legislation might operate in practice and some potential barriers. The Bill as drafted states that an assault is deemed to have taken place if it is either in the course of that worker’s employment (s1(1a) of the Bill), or by reason of that worker’s employment (s1(1b)). The issue of whether any successful prosecution under the Bill would have to include proof that the accused knew that the victim was acting in the course of their employment and, if so, the problems this could pose for the police, was raised in evidence. Robert Milligan of the Scottish Police Federation told the Committee that—

“We are also concerned about the difficulty of proving motivation. Instead of dealing with the common law, which requires us to prove an assault, a breach of the peace or threats, we will have to find time to prove motivation. We are concerned that our members’ jobs are becoming harder and more time consuming.”

28. Bill McVicar of the Law Society of Scotland told the Committee that proving the knowledge of the accused would be difficult during prosecution. He said that—

“….the prosecution would need to prove the proximity of the individuals, the status of the complainer as an employed person or a worker, and the knowledge on the part of the accused person.”

29. The Committee heard that the application of the Bill to workers who did not wear uniforms (unlike emergency workers) and who were not on duty at the time

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of the assault would make proving motivation very difficult. This, however, was not a fundamental issue for the Committee.

30. The Committee appreciates the concerns raised with regards to proving the motivation for an assault was as a result of the person’s employment and the subsequent difficulties for the police and prosecution service. However, the Committee notes the evidence from Alan McCreadie of the Law Society of Scotland that the prosecutor could still seek a conviction for common law assault if unable to prove the offence in the Bill—

“If the fiscal depute was not able to secure a conviction under what would be the Protection of Workers (Scotland) Act, he or she would simply have to ask the court to convict under the common-law offence. When the Crown seeks a conviction in a case in which a statutory offence has, for some reason, not been made out, it is entitled to ask for an alternative charge of common-law assault at the end of the case.”

31. A further issue considered by the Committee was the proposal that evidence from a single source will be sufficient to establish whether a person is a worker (section 1(4) of the Bill). The Committee notes that whilst the proposal represents an exception to the general rule that essential elements of an offence must be established by evidence from at least two sources (i.e. there must be corroboration), the particular exception provided for in the Bill follows a similar approach to that found in a number of other statutes (e.g. in section 4(6) of the EWA).

\section*{Hindrance and obstruction}

32. Those witnesses who were looking for parity with the provisions in the EWA told the Committee that they would like hindrance and obstruction included in the Bill. The EWA provides protection from not only hindrance and obstruction of emergency workers, but also, to damage to a vehicle, equipment or apparatus that a worker is using. Dave Watson of Unison Scotland—

“From our point of view, what is useful about the EWA is that it deals not just with physical assaults but with hindering and obstruction. We would like the bill to be strengthened on that, too.”

33. Other evidence has raised concerns about any such amendment. The written submission from ACPOS stated that—

“There may also be significant issues with extending the use of the offences of hindrance/obstruction when applied to general public facing employees. The interpretation of what would merit hindering or obstructing a bus driver or


shop worker for example, is open to interpretation and in some cases could criminalise extremely minor acts.\textsuperscript{20}

34. The Committee heard evidence from Hugh Henry MSP that this was an issue that merited consideration at stage 2 of the Bill—

“If others wished to articulate an argument about hindrance and obstruction at stage 2,—if it ever gets to that stage—I would be sympathetic to it, but it would be a matter for Parliament to determine rather than me, because we would have reached a different stage in the process.”\textsuperscript{21}

35. The Committee notes that the addition of hindrance and obstruction could go some way to answering the criticism made by some of the Bill that it simply criminalises that which is already criminal under the common law. However, the Committee also recognises that any such amendment would require very careful consideration.

The scale of the problem and under-reporting

36. The Committee heard conflicting evidence regarding the scale of the problem. Many witnesses provided evidence of under-reporting of incidents due to the view amongst some workers that unless a physical assault was involved, the offence was not taken seriously by the Crown Office.

37. Colin Borland of the Federation of Small Businesses, stated that—

“Unfortunately there is massive underreporting of incidents. It is difficult to get reliable figures, but when we ask about the issue about three times as many people say that they have been subjected to such behaviour as have actually reported it to the police. When we ask them why they have not done so, the strong feeling that we get is that the incident would not be treated sufficiently seriously.”\textsuperscript{22}

38. In further evidence from Jackson Cullinane of Unite, the Committee heard that—

“Another survey, by First Glasgow staff, showed that 57 per cent of staff said that they expected to be attacked or abused in the course of their work. That is clearly not acceptable. When those staff are asked why they have not reported the incidents, they clearly say that it is because they believe that no attempt is made to apprehend or punish the perpetrators.”\textsuperscript{23}

39. In a written response to the Committee, the Crown Office and Procurator Fiscal Service responded that this was not the case—

\begin{footnotes}
\end{footnotes}
“Clear guidance has been issued to Procurators Fiscal that where a decision has been taken to raise criminal proceedings in a case involving a charge under the Emergency Workers Act 2005 (“the 2005 Act”) or in a case involving an assault on a public service worker, proceedings in the Sheriff Court will usually be appropriate.”

40. The Committee nonetheless notes the wide concern about how seriously the prosecution services treats assaults on workers who provide a service to the public, especially when it is not a physical assault. The Committee feels that both the Crown Office and employers need to address this perception and encourage the reporting of incidents.

Existing provisions

41. The Committee examined both statutory and common law offences to assess what added-value the offences proposed within the Bill would bring, given that it did not propose greater penalties than those already available under summary procedure for relevant existing offences.

Common law assault and breach of the peace

42. In written evidence, the Criminal Law Committee of the Law Society of Scotland expressed the view that existing common law provided sufficient protection to workers providing a service to the public as it took account of aggravating circumstances—

“The Committee maintains the view that the position with regard to common law at present providing protection from assault for everyone and allowing aggravating circumstances such as whether or not it was an assault of a worker in the course of that worker’s employment can be taken into account, both in determining the forum for prosecution and the level of sentence upon conviction.”

43. Robert Milligan of the Scottish Police Federation, however, disagreed—

“The courts do not place sufficient emphasis on what is reported to them. If they did, the full and proper application of the common law would negate the need for any other aggravator or any other act.”

44. In evidence to the Committee, the Cabinet Secretary for Justice indicated that any assaults which were not physical were covered by breach of the peace. He stated—

“I would have thought that the common law of breach of the peace would cover non-physical abuse.”

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45. However, Dave Watson of Unison Scotland thought that this was not the case in practice—

“….there are areas in the bill and the EWA that are not well covered by the common law, particularly in relation to lower-level offences.”

Emergency Workers (Scotland) Act 2005

46. Emergency workers have additional protection under the EWA. The Act makes it an offence to assault, hinder or obstruct persons who provide emergency services. The EWA Act was modified in 2008 to extend protection for registered medical practitioners, registered nurses and registered midwives at all times and not just when responding to emergency circumstances.

47. The Committee heard from various witnesses that the EWA was not being used to its full effect and that there was a preference for prosecuting using other legislation. David Dalziel of the Chief Fire Officers Association Scotland, told the Committee in oral evidence that—

“The vast majority of cases that are reported to the police are proceeded with under other legislation, such as that on common assault, reckless endangerment or breach of the peace. The 2005 act is not widely used.”

48. The Scottish Government provided the Committee with data on the number of prosecutions under the EWA from 2005-2009, which is detailed in the table below.

<table>
<thead>
<tr>
<th>Persons with a charge proved in Scottish courts under the Emergency Workers (Scotland) Act 2005(1), by category of offence, 2005-06 - 2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charge</td>
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<tr>
<td>Emergency workers (Scotland) Act 2005 Section 1(1)</td>
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<td>Emergency workers (Scotland) Act 2005 Section 2(1)</td>
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<tr>
<td>Emergency workers (Scotland) Act 2005 Section 3(1)</td>
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<tr>
<td>Emergency workers (Scotland) Act 2005 Section 5(1)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

Notes: 1. Where main offence.

Source: The Scottish Government

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31 Scottish Government. Written submission to the Economy, Energy and Tourism Committee.
49. The Royal College of Nursing (RCN) Scotland in its written submission stated that employers could also be more supportive. It said that—

“…there is some concern that health boards are not giving staff appropriate levels of support to report assaults to the police and are not necessarily pushing for prosecutions under the Act”.32

50. The Crown Office and Procurator Fiscal Service (COPFS) responded to these views in written evidence—

“In terms of sentences for EWA offences, the courts have imposed prison sentences in a third of cases and direct alternatives to imprisonment particularly probation and community service in over a quarter of cases.”33

51. The Cabinet Secretary for Justice concurred with the COPFS view in written evidence to the Committee—

“The COPFS have confirmed that they take a robust approach in these types of cases and that the Lord Advocate has issued guidance to her staff to the effect that where a decision has been taken to raise criminal proceedings in a case involving a charge under the EWA or in a case involving an assault on a public service worker, proceedings in the Sheriff Court will usually be appropriate. The effect of this is that such cases are dealt with by courts with higher sentencing limits than would be case if they were dealt with in a justice of the peace court.”34

Analysis of the effectiveness of the EWA

52. The Committee wanted to find out if the EWA has led to an increase in the number of people prosecuted for attacking emergency workers or whether, prior to the EWA, similar numbers of people were prosecuted for such attacks using other offences (e.g. common law assault). The Committee heard that such analysis was not possible as the COPFS did not keep statistical data on the aggravating circumstances for common law assault and breach of the peace prosecutions. The Committee wrote to COPFS to ask if statistics could be made available and received a written response that this was not possible. The response stated that—

“I understand that frustration was expressed about the lack of information publicly available in relation to the incidence of common law offences, such as assaults or breaches of the peace, involving public service workers. COPFS cannot provide this information as the COPFS database is designed to meet the needs of COPFS, as the prosecution authority. The database can provide information according to particular offences. Offences are not

32 Royal College of Nursing Scotland. Written submission to the Economy, Energy and Tourism Committee.
34 Scottish Government. Letter from the Cabinet Secretary for Justice dated 1 November 2010.
categorised by whether the offence occurred at a place of work nor are Victims categorised according to their occupation.\(^{35}\)

53. In its written evidence to the Committee, the Scottish Government stated that it was difficult to draw meaningful conclusions on the effectiveness of the EWA with the available data both before and after its introduction. The Scottish Government’s submissions states that—

“…the data held in respect of common law assault and breach of the peace does not include information relating to the occupation of the victims and so pre 2005 Act data cannot show the incidences of assaults and breaches of the peace against emergency workers … However, it is probably easiest if no final conclusions are drawn at all given the difficulties in analysing what the 2005 Act data shows.”\(^{36}\)

54. The Committee notes that in the policy memorandum it states that the Unison survey on assaults in 2007/08 found that “assaults on health workers fell by more than 1,000 from the previous year” whilst attacks on shop workers and local government workers increased and that this could be attributed in part to the EWA acting as a deterrent. However, a Unison Violent Assaults on Public Service Staff in Scotland Follow up Survey 2010\(^{37}\) found that “During the year, the figures in health have increased by 1,510 to 15,212.” The Committee is therefore not convinced that the previously recorded reduced number of assaults on health workers can be attributed to the introduction of the EWA.

*Is the EWA now necessary?*

55. A central theme that emerged from evidence centred on whether the introduction of primary legislation, which does not extend the scope of the criminal law or increase the level of penalties available to the courts, is necessary. Bill McVicar told the Committee that it was the Law Society of Scotland’s view that as the introduction of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 had equalised maximum sentences for common law offences prosecuted in the sheriff summary courts and offences under the EWA, the EWA was no longer necessary—

“It is not necessary now because of the change in the sentencing regime that I mentioned earlier, as a result of which you can receive a longer sentence under common law than you can under the provisions of the 2005 act.”\(^{38}\)

56. In its written evidence, the Scottish Government stated that it did not see the Protection of Workers (Scotland) Bill as necessary—

“The current common law of assault provides legal protections to public facing workers (and everyone else) as they go about their daily lives. The specific statutory offence provided for in Hugh Henry’s Bill would not

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\(^{36}\) Scottish Government. Written submission to the Economy, Energy and Tourism Committee.


therefore extend the scope of the criminal law in any way and would rather replicate part of existing common law within a separate specific statutory offence.\textsuperscript{39}

57. The Committee has been unable to undertake any meaningful analysis of the impact and effectiveness of the EWA due to a lack of publicly available data and recommends that the Scottish Government ensures that the COPFS collects information on the aggravating circumstances in relation to criminal offences and makes this information publicly available.

\textsuperscript{39} Scottish Government. Written submission to the Economy, Energy and Tourism Committee.
ALTERNATIVE APPROACHES

Preventative measures

58. There was broad agreement amongst those who were in favour of the Bill that it should not be a stand-alone measure, but part of a wider package of suggested measures aimed at addressing the problem of attacks on workers providing a service to the public. Measures included a high-profile publicity campaign to increase awareness of the introduction and purpose of the legislation, employers taking relevant workplace measures such as the introduction of CCTV and schemes to target unacceptable behaviour. Dave Watson of Unison Scotland told the Committee that—

“We see legislation not as the only solution but as part of a three-pronged solution. First, we need campaigns to raise public awareness, to try to make abusing people who serve the public unacceptable in the same way as drink driving is no longer acceptable … Secondly, workplace measures are important … Legislation is the third prong. It is important not just because of the deterrent and punishment elements, but because of the public policy message that it sends.”

59. David Dalziel of the Chief Fire Officers Association Scotland outlined a community scheme which had been successfully introduced—

“There are some schemes that we, in the fire service, have found very beneficial, such as intelligence-led projects that aim to reduce the level of risk … We have seen some benefit in using diversionary schemes such as street football schemes, which I know our police colleagues also use, and engaging with communities to target antisocial behaviour.”

60. There was an acknowledgement that although the effectiveness of preventative measures was difficult to analyse, it was nonetheless an essential part of tackling the problem.

61. The Scottish Government reiterated its view in written evidence that the abuse of alcohol and drugs was a contributing factor and should be tackled initially. Its submission states that—

“….we should be treating the underlying causes of many of the attacks on public workers which includes Scotland’s unhealthy relationship with alcohol and drugs which is why we have included measures in the Alcohol etc (Scotland) Bill designed to reduce consumption and harm, and why our drugs strategy should be supported.”

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42 Scottish Government. Written submission to the Economy, Energy and Tourism Committee.
Sentencing and prosecution guidelines

62. An option proposed by some to help achieve the necessary culture change was the introduction of sentencing and prosecution guidelines. In evidence both the Scottish Police Federation and the Chief Fire Officers Association Scotland favoured this approach. Bill McVicar of the Law Society of Scotland outlined how guidelines had been successfully introduced in relation to knife crime—

“I understand that the Lord Advocate has set out guidelines that require cases that involve someone with a previous conviction for carrying a knife to be prosecuted on indictment, which gives the court that deals with the matter a much stronger sentencing possibility. It seems to me that those would be more effective means of dealing with problems relating to the harassment or abuse of workers.”

63. Dave Watson of Unison Scotland agreed that prosecution guidelines would assist in helping to tackle the perception that assaults were not taken seriously by the Crown Office—

“I would like there to be stronger prosecution guidelines, better collection of data and better training for fiscals.”

64. The Committee is of the view that the introduction and application of both sentencing and prosecution guidelines in relation to assaults on workers providing a public service would be beneficial in tackling the perception that aggravating circumstances are not taken seriously. Any such introduction should be linked to a high-profile publicity campaign.

Definition of worker

65. The question of which workers would be covered by the Bill was raised in written evidence and during evidence to the Committee. Section 1(3) of the Bill defines a worker as “a person whose employment involves dealing with members of the public, to any extent, but only if that employment involves (a) being physically present in the same place and at the same time as one or more members of the public”.

66. The Committee heard evidence from the Federation of Small Businesses that self-employed workers should be included in the Bill, whereas the view of the STUC was that self-employed workers were already covered by the current definition.

67. The Cabinet Secretary for Justice told the Committee that the inclusion of self-employed workers would make the scope of the Bill too large and it would lack focus. The Committee asked the Cabinet Secretary to provide an estimate of the number of Scotland’s workforce who would be covered by the Bill as introduced,

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including self-employed workers, and received an estimate that this would be 1,052,800 or 43% of Scotland's workforce. However, this figure came with the caveat that “…the figures given above carry a significant health warning as it is very difficult to map across the provisions in the Bill to occupational groups with exact precision.”

68. In evidence to the Committee Hugh Henry MSP agreed that further clarification on whether or not the self-employed who did not “take a wage” were covered was required. He said—

“Some people structure their businesses so that they exist on dividends. That may be an issue that we need to consider further, but those who draw a wage are in paid work.”

69. ACPOS raised a concern with regards to the definition of a worker in their written evidence—

“The interpretation of which workers are, or are not, protected by the Bill could be extremely problematic with the phrase, ‘providing a service face to face with the public’, being wide ranging.”

70. The Committee questioned whether or not call centre workers would be covered by the Bill. Mike Dailly of Govan Law Centre subsequently wrote to the Committee and stated that abusive telephone calls are prosecuted in Scotland under section 127 of the Communications Act 2003. The member in charge of the Bill, Hugh Henry MSP, confirmed in evidence to the Committee that call centre workers were not covered by his Bill. However, his view was that this was an issue that could be looked at during stage 2 consideration—

“If the Bill got to stage 2 and members such as you who are listening to the arguments of those who support call centre workers felt that a workable amendment could be made, that would be for others to determine.”

71. The Committee is concerned about the lack of clearer definition on the face of the Bill in relation to which workers are covered and would like clarification should the Bill proceed to stage 2.

Definition of assault

72. The Committee heard conflicting oral evidence on whether or not verbal abuse and/or threatening behaviour should be included in the Bill. The Committee heard that the type of verbal abuse and the “day-in day-out” nature of it can, and does, have an adverse effect on the health of workers. Julie McComasky, of First ScotRail told the Committee—

46 Scottish Parliament Economy, Energy and Tourism Committee, Official Report, 10 November 2010, Col 4308
48 Scottish Parliament Economy, Energy and Tourism Committee, Official Report, 10 November 2010, Col 4315
“A piece of legislation that recognised verbal assault, and the fact that it might happen not just once, would be of great benefit. Verbal assault can go on and on, and can have an adverse effect on people and their ability to do their work.”

73. Similarly, Ian Tasker of the STUC thought that verbal abuse was classed as “low-level” and not taken seriously—

“We must consider how we can extend the legislation to cover verbal abuse, because we often hear reports of that happening. The public awareness of verbal abuse is low, but when it involves threats to individuals, it is a very serious offence … We need a serious debate on how we can extend the provisions for emergency workers to all workers who carry out public services.”

74. In oral evidence, the Cabinet Secretary for Justice stated that tackling verbal abuse “would be about better enforcement of breach of the peace” rather than by new legislation.

75. **The Committee is of the view that verbally abusing a worker providing a service to the public is unacceptable behaviour and that this needs to be taken seriously by both employers and the prosecution service.**

**Definition of member of the public**

76. Section 1 (1) refers to “A person, being a member of the public”. The Committee heard evidence that this term could have a different meaning depending on the circumstances and therefore needed clarification.

77. Sam Jennings of Capability Scotland told the Committee that she was concerned about who would be covered by that definition—

“We wanted to be clear that the definition would extend to the clients who use our services—our service users—and to their parents and carers. Our staff might be providing a service to the individual, but the risk of violence or aggressive behaviour can also come from a service user's parents, family, or other carers. I wanted to clarify whether that would be an offence under the bill.”

78. The Committee is aware of concern about the lack of definition on the face of the Bill in relation to who would be classed as a member of the public and the difficulties this would pose for the police and prosecution service. The Committee would like to see clarification of this issue should the Bill proceed to stage 2.

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**Subordinate Legislation Committee Report**

79. There are no provisions of the Bill that confer powers to make subordinate legislation and therefore the Subordinate Legislation Committee did not consider the Bill.

**Financial Memorandum**

80. The Finance Committee adopted a ‘level 1’ approach to scrutiny of the Financial Memorandum for the Bill and did not, therefore, take oral evidence on the Bill or produce a report. A letter from the Convener of the Finance Committee with a copy of the evidence received is attached at Annexe A.

**Policy Memorandum**

81. The member in charge of the Bill prepared a Policy Memorandum, which accompanied the Bill when introduced. **The Committee agrees that the Policy Memorandum provided a comprehensive explanation of the policy objectives of the Bill. The Committee is content that an inclusive and in-depth consultation process took place and that there was an adequate consideration of the impact of the Bill on equal opportunities.** The respondents indicated that the Bill would have a positive effect on equality by increasing the safety of workers and the safety of the public.
CONCLUSION ON THE GENERAL PRINCIPLES OF THE BILL

82. From the written and oral evidence received by the Committee, it is clear that there is strong support for the basic principle that the rights of those who provide a service to the public should be respected. However, the Committee considers that the principal debate arising from scrutiny of the Bill centres on whether primary legislation is the most appropriate method of seeking to ensure the protection of public facing workers.

83. The Committee believes that the issues raised are significant and that if they are not dealt with by this Bill then Parliament should look at other ways of addressing them, such as those outlined in paragraph 64 of this report.

84. The Committee is of the view that the Scottish Parliament and the Scottish Government should address the issues now, particularly with regards to the introduction of sentencing and prosecution guidelines and the collection of relevant and transparent data.

85. The Committee welcomes, and shares, the commitment of the member in charge of the Bill to promote the protection of, and respect for, public facing workers and recognises that there is a need for a culture change to tackle unacceptable behaviour towards those workers.

86. The Committee is of the view that the proposals in the Bill will not extend the protection currently available under the common law offence of assault and therefore recommends that the general principles of the Bill are not agreed to.  

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52 An amendment to this paragraph was disagreed to by division. The result was: For 3 (Lewis Macdonald, Wendy Alexander and Marilyn Livingstone) Against 5 (Stuart McMillan, Rob Gibson, Christopher Harvie, Gavin Brown and Iain Smith)
ANNEXE A: LETTER FROM THE FINANCE COMMITTEE

Dear Iain

Finance Committee – consideration of the Financial Memorandum of the Protection of Workers (Scotland) Bill

As you are aware, the Finance Committee examines the financial implications of all legislation, through the scrutiny of Financial Memoranda. The Committee agreed to adopt level one scrutiny in relation to the Protection of Workers (Scotland) Bill. Applying this level of scrutiny means that the Committee does not take oral evidence or produce a report, but it does seek written evidence from affected organisations.

The Committee received one submission, from the Scottish Court Service, which is attached to this letter. If you have any questions about the Committee’s scrutiny of the FM, please contact the clerks to the Committee via the contact details above.

Yours sincerely

Andrew Welsh MSP,
Convener

Submission from the Scottish Court Service

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made? The Scottish Court Service did not participate in the consultation exercise, and made no comment on the financial assumptions made.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum? As at 1. above.

3. Did you have sufficient time to contribute to the consultation exercise? The Scottish Court Service did have sufficient time to contribute to the consultation exercise. We did not respond to the consultation as we did not anticipate that the proposals would create any difficulties for us.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

We do not anticipate that the Bill would have any financial implications for the Scottish Court Service.
5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
   As at 4. above.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
   As at 4. above.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
   We are unaware of any related wider policy initiative.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
   We are unaware of any related future costs.
ANNEXE B: EXTRACTS FROM THE MINUTES

24th Meeting, 2010 (Session 3), Wednesday 15 September 2010

Protection of Workers (Scotland) Bill: The Committee considered its approach to the scrutiny of the Bill at Stage 1.

25th Meeting, 2010 (Session 3), Wednesday 22 September 2010

Protection of Workers (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Jackson Cullinane, Unite
David Dalziel, Chief Fire Officers Association Scotland
Robert Milligan, Scottish Police Federation
Ian Tasker, STUC
Dave Watson, UNISON Scotland
David Dickson, William Morrisons Supermarket
Stuart Forrest, USDAW

26th Meeting, 2010 (Session 3), Wednesday 29 September 2010

Protection of Workers (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Colin Borland, Federation of Small Businesses
Sam Jennings, Capability Scotland
Julie McComasky, First ScotRail Limited
Alan McCreadie, The Law Society of Scotland
Bill McVicar, The Law Society of Scotland

27th Meeting, 2010 (Session 3), Wednesday 6 October 2010

Protection of Workers (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Kenny MacAskill, Cabinet Secretary for Justice
Philip Lamont, Head of Branch, Criminal Justice and Sentencing, Scottish Government
30th Meeting, 2010 (Session 3), Wednesday 10 November 2010

Protection of Workers (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Hugh Henry MSP
Mike Dailly, Principal Solicitor, Govan Law Centre

31st Meeting, 2010 (Session 3), Wednesday 17 November 2010

Protection of Workers (Scotland) Bill: The Committee considered a revised draft Stage 1 report. The Committee voted on the following proposed amendment to the recommendation to Parliament on the general principles of the Bill—

“The Committee believes that the Bill requires some strengthening and clarification in a number of areas, for example in relation to hindrance and obstruction, the definition of a worker and the definition of a member of the public. The Committee supports the general principles of the Bill in expectation of these issues being addressed at stage 2.”

This amendment was disagreed by division: For: 3 (Lewis Macdonald, Wendy Alexander and Marilyn Livingstone), Against: 5 (Iain Smith, Gavin Brown, Christopher Harvie, Stuart Macmillan and Rob Gibson), Abstentions: 0.
The Deputy Convener: Item 2 is discussion of the Protection of Workers (Scotland) Bill. I welcome Hugh Henry, who has stewarded the bill.

Today, we will hear the views of two panels of witnesses on the proposals. I invite the members of the first panel to introduce themselves, after which we will move straight to questions.

Jackson Cullinane (Unite): I am an official of Unite the Union.

Dave Watson (Unison Scotland): I am the Scottish organiser, Unison Scotland.

Ian Tasker (Scottish Trades Union Congress): I am assistant secretary of the Scottish Trades Union Congress.

Robert Milligan (Scottish Police Federation): I am the vice-chairman of the Scottish Police Federation.

David Dalziel (Chief Fire Officers Association Scotland): I am from the Chief Fire Officers Association Scotland.

The Deputy Convener: I will start with a general question that each of you might have a view on. Given the existence of the Emergency Workers (Scotland) Act 2005, what is your general view on the need for the introduction of a bill to develop that concept?

Ian Tasker: I will start off, because the STUC was very much involved in the discussions that led to the introduction of the 2005 act. At that time, we had a number of meetings about how far it would extend. Many of our affiliates that did not represent what had been defined as the blue-light emergency services were unhappy about the fact that, despite the number of attacks on and incidents of verbal and physical abuse against their members every year, the 2005 act appeared to provide no protection for that population.

However, we welcomed the package of non-legislative measures that was introduced at that time, and there has been welcome activity in Scotland to raise the profile of attacks against all workers but, in recent years, the effectiveness of the public awareness campaign on the extent of the problem has reduced as the funding for it has been reduced. We still see attacks against the remaining health workers who are not covered by the legislation, local government workers—including construction workers who carry out emergency services—and retail, finance, transport...
and postal workers. They all face attacks day in and day out.

We must consider how we can extend the legislation to cover verbal abuse, because we often hear reports of that happening. The public awareness of verbal abuse is low, but when it involves threats to individuals, it is a very serious offence. Even call centre workers receive threats from people who say that they know where the worker stays or that they will be waiting for them when they leave work.

We need a serious debate on how we can extend the provisions for emergency workers to all workers who carry out public services.

The Deputy Convener: I hope that the committee can provide that serious debate.

Jackson Cullinan: I will add to what Ian Tasker said about the history of the issue and the position that some of the STUC affiliates adopted vis-à-vis the Emergency Workers (Scotland) Bill, which became the 2005 act. At that time, our union argued quite strongly that the bill should be extended to cover public transport workers in particular, and I have to say that the situation is still horrific, particularly for bus workers.

I will describe a couple of incidents to the committee. In Glasgow recently a driver was slashed, and drivers have been punched and spat on, for the simple act of asking for the correct fare. The worst cases that we have heard of involve a driver who was shot with air-gun pellets through his window, and another who was attacked by someone wielding a sword.

A couple of years ago a survey was conducted by First Glasgow, which showed that on average 23 bus windows are broken every night—which is 8,000 per year—causing eye and facial injuries to drivers and passengers. Another survey, by First Glasgow staff, showed that 57 per cent of staff said that they expected to be attacked or abused in the course of their work. That is clearly not acceptable.

When those staff are asked why they have not reported the incidents, they clearly say that it is because they believe that no attempt is made to apprehend or punish the perpetrators. We do not view the bill as something to be used instead of other measures—we have campaigned for years for the installation of closed-circuit television cameras, unbreakable glass and so on—but it is a necessary part of the package if we are to prevent those incidents from taking place.

I urge the committee and the Parliament to recognise that the issue does not stand in isolation from some of the major policy positions that the Parliament must consider. For example, if there is a push—quite rightly—to tackle climate change and improve the environment, it must be recognised that public transport has a role in that. The reality is that people will use public transport only if they believe that it is safe to do so. Given the type of incidents that I have highlighted, there will be a fear among the general public, and unless something is done to address such incidents, people will be deterred from using the public transport system.

David Dalziel: The 2005 act has already been mentioned, and I want to provide some context around its use or otherwise in any given year, although it is clear that the situation changes from year to year. In the fire service alone—just to be parochial—we suffer about 300 reported attacks on fire crews across Scotland in any particular year, which is fortunately not as high as the level of attacks on public transport workers.

Conversely, the number of prosecutions in proceedings under section 1 of the 2005 act—which covers police, fire and ambulance services, as opposed to health workers and others—bubbles around the 50 mark. If the numbers for ambulance worker and police attacks are added to the 300 attacks on the fire service—which I am sure makes a significant difference—and the resulting figure is contrasted with the 50 prosecutions under the 2005 act, it seems that the current legislation is not being used as widely as it might be.

Robert Milligan: Before I summarise our position, I want to say that I fully respect the motivation behind the bill.

The Scottish Police Federation believes that assaulting someone in the execution of their duties is a serious offence, and that the justice system should treat it as such, but we do not think that the bill contains the best way of doing that. We support the common law and think that the Crown and the judiciary are flexible enough to deal appropriately with the peculiarities of each case, bearing in mind that every standard prosecution report that is referred to the procurator fiscal includes a section purely for remarks in which the reporting officer outlines the aggravations to the offence.

We are concerned that the principle of everyone being equal before the law is being challenged and that a hierarchy of victims may be created. We are also concerned about the difficulty of proving motivation. Instead of dealing with the common law, which requires us to prove an assault, a breach of the peace or threats, we will have to find time to prove motivation. We are concerned that our members’ jobs are becoming harder and more time consuming.

I will not go into the figures, although I have them and will gladly circulate them. Figures for
police assaults from central Glasgow division equate to every police officer in the division being assaulted twice a year. I want the committee to bear in mind seriously that passing legislation does not guarantee protection from attack.

The Deputy Convener: It would be helpful if you could make the figures available to the committee in writing.

Dave Watson: Unison Scotland supports the principles of the bill. Sadly, violence at work remains a serious problem for staff facing the public. We conduct an annual survey on the issue; the new one will be published next month. Last year, 30,000 incidents were recorded by public service workers in Scotland. I emphasise the word “recorded”, because many incidents are not recorded, for a variety of reasons. The systems are too complicated—many staff feel that incidents happen so often that, if they were to record them, they would be constantly filling in forms. I refer only to incidents in our sphere of influence—there are further incidents in other areas.

We see legislation not as the only solution but as part of a three-pronged solution. First, we need campaigns to raise public awareness, to try to make abusing people who serve the public unacceptable in the same way as drink driving is no longer acceptable. Secondly, workplace measures are important. We have made progress in the health service. I am pleased to say that this year local government, which had lagged behind somewhat, has come on board with new guidance that we have developed with colleagues there. We hope to see the benefits of that in the next couple of years. Practical workplace measures are important.

Legislation is the third prong. It is important not just because of the deterrent and punishment elements, but because of the public policy message that it sends. The Emergency Workers (Scotland) Act 2005 was an important step forward. However, we said at the time—and have said since in extensive discussions with ministers and officials—that it was too limited in scope. There are provisions to extend the scope of the 2005 act, but it is limited somewhat by its overarching emergency circumstances provisions.

Serious physical assaults should be—and are—dealt with by the common law. However, below that there is a level of incidents—some physical, some of other types—that are nonetheless particularly traumatic, especially for public-facing workers, who are not used to dealing with violence. Hopefully, most members will never face violence—if they are particularly unlucky, it may happen once or twice. That is a hugely traumatic and, usually, costly experience for the public sector, because the people concerned suffer illness and ill health and often take some time to recover from the incident.

I am sure that you will test us on whether the bill is necessary. I am happy to deal with points made by the Scottish Government and others, but we think that the numbers indicate that the justice system does not take such incidents seriously enough. Parliament should show that it is serious about the problem by supporting the bill and sending a clear public message.

The Deputy Convener: Before I open the floor to members, I remind you that it is not necessary for every one of you to answer every question. We are here to hear a wide range of views, but please make your points as specifically as possible.

09:45

Lewis Macdonald (Aberdeen Central) (Lab): I will start by asking for comments from several of you on the Emergency Workers (Scotland) Act 2005, which it is clear is the model, as it is already in place. David Dalziel said that, although the number of prosecutions has increased under that act, it is still lower than the number of cases that arise. What is the overall assessment by the fire service and the Scottish Police Federation of the 2005 act’s usefulness and effectiveness for your members? I am also interested in the trade unions’ view on how the act has worked and the lessons that it has for the bill.

David Dalziel: Firefighters do not—thankfully—suffer anything like the level of attacks that police officers do, but the level has remained static since the 2005 act was introduced. The number of attacks dropped slightly last year, but the figures have stayed at about 300 incidents each year. As another witness said, the vast majority of incidents are—thankfully—verbal assaults, and few result in physical injury, unlike attacks on our police colleagues. Nonetheless, verbal assaults or attempted attacks on crews—whether with missiles, laser pens or bricks, or recently petrol bombs and fireworks—are traumatic, whether or not they result in injury.

Initially, passing the 2005 act raised awareness hugely. That put Scotland ahead of the rest of the UK again in passing legislation to protect sections of the workforce. My colleagues south of the border and in Wales were jealous of that and remain so. However, the act has not resulted in a reduction in attacks. The vast majority of cases that are reported to the police are proceeded with under other legislation, such as that on common assault, reckless endangerment or breach of the peace. The 2005 act is not widely used.

Robert Milligan: Annually, more than 8,000 offences are reported under section 41 of the Police (Scotland) Act 1967. That section has fallen
into disrepute for the rank-and-file police officer, because all that it does is clog up the court system. An offence under that section is the first offence to be plea bargained away. Our experience of such aggravations is that the accused is unlikely to plead guilty to a section 41 assault on a police officer and is far more likely to plead guilty to common-law assault or breach of the peace. The courts and the judiciary do not take the aggravation seriously.

Lewis Macdonald: Does any other witness have a view?

Dave Watson: The short answer is that people do not know what happens under the EWA because the justice directorate does not keep statistics for people to analyse. In the first year of the EWA’s operation—2005-06—an attempt at grouping incidents by occupation was made, but that was dropped after 2005-06. After that, the categories were ambulance workers and everybody else, which I presume is because ambulance workers formed the largest chunk in the first year. No explanation was given for dropping the statistics, although the committee that dealt with the Emergency Workers (Scotland) Bill criticised the justice department for not keeping those statistics.

The use of the EWA is limited. One reason for that—it also applies to the Protection of Workers (Scotland) Bill—is that the EWA has wider provision. That is partly because the sentencing provisions came into line with the common law. From our point of view, what is useful about the EWA is that it deals not just with physical assaults but with hindering and obstruction. We would like the bill to be strengthened on that, too.

In its submission to the committee, the Scottish Government’s justice directorate says that the Crown Office and procurators fiscal take all matters into account in proceeding with prosecutions and in aggravating offences. Where is the evidence for that? Not one single statistic has been put before the committee to support the argument that fiscals and the Crown Office do what has been said. Such statistics are not kept. In 2004, the Justice 1 Committee asked questions about that and was told that the operational database was being looked at and that improvements would be made. I cannot count the number of meetings that I have had with justice officials over the years at which I have been told that the database would be reviewed and that they would be able to give us the statistics. The statistics have never been produced.

All that the Scottish Government’s submission does is give two anecdotal examples of cases that probably would not be prosecuted under the EWA anyway. In anecdotal evidence, my colleagues in the legal profession—people with whom I went to law school and who are defence agents and fiscals—tell me, bluntly and privately, that an aggravation is simply plea bargained away. In a busy court on a Monday morning, the aggravation might be cited but, if the defence agent said, “Okay—he’ll plead guilty if you drop the aggravation,” the aggravation would be dropped. If we had the statistics, I suspect that they would show that the aggravating provisions are not used much. On that basis, we do not believe that the common law is being used properly, so there are strong public policy and practical reasons for having legislation.

Ian Tasker: Recently, there have been two concerning incidents of assaults on fire service personnel. One, which was reported in the media and took place in Edinburgh, emphasises the importance of the issue of impeding workers, as it involved the firefighters’ hoses being slashed by attackers. That might not be capable of being classed as an assault, but it is evidence of the firefighters being impeded in their duties. The other incident, which I have not seen reported in the media, involved a youth getting into the cab of a fire appliance and attempting to drive it off. Such incidents are concerning, but they might not be classed as assaults against a firefighter.

I echo the comments that were made about the Crown and the judiciary not taking such matters seriously enough. That was raised in the early days of the non-legislative measures, when we had round-table discussions involving the Association of Chief Police Officers in Scotland and the Crown Office. At that time, it was clear from the discussion groups that we held with workers that, when issues were reported to the police, they were not taken forward for prosecution. Workers sometimes blamed the police for that, but it was the fault not of the police but of the prosecution service.

Lewis Macdonald: What we have just heard makes it clear that how these matters are dealt with in the courts is critical to the usefulness of the existing legislation and, therefore, to the usefulness of incoming legislation. Would it be unfair to characterise the comments that we have heard as saying that, often, cases are simply not taken through to prosecution because fiscals either bargain away the aggravation aspect or do not raise it in the first place? If I understood Robert Milligan correctly, he supports that view but comes to the opposite conclusion. In other words, he agrees that not enough cases are prosecuted and taken through to a conclusion, with regard to the aggravation element, to make the law as useful as he would like it to be, but the conclusion that he draws from that is that he does not like the law.

Robert Milligan: That is correct. If the intention is to make a statement, I would point out that
every right-minded person in Scotland already agrees that any assault is serious. That is the bottom line.

It has been suggested that no attempt is made to apprehend these people, but I have yet to meet the cop who does not want to apprehend someone—that is just part and parcel of what we do. I do not see what the bill adds to that.

The way in which we report offences under the common law means that there is sufficient flexibility for the judiciary to deal with that appropriately. As someone said, however, where is the evidence of that happening? I do not think that legislation is the answer, but sentencing guidelines might be. The message that everyone should be free to go about their business without the fear of being abused in any particular way is important, and I support the motivation behind the proposal, but the Police Federation is not convinced that legislation is the answer to the question.

Lewis Macdonald: Does the fire service have a view on this issue of aggravation? Does the fact that the Emergency Workers (Scotland) Act 2005 allows an additional charge of aggravated assault make it easier for the Crown to secure convictions for the common-law offence in the first place?

David Dalziel: It has not been our experience that that has been the case. Occasionally, we have to prompt the Crown Office and Procurator Fiscal Service to use that additional legislation, just as Robert Milligan has outlined.

“Easier” is not the right word, as that just derogates the whole thing. It seems that there is a much greater chance of success if the common law is used in terms of assault, breach of the peace or reckless conduct, and the penalties that go with those offences can be fairly substantial. The 2005 act raised the issue, of course. However, certain incidents—such as those that Ian Tasker mentioned—are already covered under the Fire (Scotland) Act 2005, which is the primary piece of legislation, and therefore no additional legislation was required in order for them to be dealt with.

We work well with police colleagues and the Crown Office with regard to assaults on fire crews, without using that additional legislation.

Lewis Macdonald: Might there be a case for making it easier to use that additional legislation, in order to secure more convictions?

David Dalziel: If we stick with the Emergency Workers (Scotland) Act 2005, it would be extremely helpful for sentencing guidelines to be reinforced and awareness raising to be carried out. However, as Robert Milligan said—I do not speak for the Scottish Police Federation, clearly—where there is statute law, the arresting officer is obliged to use that first and, in some instances, it might have less chance of successfully going through the judicial system than a prosecution under the common law.

Lewis Macdonald: A common feature of the police and fire service responses is that, for the Emergency Workers (Scotland) Act 2005 to have more effect, tougher or clearer sentencing guidelines would be required. Do you agree?

David Dalziel: Yes.

Robert Milligan: Yes.

Lewis Macdonald: Do the trade unions support that view? If so, does that mean that, if it is to be useful, the bill needs to be clearer about sentencing guidelines from the outset than the Emergency Workers (Scotland) Act 2005 is?

Dave Watson: We need to be a little bit careful, because we are confusing two things. The aggravation is part of the common law, not the EWA. We are talking about the Crown Office guidelines on common-law assault. That is the aggravation for which no statistics are given and nobody can tell us whether it has ever been used or is used significantly.

We represent the third of the uniformed services that are covered by section 1 of the EWA—that is, ambulance workers. It is clear from statistics that we have had from the justice department that the act is being used in relation to assaults on ambulance workers. I know from talking to fiscals that they like the hindering and obstructing element of section 1 of the EWA because it is easier to prove that an accused was hindering or obstructing an ambulance worker who was trying to get to somebody than it might be to prove breach of the peace or common-law assault.

When the charge comes in, it is obvious that colleagues from uniformed services were acting as a uniformed presence. However, the problem for Unison is that most of the victims in the 30,000 incidents that I mentioned are not uniformed public service workers but people who work in care homes, schools or the reception areas of council offices. The public service element may not even be mentioned in the report, so it is not immediately obvious that there is such an element to the incident, even if where it happened is mentioned. That sometimes gets lost in the system, which is why we need better data.

Such incidents are often lower-level assaults than those on the uniformed services and, therefore, not as suitable to be tried as assault cases. They are the sorts of assault that, if they happened on a Saturday night outside a pub in Glasgow, would not get as far as the sheriff court on a Monday morning. However, if somebody is
serving the public as part of their daily work, they do not expect such treatment. It is not part of the culture and has a traumatic impact.

There is a difference. The bill is important for the vast majority of our members who suffer thousands of incidents of violence. I understand why the uniformed services take a different view, but we take a different view from them because our members have a different experience.

Lewis Macdonald: I am sure that colleagues will follow through the implications of that for Hugh Henry’s bill. In relation to the experience of ambulance staff, does the proposition that the Emergency Workers (Scotland) Act 2005 would be more effective with more specific sentencing guidelines ring any bells with you? If it does, would that have any implications for the bill?

Dave Watson: It does. I would like clearer guidelines not only for sentencing but for prosecution. Nobody knows where the problem is because there are no stats, but my suspicion from talking to people and having looked at the cases—I head Unison’s legal services, so I see all our legal cases in this policy area—is that it is with not the judges but the prosecution process. I would like there to be stronger prosecution guidelines, better collection of data and better training for fiscals. Those are the areas in which I would like the rules to be strengthened.

It is difficult to draw conclusions on the operation of the EWA from the limited statistics. We cannot draw any real statistical correlation from the three or four years of statistics on it, although I notice that the Scottish Government’s submission attempted to do so. However, if you are looking for some statistical evidence, I point out that our survey shows that assaults in the health service have gone down and the EWA covers most health workers, whereas assaults have gone up in local government and the EWA does not cover most of those staff. I do not claim any great statistical correlation any more than I suspect the Scottish Government officials do—it is too early to tell—but, if you are looking for correlation rather than cause and effect, I point out that bald statistic to you.

10:00

Stuart McMillan (West of Scotland) (SNP): Good morning. From your understanding of the bill, what constitutes a public-facing worker? Do you have any examples of such a worker?

Ian Tasker: The unions’ view is that it is anyone, whether employed or self-employed, who provides a service to the public. They might be a shopkeeper, for example. The method of service delivery involves contact, physical or otherwise, between the worker and the public. We carried out numerous focus-group exercises as part of the initial non-legislative measures and we looked at various jobs including doctors’ receptionists, nightclub bouncers, stewards and parking wardens, for whom there are major problems. That approach came from the Scottish Government at the time, not the trade unions. A public-facing worker is any worker who is involved in delivering a service on behalf of their employer to a member of the public.

Dave Watson: As you know, there is a definition in section 1(3)(b), which describes the worker as

“interacting with those members of the public for the purposes of the employment”.

It requires more clarification, as we said in our submission. Although it is fine for obviously public-facing people, our difficulty with the definition is not the interaction with the public but the “purposes of the employment” bit. For example, imagine a housing clerk in a reception area who deals with a member of the public who says, “I’m going to get you.” Most of our members who work for local authorities live in the communities they serve, so it is not unlikely that they could bump into that same aggravated customer in the pub on Friday night and be assaulted or otherwise abused. The argument in court would be whether that encounter was for the “purposes of the employment”. We need to discuss and tighten up the definition. We would like the committee to consider that at stage 2, when we will probably come up with a definition amendment to address the issue. The definition issue does not undermine the principles of the bill, but the definitions need to be tightened up in that and one or two other areas that we highlighted in our submission.

Stuart McMillan: As I read all the paperwork, I thought of an example. If a security worker who is a shift worker is on a day shift, they probably deal with the public regularly. However, if they are on a night shift, perhaps on a building site, they would not expect to deal with the public regularly. Would that shift-pattern worker be covered by the bill?

Dave Watson: They would, because they would meet the definition of a worker who provides a service to members of the public. The other thing that you need to define is who is a member of the public. That is the thing about legislation; the rules operate their own lexicon—so we need to define some of the issues. However, there are common-law provisions, such as the concept of causation, that could help you to make the legal link in that regard. We can get round the problems by making definitions a little clearer and drawing on examples from common law or statute. For example, we argued that “the purposes of employment” would fit better into the EWA because we lifted it from the Police (Scotland) Act 1967. The courts are used to
using that type of provision, which has been used to protect police officers for many years. We wanted to use a similar provision so that the protection afforded to police officers would be afforded more generally to other workers in the public sector. The bill has rightly used better wording than even the EWA, but you can still tighten up the language so that there is less scope for interpretation that might be unfavourable and exclude people.

Robert Milligan: One point that immediately springs to mind is that if we are not very sure what the answer is in this committee room, how is a cop who is working at 2 o’clock in the morning in the middle of Glasgow supposed to know? I return to the common-law aggravations. One category relates to the place of the assault, which I would extend to include someone’s place of occupation. Another category is the character of the victim, which I would extend to include the person who has been convicted. Those avenues already exist and are already used.

Stuart McMillan: I will give another example. On the next panel we have a witness from Morrisons. Years ago, I used to work for a couple of supermarkets. When I was thinking about the bill, I took myself back to that time. Someone who works on a supermarket shop floor works with and faces the public, but what would happen if they were assaulted when they had left their station of work and were officially on their break and heading to the staff canteen? They would not officially be working. Would they be covered under the bill?

Dave Watson: That is not a problem with the bill. It is fairly clearly understood in employment law that someone who is going for their break is doing so for the purposes of employment. As always with legislation, the issue would be for judges to interpret. There are provisions that need to be tightened up but, to be honest, that one is fairly clearly understood.

Stuart McMillan: In some of the evidence we have received it is suggested that there is already a two-tier system and that, if the bill were passed, there could be a three-tier system. Mr Milligan spoke about a hierarchy of victims. We would have the Emergency Workers (Scotland) Act 2005 and the proposed legislation, if it were passed, which would cover public-facing workers, but what about someone who works in a factory, shipyard or engineering works, is not in a public-facing role and is assaulted? There are a few question marks on that. Why should those people not be included in the bill?

Ian Tasker: We would have to extend the example you have used and consider where the assault came from. If it was from a colleague, it is covered under employment legislation. Employers should have the appropriate policies in place to ensure that they can take action against that individual. There are options in other areas of business for an employer to take a prosecution against an individual who has stolen money from it, so surely the employer should be able to seek prosecution if there has been a serious attack by one colleague on another. Other areas of legislation cover situations in which an individual does not provide public services but there is still the likelihood of attack against them.

Jackson Cullinane: We must keep the purpose and target of the bill clearly in mind. As Ian Tasker has explained, if someone is assaulted in the course of their work, measures are available right now to deal with that. The bill is trying to address the thought and the culture that exists among some members of the general public that somebody who provides a public service to them is an easy target and, if they do not get 100 per cent satisfaction from that person, they can take out their anger on them and abuse them. The bill is part of that much wider package, which is why it needs to be stressed that it is required.

David Dalziel: Stuart McMillan talked about tiers, or levels, of victims and Dave Watson talked about the need for prosecution and sentencing guidelines. High-level campaigns such as the campaigns on domestic violence and road traffic offences, which are also despicable offences, have been successful. The raising of awareness in general is to be applauded. The bill is intended to raise awareness, which is a laudable aim.

We could find lots of examples of groups of workers who would be excluded. As we reshape public services over the next five to 15 years, tensions will rise. There is already the potential for that for a variety of reasons, as people lose employment and so on.

A huge section of our workforce deals with the public by phone. Intimidation and threats of violence over the telephone, in e-mails or in writing have an equally damaging and traumatic effect on victims. There is a spectrum of activity, but the common law tends to deal with most of it. My trade union colleague mentioned employment law, which provides protection across the piece.

I do not think that anyone would argue with the bill—it is spot on—but there is an issue to do with equal application of the protection of the law throughout the workforce.

Stuart McMillan: I am a member of the Parliament’s Equal Opportunities Committee, which is reaching the end of an inquiry into trafficking. Yesterday, the committee heard evidence on the sex industry. Would the bill apply to people who work in the sex industry? Would it
encourage people to come forward and complain about issues?

Dave Watson: We do not represent staff who work in that industry, so I cannot claim particular expertise in that regard, but it seems to me that some of the tests under the bill would cover people in that type of industry.

An equal opportunities issue that we identified in our submission is that the EWA is drawn up in such a way as to cover male-dominated professions. I think that that was unintentional. The value of the bill is that it would draw in a much wider group and female-dominated occupations would start to get similar protection. In equal opportunities terms, the bill has strong merits.

Stuart McMillan: In written evidence to the committee, the Scottish Government suggested that the bill would not add anything new to existing legislation. The witnesses commented on the issue; do you have anything to add?

Dave Watson: Those are the same arguments that the same officials and the legal establishment churned out against the Emergency Workers (Scotland) Bill. I well understand—I am qualified in Scots law—the view about the wonders of the common-law approach to the issue. It can be argued that elements of the bill are covered by our allegedly all-encompassing common-law provisions, but there are areas in the bill and the EWA that are not well covered by the common law, particularly in relation to lower-level offences. We would also like to strengthen bits of the bill by bringing in more EWA-type provisions.

The legal profession and officials missed the point that passing legislation is about not just deterring and punishing but sending out a clear public policy message. Ministers have been promising to extend the EWA for the past two or three years, but they have done nothing about that. Officials promised to produce a consultation paper on extending the EWA, but that has not happened either. Something has to be done. The bill would send a public policy message that the Parliament is serious about doing something about the 30,000 people who are the victims of incidents each year. I would not underestimate the public policy benefit of passing the bill, even if what it does is technically covered by the common law—although nobody can prove that, because they do not even bother to keep the statistics.

10:15

Robert Milligan: I repeat what I said earlier: we are concerned that the bill does not bring anything new to the table for us—although we fully understand the motivation behind it. Our concerns are about the law becoming more complex. That is not just an administrative matter or an issue of delivering justice on the streets of Scotland; it is even more about the court set-up. We have to review it on the basis of a reducing workforce. I understand the motivation behind the bill, as I have just said, but I do not see what it brings that is new.

Hugh Henry (Paisley South) (Lab): I understand Mr Milligan’s frustration, and that of his members, regarding the law not necessarily being seen through to a conclusion. Considering the effort that police officers put in, we can understand why some of them are so aggrieved that those efforts come to nothing. That is the case in other areas, too. Most members here will have constituents who complain bitterly about antisocial behaviour, but the authorities do not use the powers.

I wish to clarify something with Mr Milligan, following the logic of what he has been saying about parts of the Police (Scotland) Act 1967 being brought into disrepute and about the emergency workers act. Do you think that the emergency workers act should be scrapped, because it has no value?

Robert Milligan: That is a difficult question, as we are speaking with hindsight. Our position on the Emergency Workers (Scotland) Act 2005 is exactly the same position as I have been describing today. The courts do not place sufficient emphasis on what is reported to them. If they did, the full and proper application of the common law would negate the need for any other aggravator or any other act.

Hugh Henry: Your view on the Emergency Workers (Scotland) Act 2005 is different from the Government’s view. Your view on the bill before us is with the Government—that there is no need for it—but it is your view that there is probably no need for the 2005 act, whereas the Government believes that there is a need for it and it has extended it and promised to extend it further.

Robert Milligan: I would not say that I am against the Emergency Workers (Scotland) Act 2005. I would not like to see any dilution in it. I am sure that David Dalziel will have a view on that, too.

Hugh Henry: You say that you do not want any dilution in that legislation. Why should a police officer get protection under the Emergency Workers (Scotland) Act 2005 but a social worker taking a child into care should not receive protection under the bill?

Robert Milligan: Because those protections exist under the common law.

Hugh Henry: But they also exist under the common law for the police officer. Why should the
police officer also get protection under the 2005 act?

Robert Milligan: It is there for the police officer under the common law, as well as by using the act.

Hugh Henry: So you are saying that there is no need for the Emergency Workers (Scotland) Act 2005.

Robert Milligan: I am not advocating that. I would not want to see a dilution in it.

Hugh Henry: There is an important point here. The Police Federation does not want there to be a dilution of the 2005 act and it is quite content for the police to continue to be covered by it, but it does not believe that the same type of protection would be necessary, under the bill, for a social worker taking a child into care, for a bus driver in the situation that Jackson Cullinane described or for a shop worker. You spoke about a hierarchy, but you want protection in terms of that hierarchy.

Robert Milligan: I still think that the protection would exist under the common law anyway.

The Deputy Convener: I am trying not to open this part of the discussion out, but David Dalziel is next.

David Dalziel: In the best traditions of the blue-light services, I will come to the police’s assistance yet again. The point is valid. It is not a matter of saying that police officers, fire officers or anybody else has a particular right to more protection. The point about sentencing has been covered a few times already. If the Emergency Workers (Scotland) Act 2005 and your very laudable bill, Mr Henry, had additional penalties that were reinforced through sentencing guidance and guidance to prosecutors, and if those penalties were widely publicised—that is another key point, connected with the name and shame aspect—in other words, if the 2005 act and the bill had actual clout, that would be in everyone’s interests.

That is not an excuse. I do not want to make the argument that uniformed public services are different from other public services, all of whom, particularly social workers and front-line health care workers—our ambulance colleagues are covered already—are knowingly and almost without option put into volatile and hostile environments. We are no different to them in being exposed more frequently to hostile and violent situations from which we have less opportunity to walk away. We have less opportunity to walk away than workers in static situations such as those in benefits offices who have screens, CCTV and security guards. We cannot take all of that to incidents. The case can be made that there is a difference between us. That said, there should be no difference in terms of the protection of the law. I agree on that.

Ms Wendy Alexander (Paisley North) (Lab): David Dalziel drew the remarkably important analogy between the issue before us and domestic violence. Over the past 30 years, there has been a change in culture in which we have not simply relied on common law. There has been a battery of measures of the type he described, including sentencing and prosecution guidelines, awareness raising and significant changes in statute. The analogy is a helpful way in which to think about where we are on the issue before us. We are in something of a halfway house: we are in the slightly odd position of people saying either, “Let us step back,” or, “Let us continue to move forward.”

Despite the essential hostility of the prosecution authorities to using—indeed to the introduction of—the EWA, there have been 1,000 prosecutions in a remarkably short period of time. The fact that 1,000 prosecutions have been made in three years suggests a gap that the act was helpful in addressing. The essential question that arises is whether there are further gaps. Self-evidently there must be, given that there are 30,000 incidents. If we are trying to achieve behavioural change, how should we move forward? I invite David Dalziel and Robert Milligan to comment on that.

From the trade union side, Dave Watson made the fascinating point that we have seen fewer assaults at the margins of the health service but continue to see them in local government. Part of the issue is the public perception that there is no sanction against someone who assaults a bus worker at 2 am or loses the rag completely and makes threats against someone because their housing benefit has not been paid. Most members of the public believe that there is no sanction against that behaviour. There are, however, the beginnings of awareness that there is a sanction against that. The public seem to believe that there is no sanction against the act, and that public opprobrium will be directed at, someone who interferes in the work of the emergency services of any kind. How can we build a growing awareness of the issue? Will the bill help to build awareness that it is unacceptable to assault people, verbally or otherwise? The public seem to believe that there is no sanction, as do many managers. I will leave it there for the meantime.

Ian Tasker: A few weeks ago, I was on the train from Glasgow to Paisley at about 7 o’clock. After Cardonald station I noticed that the ticket collector was having problems with a male passenger. As the train drew into Paisley station, the man appeared to attempt to spit on the guard. The train doors opened and the individual walked off the train. He did not run; he seemed to have no
perception that he was in trouble. The conductor was left in a state of trauma. He rang the emergency button. The driver came along with the spit kit. The train was delayed substantially. I went to see what was going on. Indeed, I was the only passenger who provided assistance to the guard. It appeared that he had not been spat on—no traces of saliva were found, although we took a swab. The public attitude to the event brought home the situation to me. By coincidence, it happened when we were preparing our evidence on the bill. Once you have had a personal experience such as that, you realise how vulnerable such workers are. The inconvenience to the travelling public was the factor on that occasion. The member is right in what she said on the matter.

The pattern of domestic violence is over a prolonged period. We would not want to equate the seriousness of domestic violence with the seriousness of the attacks, but our members who serve the public are finding that such behaviour builds up over a prolonged period and, if their employers do nothing about it, it has a health effect on individuals. These are not one-off incidents—workers face these incidents day in, day out, and they are looking to the law for protection.

Dave Watson: I was closely involved in the EWA—the campaign for it, the drafting and the amendment stage—and I clearly remember being told by the legal establishment and officials at the time that there would be no prosecutions under it. They did not say that there would be one prosecution or very few; they said that there would be none. There have been 1,000 prosecutions, although that is not enough when you consider that we are recording 30,000 incidents a year. It is important to remember that most of those incidents are reported in the local press, and the courts are aware of them. The focus on a particular group of people raises awareness of the issue.

If we are looking for an analogy with domestic violence, it would be that there is a culture—albeit a declining culture—that it is acceptable to abuse people who serve the public. Thousands of our members work in call centres. I have listened to some highly educated and fairly well-off people who think it is okay to shout abuse down the phone. They would not do it face to face, but they think it is okay to do it to a call centre worker at the end of a telephone.

There is also a culture in a number of professions of pressure not to report incidents. We get it in schools, for example, and in social work. In the guidance that we developed for local government, I wrote a case study of a legal case I handled that involved a child in a particular school who should not have been in that school. There was clearly a pattern of behaviour. Although the violent incidents became increasingly serious, there was pressure from the parents to keep the child in a mainstream school. The headteacher resisted moving them until the inevitable happened and a serious assault happened. The director of education said to the headteacher, “Sorry, this child can no longer stay in this school.” That culture in the professions means that incidents are recorded less than they should be and staff are told, “This is part of the job.” That is precisely the culture that used to exist with domestic violence; it was considered acceptable. We changed that culture in domestic violence, but we have not changed it yet in relation to assaults on staff. For us it is a longer-term issue; legislation is not a panacea. We are not claiming that if the bill is passed everything will be all right. You have to do the awareness raising and you have to put in the measures, but legislation sends important messages and you as legislators must send out to the public the important message that violence against workers is not acceptable.

Ms Alexander: I have a technical point. In its evidence on the bill, the Federation of Small Businesses raised the issue of self-employed workers. Clearly, the isolation of the bus driver at 2 am is awful, but there is also the self-employed shop owner whose shop is open late at night and who is on their own. This is more of a stage 2 issue, but I would like the panel’s views on whether self-employed workers should be brought within the scope of the bill.

Dave Watson: The short technical answer is yes, and the way in which to do that refers back to my answer to Stuart McMillan’s earlier question, which is that we have to define in the bill what we mean by the “purposes of the employment”. There are definitions of worker in other legislation that would not cover the self-employed, but we are not bound by them; we could write a definition that covered such workers.

Gavin Brown (Lothians) (Con): I am keen to explore the gap Dave Watson mentioned. He said that if there was a serious assault it would be dealt with by the common law but that there is a level underneath the common law that is not being dealt with. If a bus driver is slashed with a knife or attacked with a sword, that could be dealt with under the common law, but Ian Tasker gave the example of spitting at a train conductor. While, technically, that could be dealt with under the common law, I would guess that in practice it often is not. Obviously, serious assaults can always be dealt with under the common law. Other than spitting, what acts and types of behaviour do you envisage being dealt with by the bill?
10:30

Dave Watson: Let us be clear. In theory the common law covers a wide range of incidents. Even if you just push somebody, in theory that is an assault and, in theory, breach of the peace might cover some other incidents. I say “in theory” because the reality—especially in our cities—is that our courts are busy places and the prosecutors are under enormous pressure. If you go to Glasgow sheriff court on a Monday morning, you can see that.

The reality under our current system is that although, in theory, the law is there, in practice incidents that involve lower-level assault and intimidating behaviour—for example, the person who walks into the housing office and does not get the allocation that they want, the new bath that they want or such like and does not physically assault anyone but makes pretty pertinent threats about what will happen to a member of staff once they get them outside the building—are unlikely to be pursued by the prosecuting authorities. In some cases they may be, but generally they are not. That is the difference.

In theory, the common law touches these things and cases will be pursued when there are serious offences, when the offence is clear and when there are clear offences in relation to uniformed staff and others that have a high profile. The problem arises when it comes to people like our housing clerks, people in social work reception areas and reception areas in hospitals, and porters who deal with the violence in the accident and emergency departments in hospitals on Saturday nights. It is about all those groups of people, who are not the obvious people. In the eyes of the prosecution authority, the incidents are often not serious enough to justify prosecution, but in the eyes of our members they are hugely traumatic experiences and they rightly expect us to do something about them.

Gavin Brown: Thank you. I will move on to another issue.

We have heard a number of questions about the EWA and its impact. We have clear statistics on the number of successful prosecutions: there were 54 in the first year and the figure has gone up to 301 in the most recent set of statistics. Those statistics can, of course, be argued either way, although the Scottish Government ultimately took the view that we should probably not try to argue the case either way.

What impact do you think the EWA has had on the number of attacks on emergency workers, as opposed to the number of successful prosecutions? Successful prosecutions are one thing but, in respect of the number of attacks, we have heard from the fire service that it estimates the number of attacks to be about 300 a year and thinks that the figure has remained the same over the period. I think the STUC’s submission states that it believes that, on the whole, attacks on people who are protected under the EWA are in decline. It is always difficult to get specific numbers, but can any of you give us statistics, now or as we go forward, on the number of attacks? Such information may have come from surveys of your members and so on. We have heard some anecdotal evidence, but it would be useful to have statistics that are as good as we can get.

Dave Watson: It is widely recognised that we do probably the most detailed annual survey and report of assaults on public service workers generally. Obviously, we cover the widest group of workers. Unfortunately, we will not report on the survey until next month, but it will still be relevant, so we will send you our annual report once we get it.

The survey has its limitations. It shows that the overall figure is that there were almost 30,000 assaults and we break the figures down by health, local government, police and other groups, because what we are doing is taking the data from public service organisations that collect the recorded incidents through their systems. The problem with that approach is that it requires the member of staff who has been the subject of the incident to fill in a report on the incident, but a wide variety of reporting systems are used. For example, one local authority requires that a 16-page form be filled in every time there is an incident. You will not be surprised to learn that not many members of staff bother to fill it in. I am pleased to say that other local authorities have better systems and use a relatively simple form.

Other local authorities and public bodies do not do a great deal with the forms when they get them in. One authority, not a million miles from the Parliament building, just sticks all the recorded incidents on a spreadsheet and all you get is a long spreadsheet with names, which are not even broken down by department. I have to say that how that authority makes any risk assessments or judgments is beyond me. We have been fairly critical of that.

There is a problem with how the data are collected and evaluated, and it is difficult to take effective workplace measures if that evaluation is not done.

Having given all those caveats, I can tell you that the data that we receive show about 30,000 incidents in the latest recorded year. They vary from relatively low-level incidents to serious ones, and there is inevitably a triangle with a large number of low-level incidents on the base and some of the well-publicised ones at the top.
As I said, the quality of the data is such that I am always wary about drawing conclusions—I say that every year in the report that I write. The Scottish Government also has stats. It gets them every year, and it can tell us how many prosecutions there have been and how many have failed. It has those data if you want to see them. In fairness, most prosecutions are successful and, ultimately, there are not that many failures.

It is difficult to draw correlations between the EWA and movements in the statistics that we get. There is an apparent correlation in that assaults on health staff, who are largely covered by the EWA, are going down, while assaults on local government staff, who are not covered, are going up. My health warning for that finding is that the health service has had a longer go at introducing effective workplace measures, policies and procedures. For example, it has a common data collection system. Local government does not have that, and it has taken us a number of years to get local government to take the issue more seriously. I am pleased to say that we have published guidance on that this year. I hope that the new guidance, with standard reporting systems and so on, will start to show results over the next two, three and four years. However, the improvement will not be any quicker than that.

You need to conduct a study over a number of years to see where the data are going and how they are collected, and to measure improvements in collection and analysis of data and in the workplace measures that public authorities are putting in place to deal with the issues. If you do all that, you might get a picture of the situation. At the moment, however, for the three or four years since the legislation was passed, data on actual incidents, which are faulty for all the reasons that I have mentioned, are only a broad indicator. I would not draw any hard conclusions from them one way or another. In fairness, I do not think that the Scottish Government is trying to do that either. It is pointing one way and we are using the data to point another, but neither of us claims that there is overwhelming data that points either way.

**Gavin Brown:** Your survey counted 30,000 incidents last year. What breakdown do you have of types of incident? You talked about a pyramid.

**Dave Watson:** Sadly, we cannot provide such a breakdown, because there is no consistent method of collecting the data. We ask every employer we deal with to give us its recorded statistics and its recording system. For the reason that I have indicated—everyone collects the data differently—we cannot break them down properly. We can break the information down by employer group, so we can tell you the statistics for health, local government and police, but we cannot break down the information in local government by department. It might be possible in health, but every local authority organises differently. For example, we may get statistics from one local authority from a department that covers social work and housing, but in another local authority social work will be stand-alone or grouped with another service. Therefore, it is not possible to break the statistics down.

We certainly do not have occupational groupings. We have said, to local government in particular, that it is important to have common occupational classifications for the data. How departments are managed is not relevant; the occupational groupings are what matter. If employers could collect the data in occupational groupings, they would be able to target workplace measures at where the vast majority of incidents take place. Some local authorities could not even say geographically where the incidents are. Those are the two pieces of information that we need: occupational groupings and where incidents are happening. If we knew that, we could focus the measures at local level and, in national policy terms, we would be in a position to tell you about the measures that we would like the Government to take administratively, and the Parliament to take legislatively, to address the issue.

**Robert Milligan:** I want to echo Dave Watson’s frustration. It is remarkably difficult to deal with raw data and turn it into a more victim-focused input. That frustration is shared in the police.

It is also difficult to measure prevention by looking at the raw data on assaults. Has the number of instances come down? In the case of the national health service, is that because staff are better trained in how to defuse situations? Does having cops stationed in hospitals have an effect? It is really difficult to put a figure on the roles of the violence reduction unit, the state hospital cops and that type of stuff. For me, it is a wee bit difficult to give massive credence to the raw data.

**David Dalziel:** I will add a couple of contextual comments. I agree with everything that has been said about statistics—they can be used any way you want to use them. It is clear that, since the 2005 act was implemented, the severity of violence has not altered much. We still get headbutts, we still get threatened with knives and we still get bricks and other missiles being thrown at people and vehicles.

There are some schemes that we, in the fire service, have found very beneficial, such as intelligence-led projects that aim to reduce the level of risk. During the fireworks period around November our work peaks, just as police work does when the pubs close. There are also certain areas of our society—socially deprived and excluded areas—on which we have the data to
support an expectation of higher levels of potential threat to responding crews. We have seen some benefit in using diversionary schemes such as street football schemes, which I know our police colleagues also use, and engaging with communities to target antisocial behaviour. We now see those areas narrowing a wee bit, the threat levels reducing slightly and—which is important for us—the severity of attacks reducing. For example, it has become quite rare for people to aim fireworks at crews, although that used to be quite a common occurrence.

Marilyn Livingstone (Kirkcaldy) (Lab): I apologise to the panel for being late. A train was derailed at South Gyle and I have been all around the country this morning. I apologise if you have already answered this question.

I agree with the comments of my colleague, Hugh Henry, and with the analogy that Wendy Alexander drew with domestic abuse. For me, the request that we have received in the written submission from Unison, asking that we ensure that all public sector workers are offered the same level of protection, is the crux of the matter. That is especially the case if, as Gavin Brown was exploring, there is a gap in protection. I accept that there are different levels of risk in different jobs, but there is a question of equity that cries out loud and clear. At the moment, we do not offer all the people who serve our communities the same level of protection. I want to explore with Robert Milligan the question how the EWA protects certain workers while the common law is good enough for others. I am not convinced about the answer, so I would like to explore that. Is there inequality at the moment?

Robert Milligan: We are concerned that there should be equality for all under the law, but we are creating a hierarchy of victims and we have always said that that should not be the case. Our role, in its most simplistic form, is to collate the facts and circumstances of each case and report them to the procurator fiscal to be processed through the courts. That is probably where our frustrations lie. There should be equality for all, in its purest sense, under the law, and we are against the hierarchy that has been developed. That has been the case since 1997, which is probably when we were first asked about it.

David Dalziel: It is about equality for both public and private sector workers who engage with the public in the widest sense. The general definition was not intended to be exclusive to public sector workers; it was to include anyone who engaged with the public. I think that we all agree that the bill is laudable in highlighting an issue, but the question that we all seem to be asking from the blue-light side is whether all the legislation will add very much. It certainly would if there were more severe sentencing and punitive sanctions attached to the offences under both the EWA and Hugh Henry's bill.

Ian Tasker: In relation to equality under the law, I can provide a chart to the committee. When we did the initial work on “Protecting Public Service Workers: When the customer isn’t right”, there were focus groups to engage people’s perceptions of who is vulnerable or not vulnerable and who is deserving or not deserving. In that exercise, I was struck by the fact that people accepted that doctors’ receptionists are undeserving yet very vulnerable. If medical staff are protected in their workplace under the Emergency Workers (Scotland) Act 2005 but receptionists are not, there is an issue of unfairness and inequality in the same workplace, which should be addressed.

Marilyn Livingstone: Yes. That certainly struck me.

The Deputy Convener: We have received a wide range of evidence from the panel, and I thank the witnesses for providing that evidence. This is the start of a large amount of information gathering. It has been very interesting and informative—thank you for coming. I suspend the meeting briefly to allow our witnesses to leave and the next panel to appear.

10:45
Meeting suspended.

10:49
On resuming—

The Deputy Convener: I remind members that we are somewhat over time.

I welcome the next panel of witnesses, and invite them to introduce themselves and to make an opening statement before we move to questions.

David Dickson (Wm Morrison Supermarkets): Good morning. I was the subject of a severe assault in my employment. I have followed matters through to Mr Henry’s bill, and have asked to come to the committee to explain what happened. My colleague is from the Union of Shop, Distributive and Allied Workers.

Stewart Forrest (Union of Shop, Distributive and Allied Workers): Good morning. I am the deputy divisional officer of USDAW in Scotland, and intend to support Mr Dickson as he gives evidence to the committee.

The Deputy Convener: Can we start by hearing a brief version of the story that you wish to tell us?
David Dickson: Sure. As are people in most stores, we are constantly aware of shoplifting. Shoplifters usually take big expensive joints from the meat department. Unfortunately, we cannot look directly on to the aisle in our store because of where we are situated, but over a period, we became aware of a fellow who seemed to recce the place before taking foodstuffs. He always had the same method of operation, which made him quite distinct, but unfortunately, we could never catch him at it. When we made checks after he had been to the store, we always noticed that stuff was missing.

I had been out of the store on a paid break—I am interested in Mr McMillan’s point about breaks. When I was coming back from that break, I recognised the chap I mentioned. He had the usual stuff over his arm, so I was immediately suspicious. I crossed the foyer with the intention of speaking to him—nothing else—but he must have recognised me. He caused a furore and gave me an almighty push against a plate-glass window before I could defend myself. I slid down the window, hit the metal retaining bar at the bottom of it, and was knocked unconscious. I am not sure how long I was unconscious for, but I remember waking up. Quite a lot of people were around, and I was given first aid. It is ironic that, while people were attending to me, other people were picking up the joints of meat that the man had dropped in his panic. That meat was worth about £80. Many other people do such things, but I am talking about a particular character. He was pursued by the police, but was never brought to justice, unfortunately.

I was concussed and still think back to what happened. I sought legal advice through the union. I know that it is clearly stated that, if a person sees somebody like the man I have described, they should notify security, for example, but when a person works hard and somebody is taking away their financial livelihood, they will act by instinct. In hindsight, I realise that the man could have had a knife, a gun or any other weapon and that what happened could have been more severe. However, it annoys and angers me to know that people are doing such things day in, day out, but few of them end up in the courts.

Stewart Forrest: I support Mr Dickson’s statement. From a union point of view, we find that staff in stores have tremendous loyalty against people who take goods without paying. That is particularly the case in the retail sector. Mr McMillan will possibly have experienced that. More and more of our members are trying to do their bit by supporting their stores and trying to stop shoplifters, but they get injured. Mr Dickson is extremely brave in coming to the committee. Many of our members get injured in their employment and are not comfortable with speaking in public about what happened. As a union, we try to log the statistics.

I would like to make the committee aware of USDAW’s freedom from fear campaign, which we have run since 2002 to raise awareness of the abuse and assault of our members by the public. This year, our campaign is called keep your cool at Christmas. Christmas becomes a flashpoint in the retail world because, as I am sure you know, shops are extremely busy and queues are longer, and our people on the checkouts tend to be verbally abused more at that time of year.

A lot of the legislation that the Parliament has passed has put slight pressure on our members—for example, the alcohol and tobacco legislation that is now in place. Many of the big retailers have think 21 or think 25 projects running in their stores. It is our members at the front who have to ask for identification, and many members of the public take exception to that even though our people are just doing their jobs. Our members support the legislation that the Parliament has passed, but they are being physically and verbally abused while doing their jobs.

Our previous freedom from fear campaign was run in November last year. Our union reps ran a survey and we also ran an online survey. To share the statistics with the committee, 32 per cent of respondents had been threatened with physical violence and 10 per cent had actually been assaulted while carrying out their duties. We equate that to one shop worker in Scotland being physically or verbally assaulted every 15 minutes while just carrying out their job. Those figures from USDAW’s survey tie in with the Scottish crime and justice survey, of which I believe the Parliament is aware. That survey showed that 34 per cent of adults in public-facing employment had experienced verbal abuse and 7 per cent had actually been physically assaulted. We find that, more and more, our people are being assaulted while just carrying out their jobs.

Not all our members work in large retail outlets where there are probably better forms of security. Many of them work in small convenience stores with no security back-up, or in filling stations. Another flashpoint is when staff are going through the process of asking for ID or, in a filling station, when they ask someone who drives a motorcycle to take off their crash helmet just for our member’s protection. Those are some examples of the issues that USDAW deals with.

The Deputy Convener: Thank you. Do members have questions?

Lewis Macdonald: Like Stewart Forrest, I am impressed with Mr Dickson for coming to tell us his personal tale, because it is not an easy thing to do. What he described is clearly an extreme case.
Will you give us a flavour of your experience in general? Do the statistics that USDAW has discovered across the board for the number of retail staff who have been threatened and assaulted agree with your experience in your workplace? What is the general view from the shop floor of the nature of the threat that your colleagues face and how Parliament should deal with that?

David Dickson: Apart from being a butcher, I am also shop steward within the store. I have to echo what Stewart Forrest said. The majority of the staff are female, and many are the times when I have had occasion to speak to management to try to get some time for female staff who have been upset and are sometimes in tears through verbal abuse from customers. A point was made about the change in the legislation on alcohol and tobacco, and some people will go to extreme lengths to put their point across. There is verbal abuse, but sometimes I feel as though, if there was no counter between them, the customer would be ready to assault the member of staff. It is really quite disheartening.

After my assault, it became clear that, although there is plenty of CCTV in the store, there was none in the area where I was assaulted, so one thing that came out of the assault is that that was rectified.

My real concern is that we, as individuals, come in every day, enjoy our work with a loyal workforce and should not have to take such abuse. I appreciate what has been said about other workers such as bus and taxi drivers and so on. Why should we have to put up with that abuse? We are coming in to do and enjoy our job and that is being taken away from us.

11:00

Lewis Macdonald: If legislation was specifically designed to prosecute people who commit the kind of offence that you have described, do you think that that would deter them? Would it put people off making the kind of threats and upsetting comments that you have described?

David Dickson: It might put the odd one off, but I think that you will find that such behaviour is a habit with the majority of the people whom I was speaking about. Unfortunately, given the system as it is at the moment, with overcrowding in prisons, just putting them away is not the answer. We have to find something, and the strength of the bill is that it will ensure more protection and better results.

Lewis Macdonald: Is it the union’s experience that employers in the sector support measures to address these issues?

Stewart Forrest: Employers are supportive of putting a notice up in the window saying that they will not stand for any abuse of their staff, but whether they carry that through is a different question. I back up what Ms Alexander said at the committee’s previous meeting: the bill is about raising public awareness of a stronger deterrent.

We are going through the process of dealing with one of our members who was bitten while he was helping his manager to restrain someone. When he went to the police station to have photographs taken of the bite, he asked what would happen to the chap, and the police said that he would probably get a fine or community service. For six months, our member has had to worry about whether he had any infection. Thankfully, he has had the all-clear, but that was an horrific time for that lad. As Ms Alexander said, awareness needs to be raised that a strong deterrent exists. We feel that that approach is not in place at the moment.

Christopher Harvie (Mid Scotland and Fife) (SNP): On habitual shoplifting, there was a case last week, or a fortnight ago, when various members of a fairly notorious Glasgow gang were brought to justice, but plea bargains were involved, which meant that the penalties were ridiculously low. Can the proposed legislation protect against such cases? That group, who featured on a “Panorama” television programme on shoplifting, were not effectively punished.

Stewart Forrest: Some of the people on the previous panel tried to answer that point. All that we can ask for is strong legislation and for that legislation to be implemented. The previous panel expressed some concerns about whether the Emergency Workers (Scotland) Act 2005 is being implemented in full. As a trade union, we seek strong deterrents through the courts against people assaulting our members.

Christopher Harvie: The figures that have been given involve around 30,000 instances of confrontation per year, 20,000 of which seem to come from the national health service and local government. Have you any notion of the proportion of the remainder that comes under USDAW’s remit? Some cases will come from transport, which is also seen as a flashpoint, but what proportion comes from the retail area?

Stewart Forrest: On the statistics, the majority are bulked up by the verbal side of things. The flashpoints arise when our members ask for identification, or, if the person is buying alcohol, whether they are buying it for a youth; if so, they will refuse to sell it to them. Some people come into shops with a lot of alcohol in them and try to buy more, and the legislation says that it should not be sold to them. Those are the flashpoints that
can lead to assaults. The public needs to know that there is a strong deterrent.

Christopher Harvie: I recollect from my own experience situations in the public service—particularly in transport, where the systems of operation are extremely complicated as a result of privatisation—that have given rise to flashpoints.

For example, a train stops in the middle of nowhere because of a bridge strike—in other words, a lorry has rammed a bridge. Because the bridge is Railtrack's responsibility, someone from the nearest Railtrack office has to go and inspect it before the train is allowed to go ahead. One can see that, in a crowded train in which the lavatory or the air conditioning is not working, the train staff are at a pressure point in dealing with angry passengers. Such situations are not helped at all by the nature of the command structures in that public service.

It seems that there is some room for improvement in that area, to ensure that such flashpoints do not arise. The obstreperousness of the clientele can certainly play a part in such situations, but there is also the problem of a structure that has a failure built into it.

The Deputy Convener: The panelists are shop workers, so it might be more appropriate—

Stewart Forrest: I cannot comment on the transport side of things, but Mr Harvie's description sits quite well with me as I can relate it to what I said about Christmas shopping, when people have to stand in long queues. I think that he was trying to say that people get frustrated at the train not going anywhere. Members of the public can get frustrated waiting in long queues, and if they are asked for identification when they eventually come to pay for their shopping, that might be the final nail in the coffin.

Christopher Harvie: In such circumstances, an offender can often pull a particular weight, in a sense, by infuriating the people who are in the queue. The process of apprehending the offender can infuriate them, which adds to the pressure on the staff who are involved.

David Dickson: That is also a concern for security people. I have experience of a reasonably large supermarket where there has been only one security guard, and it is not possible for them to be everywhere all the time.

The security guards get to know who the likely offenders are. If they get caught shoplifting, the easy answer is to say, "You're barred. Don't come back." It is a lot easier to take that way out than it is to effect a prosecution because, at the end of the day, nothing really happens as a result of a prosecution. That concerns a lot of people, given the suffering that they go through. The fact that nothing will happen to a shoplifter makes security guards wonder what the point is of trying to apprehend them.

Stuart McMillan: Thank you very much for giving us your story, Mr Dickson.

After the incident took place, how did your employer behave towards you? Did it give you the support that you needed at that time?

David Dickson: My employer was very good. It made sure that everything was okay. I had to go up to the hospital and so on. Fortunately, my wife worked close at hand. The supermarket made arrangements for someone to collect her and bring her up, and it made sure that we were escorted to hospital. It tried to get an ambulance but, unfortunately, something had happened that day and one was not available, so it arranged for a taxi to take me up to the hospital.

Afterwards, when I came back to work, my employer made sure that everything was okay and that I could come back. I still think about the attack now. To be honest with you, it still gives me the shivers to think that the guy I went up to—it was an instinctive thing, which maybe I should not have done—could have come at me with a knife. I still think about that—it is always at the back of my mind. Having said that, I would not stand by and let it happen again. If I knew that someone was doing something and I happened to be there, I would try to prevent it, irrespective of the situation.

Stuart McMillan: A moment ago, you mentioned the lack of prosecutions and the tendency just to ban people from stores. Do you think that supermarkets and store owners should use existing legislation to prosecute people more often than they appear to be doing, instead of taking the easy option of barring someone for an hour, or however long?

David Dickson: I whole-heartedly agree with that. Prosecution must be seen to be happening. As I said, the easy option is just to bar people. It would not eradicate the problem if the police were called and the prosecution service took serious action against people, but it would make some petty offenders sit up and think about what could happen to them.

Stewart Forrest: When USDAW speaks to companies at the national level, we suggest to them that they take the same route that they take when someone steals. Normally, they prosecute people who steal, whereas they may only bar someone who verbally abuses staff.

The Deputy Convener: We have been given an excellent insight into a particular set of circumstances, which has been valuable for the committee. It was brave of Mr Dickson to come here to talk about his experience; we welcome
that. I thank both witnesses for their evidence, which adds to our knowledge of these matters.

11:12
Protection of Workers (Scotland) Bill: Stage 1

The Convener (Iain Smith): I welcome everyone to the 26th meeting in 2010 of the Economy, Energy and Tourism Committee. We have received apologies from Lewis Macdonald, who will be here in due course, and Wendy Alexander, who is attending a conference and will be here for later items on the agenda. I also welcome to the meeting Hugh Henry, the member in charge of the Protection of Workers (Scotland) Bill. He is welcome to stay for the rest of our business, but I am sure that he has better things to do.

The first item is stage 1 consideration of the Protection of Workers (Scotland) Bill. I welcome to the committee the first of our two panels of witnesses: Sam Jennings, who is health and safety manager of Capability Scotland; Colin Borland, a well-known figure to the committee, who is public affairs manager for the Federation of Small Businesses; and Julia McComasky, who is head of human resources at First ScotRail.

As the witnesses have indicated that they do not wish to make opening remarks, we will move to questions. Is there a need for the common law on assault to be extended in the way that the bill proposes, or does the current common law provide sufficient protection for workers?

Colin Borland (Federation of Small Businesses): The figures reported by our members show a persistent problem that, regardless of economic circumstances and other factors, has stayed at the same level in recent years. As we say in our written evidence, over the past 12 months, 20 per cent of our members have reported some form of intimidation, abuse or assault. Unfortunately there is massive underreporting of incidents. It is difficult to get reliable figures, but when we ask about the issue about three times as many people say that they have been subjected to such behaviour as have actually reported it to the police. When we ask them why they have not done so, the strong feeling that we get is that the incident would not be treated sufficiently seriously.

As a result, we must welcome any measure that underlines the unacceptability of such behaviour and backs up the vital work carried out in communities particularly, from our point of view, by small businesses and self-employed people in delivering services and providing jobs. For that reason, we broadly support the bill’s aims and agree that it is a sensible and effective step forward—with the caveat, however, that there must be clarification in the bill that it also covers the self-employed.

Sam Jennings (Capability Scotland): We, too, broadly support the bill’s principles, mainly because we think that it sends out a clear message to the people with whom our staff come into contact that such behaviour is unacceptable and will not be tolerated, as well as a message to our staff that they are not expected to put up with it.

The majority of Capability Scotland staff provide care and support services to people with disabilities and, by extension, their parents and carers, and there can be a feeling that putting up with verbal abuse or aggression is part of the job. Our policies, procedures and processes already make it clear to our staff that that is not the case but, as I say, we want to send a clear message to our staff and other members of the public that such behaviour is not expected, is not acceptable and will not be tolerated and therefore we broadly welcome anything that raises that profile. That said, we have a number of questions of clarification on the bill.

Julie McComasky (First ScotRail): First ScotRail supports the bill’s introduction for many of the reasons that have already been outlined. For a start, we think that it will raise the profile of these issues and highlight that such behaviour is unacceptable and that our workers, who provide a vital service to the public, should be valued for their work. Over a number of years we have done a lot of work and reduced the number of assaults, but we think that the bill provides another means of maintaining that downward trend.

The Convener: So it is not that the bill would change the legal position on assault—an assault would still be an assault—but that it would make the public feel that the prosecuting authorities would take the issue more seriously.

Julie McComasky: That is correct. As we have said, raising the profile of such issues would act as a deterrent, and it is the bill’s deterrent factor that we really support.

The Convener: Instead of changing the law and making such incidents statutory rather than common-law offences, could the Government or others take measures that would have a similar impact?
Julie McComasky: As an employer, we have done a lot of things to mitigate assaults on our staff but I am not quite sure what else could be done under the law. We have extended closed-circuit television coverage and given staff extensive training. We have DNA kits on trains and in stations. All that has led to a slight reduction, but we would like to get out the clear message that such behaviour is unacceptable.

Colin Borland: I take your point, convener. There might be other ways of achieving the aims, which are laudable. However, the bill is what we have: its proposals are in front of us and we are considering the changes that it will make. On that basis, we support it. You and Julie McComasky are right to say that a piece of legislation is not a silver bullet and that it will not solve the problem on its own. Murder has been illegal since Moses descended from the mountain, but the jails are still full of lifers. Legislation has to go alongside a proper enforcement campaign. However, that is probably beyond what we can do as employers and as a lobbying organisation. There are questions for the criminal justice system that are probably outwith the sphere on which we, as a business organisation, should be commenting.

Sam Jennings: I do not have anything to add, other than to agree with what Colin Borland and Julie McComasky have said.

Rob Gibson (Highlands and Islands) (SNP): Good morning. I thank each of you for your comments about the profile of the problem being raised.

It has been suggested that the way in which sentencing and prosecution guidelines are drawn up is one of the things that would heighten the procurator fiscal’s attention to incidents of assault. Capability Scotland talks about non-physical abuse. How can the procurator fiscal deal with the trauma of such abuse? Could the bill improve the prosecution rate and send out a signal that such behaviour is not acceptable?

Sam Jennings: Yes, I think that it could. It gives a clear message about abuse or aggressive behaviour towards our staff, or other public-facing staff, being a specific offence over and above a normal common-law assault. It could make it easier to prosecute.

Rob Gibson: Yes. Your submission says that you have a problem with the definition of a “member of the public”.

Sam Jennings: Yes. We wanted to be clear that the definition would extend to the clients who use our services—our service users—and to their parents and carers. Our staff might be providing a service to the individual, but the risk of violence or aggressive behaviour can also come from a service user’s parents, family, or other carers. I wanted to clarify whether that would be an offence under the bill.

Rob Gibson: Does anyone have further general comments on the bill? I assume that people who work on trains get quite a lot of verbal abuse.

Julie McComasky: Yes. As Colin Borland said, there is a massive amount of underreporting. Every weekend, staff can quote lots of verbal abuse. We move many people around late at night on Fridays and Saturdays—they get thrown out of the pub and come to the station to get home, so we have to deal with them.

Staff are often worn down over a period of time, which has a psychological effect on them, and they can come to dread the Friday and Saturday night shifts. A piece of legislation that recognised verbal assault, and the fact that it might happen not just once, would be of great benefit. Verbal assault can go on and on, and can have an adverse effect on people and their ability to do their work.

Rob Gibson: I can understand that. I give the example of travelling between Glasgow and Edinburgh on the 11.30 train in January after a Celtic Connections concert: the variety of behaviour to be seen is something that we want to move away from. In dealing with that, there are issues around highlighting sentencing guidelines to procurators fiscal and the judiciary. I accept the point about heightening the profile, but how do we get more convictions?

09:45

Colin Borland: I am not sure that it is necessarily an either/or question. I absolutely agree that we need to consider the sentencing guidelines and use all the weapons in our armoury to deal with such problems. It is not that we cannot do that alongside strengthening the law. We have sentencing guidelines for things that have limited impact in the wider public consciousness, but in this instance we can send a very strong message—that, without the people who deliver the services in communities, those communities would often, in effect, cease to exist, particularly in rural and more hard-pressed urban areas. The bill gives us a peg on which to hang that message. It gives us a focus for what the three of us on the panel—and, I imagine, a wider range of stakeholders—would agree is something that we must address and send a united message on.

Gavin Brown (Lothians) (Con): Colin Borland’s submission gives us some statistics from fieldwork that the FSB did at the start of the summer. For me, the main figure is the one on “Threatening behaviour, intimidation or aggression”.
Most of the other figures would not be covered by the bill, I guess. We might imagine that assault, in particular, would be covered by the common law anyway. Your submission says that 28 per cent of those who responded to your survey had suffered threatening behaviour over the past year. Is that figure broken down at all between employees and business owners? Some of your main points about the bill concern business owners.

Colin Borland: The people who were asked the question were the business owners—our members. That figure is the percentage of our members who have been subject to those offences over the previous 12 months.

Gavin Brown: So the people who responded to the survey were not doing so on behalf of their businesses; they were saying what they, personally, had suffered as business owners.

Colin Borland: The question was:

“In the course of your business activities, have you suffered from any of the following”.

We were asking specifically about their experiences. The figures are not broken down by sector, although it would be interesting to see that; they cover all sectors. Only about a quarter of our members are in retail, where we know there is a particular problem. If we asked retailers specifically, the figure would be higher, particularly compared with similar data from, for example, the British retail crime survey.

Gavin Brown: You said that you felt that a lot of such crimes are underreported; I am sure that that is right. Do you think that they are underreported in your survey or, from your knowledge of your members, do you think that they were pretty straight with you on this point?

Colin Borland: The survey is anonymous apart from people telling us where their business is located and their membership number; their names are not on the survey forms. Twenty-eight per cent of them told us that they have been subject to that sort of behaviour. We asked how many of those respondents reported it, and the answer was about a third. The actual figure might be greater but I imagine that, if the two thirds are confident enough to say that they have been subject to it but have not reported it, the statistic should be fairly reliable.

Gavin Brown: The witness from First ScotRail has described different types of incident that take place on the trains, particular at weekends and later in the day. What is ScotRail’s policy for dealing with such issues? Do you have a robust policy whereby such incidents are always reported to the police, and do you push for something to happen, or are things swept under the carpet? What happens in practice?

Julie McComasky: We have a robust policy in place for dealing with such incidents. All our people who work on trains and in stations can communicate with British Transport Police, which is our main partner for dealing with such matters and with which we work very closely. We like to think that the vast majority of the more serious incidents are reported. We have a central reporting system and we share intelligence with British Transport Police. We have “help us help you” forms so that we can share intelligence and hotspots can be identified. British Transport Police resources can then be targeted to support staff on particular services or at particular locations.

All our staff are trained in our no contact policy, the first rule of which is that they should get themselves out of harm’s way. Points of conflict can often occur when staff are trying to perform their duties, particularly revenue protection duties on late-night trains. All that they have done is tried to get someone to pay the fare for their journey. The message in training is clear, and written briefs are constantly refreshed. If someone is becoming aggressive, the member of staff should forget about the fare and get themselves out of the situation. Their safety is the number 1 priority.

Gavin Brown: It sounds as though you have a robust education, staff training and reporting policy, but what happens when incidents are reported? Do you get notes back from the police or procurators fiscal that say that nothing can be done because the incident was not serious enough, there is not enough evidence or there were no witnesses? Do you log what comes back? What proportion of incidents end up going to court?

Julie McComasky: I do not have information on that with me, but we could get it through the British Transport Police.

Gavin Brown: It would be helpful to have that information. I will not hold you to any figures, but do you have a feel for the proportion of incidents that go anywhere? Are most incidents simply not treated seriously and discarded? What happens?

Julie McComasky: There seems to be a feeling during discussions that the procurators fiscal often do not take incidents seriously and that common-law assaults are not thought to be significant enough to be taken any further.

Gavin Brown: So the British Transport Police treat incidents seriously, but when incidents get to the procurators fiscal—

Julie McComasky: That is the feeling, but I do not have the figures with me to support it.

Christopher Harvie (Mid Scotland and Fife) (SNP): First, I have a personal declaration. In another world, I am president of the Scottish
Association for Public Transport. My status there should be borne in mind with any questions that I ask the railway representative.

I want to consider two marginal issues with which all the witnesses are involved: situations involving disabled people and elderly people. Those people may find it difficult to comprehend the situations that they are in, and adherence to the letter of the law may seem inhumane to them. I have parents who are in their 90s. One of my projects in the SAPT is getting people active on public transport for much longer so that they are not really disadvantaged when they give up driving. There are various situations that some people find difficult—for instance, when none of the lavatories on a train works, or when people do not help when they are faced with very high steps into a carriage. A person, who may be very deaf as well, may or may not know that they are in the right or in the wrong, but they may find that they are being treated brusquely and possibly irrationally. People may become a bit noisy and obstreperous in such situations. How are such issues dealt with? They can be awkward and can leave someone who might be in the wrong, but is in the right in a moral sense, with a sense of injustice.

Sam Jennings: A number of the people whom we support have a learning disability. Our staff are given training on how to manage people who have known challenging behaviour. That is mainly about trying to avoid triggers and proactive strategies to reduce the incidence of such behaviour. Our staff are given information and guidance on how to de-escalate and deal with known challenging behaviour, and they learn skills in that. We also offer post-incident de briefing and link into counselling if that is required.

Our staff know that they have the option of pressing criminal charges if they wish. I do not have statistics on that or know whether it has ever been done, but I know that the general feeling is that staff are reluctant to do it when it is known that somebody does not necessarily have sufficient capacity to understand their actions or the consequences of those actions. We have robust policies in place. We have policy statements, processes and training and we have put in place on-going support.

Our question about the bill is about the need to establish capacity and to establish whether somebody

“knows or ought to know”

that the worker was acting in the course of their employment. That relates to our staff providing a service for service users and also, as you say, to service users who might act in a way that could be perceived as violent or aggressive towards other public-facing workers.

Colin Borland: To add to what Sam Jennings said, there are clear pre-existing rules on issues of capacity. We need to be careful to define our terms and know what we are we talking about. In the sort of situation that the member describes, I do not think that a small business owner would seek to prosecute a customer who was confused and who became obstreperous or who thought that she had paid or whose change was not right. Such things happen. We would not have many customers if we started treating them like that.

I will give an example of the sort of issue that we are thinking about. There was a case in Mr Henry’s constituency—it was certainly reported in his local paper—in which a customer tried to steal a till and, when they were unable to do, sprayed the shopkeeper with a syringe-full of blood. I believe that the court report was along the lines that the sheriff was considering what should happen to the person and whether a custodial sentence would be appropriate. That is the end of the spectrum that we are talking about—the completely unacceptable behaviour. There is no grey area there. The problem comes when such cases are not treated sufficiently seriously by the prosecuting authorities or when people wonder whether it is worth going down that road. That shows a worrying lack of respect towards people who are serving our communities. From a small business point of view, I am happy to allay Christopher Harvie’s concerns on the issue that he raises.

Julie McComasky: Our staff often deal with customers who are frustrated, for a number of reasons. Through frustration, people can sound off a bit. Our staff are absolutely experienced and trained to deal with those situations. We differentiate those situations from situations that we consider go beyond that and become a verbal assault. If we were to report everyone who was a bit frustrated and who sounded off a bit, we would be doing nothing else.

Christopher Harvie: Do you not consider that there is an issue because of the law that governs transport, particularly the imposition of competition criteria? For instance, bus companies are specifically told not to confer and reach agreement to maintain connections. So one can expect that the X95 bus coming into Galashiels will see the supposedly connecting bus to Melrose leaving as it comes in. That happens about six or seven times a day. On one occasion a very helpful shunter at Galashiels depot stopped a bus from leaving so that I could make a connection. I referred to that in a blog that I wrote for one of the newspapers and he was reprimanded by the company for doing so. That seems to me a point
at which, if the law is an ass, there ought to be a
certain flexibility.

The Convener: I am struggling to see how that
is relevant to the bill. Could you get to your
question, please?

Christopher Harvie: I am asking whether workers who work in a situation in which an
inflexible and poorly conceived law is being
enforced ought to consider themselves justified in
upholding that law if it contributes to the
inconvenience of others. The impact of
privatisation on public transport has had that effect
all over. May I say that if a train in Germany is late
by an hour, the staff go down the train distributing
€25 vouchers in compensation. They are therefore
probably the most popular people in the country at
the time. Have I made my point?

The Convener: You have made that point, but
the point that I was trying to make is that I am not
entirely sure what its relevance is to the bill.

10:00

Julie McComasky: The only response I can
make on that point is that our staff have to work
within the rules of competition and the context of
privatisation. They do so to the best of their ability
and do not deserve to be abused for upholding
those rules.

Marilyn Livingstone (Kirkcaldy) (Lab): Good
morning. I will ask about parity of esteem. We
have heard that the Emergency Workers
(Scotland) Act 2005 has promoted further
prosecutions and, I hope, encouraged more
people to report incidents. Do you think that the bill
will have that effect? Is it a good message to send
to workers? Crucially, do you think that the bill
will encourage more people to report incidents?

Colin Borland: On parity of esteem, we are
particularly interested in whether the bill would
apply to people who are self-employed and to
small business owners. I assume, given the notes
in the policy memorandum that refer specifically to
taxi drivers, that the intention of those who drafted
the bill is that it should apply to those groups.
However, as the Scottish Parliament information
centre briefing says, it is arguable whether section
1(3) as drafted would include them. If the
legislation ever got to a court of law where it was
being argued over by clever lawyers, that lack of
clarity would certainly dilute the very strong
message that I think we agree we are trying to
send.

It would be unacceptable, for example, for a
shop assistant—an employee—in a small shop to
have a level of protection that the shop owner did
not have. We think that the bill should deliver
parity of esteem; it should underline to people how
important these services and these people are in
their community, and that will happen effectively
only if we ensure that it applies to the self-
employed.

Marilyn Livingstone: If the bill is passed, would
the fact that such legislation was in place encourage more people to come forward?

Colin Borland: On its own, perhaps it would
not, but it would if it was accompanied by a proper
campaign, which should not be down only to the
Scottish Government and public authorities, as
business and others would also have a role to
play. We are members of the Scottish Business
Crime Centre, which takes a lead and delivers a
lot of good work on awareness campaigns and the
like. Provided that the legislation is accompanied
by such work, with the message of the campaign
being that such behaviour is unacceptable, that
people will be prosecuted for subjecting others to it
and that incidents will be taken seriously, there is
every chance that the bill should raise the frankly
appalling underreporting rates.

Sam Jennings: I agree. Having a specific
offence would encourage people to go for a
prosecution if they were otherwise swithering
about whether that was a good idea or worth while
doing. When it comes to some of our service users
who have a disability but have been deemed to
have the capacity to understand their actions and
the consequences of their actions, we have
occasionally found that the police do not always
know what to do when they are called out to deal
with an incident.

We try to build up relationships with community
police, so that they are aware of some of our
clients, particularly those who have a history of
violent and aggressive behaviour towards our
staff. However, we find that the police are often at
a loss as to how to handle such individuals. We
would welcome anything that can support staff and
the police to know how best to handle a situation
in which staff feel that their personal safety has
been threatened when they have been assaulted,
or threatened with assault, by an individual who,
despite their disability, knows what they are doing.

Julie McComasky: I remember all the publicity
surrounding the introduction of the Emergency
Workers (Scotland) Act 2005. The discussion that
that engendered could only raise awareness of the
legislation, which has had an impact. We would
like the same for our workers as well. As has
already been said, if employees and the travelling
public knew that there was a specific offence of
assaulting a worker who was trying to do their job,
that would act as a strong deterrent.
Stuart McMillan (West of Scotland) (SNP): I am sorry for my lateness, convener.

I have a couple of quick questions for ScotRail and Capability Scotland. What percentage of your employees are public facing and what percentage are back-office staff who never deal with the public?

Julie McComasky: Two thirds of First ScotRail staff are directly customer facing.

Sam Jennings: I do not have precise statistics, but the majority of our staff are public facing. The only non-public-facing staff are our head office, administrative and other support staff. The majority of our staff are support workers, nurses, teachers and other people who provide a direct service to our clients and interact with their families. Our shop workers are public facing as well.

Stuart McMillan: If the bill were passed without any amendment, it would create a two-tier system within your organisations: two thirds of ScotRail employees would be covered by the bill, but one third would not. The vast majority ofCapability Scotland staff, who are public facing, would also be covered. How would your employees deal with that?

Julie McComasky: It would not be a problem. There is already recognition that the staff who do the late-night shifts on trains and at stations deserve additional protection. The third of staff who are not customer facing do not face the same challenges as the other two thirds, and would be covered under the common law if they were assaulted.

Sam Jennings: I agree. The response needs to be proportionate to the risk. The risk of violence, aggressive behaviour and assault to our non-public-facing staff is much lower than the risk to our public-facing staff.

Hugh Henry (Paisley South) (Lab): Do First ScotRail staff ever operate in what could be described as emergency situations?

Julie McComasky: Yes. For example, in a high-profile derailment, which happens very occasionally, everyone has to get into an emergency situation and our staff are highly trained to do that.

Hugh Henry: As the law stands, if the police and fire services attended such a derailment and some of the aggrieved passengers who were referred to earlier started to lose their cool because of delays, the police officers and firefighters would have the protection of the Emergency Workers (Scotland) Act 2005 but the rail workers would not. We heard from the Scottish Police Federation last week that it was important that that protection continue, but the federation’s representative did not think that rail workers should have it. Is it equitable that, in an emergency, your employees have less legal protection than others who attend?

Julie McComasky: As you describe it, the situation does not seem fair at all. After all, a brick thrown at a train driver’s window can cause a derailment. Given that an assault or attempted assault can cause an emergency situation, it does not really seem fair that those workers do not have the same protection.

Hugh Henry: I acknowledge that as others have said—and, indeed, as the police said last week—someone who created a serious situation by throwing a brick at a train would, as we would expect, face significant legal penalties. The Parliament and all the parties in it—with one exception—believed that it was necessary for workers in emergency situations to have additional protection in law, but there is a debate about whether such protection should be extended to other workers who deal with the public. You have described a situation in which some of your staff might well find themselves in emergency situations but under the law that the majority of politicians in the Parliament have constructed some of the workers attending such situations get additional protection while others do not.

Julie McComasky: That is right.

Hugh Henry: Do any of Sam Jennings’s staff ever have to operate in what could be described as emergency situations with life-or-death issues at stake?

Sam Jennings: Not really. They might find themselves having to administer emergency first aid or cardiopulmonary resuscitation to one of our service users, but I cannot think of anything that would fit in with the 2005 act or any situation where they might be hindered or obstructed.

Hugh Henry: I am thinking not about occasions where there might be hindrance or obstruction, but about certain crisis situations in which things get out of hand, emotions start to run high and there might be a threat to the wellbeing of individuals. Do your staff ever have to operate under such circumstances?

Sam Jennings: Yes, they could do. The behaviour of some of our service users, particularly those with mental health problems and learning difficulties, can lead to crisis situations and staff might find themselves having to protect themselves, the individuals in question or the wider public who might be in the area of the incident.

Hugh Henry: My next question is for Colin Borland. What would be the social consequences of small businesses feeling that they cannot
operate in certain areas as a result of sustained attacks? Leaving aside the implications for the individuals involved—the self-employed and others—do you think that that would have wider social implications?

Colin Borland: If businesses think that it is not worth operating in certain areas because of the behaviour that they are continually being subjected to, they will simply pull down the shutters and leave. In many hard-pressed urban and rural areas, the small businesses are the glue that holds the community together. No matter whether they are the local post office, the local pub or whatever, without the services or, indeed, the employment that they provide, communities become nothing more than a collection of houses. As we know, once one business goes, the others start to shut down and leave, which only adds to the feeling of rejection in that community.

Hugh Henry: The convener mentioned other measures that might be taken and Rob Gibson touched on sentencing and prosecution guidelines. In 2004, there was a commitment that additional measures would be taken and I believe that, since then, action has indeed been taken on sentencing and prosecution guidelines, with the feeling that that move would give additional protection to workers who are not covered by the 2005 act. Also in 2004, the Administration of the time committed it and subsequent Administrations to taking forward a wider package of measures, including awareness-raising and educational campaigns, to educate the public and reinforce the message that attacks on public service and other workers were totally unacceptable. Have those campaigns had the desired effect in improving protection for the people whom the witnesses represent?

10:15

Julie McComasky: I do not have any evidence one way or the other on whether such campaigns have been a factor. As I said, the number of workplace assaults on our employees has decreased slightly over a number of years, but I could not comment on whether such measures have been a factor.

Colin Borland: As I said at the outset, the proportion of our members who report that they have been subject to such incidents in the previous year has remained fairly constant at 28 per cent, but I do not have figures that go back before 2004. We could certainly find out whether that question has been asked in earlier tracking surveys and come back to you, if that would be helpful. For the past three or four years, the figure has remained relatively static.

Hugh Henry: So when people who do not support the bill say that other things can be done, which was similar to what was said when the 2005 act was brought in, you would say to them that you have not seen any historical evidence to suggest that that approach has worked. Presumably, the analysis would be no different in relation to the bill.

Colin Borland: It may well be that other things can be done. As I said to Mr Gibson, it should not be a case of either/or, but our figures tend to suggest that the action that has been taken to date has not had the intended effect.

Sam Jennings: I cannot comment on whether that approach has worked, but one of the reasons why we welcome the idea of the bill is that it would allow us to send a message, perhaps at an early stage, when we might be dealing just with a bit of verbal abuse, that if that behaviour continued, we had a tool that we could use to take further action and to prosecute. Many of the people whom we deal with are family members who may have mental health difficulties over and above those of the person whom we support. They might be experiencing high levels of anxiety and stress, and there might be child protection orders in place.

In addition, some of our shops are in quite deprived areas, so we could be talking about people with drug and alcohol abuse problems who will not necessarily be aware or care that in 2004 additional measures were put in place. We feel that the bill could act as a deterrent, with campaigning and publicity, and that we could use it to step in at an early stage and say to people that if their behaviour continued, we had the option of prosecuting.

Hugh Henry: You say that many of your staff operate in circumstances in which there are high levels of drug and alcohol dependency. I presume that those are situations in which there are potential flashpoints.

Sam Jennings: Not so much in the services that we provide; that would apply more to our shop staff. Some of our shops are in quite deprived areas and there are incidents of shoplifting and people trying to steal money. Often, the people involved are under the influence of drugs or alcohol. In addition, some of our clients with learning disabilities have been known to act under the influence of drugs or alcohol, and staff may have to deal with that. When staff deal with new referrals and go into the family home for the first time, there might be an issue, not necessarily with the person we are supporting, but with members of the wider network of friends and family who could be there.

We have two policies. We have one for managing known challenging behaviour and we have another for managing risks of general
violence and aggression at work, which involves a tiered approach. We recognise that people who are raising a child with a disability are in a difficult position—I cannot even begin to imagine how difficult that must be for families—so we do not want to adopt a zero tolerance approach. We need to recognise that tensions run high and that there is stress and anxiety. Stage 1 of the tiered approach involves people being told that their behaviour is not on. If the behaviour continues, stage 2 involves the issuing of what we call a behavioural contract, whereby we say what we expect of people and what they should expect of us in return. That can lead on to sanctions and restrictions and, eventually, a service might need to be withdrawn. We feel that the bill would help us between stage 1 and stage 2 of our tiered approach in dealing with the parents, carers and families of our service users.

The Convener: I have a couple of final questions. Some of the evidence that we received suggested that the bill might make it more difficult to secure prosecutions because of the additional proofs that might be required—for example, in the case of a statutory offence, proving that somebody was a public-facing worker or that they were assaulted in the course of their work. Does that issue cause you concern, or are you satisfied that what is proposed is unlikely to lead to such difficulties?

Sam Jennings: It would not be such an issue for our organisation. The only issue would be to do with the capacity of our service users, but that will not change the options that staff currently have for choosing whether to press criminal charges. Most people who come into contact with our staff know that they are working—for example, shop staff are behind the shop counter. Our support workers are known to the service user, and their parents and carers know that we are Capability employees who are providing a support service.

Colin Borland: Similarly, it should be a clear-cut issue for most of our members, although we are not legal experts, to whom we are more than happy to defer.

Julie McComasky: It would not be a problem at ScotRail because all our customer-facing staff wear uniforms and name badges so it is clear that they are at work.

The Convener: My final point is a general one on which it would be helpful if witnesses could provide any information either immediately or, more likely, in writing. It is difficult to assess whether the legislation is required. When deciding whether to accept its general principles, we have to assess the impact of the 2005 act because of the lack of evidence of assaults. We would appreciate any information from surveys or work that you have done with your staff about how many assaults go unreported to the police and the reasons for that; of those cases reported to the police, how many go on to prosecution; the reasons why those that do not go to prosecution are not proceeded with; and how many prosecutions result in convictions. That would help us to get a feeling for how necessary—or not—the bill is.

As there are no other questions, I thank Sam Jennings, Colin Borland and Julie McComasky for their evidence, which has been very useful. I suspend the meeting while we change panels.

10:23
Meeting suspended.

10:26
On resuming—

The Convener: I welcome our second panel of witnesses this morning to give evidence on the Protection of Workers (Scotland) Bill. From the Law Society of Scotland are Alan McCreadie, deputy director of law reform, and Bill Maciver, convener of the criminal law committee. Do the witnesses have any opening remarks before we proceed to questions?

Bill McVicar (Law Society of Scotland): My name is Bill McVicar.

The Convener: I am sorry—it is far too early in the morning for me.

Bill McVicar: It is much the same for me.

My view is that every member of the community is entitled to protection from assault, harassment and abuse. As far as I understand it, the law currently provides some protection for all members of the community. The question that arises is whether it is necessary to introduce further legislation when the bill would not lead to an increase in the penalty that is available under identical common-law offences.

In 2007, the law on sentencing was changed, and now all summary cases that are called before a sheriff carry a maximum sentence of 12 months' imprisonment. When the Emergency Workers (Scotland) Bill was introduced, the penalties under common law were three months for a first offence and six months for a second offence, and, generally speaking, the maximum sentence for breach of the peace was three months. The Emergency Workers (Scotland) Act 2005 increased the sentence to nine months, which was in line with the sentence that was available to courts dealing with offences of police assault, police harassment or obstruction under the Police (Scotland) Act 1967. As the law now stands, the police have greater protection at common law, in
terms of the sentencing abilities of the court, than was available up until 2007. While the Law Society is of the view that all workers should be protected from any assault or harassment, the question is whether the bill would achieve that aim.

Alan McCreadie (Law Society of Scotland): I endorse Mr McVicar’s comments. The Law Society accepts fully the principle that all workers should be properly protected, but it questions whether the bill is the best way to achieve that.

The Convener: You seem to suggest that because of changes to sentencing under common law, the bill would not provide any additional protection to workers than is currently available under the common law.

Bill McVicar: Yes. The previous panel asked whether particular types of worker might have less protection than others. The answer is that obviously they have the same protection, because the sentencing regime that operates in the courts is identical in each case.

The Convener: Other witnesses have suggested to us that the point of the bill is not so much the sentencing that is available to the courts as the fact that having a specific law on the protection of workers sends a strong message that assault, harassment and abuse of workers is unacceptable. Is that a reasonable argument?

10:30

Bill McVicar: It is a reasonable argument, but I am not sure that it has any practical effect. More effective means of dealing with the matter would require to be raised with the Crown. Domestic abuse is an example of something that is dealt with more successfully and taken much more seriously by prosecutors now than it was in the past. That involves various measures. For example, the police will keep people in custody overnight before they appear in court if they have been involved in an incident of domestic abuse, and all cases that are reported are prosecuted in so far as they can be prosecuted and there is sufficient evidence.

Another example is the policy on marking, which is the process by which the Crown decides which courts cases should go to. That is relevant to the current attitude to knife crime. I know that the Parliament is considering and discussing knife crime, but apart from that I understand that the Lord Advocate has set out guidelines that require cases that involve someone with a previous conviction for carrying a knife to be prosecuted on indictment, which gives the court that deals with the matter a much stronger sentencing possibility.

It seems to me that those would be more effective means of dealing with problems relating to the harassment or abuse of workers.

The Convener: We have evidence that there has been an increase in the number of prosecutions and convictions under the Emergency Workers (Scotland) Act 2005. Is that a result of more assaults on emergency workers being reported or is it simply a transfer of prosecutions from the common law to the new legislation?

Bill McVicar: I do not have any figures on that. The Crown Office would have to give you that information. All that I can say is that, anecdotally, any case that I have come across in which a worker has been assaulted has been taken seriously by the court. If a bus driver is assaulted in the course of his employment—if he is spat at or whatever—that is always taken seriously by the sheriffs and the courts in which I practise. Similarly, even before the 2005 act, cases involving hospital staff were taken seriously by the sentencers when such cases were prosecuted.

The Convener: I have one more question before I open it up to other members. Your written submission states:

“the evidential burden of proof under a statutory offence such as the one proposed here may therefore be greater and, conversely, it may be more difficult to secure a conviction.”

Will you expand on your thinking about that?

Bill McVicar: When we prepared the submission we were concerned that the bill would add to what the prosecution needed to prove to secure a conviction. For example, the prosecution would need to prove the proximity of the individuals, the status of the complainer as an employed person or a worker, and the knowledge on the part of the accused person.

Having said that, because of the change in the sentencing regime, it is open to the court to convict in a case where a statutory offence is brought of the common-law equivalent. For assault either under statute or at common law, the penalties are exactly the same. If a sheriff hears evidence during a trial that an employee or a worker, who is the complainer, was assaulted by the accused, the court will take that information into account in imposing the sentence. It is probably unnecessary to require the Crown to produce additional evidence that it would not need to use in other circumstances.

Alan McCreadie: That is pretty much where we are coming from in our submission. The point is simply that the bill would detract from the current common-law flexibility because it would place an additional burden on the Crown, which would have to prove that the person was a worker, that the
accused knew that they were a worker, and that the worker was acting within the scope of their employment. As we heard, the penalties under the bill would be exactly the same as the penalties at common law, where the crime of assault would be prosecuted summarily.

The Convener: I said that that would be my last question, but I would like to follow up on that particular point. Presumably there would have been similar concerns about the burden of proof in relation to the Emergency Workers (Scotland) Act 2005, yet the number of prosecutions under that legislation is increasing rather than decreasing. I am not sure whether that is because there are more assaults or because offences are being transferred from the common assault category to the category of assaults against emergency workers. I am trying to get that information.

Alan McCreadie: As I understand it, the Law Society would have voiced those concerns at the time. One difference between the Protection of Workers (Scotland) Bill and the Emergency Workers (Scotland) Act 2005 is that section 1 of the act includes hindrance as well as assault, which means that there is greater latitude.

Rob Gibson: The previous panel told us that the level of assaults in the small business sector and ScotRail seemed not to have increased in recent years. It is easy to prove cases of assault when you have witnesses, but the issue of verbal abuse that leads to trauma for people-facing workers does not seem to have been tackled, although it is probably prevalent.

Bill McVicar: It might be worth noting that abusive conduct on the part of a customer—shouting and swearing, for example—is punishable by a sentence of up to 12 months on summary complaint, as well.

Rob Gibson: So the prosecution service is not taking forward as many of those cases as the public-facing workers organisations would expect. Assaults seem to be taken more seriously than instances of abusive behaviour.

Bill McVicar: That might be so, but the Crown Office would have to respond to that. It is not a matter over which I have any control. I am a small businessman, and I would be indignant if one of my staff were abused by a member of the public in the course of their employment and the prosecutor did not do something about it. If I were in that situation, and the matter were reported, I would expect it to be taken seriously by the police and the prosecutor.

Alan McCreadie: There is nothing that I can usefully add to that, other than to say that, in relation to other legislation, you might want to consider an aggravation provision, which would cover all crimes and offences that are prosecuted under common law. Such a provision exists in relation to racial and religious offences. If the proposal goes ahead, that could be considered.

Rob Gibson: Is there a problem for workers such as railway workers who are presented with the alcohol-fuelled late-night situations that were described earlier, as it is difficult for them to report on the incidents in detail because of the amount of time that it would take? Might we not be getting to the bottom of why these events take place?

Bill McVicar: I agree.

Lewis Macdonald (Aberdeen Central) (Lab): Bill, you said that there were different ways to deal with aggravated offences, and you spoke about domestic violence and the marking of offences. How and why has the process around the reporting of domestic violence cases changed?

Bill McVicar: My understanding of the history is that by prosecuting certain offences publicity was given to what was perceived to be a problem. That actually turned out to be a problem, and the Crown recognised as much by changing its policies in a way that some sheriffs have recently made adverse comments about. There is a degree of inflexibility in some of the guidelines that the Crown appears to be enforcing, but that is a matter more of adjusting the guidelines than of passing or imposing new legislation.

Lewis Macdonald: Do you accept that those guidelines reflect the views of Parliament and, particularly, the opinion of the wider public about what is socially acceptable and the feeling that, for example, degrees of domestic abuse that the courts did not pursue rigorously a generation ago should now be pursued?

Bill McVicar: Yes, I agree entirely.

Lewis Macdonald: Does the same hold true for the way in which the Crown Office marks certain offences, for example the second-offence knife offenders you mentioned? Although the guidelines issued by the Lord Advocate or the Solicitor General for Scotland are only that—guidelines—do they reflect the views expressed in Parliament and in the wider community?

Bill McVicar: Yes.

Lewis Macdonald: Is your critique of the bill based on the view that legislation is not appropriate or do you acknowledge that legislation can also be an appropriate vehicle for expressing public opinion and for allowing Parliament to give direction to the prosecuting authorities and the courts on the degree of seriousness with which a particular offence should be treated?

Bill McVicar: I am not sure that legislation would assist in that respect. Certainly it is very important to debate the matter and the more
debate we have, the more attention the public will pay, as long as such debates are reported accurately and thoroughly. I do not think that passing legislation will of itself make any difference, but discussion of problems is very worthwhile and should be encouraged.

**Lewis Macdonald:** That is helpful.

In the previous evidence session, Sam Jennings from Capability Scotland said that the bill would be extremely useful to her staff and organisation in sending a signal to, for example, the families or associates of the people they support with regard to what is and is not acceptable and what would be the consequences of abusive behaviour. Do you accept that it is legitimate for someone in her position to consider legislation as being able to convey a clearer signal to the people with whom her staff deal daily?

**Bill McVicar:** It is a perfectly reasonable viewpoint. The question, though, is whether, as a matter of practical reality, we need legislation that the courts must enforce when it is not necessary for them to take that particular approach.

**Lewis Macdonald:** You have expressed your clear view on the substance of the bill. Do you support the continued use of the Emergency Workers (Scotland) Act 2005 or do you think that it does not serve any additional purpose?

**Bill McVicar:** It is not necessary now because of the change in the sentencing regime that I mentioned earlier, as a result of which you can receive a longer sentence under common law than you can under the provisions of the 2005 act.

**Lewis Macdonald:** Correct me if I am wrong, but could that change in the sentencing regime be reversed without Parliament’s explicit consent?

**Bill McVicar:** No. The change was enshrined in the Criminal Proceedings etc (Reform) (Scotland) Act 2007.

**Lewis Macdonald:** So any reversal would require parliamentary approval.

**Bill McVicar:** Yes.

**Lewis Macdonald:** That was very helpful.

**Gavin Brown:** I should declare that I used to be a practising civil solicitor and that I am still retained on the roll of solicitors, although obviously I do not practise any more.

I want to explore the weight that the Law Society’s helpful submission puts on the additional evidential burden. With regard to the bill, the Law Society says:

“there is an evidential burden of proof for the Crown to establish that the assault was by reason of that worker’s employment.”

If the bill were to become law and someone were to be charged under its provisions, could that person still be convicted of, say, common-law assault or breach of the peace if the Crown could not prove either or both of the above points and even though that was not libelled in the initial charge?

10:45

**Alan McCreadie:** The Crown could indeed ask for the alternative conviction. As I understand it, the bill contains no proposal to change the common-law offence of assault. An assault would still have to take place. We very much appreciate the perfectly fair public policy point about the legislation sending out a message, but you would still have to discharge evidential burdens that you would not have to discharge if the charge was libelled as the common-law crime of assault. If the fiscal depute was not able to secure a conviction under what would be the Protection of Workers (Scotland) Act, he or she would simply have to ask the court to convict under the common-law offence.

**Gavin Brown:** Could that happen mid-trial or would such a decision have to be taken at the beginning of the process?

**Bill McVicar:** When the Crown seeks a conviction in a case in which a statutory offence has, for some reason, not been made out, it is entitled to ask for an alternative charge of common-law assault at the end of the case. The bill itself says:

“A person, being a member of the public, who assaults a worker ... commits an offence.”

As the bill does not define assault, it must be referring to common-law assault. The Crown would therefore be entitled to ask for that charge—and indeed has done so in cases involving assaults on police. For example, common-law assault convictions could be sought in cases involving individuals who did not know that they were having a fight with a police officer because, say, the officer was in plain clothes. That sort of situation could arise in the future, but the point is that assault is assault.

**Gavin Brown:** I just wanted to be clear on the point. Although the evidential burden to secure a conviction under this proposed legislation would be greater, the Crown would not lose a conviction if it proceeded under the bill’s provisions and subsequently decided to ask for the charge of common-law assault instead.

**Bill McVicar:** That is correct.

**Gavin Brown:** That is helpful.
In your opening remarks, you said that the current law already provides protection and a remedy for what the bill seeks to cover. I think that you are without question right in theory, but the question is whether that is the case in practice. You both referred to the court taking seriously incidents in which a bus driver is spat at, but surely you would expect the same if a member of staff in your own small business was treated in such a way, yet evidence that we have heard this morning suggests that such incidents are not being taken as seriously as they ought to be. In a survey conducted by the FSB, for example, its members said that they do not bother reporting incidents in which staff are told, for example, “We’re going to find out where you live,” or, “We’re going to wait for you outside,” because they do not see any point in it.

We also heard from First ScotRail which, on the face of it, seemed to have quite a robust system for tracking and reporting incidents and working hand in hand with the British Transport Police. However, we were told that when such incidents get to fiscal level they seem to get nowhere. The witness was unable to give us statistics this morning—she has agreed to send them in to the committee—but her hunch was that in many cases such incidents were looked at, not taken terribly seriously and simply allowed to fizzle out. Do you think that in practice such incidents are treated as seriously as they ought to be?

Bill McVicar: From my experience of dealing with workers who have been the victims of the sort of crime you describe, the courts take such cases seriously. I do not know whether the Crown has too many other things to do, but it would have to answer that question. Of course, some courts are much busier than others, and perhaps some cases are not dealt with as effectively as they might be. As I say, that is a matter on which the Crown can offer its own comments and reassurance to the committee. I hope that cases are being taken seriously and not simply being brushed aside because, for example, there are too many other things to do.

Alan McCreadie: Absolutely. On any view, the situation to which you refer is deplorable. Clearly, it may be a matter for police guidelines to officers and, subsequently, Crown Office guidelines. For what it is worth, I will recount an example from my past employment with Fife Council. As clerk to Kirkcaldy district court, I recollect the court taking a very dim view of anyone who was involved in an assault or a beach of the peace at the Victoria hospital in Kirkcaldy or elsewhere.

Gavin Brown: Is it a fair summation of your evidence to say that when that type of incident goes before a sheriff the case is treated seriously and dealt with accordingly, but you are not sure whether the Crown treats it seriously.

Alan McCreadie: I agree with that summation.

Christopher Harvie: I have a general point that leads on from something that Rob Gibson brought up. A lot more drinking goes on in Scotland in socially and technically awkward places, such as on trains, than is the case on the continent.

There is a relationship between consuming drink and having facilities to get rid of it—I mean functioning lavatories and so on. You may remember that the origin of the phrase “steaming drunk” comes from the fact that people could go on a Clyde steamer and drink all they wanted because there were capacious heads to get rid of it. On the continent, it is rare that drink is sold on local trains. Indeed, the sale of drink frequently is banned totally over the weekend. In Scotland, railway personnel and the police are placed in the awkward and often threatening position of having to deal with the sort of person about whom the rest of us would say automatically, “Avoid eye contact with them.” If we could not get off the train. I say that in justification of the bill.

The situation could also be used to justify a much tougher policy line on the availability of drink. We have talked about the problem of supermarket drink taking over from controlled drinking in pubs. The example that I have cited has the disadvantages of both: the availability of cheap supermarket booze in a public space where the majority of people are not drinking and feel threatened by others who are drinking. Of course, the guardians of public order are faced with such flashpoint situations. The bill seems appropriate and right, but the problem is part of a more general problem.

Alan McCreadie: I understand that licensing boards now have a locus in the matter. I stand to be corrected, and I would have to check the terms of the Licensing Act (Scotland) 2005, but I understand that a change was made and boards can now consider alcohol sales on trains.

Again, I recollect from my days in the district court that such offences on trains were taken as an aggravation—fiscals made that point in court. If a breach of the peace happens in the high street, a member of the public can move away, whereas if someone commits a breach of the peace on a train, they cannot. The offence is aggravated: people are sitting on the train and they have nowhere to go. The situation would be similar for public workers who are doing their job and cannot simply walk away from the situation. By virtue of the offence having been committed against that background, the offence would be aggravated. I take the point entirely with regard to the situation on trains.
Hugh Henry: At one point in your evidence you said that you believed that the bill would detract from common-law flexibility.

Alan McCreadie: Yes.

Hugh Henry: Does the Emergency Workers (Scotland) Act 2005 detract from common-law flexibility?

Alan McCreadie: It can do, because it involves having to prove a situation and discharge evidential burdens that would not have to be discharged under common law. The point about emergency workers is taken, but whether they are afforded additional protection is a matter of debate, certainly with regard to the sentencing provisions, which are now exactly the same. It could be argued that there is a need for the bill from a public policy point of view. I entirely accept that it may be that assaults should be seen to be prosecuted under statute rather than common law but, from a practical point of view with regard to securing a conviction and thereafter sentencing, I am not sure that there is much difference.

Hugh Henry: So, using that sort of logic, you believe that the bill is pointless.

Alan McCreadie: I would not go as far as to say that it is pointless. If the bill comes to fruition, it might send out a message, as was alluded to earlier. However, from a purely practical point of view, it is—

Hugh Henry: That same analysis applies to the Emergency Workers (Scotland) Act 2005. You believe that the common law protects all members of the public from assault, including workers, as you have said. Therefore, you believe that the bill is not necessary, but you also believe that the 2005 Act is not necessary to achieve that effect.

Bill McVicar: We see that against the background of the 2005 act being superseded by the change in the sentencing regime. We are not saying that people were not entitled to greater protection than they received under the former common-law regime. However, there has been a change and things have moved on. That is the background against which—

Hugh Henry: So you are saying that, since 2007, the need for the emergency workers legislation has disappeared because the sentences that are available under common law are equal to those under that legislation.

Bill McVicar: It has been superseded in that sense.

Hugh Henry: So when ministers of the present Administration decided, after 2007, to extend the groups of workers who are covered by the Emergency Workers (Scotland) Act 2005, in your opinion that was a pointless exercise.

Bill McVicar: It was unnecessary.

Hugh Henry: Your perspective is that the bill is unnecessary and that the actions of ministers in the present Administration in extending the 2005 act were also unnecessary. Ministers say that there was a purpose to extending the 2005 act, but you differ from that. You do not think that it was necessary, although ministers might think that it was, from a public policy perspective. In effect, your attitude to ministers extending the emergency workers legislation and to me trying to bring in the bill is the same.

Bill McVicar: In what sense?

Hugh Henry: You do not think that it was necessary for ministers to extend the emergency workers legislation and you do not think that it was necessary for me to introduce the bill.

Bill McVicar: That is what we are saying, because the legislation is not necessary. However, as we said earlier, public debate is being raised and that is to be encouraged. It is helpful from our point of view to be able to try to assist in increasing public knowledge of the issues.

Hugh Henry: Absolutely. As members have said, we need a debate about better public education, more individual responsibility and more awareness of the dangers that excessive alcohol consumption can bring. All that is taken as read. However, from a purely legislative point of view and from your analysis as legal practitioners, you think that the bill is not necessary and, equally, that the extension that present ministers made to the Emergency Workers (Scotland) Act 2005 was not necessary. Is that correct?

Bill McVicar: Yes.

Hugh Henry: And you also believe that, despite the present Administration’s support for the 2005 act, there is no need for that stand-alone legislation, because sentencing has now caught up.

Bill McVicar: Yes, that is right. We are saying that things have moved on and that the concerns that people had up to 2005 or thereafter have been taken into account by the changes that have been made.

Hugh Henry: That is what I am trying to get at. The legal profession’s view, which has been fairly consistent, is that we should use current powers, particularly when sentencing provisions have caught up. There is a difference of opinion between the legal profession and me as an individual promoting a bill and Government ministers. They are on the same side as me when it comes to the emergency workers legislation, which you believe is not necessary. Equally, you believe that my bill is not necessary. Your attitude to my bill is exactly the same as your attitude to
the emergency workers legislation. Some people support that legislation but not my bill, but you believe that neither is necessary. However, it is for us as politicians to make a decision about what we believe the law should say and what the impact on public policy should be.

Bill McVicar: Yes, of course.

The Convener: There are no further questions, so I thank Bill McVicar—I got it right this time—and Alan McCreadie for their evidence.

Unfortunately, the witnesses for our next panel, which is on the enterprise inquiry, are not available until 11.45, so I will suspend the meeting.

11:00

Meeting suspended.
Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 6 October 2010

[The Convener opened the meeting at 09:30]

Protection of Workers (Scotland) Bill: Stage 1

The Convener (Iain Smith): I welcome members to the 27th meeting in 2010 of the Economy, Energy and Tourism Committee. We have four items on today’s agenda. As far as I am aware, we have received no apologies. I am sure that Chris Harvie’s bus is on the way up from the Borders as we speak.

Agenda item 1 is to continue our consideration of the Protection of Workers (Scotland) Bill at stage 1. I am pleased to welcome the Cabinet Secretary for Justice, who is a rather rare visitor to the committee. He is accompanied by Philip Lamont from the Scottish Government justice directorate. I ask the cabinet secretary to make brief opening remarks, after which we will proceed to questions.

The Cabinet Secretary for Justice (Kenny MacAskill): Thank you for inviting me along. No one in the room would disagree that workers who serve our communities should be able to go about their daily lives free from the threat of attack. It is entirely unacceptable for people who are the lifeblood of our communities, such as bus drivers, train drivers and shop staff, to suffer from assaults and threats. However, there is disagreement on the steps that should be taken to reduce the incidence of violence against public-facing workers. We do not think that we can view the problems of attacks on public-facing workers in isolation. Only by beginning to address the underlying causes of crime more generally will we reduce violent attacks on public-facing workers. The committee will have seen our memorandum on the bill, which outlines why we do not support it. I am happy to take members’ questions.

The Convener: I beg members’ indulgence, as Hugh Henry, the member in charge of the bill, is with us but has to leave shortly to convene the Public Audit Committee. If members are content, I will allow Hugh Henry to ask his questions first.

Hugh Henry (Paisley South) (Lab): Thank you for inviting me along. No one in the room would disagree that workers who serve our communities should be able to go about their daily lives free from the threat of attack. It is entirely unacceptable for people who are the lifeblood of our communities, such as bus drivers, train drivers and shop staff, to suffer from assaults and threats. However, there is disagreement on the steps that should be taken to reduce the incidence of violence against public-facing workers. We do not think that we can view the problems of attacks on public-facing workers in isolation. Only by beginning to address the underlying causes of crime more generally will we reduce violent attacks on public-facing workers. The committee will have seen our memorandum on the bill, which outlines why we do not support it. I am happy to take members’ questions.

The Convener: I beg members’ indulgence, as Hugh Henry, the member in charge of the bill, is with us but has to leave shortly to convene the Public Audit Committee. If members are content, I will allow Hugh Henry to ask his questions first.

Kenny MacAskill: That is the case.

Hugh Henry: Which groups are they?

Philip Lamont (Scottish Government Justice Directorate): The Emergency Workers (Scotland) Act 2005 was extended. However, that did not involve adding new workers, because that could not be done through secondary legislation. It involved moving certain categories of worker from one bit of the act to another bit, the effect of which was to provide them with protection whenever they are on duty rather than only when they are dealing with emergency circumstances. I cannot remember the exact list, but I think that the three categories were medical practitioners and nurses—

Hugh Henry: Nevertheless, you felt that it was important to extend the cover for those groups of workers—we can get the list later in the proceedings—so that they were covered not only in emergency situations.

Kenny MacAskill: That was the request of people working in the medical profession.

Hugh Henry: The Scottish Police Federation and the Law Society of Scotland said that there is no need for the emergency workers legislation because anyone who is assaulted is covered by common law in Scotland and that, since sentencing provisions were extended, the need for the 2005 act has been removed. However, rather than take that approach, you decided to alter the provisions of the legislation to extend cover to groups of workers in non-emergency situations. Why was that?

Kenny MacAskill: When I was in opposition, similar points were made about the Emergency Workers (Scotland) Bill. However, Parliament, the Scottish National Party group and I took the view that emergency workers are distinct and different and that we should seek to protect them. When we came to power, we sought to ensure that the appropriate cover that had been sought was, in fact, provided.

In his letter of 1 October 2010 to the committee on behalf of the Crown Office and Procurator Fiscal Service, John Logue referred to comments that Colin Boyd, the former Lord Advocate, made in a parliamentary debate. Of course, Colin Boyd served as a law officer in the Labour Government in which you served. Mr Logue wrote that Colin Boyd
public-facing workers. That is a different matter to the forward relates not to emergency workers but to certain groups of workers when they are not in emergency situations.

**Philip Lamont:** Yes. The key point is that they are workers who deal with emergency situations in the course of their work. If they did not deal with emergency situations, they would not be covered by the 2005 act in the first place. Their place in the 2005 act was changed.

**Hugh Henry:** Yes—and the effect is that they are covered in non-emergency situations.

**Philip Lamont:** Yes. A modification order amended section 1 of the 2005 act so that medical practitioners, registered nurses and registered midwives have the same status under the act as constables and fire brigade and Scottish Ambulance Service personnel, and are therefore covered whenever they are on duty. That reflects the fact that they are extremely likely to have to deal with emergency circumstances.

**Hugh Henry:** The cabinet secretary talked about what the Lord Advocate said in 2004. There is no disagreement between us on that, but the Lord Advocate was talking specifically about emergencies, whereas you are talking about groups of workers—doctors and nurses—being covered when there is no emergency. What is the difference between such a situation and one in which a social worker is taking a child into care in a stressful and potentially confrontational situation?

**Kenny MacAskill:** First, let us set out what the Government tweaked. We wanted to ensure that workers whom we decided to classify as emergency workers on duty were given protection, and there was a decision on the nature of workers' employment back in 2004. If I were to have a heart attack now, for example, and Philip Lamont offered me some form of medical care, he would not be classified as a medical worker because he is not a medical worker; he would simply be a good citizen. We as a society have decided to classify individuals by the nature of their employment.

It is clear that a range of jobs are involved. You mentioned a social worker dealing with children in care. From having been involved in legal practice, I know that such work can be stressful. However, the question is this: where do we draw the dividing line? The committee doubtless knows that you have referred to bus and train drivers—I have referred to them, too—and shop assistants.
Coverage can be broadened to everybody who is involved with the public. That has been referred to in the representations and the consultation. It has even been suggested that self-employed people should be eligible. On that basis, who would not be covered by the bill or the 2005 act? Would that be MSPs, MPs and a few others because everybody else would be in?

I think that the logic that you accepted back in 2004, which the Labour Lord Advocate correctly put forward, is that some positions should be covered because of their very nature. Social work is extremely stressful, and there can be difficult situations in such work. Equally, there can sometimes be difficult situations for members in their surgeries.

Hugh Henry: Yes, but you have accepted the principle that certain categories of workers who do specific types of jobs should be covered in non-emergency situations.

Kenny MacAskill: No. I said that the 2005 act covers people who are doing their job. There could be an assault, but that might not be in an emergency situation. A medical person can be on duty doing their daily job, but not in an emergency situation. The issue is not the emergency; it is the fact that they are within the category and on duty.

Hugh Henry: Can we clarify that? I think that what the cabinet secretary is saying is slightly different from what Mr Lamont said. Mr Lamont said categorically on the record that certain groups of workers are covered in non-emergency situations, but when I asked the cabinet secretary about that, he said no. He then said something about the classification of workers. I do not doubt that a doctor or a nurse helps in emergencies, but I am talking about the 2005 act potentially covering them in situations in which they are not engaged in an emergency. Is that the case?

Kenny MacAskill: There are two factors. First, section 1 of the 2005 act provides protection for constables and fire brigade and Scottish Ambulance Service personnel whenever they are on duty. The modification order that Parliament approved in early 2008 added registered medical practitioners, registered nurses and registered midwives to the list and removed them from section 2. Section 2 provides protection for prison officers, coastguards, social workers when they are dealing with child protection cases, and mental health officers, but only when they are dealing with emergency circumstances. Therefore, there are two categories of people. There are those who are provided with protection when they are on duty: constables and fire brigade and Scottish Ambulance Service personnel. That started with Lord Boyd. We added to that list medical practitioners, registered nurses and registered midwives. In addition, prison officers, coastguards, social workers and mental health officers, because of the nature of their jobs, are provided with protection in emergency circumstances, whether while taking a child into care or while tending somebody who may be detained and sectioned under mental health legislation.

Hugh Henry: The point is that a doctor who is assaulted by a patient would be covered by the 2005 act even though that assault did not take place in an emergency situation. Is that correct?

09:45

Kenny MacAskill: Yes, because the person is classified as a doctor on duty.

Hugh Henry: That is the point at which I am driving.

Kenny MacAskill: If the person is on holiday on the beach on the east neuk of Fife, they will not be considered a doctor on duty. However, if they are on duty at work, they will be covered by the 2005 act.

Hugh Henry: Of course, but reducing the arguments to the absurd does not help either of us. We are talking about people who, in the course of their employment, are classified in a certain way. You have confirmed that workers such as doctors and nurses are covered by the 2005 act in non-emergency situations simply by dint of their profession.

Kenny MacAskill: That was always the case. The position was established in 2004 and its logic was narrated by the Labour Lord Advocate, Colin Boyd. I have read out what he stated in Parliament. If you wish me to repeat it, I will do so. He expounded clearly why emergency workers’ positions were distinct.

Hugh Henry: I do not dispute the logic of the argument and do not criticise the cabinet secretary for it. I am merely trying to establish that he has accepted that the provisions of the 2005 act have been extended to cover certain groups of workers when they are dealing with members of the public in non-emergency situations.

Kenny MacAskill: Parliament agreed to that when it passed the Emergency Workers (Scotland) Bill.

Hugh Henry: Which you support.

Kenny MacAskill: Yes. I have said that.

The Convener: One argument that was made in favour of the Emergency Workers (Scotland) Bill when it was introduced and that is being made in favour of the Protection of Workers (Scotland) Bill is that the legislation will act as a deterrent. I understand that when the Emergency Workers (Scotland) Bill was introduced, the penalties that
were available under the common law were less than those for which the statute provided. Am I correct in saying that that is no longer the case?

Kenny MacAskill: Yes. That is true if a case is charged at summary level and not on indictment.

The Convener: The deterrent aspect of the 2005 act was the greater penalties that were available under the statute, as opposed to the common law offence, but the penalties under the Protection of Workers (Scotland) Bill are the same as the current penalties under common law. Do you consider that the deterrent effect that was intended by the 2005 act is no longer relevant?

Kenny MacAskill: There is a variety of issues. The previous Administration, in which the convener served, correctly introduced the Emergency Workers (Scotland) Bill partly because it was appropriate that we should record such offences in order that those offences, rather than breaches of the peace or assaults, would appear in previous conviction lists. There was and remains a clear problem in that area. If we broaden the legislation, we will reduce its effectiveness.

The convener is right about sentencing. It can be argued that the 2005 act has not made any difference in that regard. The Crown would argue—correctly—that prior to the 2005 act anyone who assaulted a paramedic, a fireman or a doctor who was on duty would have had that libelled as an aggravation, and that the courts would have dealt with the offence most seriously. The additional benefit of the emergency workers legislation is that convictions are recorded. That means that, if there is a further conviction, the sheriff will know that there was a past offence. If it were recorded simply that someone had been convicted 10 times for breach of the peace and five times for assault, there might be no indication that they had assaulted a nurse or doctor previously.

There is no evidence that the 2005 act has increased the level of sentencing, but it was thought to be appropriate for emergency workers. The Protection of Workers (Scotland) Bill will not necessarily increase the level of sentencing, as action has already been taken on the issue. However, if we extend the provisions of the 2005 act to almost everyone, we will not know whether an offence was committed against someone in a very serious situation, such as an emergency worker. That will devalue what we intended to do back in 2004, which was to record such offences.

The Convener: I want to look at the issue from a slightly different angle. When the committee scrutinises the general principles of any bill, it must consider whether there is a need for the legislation. Given that the proposed penalties in the Protection of Workers (Scotland) Bill are the same as those that are available under common law, and given that there is a dearth of evidence on whether the 2005 act has acted as a deterrent—the committee has tried to establish that, but it is difficult to do so—is there any need for the bill?

Kenny MacAskill: That goes back to what I said at the outset. Is there an issue here? Yes, there is. Someone who is going about their lawful business in working as a train driver, a bus conductor or a shop assistant should not have to put up with foul-mouthed abuse, whether or not it is alcohol fuelled, and should certainly not be assaulted. The question is whether the situation would be resolved by a law. My answer is that it would not. The bill would not change the law in any way; it would simply place in statute the law that currently exists under common law. It would not make the law any tougher or achieve anything—indeed, it might devalue the benefit of what was introduced in the Emergency Workers (Scotland) Act 2005. We all accept that there is an issue, and Mr Henry is right to flag it up. However, changing the law through his bill would not improve the law at all; it would just make such behaviour a statutory offence as opposed to a common-law offence.

It perhaps comes back to the fact that we have taken our eye off the ball. If a law could have solved the problem, it would have been introduced by now—we would have introduced it in 2004. In 2004, we introduced the Emergency Workers (Scotland) Bill. Sadly, although the 2005 act is correctly being driven home by the police, the prosecution and the judiciary, the number of assaults continues to be high. The root of the problem in many cases is the fact that it is alcohol-fuelled abuse. We know that, in this country, there is a clear correlation between overconsumption of alcohol and assaults on emergency workers, shop assistants and bus drivers. Our view is that the bill would not add anything and could, indeed, undermine the attempts that were correctly made by the previous Administration to ensure that we targeted emergency workers for protection.

Rob Gibson (Highlands and Islands) (SNP): Good morning, cabinet secretary. It has been led to us that there is a feeling that abuse—which is a kind of assault—is not treated as seriously as assault, despite the fact that it might be the sort of thing that people who work on trains and so on experience on the weekend shifts, as was suggested by a ScotRail witness last week. The descriptions in various police forces of what constitutes a minor assault of an emergency worker are beginning to be rolled out across the country. Do you think that more knowledge about the number of complaints that lead to a charge relating to abuse would strengthen our hand in
Kenny MacAskill: The Crown Office would argue that it takes such instances seriously. There have been some recorded incidents to which I could refer—they have probably been made available to you by the Crown Office anecdotally—for which severe sentences have correctly been handed down by the court. As you say, it is not always about serious assault; it can be about disrespect or ignorant and loutish behaviour, which is entirely unacceptable. In Scotland, such behaviour tends to go hand in hand with alcohol overconsumption and is not restricted to Fridays and Saturdays. Would more information be beneficial? It might be, but, drilling down, it might sometimes be hard to get that. What is quite clear, though, is the link between alcohol and offending at that level. Although it is not serious assault, it would be wrong to classify it as low-level offending. It is unacceptable and, whether it is against a male or female, it can be extremely frightening and distressing.

The Parliament has passed the Criminal Justice and Licensing (Scotland) Act 2010, which makes it clear that overconsumption of alcohol cannot be used as a defence. Somebody cannot say, “It wisnae me. I was drunk.” That drives home the message that being in the pub beforehand is no excuse for shouting at the bus driver.

The Crown Office and the police could seek more information for the committee, but I do not know where that would take us. The issue is very broad indeed and I believe that the fundamental solution is not a law that could be introduced at any stage. The bill will not change the current situation except by classifying such behaviour as a statutory offence as opposed to a common-law offence. The solution is more in driving home the message about enforcement, and the British Transport Police, the police in Scotland and licensing standards officers must all take appropriate action.

Rob Gibson: I hear your comprehensive response. Do you think that when people are talking about a minor assault of an emergency worker, there should be some reference to alcohol, so that we show directly in figures the number of people who are aggravating their behaviour through alcohol? Would that help?

Kenny MacAskill: I can understand why that might be helpful. These things are always about striking a balance between not having a bureaucratic burden and how much information we have to recall. It would be fair to say that when such people are prosecuted, their police report will almost invariably say that the accused was drunk when he did this or that. That information will be available and the procurator fiscal will doubtless lead it. What we as a Parliament have managed to close down is the suggestion that the defence agent will stand up and say, “He’s a swell guy who is normally really nice and it was just the drink that did it to him last night.” That excuse has gone.

You could ask for that information, but it is a question of striking a balance. It might be that police officers, prosecutors and court officials are recording lots of information. However, if it looks like an elephant and walks like an elephant, it is an elephant. Therefore, if alcohol is the major problem, as we hear from police, prosecutors, sheriffs and the Scottish Prison Service, maybe we should deal with that.

Lewis Macdonald (Aberdeen Central) (Lab): I want to take you back to the question of how the proposed bill relates to the 2005 act. Let me take you through what I understand the position to be and you can tell us whether you agree.

The 2005 act divides the population into three categories. The first is those who are covered by the full force of the act in section 1: police officers, fire staff and ambulance staff. The second is those who are covered by section 2 only, which includes doctors, nurses, midwives, prison officers, coast guards, social workers and child protection duty and mental health officers. The third category is everyone else who is not covered by the first two specific sections. Does that accurately describe the position?

Kenny MacAskill: With the caveat that for some of those positions, such as social workers, it depends on the nature of the work that they are doing. The act refers to social workers who work with children, not social workers per se. So, a social worker dealing with care for the elderly for example, who might be assaulted by a patient suffering from dementia, is not covered. However, a social worker dealing with the case that Mr Henry narrated is covered. Equally, mental health officers per se are not covered, but mental health officers in certain situations are covered. There is a drilling down. Although Lewis Macdonald is correct that some categories are fully protected under section 1, other categories are more focused.

Lewis Macdonald: Thank you for that clarification. The Scottish Government decided to move some of those groups—the doctors, nurses and midwives—from section 2 cover to section 1 cover.

Kenny MacAskill: Yes. There was a significant representation from the British Medical Association and the Royal College of Nursing that referred to the fact that those staff wear uniform and the nature of their job. We fully accepted that.

Lewis Macdonald: You accepted their representations. Did you have representations...
from any other groups of workers who were covered, but wanted to be covered by section 1 of the act, or from groups who were not covered at all and wanted to be covered?

Kenny MacAskill: That I cannot recall. I can happily investigate and reply to you, but I cannot say off the top of my head.

Lewis Macdonald: It would be helpful to have that clarification if that is possible.

If you had been asked to consider other categories, what criteria would you have applied? You tell us that you responded to the representations from the professional representatives of doctors, nurses and midwives. Had you received similar representations from other groups covered by section 2 of the 2005 act, would you have considered them? If so, what criteria would you have applied in making a decision?

Kenny MacAskill: I would have looked at the facts and circumstances. The society in which we live ebbs and flows, which is why we listened to representations and expanded on what was passed in 2004. New situations come about. An example of that is the UK Border Agency. We now have officers walking around who look like policemen. At some stage, they might well say that they are victims of this or that. I would look at the facts and circumstances at the time.

As I said to Mr Gibson, it is a matter of balance. We have to consider whether it would be useful to have certain information or whether recording it would cause a bureaucratic nightmare and we would be better just letting folk do their job. That is a matter of balance that you will have to decide as a committee.

Doubtless new jobs that we have not thought of will be established. Despite the desire of Governments north and south of the border to reduce the number of agencies, agencies might well spring up that have to be protected. We will look at each such case. Again, it comes down to a balance. If we included almost everybody apart from a few people, we would detract from what we are trying to achieve. I would consider each instance on its merits.

10:00

If we did what the bill seeks—and certainly if we included the self-employed, on which there has been lobbying—only a handful of occupations would not be included. That would not be the appropriate balance and would go too far, especially given that, as the convener correctly said, we would not be improving the law, increasing the penalties or ensuring a greater conviction rate. We would simply move something from the common law of Scotland that has served us for centuries and put it in statute. As I said, I do not see what additional benefit that would provide. The 2005 act provided the additional benefit that a sheriff can see that the accused, X, has carried out five assaults, including two on emergency workers, and can say, "You've done it again, Mr X—that's unacceptable." If everybody was included, what would be a breach of the peace? That would lose the focus.

There could always be an argument to consider individual jobs but, whether they are with the UK Border Agency or HM Revenue and Customs—it could be licensing standards officers—the individual facts and circumstances should be considered. The bill is too wide and too deep and would not add anything. If the bill simply would not make things any better, that might have been all right, but the danger is that it could make matters worse by undermining the work that we have tried to do to make it clear that the people who are included in sections 1 and 2 of the 2005 act need to be protected because of the nature of their jobs. I am happy to consider adding more people to that act, but the bill would undermine the ethos of the bill that we correctly supported in 2004.

Lewis Macdonald: You made a judgment in government. From what you have said, the judgment was based not simply on the representations that you received from the medical, nursing and midwife professions. As you have described, you considered each case on its merits. You considered the case that those professions made to you for being included in section 1 of the 2005 act rather than section 2 and you decided that they were right to argue that they should be afforded the additional protection from section 1.

Kenny MacAskill: We followed the 2005 act. Apologies, convener, but I think that 2004 was when Colin Boyd, the then Lord Advocate, spoke about the Emergency Workers (Scotland) Bill. We followed section 8 of the 2005 act, which was introduced by the Labour-Liberal Administration and supported by the SNP, although I cannot remember whether the support was uniform throughout the Parliament. Section 8(2) of the 2005 act states:

"The Scottish Ministers shall not make an order under subsection (1)(a) above"—

which is about adding a person—

"unless it appears to them that the person to be added (or, as the case may be, each person of the description to be added) is one whose functions or activities are such that the person is likely, in the course of them, to have to deal with emergency circumstances."

The 2005 act is clear that we can add to it. I hypothesised about whether licensing standards officers, customs and excise officers and so on—
you name it—could be added. The role has to have some emergency factor. If we broadened it beyond that, there would be difficulties, so there would be difficulties with adding shop assistants. Although I have every sympathy for them and believe that it is entirely unacceptable for people to go into off-licences under the influence of drink and shout abuse or do worse, that could not be covered by the 2005 act.

**Lewis Macdonald:** That is clear. The categories that are covered by section 2 could not be added to other than with additional groups of emergency-related workers. However, for example, if a case was made to you in relation to social workers, who currently are covered by section 2 when they deal with emergencies in relation to child protection, you could by order add them to section 1 if you were persuaded that that was appropriate.

**Kenny MacAskill:** That is a fair assessment.

**Lewis Macdonald:** You mentioned other groups of social work staff, for example those who may be subject to the fear of violence when providing care for persons with dementia. Would it, in your view, be possible that ministers could determine that those social workers were dealing with an issue of an emergency nature and bring them within the scope of the existing legislation?

**Kenny MacAskill:** Clearly, an argument could be made, but I have to say that I would take a lot of persuading. I appreciate that there can be instances when those suffering from dementia can strike out and be violent, but I tend to think that the circumstances to which the legislation refers are much more fraught than that. A legal argument could be made for bringing such cases within the scope of the legislation, but would it be one that would persuade me or, indeed, the Parliament? I am probably sceptical, much as I am sympathetic to those who work in that environment, because at the end of the day we all recognise the difficulties.

These things come down to legal arguments. Lawyers can make arguments—I practised law for 20 years—about whether the interpretation of section 8 of the 2005 act is capable. Indeed, there is a definition in section 2(5) of the 2005 act. It states:

“For the purposes of this Act, circumstances are ‘emergency’ circumstances if they are present or imminent and—

(a) are causing or are likely to cause—

(i) serious injury to or the serious illness (including mental illness) of a person;

(ii) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings); or

(iii) a worsening of any such injury, illness or harm; or

(b) are likely to cause the death of a person.”

As I say, I think that you could find an argument to be made for social workers in a variety of situations being included, but I have met regularly with the Association of Directors of Social Work and it has never suggested to me that it wishes the powers to be extended. I appreciate that in certain situations social workers face the issue, and I would be very open to considering the matter, but the circumstances would have to fall within the interpretation of “emergency” and, as I say, I think that these professions, to be fair to them, have sought to use the powers sparingly.

**Lewis Macdonald:** Finally, I take you back to a comment that you made at the outset, which is that part of the point of the existing legislation was to record public opprobrium and ensure that the courts did the same. If you are not willing to support the bill that Hugh Henry has introduced, is there any other method that you would support for recording public opprobrium in relation to assaults on non-emergency, public-facing workers?

**Kenny MacAskill:** That is a matter for the Crown and it is why we have aggravations within the law. It can be made clear that you shouted abuse at X in the course of whatever it was that they were doing and, if need be, that you did so under the influence of alcohol. That can be recorded within the common law. We have made it clear as a Parliament that we are not prepared to tolerate alcohol as an excuse. Thereafter, rather than simply record that, I would expect the courts to do their duty; which is to enforce severely that we are not, as a society, prepared to tolerate rude, ignorant and disrespectful behaviour. The respect agenda is not supposed simply to be at governmental level; it is supposed to be across our society and communities. We are not prepared to put up with it and we encourage the courts to act appropriately.

**Gavin Brown (Lothians) (Con):** A number of witnesses have put forward the public policy argument as one reason for the bill. They have said that it sends out a message to those who work on the front line that such behaviour will not be tolerated, that it might encourage them to report incidents—there is a suggestion that a lot of incidents are not reported because of a feeling of helplessness—and that at the same time it would send out a message to deter those who might engage in such behaviour. What is your analysis of that argument, which the unions and others have put forward?

**Kenny MacAskill:** I think that, again, it is a matter of each and every one of us ensuring that we drive home the message that there must be a culture change and that we are not prepared to tolerate such behaviour. For example, you and I both travel regularly on Lothian Buses. Lothian
Buses makes it clear in signs that are visible for all to see that their drivers and staff are not expected to put up with abuse. Employers have a clear duty to make it clear that their employees will not have to put up with drunken behaviour, whether they are serving in a shop or driving a bus. It is important thereafter that the police take such incidents seriously—they do—and that the Crown prosecutes appropriately, drawing all the aggravated factors to the attention of the court, and that the court acts appropriately.

It is a matter of each and every one of us playing our role so that people feel that crime has to be reported and that such behaviour should not have to be tolerated and that action will be taken. As I said, I believe that public transport employers have taken that on board. I think that the same approach should be taken across the board, but I have no doubt that almost all good employers will do that as a matter of course.

Gavin Brown: You say that employers are taking that message on board. I concur with you in regard to the attempts that Lothian Buses is making to address the issue. Unions and many others in the public sphere are pushing the message hard, but there is still an issue, as I think that you said that you accepted. Everyone is doing what you have suggested. You say that the police and the Crown Office are taking the matter seriously, too, but there is still an issue. The committee was told in evidence that last year front-line workers were subject to in the region of 30,000 incidents, and that was the evidence of just one union, which did not cover a variety of other professions.

Given that that is the extent of the issue, if we are already doing everything that we can to take it seriously, what else can be done to ensure that it ceases to be an issue? Something has to be done. You accept that there is a problem, but you do not think that the bill will solve it. What will solve it?

Kenny MacAskill: Two things spring to mind. First, there needs to be a culture change—people must recognise that such behaviour is just unacceptable. Following on from that, those who have the statutory powers and responsibilities require to act and the police require to visibly enforce them. As a Government, we have ensured that we have record numbers of police officers. The prosecution authorities require to drive home the message in the courts. We must ensure that those who have the statutory duties and responsibilities act accordingly. The Crown has been in touch with the committee, and I think that it has made it clear that it takes the issue extremely seriously. The police have done the same and I support them in that.

Secondly, we must tackle the root problem. At the end of the day, 50 per cent of the prisoners who responded to a Scottish Prison Service survey last year said that when they committed their offence, they were under the influence of alcohol. I do not know about the specifics of the evidence that was given to the committee, but I have no doubt that of the 30,000 incidents that you mentioned, a significant proportion—probably a majority—were perpetrated by people who were under the influence of alcohol.

Gavin Brown: I am sure that you are right about that. Could a bill such as the one that we are considering play a part in bringing about a change of culture?

Kenny MacAskill: A bill that was more tightly focused could. I think that the Protection of Workers (Scotland) Bill is in danger of undermining the benefits of the 2005 act. Lewis Macdonald asked whether we could extend the provisions of the 2005 act. Yes, of course we could, but my one worry about the bill is that we might extend provisions to such a point that only a small minority of people would not be covered, and that would undermine the focusing and targeting that I referred to when I mentioned the position of Lord Boyd back in 2004.

There is an issue. The bill is well intentioned, but I do not think that it would add anything to the law; it would simply replace the common law with an act of Parliament. The danger in trying to provide protection for such a wide number of professions is that we might undermine what we tried to do in focusing on specific professions that we all know sometimes act as a magnet for ne’er-do-wells.

Gavin Brown: One of the other points that you made was that the Crown would argue that it takes such incidents seriously. Does it?

Kenny MacAskill: Yes, it does. To be fair to the Lord Advocate, I know how much she and the Solicitor General for Scotland are exercised by such matters. As the Cabinet Secretary for Justice and someone who spent 20 years as a defence agent, I have to say that the Crown does take such incidents seriously. The Crown will make quite clear the circumstances of the case, because the court would want them to be brought to its attention. Was the accused under the influence of alcohol? What was the nature of the offence? It would be brought home that the victim was driving a taxi, working in a shop or going about their lawful business as a bus driver when the accused came up and did whatever.

Gavin Brown: The difficulty that we have is that even though the Crown Office and you say that such behaviour is treated extremely seriously and is unacceptable, we have evidence to the contrary from unions and workers. One worker gave us details of what happened to him. A number of
organisations have told us that these incidents are not taken seriously at all and many of their people simply do not bother to report them any more, because they do not think that there is any point. Do you have empirical data or evidence to support your assertions that such incidents are treated seriously?

10:15

Kenny MacAskill: No. Such data are collated by the Crown, which, to be fair to it, can act only on what is brought to its attention. That normally happens by way of a police report and, on matters of police reporting, you will need to take evidence from the Association of Chief Police Officers in Scotland. All I can say is that, from my experience with and knowledge of the police and the instructions that they get from the Crown, such incidents must be collated and reported. We can make inquiries with the Crown and the police for you, if you so wish, but my understanding is that they are taken seriously and acted on. It is a matter of regret to the police and the Crown when such incidents are not reported, even if, because of a lack of witnesses or whatever else, a prosecution might not have been pursued. I certainly know that the police would rather that the matter was reported because they can begin to work out a pattern or identify the offender as, say, the person who has been doing the same thing to other individuals on previous nights. As I say, I am more than happy to go back to the Crown and police on this issue but, as Mr Gibson has correctly pointed out, there comes a point at which you have to wonder what you can do with such information.

Gavin Brown: The information is quite important, because a clear distinction has been drawn here. On the one hand, one group is saying that many of the 30,000 incidents that take place are not taken seriously, while, on the other hand, you and the Crown are saying that they are. Both positions cannot be right—they are clearly contradictory—so if you can make the inquiries that you have referred to and get us the information, that would be a huge help.

Kenny MacAskill: I am happy to ask the Crown and the police about the information that they can provide on incidents of which they have knowledge that fall within the bill’s domain.

Ms Wendy Alexander (Paisley North) (Lab): I think that there is common ground on some issues. For example, we agree that certain occupations are a magnet for these difficulties, that some of those occupations are covered by existing legislation and that other occupations—such as train guards, taxi drivers and bus drivers—that also act as a magnet are not covered. However, you have argued that the danger of extending current legislation to cover the other magnet occupations, or of introducing new legislation to extend that reach, is that only a handful of occupations would be left uncovered, and that the bill’s essential weakness is that it is too wide and deep and includes everyone.

I am seeking evidence from the Scottish Government on that very matter, because I note that there is no attempt in your submission to define how many of the population would be covered by the bill. In the course of the work that it has undertaken in reaching its view, has the Government carried out any work to back up the assertion that only a handful of occupations would not be covered if the bill were to proceed? In fairness, that is not my reading of the bill, but I accept that I need to see some evidence and simply wonder whether the department in question has carried out any analysis in that respect.

Kenny MacAskill: I am giving evidence not on my bill—a Government bill—but on Mr Henry’s bill. I accept that the Government has certain obligations, but usually it is the proponent of the bill who states how matters stand. I suppose that it all depends on whether you accept Mr Henry’s proposal or certain submissions suggesting that the legislation be extended to the self-employed. If the committee is minded to accept that extension, it will have to accept the subsequent and significant deepening and widening of the provisions. I cannot answer your question without knowing just what the proponent of the bill is targeting.

Ms Alexander: You asserted this morning that a shortcoming of the bill was that only a handful of occupations would be left uncovered. Given that argument does not feature in the Government’s submission on the pros and cons of the bill, do you have any evidence to back it up?

Kenny MacAskill: My assertion is based upon what Mr Henry and you have said, and the evidence that has been submitted to the committee. Evidence has been given that the provisions should be extended to include the self-employed. In your two questions, you mentioned bus drivers, train drivers, shop assistants and taxi drivers—where is the line to be drawn? It is not for the Government to draw that line in a bill that does not belong to it. If you accept the logic of the evidence that has been submitted by those who support the bill, I suggest that it is fair to hypothesise that we have probably included a significant majority of the working population of Scotland.

Ms Alexander: The Government has been helpful in providing information so far. The bill provides a definition. The Government is well placed to provide some estimate of how many people it believes would be covered by the
definition and that would aid the committee in its deliberations. It is, of course, up to the Government to decide whether it wishes to assist the committee by providing the figure for how many people it feels would be covered by the definition. I leave it on the table as a piece of information that would be helpful to the committee as we pursue the bill, and perhaps the Government can reflect and come back to us.

**Kenny MacAskill:** I am happy to provide that information, but the committee will have to tell me whether it wants me to include the self-employed, just those who are mentioned in the bill, or people more widely than just those in the bill. For the Government to be able to answer Ms Alexander’s question, it would require to be formulated in a legitimate way.

**The Convener:** Cabinet secretary, we can take evidence only on what is in the bill. Obviously if you want to respond to any of the evidence that the committee has received, that is a matter for you. If we consider amendments to the bill at stage 2, and you want to bring forward supplementary evidence at that stage, we will be happy to see it, but at the moment, we want information that is specifically related to what is in the bill. It is entirely up to the Government if it wants to provide any additional information.

**Kenny MacAskill:** We will happily do what we can to provide information about the number of the working population of Scotland that will be covered.

**Stuart McMillan (West of Scotland) (SNP):** The bill is about the protection of workers, but the definition of worker is quite varied, to be honest. As I read the bill, a chief executive who does not own a company but is employed, a marketing manager, or anyone who is involved in a company at a senior level would be protected if they were involved in some kind of public consultation with the community, whereas the people who work for them, such as on the shop floor of a shipyard or an engineering works, would not be covered by the bill. Is that fair?

**Kenny MacAskill:** That is my understanding of the bill. Section 1(3) defines a worker as "a person whose employment involves dealing with members of the public, to any extent".

so the scenario is as Mr McMillan suggested. The chief executive who engages with the public from time to time would be protected, but someone working down in the back office would not be.

**Stuart McMillan:** I raised the point with a panel that was before the committee a couple of weeks ago. The bill would not be so much about creating a two-tier system as a three-tier system. We already have the emergency workers legislation, and the proposed legislation would bring in protection for many people within society, including senior management, but not workers in factories, who would not be covered. It would be understandable if those who work in factories or shipyards, and so on, felt left out.

**Kenny MacAskill:** That is a reasonable interpretation.

**Stuart McMillan:** I have another quick question. The bill suggests that certain evidence could be uncorroborated. Is that a laudable aim, or would it create more difficulties?

**Kenny MacAskill:** That is fundamentally a matter for the Crown. It would certainly be a significant change from what is normally viewed as necessary in Scotland, but we are coming into uncharted waters with the case of Cadder v Her Majesty’s Advocate. However, the provisions in the bill do not reflect what would normally be required in terms of corroborated evidence.

**Stuart McMillan:** Thank you.

**The Convener:** Briefly, Chris Harvie—I am sorry but we are very short on time.

**Christopher Harvie (Mid Scotland and Fife) (SNP):** One point that has not been raised is the protection of the front-line worker from his own management. I have just received a letter from a lady who, along with 50 or 60 other people, had to stand all the way from Markinch to Edinburgh on a train that was supposed to be five carriages but turned out to be three. There was a very nonchalant response from the general manager at ScotRail, but let us imagine the position of the staff, who were caught in the situation in which they found it impossible to check tickets or move people on the train.

There seems to be a situation that is not covered by common law or the bill as it stands in which staff are put unnecessarily in a front-line position—if we added in intoxicated passengers or something similar, such staff would be in a very difficult situation. What should be the redress in the case of a management that accepts that people have to stand in great discomfort for an hour-long railway journey?

**Kenny MacAskill:** I have a great deal of sympathy for staff in those situations. Primarily, it would be a matter for health and safety at work legislation, which is obviously reserved to Westminster, although we would expect it to be the first port of call to ensure that those who are doing their daily job are not put in a situation that is damaging to them, either through the circumstances or because of the people they might meet. Equally, there is employment legislation about ensuring that people have a right of recourse and redress. Fundamentally, it is a
point of health and safety rather than the criminal law. As with all these things there are interpretations and grey areas, but it is a matter of health and safety at work.

The Convener: I am aware that you need to get away, cabinet secretary, but I want to ask briefly about the verbal abuse of workers, which has been raised by a number of people in evidence. Do you think that Hugh Henry’s bill covers verbal abuse and, if not, do you think that the provisions on threatening and abusive behaviour that are brought into force today under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 would cover that?

Kenny MacAskill: You would probably be better to ask for a proper legal opinion. Our view is that Hugh Henry’s bill is driven towards dealing with assault. Can an assault be non-physical? You would probably find that the Crown will argue that there are circumstances in which that can be the case—if somebody is up in your face, almost spitting or whatever. However, I would hazard a guess that that definition would not cover some of the abuse that is generated at a bus driver as somebody jumps on or off the bus and which is unpleasant and sometimes threatening and intimidating.

There are circumstances in which an assault can be non-physical, but it would certainly diminish the purpose and intention of the bill if it could not deal with the drunken lout shouting at the shop assistant if there was no specific threat of violence. There are difficulties in covering the points that Mr Brown correctly made about workers who feel threatened and intimidated perhaps at a lower level—although I do not like to use that terminology because it all depends on the individual. However, there is a significant gap in the bill.

The Convener: The other question was whether the provisions on threatening and abusive behaviour in section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, which were referred to in news reports this morning, would cover non-physical threatening behaviour.

Kenny MacAskill: Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 was brought in to cover domestic violence and its provisions are meant for different circumstances. I would have thought that the common law of breach of the peace would cover non-physical abuse. There are some circumstances that would not necessarily be covered by the bill. Mr McMillan referred to somebody who works in the back office, where there is limited public contact, whereas the definition in Mr Henry’s bill relates to public-facing workers. I think that dealing with verbal abuse would be about better enforcement of breach of the peace.
Scottish Parliament
Economy, Energy and Tourism Committee
Wednesday 10 November 2010

[The Convener opened the meeting at 09:32]

Protection of Workers (Scotland) Bill: Stage 1

The Convener: Item 2 is our continued scrutiny of the Protection of Workers (Scotland) Bill. I welcome the member in charge of the bill, Hugh Henry MSP, along with Mike Dailly from the Govan Law Centre, to the meeting. I will allow Hugh Henry to make opening remarks and then I will open up the meeting to questions.

Hugh Henry (Paisley South) (Lab): I have been following the committee’s evidence sessions closely and a number of interesting points have come out. There seems to be a clear split of opinion between those who believe that they and those whom they represent would be beneficiaries of the bill and—if you like—the legal establishment, which believes that there is no need for the bill.

It was disappointing to hear the evidence of the police and fire services, particularly that of the police. The Scottish Police Federation said that there is no need for the proposed legislation because current laws cover those who might be affected, and it acknowledged the fact that many are covered by the Emergency Workers (Scotland) Act 2005. At the same time, those organisations do not want to see the 2005 act removed, because their members benefit from it, even though their members, especially in the case of the police, are covered by the Police (Scotland) Act 1967.

The bill argues that there are people who might not always act in what could be described as an emergency service but who provide vital services to the public. If those workers are prevented from providing that service, for whatever reason, the public can suffer considerably.

If shops have to close because of assaults on staff, if bus services are withdrawn because of assaults on bus drivers, if trains are off because of assaults on train drivers, or if vital bills, letters or cheques do not arrive in households or businesses because a postal worker is assaulted, the consequences can be quite significant. Although those workers are not having to act as emergency workers, they often have to act in emergency situations. The definition of an emergency is a serious situation or occurrence that happens unexpectedly and demands immediate action. That can often occur when a worker is trying to deliver mail and there is a confrontation. In a shop, a serious situation can arise whether it is because someone is attempting to shoplift, or for another reason. A number of workers in this country provide vital services to the public and they are asking for the same level of protection as emergency workers have.
We have heard from the cabinet secretary about why we should not enact the bill. There seems to be a bit of a contradiction in the Government officials’ response. They downplay the success of the Emergency Workers (Scotland) Act 2005, saying:

“As such, if we wished to define ‘success’ with only reference to the data, we would expect the number of offences under the 2005 Act to fall in number as the deterrent effect operates rather than rise as has happened.”

If we accept the logic of that, the Emergency Workers (Scotland) Act 2005 has not been a success, and yet from the political perspective, the cabinet secretary is very clear that he fully supports the act. The statistics that have been provided to the committee from several parliamentary answers show that the number of prosecutions under the 2005 act continues to rise significantly year on year. We have also heard evidence from Unison that the number of assaults on health staff is falling, so to some extent that might contradict what the committee has heard from Government officials.

We believe that it is important to put on record to those who serve us, in whatever capacity, that they have the full support of the law. The Emergency Workers (Scotland) Act 2005 tried to do that. We recognise that other legislation covers serious assaults, but the footnotes to the parliamentary answers that contain the statistics on the 2005 act categorise such assaults as minor rather than serious, and they are dealt with elsewhere and by other means.

The time is right to say to those who serve us, and serve us well, that we politicians will do what we think is right to protect them when they are serving the wider public, and that the legislative cover that is available to them while they are at work should be no different from that available to those who work in emergency situations.

The Convener: Thank you for those opening remarks. I start by addressing the central issue. Could you explain to the committee how the Protection of Workers (Scotland) Bill, if enacted, would increase the legal protection for workers? I stress the word “legal”.

Mike Dailly (Govan Law Centre): Evidence has been given that the bill replicates the common-law position on assaults. The bill does not include the term “obstructs or hinders” because we had a very tight timeframe in which to draft the bill after Hugh Henry approached me at Govan Law Centre; I was in the middle of drafting the Property Factors (Scotland) Bill.

We wanted to give some thought to that point, but I think that I am right in saying that, if the bill progresses to stage 2, Hugh Henry would like to amend it so that it includes the term “obstructs or hinders”, which would add value to the legislation. For instance, if a worker such as a conductor on a train is obstructed or hindered, that could effectively result in the train service being cancelled, and many people would experience a disruption to their service. I recognise the need to address that point.

As for how the bill would work generally, the committee has heard evidence from the Federation of Small Businesses, which said that 20 to 28 per cent of its members were reporting abuse or assault. ScotRail, Unison and the Scottish Trades Union Congress have reported 30,000 incidents, which shows that the issue is a major one in Scotland. Public-facing workers are being abused, assaulted, hindered and obstructed daily. The bill is intended to have a deterrent effect.

Let us consider the Emergency Workers (Scotland) Act 2005 and other examples of where there has been a deterrent effect. There are now statutory aggravations relating to criminal conduct in connection with race, religion, disability and sexual orientation. Over the years, the Scottish Parliament has recognised that there is added value in giving extra protection to particular groups of people. All that the bill seeks to do is to extend that protection to ordinary working men and women who provide direct services to the public.

Hugh Henry: I wish to reinforce that point. Over many years, when the issue of aggravation has come up, people—particularly those who were speaking from a legal perspective—have told us that we do not need to provide for that, because the law already covers such incidents. The Parliament rejected that counsel and put in place provision covering aggravation. Over the years, it has extended the number of categories that are covered by aggravation. Parliament has already accepted the principle that there are assaults or incidents that the common law covers, but it is important, for whatever reason, to put on record our belief that a more serious attitude should be taken towards specific groups of people. In this case, we are talking about workers who perform a duty for the public.

The Convener: I have two related points to make. First, do you accept that the Emergency Workers (Scotland) Act 2005 increased the sentences that are available to the courts, and that the sentences that the courts have imposed have subsequently changed and caught up with those provisions? The Protection of Workers (Scotland) Bill would not do the same thing.

Secondly, the Protection of Workers (Scotland) Bill would not actually create an aggravation offence in the same way that was done for race or
sexuality, for instance, so how would it extend the protection of workers in that sense?

**Hugh Henry:** I will address the first point, and I will leave Mike Dailly to deal with the second one.

I accept what you say. The Emergency Workers (Scotland) Act 2005 extended sentencing provision. You are right to say that sentencing has caught up, to an extent, with that act. Judging from the evidence of the police service and the fire service, they do not want the 2005 act to be taken out of legislation. You are effectively saying that there is no need for it, but the police and the fire service do not want it to be removed. Similarly, the Cabinet Secretary for Justice believes that there is still a need for that legislation, despite the sentencing having now caught up.

It would be interesting to see what the statistics show in that regard. People are being prosecuted under the Emergency Workers (Scotland) Act 2005 rather than under other statutory libels. It is clear that the 2005 act is a tool that has been added to the armoury of both the police and the prosecution service. It is being used increasingly, and it is important to put on record the fact that the police and the prosecution service, as well as the courts, take seriously assaults on workers who perform a function for the general public.

**Mike Dailly:** In response to your point that the bill does not create an aggravation, I point out that neither, in a strict legal sense, does the 2005 act. As Hugh Henry has pointed out—and as my colleagues from the Law Society have suggested in their evidence—lawyers generally do not like to create new offences or aggravations of offences. From a purely legalistic point of view, they like things to be left to discretion and prefer flexibility.

However, the provisions in the 2005 act, as with this bill, are totally akin to creating an aggravation, in that they created a specific offence. Indeed, some solicitor and solicitor advocate colleagues, who spend all their time defending people who have been accused of crimes, tell me that any prosecution under the 2005 act is treated incredibly seriously and that, as a result, they advise their clients that they will be looking at a custodial sentence.

With this bill, all we are seeking is to create a separate statutory offence that would give ordinary working people in Scotland who serve the public and who put themselves in potentially risky situations—for example, a woman working in a garage late at night—the same protection that is available under the 2005 act. The risky situation is the significant point. It is not the job, per se. That would provide consistency for the prosecution service and would send out a very strong message. I honestly believe that the bill would have the same deterrent effect that the emergency workers legislation has had.

**The Convener:** Do you accept or dispute the point that was made by the Crown and by the cabinet secretary that the offences are already taken very seriously by the courts, and that the prosecution service makes very clear to the court the aggravation effect, if you like, of an assault on a public-facing worker?

**Mike Dailly:** It is unfortunate that there is no empirical evidence of how the 2005 act has worked. Although I totally acknowledge the sincerity of the Crown Office’s view that such matters are treated very seriously, I have to point out that, according to its evidence, its position is that all crime is treated seriously. I understand that. After all, a prosecutor cannot really say anything other than that every crime is serious.

Under the heading “Why have racial aggravations?” the Crown Office’s guidance on racially aggravated crimes says:

“there is a need to increase trust in the criminal justice system and in the prosecution service. Our prosecution policy on racially aggravated crime is robust to ensure a consistent approach and to reassure victims of racist crime that their complaints will be taken seriously. In many ways this is the most robust of all our prosecution policies but there are good reasons for this, the most important being the need to send a message to Scottish society that racism will not be tolerated whenever it occurs as a crime.”

I respectfully submit that, given the evidence of the prevalence of abuse of and assault on ordinary working people, which we all agree is unacceptable, we need to send out a strong message that such a situation must be addressed in our country. Things cannot go on in the way that they have been going on.

**Rob Gibson (Highlands and Islands) (SNP):**

In a letter from the cabinet secretary dated 1 November, the fourth paragraph on the second page says:

“We further understand that examples were given of recent cases where the Crown has libelled a mixture of common law and statutory offences involving offences against emergency workers, and the sentences imposed on conviction.”

I find that interesting, because it suggests that procurators fiscal have to think about the best way of tackling particular crimes and one would expect them to take a view on the individual circumstances before deciding how to proceed.

We understand that, under the Emergency Workers (Scotland) Act 2005 and the common law, sentencing is now tougher. Does that coincidence put in the minds of procurators fiscal the idea that they must take such conduct more seriously? By mixing common-law and statutory
approaches, do they meet the needs of the circumstances that they deal with in such crime?

Hugh Henry: That logic is powerful. You say that, in dealing with crime against people who are employed in emergency services, the Crown looks at the mixture of common-law and statutory offences and decides what is most effective. That powerful and persuasive argument should also apply to workers in other settings, in relation to whom the prosecution services should have that mixture of common-law and statutory offences to determine the best way forward. The sentence that you quoted strengthens rather than weakens the arguments for the bill.

Rob Gibson: If you think that, and since you hope that the bill passes stage 1, after which you hope to introduce the obstruct and hinder provisions, how would the procurators fiscal tackle all those matters? The range of matters that we would deal with would be extended, and it would certainly be a long while before a pattern emerged that would allow us to measure the bill’s effectiveness.

Mike Dailly: If one imagines for argument’s sake that the bill becomes law, we need to remember that underneath the bill or any statutory offence are breach of the peace and assault, as common-law offences. The bill would provide just another tool in the toolbox for the prosecution. For section 1 to engage, the conduct must in the first instance be an assault, which is a common-law offence in any event. I accept the implication of the change in sentencing law in 2007. If one was playing devil’s advocate, one could ask what the point of the 2005 act or the bill is now. However, I understand that the Cabinet Secretary for Justice is not arguing that the 2005 act should be repealed. We argue that that act has a deterrent effect, provides consistency and sends a message. All that we say is that we should provide the same for ordinary working people who serve the public.

Rob Gibson: If we put the politics aside, we have a set of laws and the cabinet secretary will not say, “We’ll scrap this one and that one,” especially as the 2005 act was amended in 2008 and it takes a while to see whether legislation is effective.

You ask for an addition to that law. It could take five years to see whether what you propose is effective, although I do not want to put a time on that. The point is that, as we create more tools for the Crown Office to work with, we provide it with a more complex set of approaches, which might not help us to get to the problem’s roots.

Mike Dailly: I say with respect that the system would not be more complicated. Prosecutors have a range of matters that they can libel as offences.

It is down to a prosecutor to decide when to employ measures. I am not sure whether one can say that that is complicated.

If a cost benefit analysis was done and we asked what the negative repercussions were, the answer would be that the effect was more or less cost neutral and that, as for the repercussions, the bill would provide a particular purpose, as I have said, which would have no potential negative consequences.

It is important to note that the cabinet secretary’s evidence to the committee has an inconsistency. As I read his evidence, he supports the 2005 act and says that Hugh Henry’s bill is unnecessary. However, the Emergency Workers (Scotland) Act 2005 (Modification) Order 2008 extended the emergency workers protection to health professionals who are engaged in non-emergency work. The question that then arises is whether it is more important that health professionals who are doing non-urgent work get protection than it is that a train conductor gets protection of an evening when there is a packed train and people have been drinking. I think that the train conductor would require more protection. I am, therefore, confused by the cabinet secretary’s evidence, which seems to be confused and conflicting.

Hugh Henry: To be fair to the cabinet secretary, I understand that he is not asking us to wait and see how the 2005 act operates over four or five years and whether there is any need for it. He is stating unequivocally his support for the continuation of that legislation. Mike Dailly has explained why we think that other workers in similar non-emergency situations should be covered.

Rob Gibson: Given that, at times, a mixture of common-law and statutory offences would be used, do you think that the procurators fiscal are beginning to think of the common law in a slightly more advanced form than they did before because of the range of public-facing workers who are—it is alleged by the figures with which we have been provided in evidence—being assaulted daily? Do you think that, over the next period, many such offences will be taken more seriously and that the common law will be the main means to cover them?

Mike Dailly: The difficulty with that proposition is that the Parliament cannot know that. There is no empirical evidence and, as far as I know, nobody is undertaking a proper study of it. It is regrettable that the evidence that we have is not particularly helpful in telling us whether that is the case. The Crown Office and the cabinet secretary are putting such propositions forward, but the difficulty that we all have is that there is no
independent scrutiny of that, which makes it difficult.

Hugh Henry: I refer Rob Gibson to the parliamentary questions that the cabinet secretary has answered. I will focus on the phraseology that he uses. There have been at least three questions—asked by Irene Oldfather, Richard Baker and Margaret Mitchell—and Mike Dailly is right about the lack of empirical evidence. You have heard this before, but the cabinet secretary’s reply to Irene Oldfather’s question states:

“The police recorded crime statistics collected centrally are based on an aggregate return and do not record the occupation of the victim. However, following the introduction of the Emergency Workers (Scotland) Act in 2005, a new distinct crime classification of Minor assault of an emergency workers was created.”

Note that this will also include minor assaults of police officers during any course of their duties. He then lists the figures for those who have been charged under the 2005 act but talks about “Offences of Minor Assault”. The cabinet secretary’s reply concludes:

“All serious assaults are recorded under a separate crime classification. However, the Scottish Government does not hold the number of serious assaults on emergency workers as the occupation of the victim is not held centrally.”—[Official Report, Written Answers, 2 March 2010; S3W-31412.]

So, even with the 2005 act, there is a twin-track approach according to which serious assaults are dealt with under common law or statutory offences of serious assault, but minor assaults on emergency workers are charged under the 2005 act and are recorded as such.

10:00

Lewis Macdonald (Aberdeen Central) (Lab): I want to pursue one or two questions around the scope of the bill. Rather to my surprise, the cabinet secretary was fairly dismissive of the notion that you could have a category of people who were covered by the bill that would be definitive and clearly understood by the courts. I would be interested to hear your response to that. I think that at one stage he said something to the effect that the bill could cover almost anybody under almost any circumstances, which is clearly not the intention. How satisfied are you that the definition of those who are covered by the bill is not the intention. How satisfied are you that the definition of those who are covered by the bill is adequate and will be clearly understood by the courts and the prosecuting authorities?

Hugh Henry: In one of your evidence sessions someone asked whether the bill would make it more difficult to achieve a prosecution. The answer that was given was that it would not, because the Crown would still be able to use other legislation if there was a problem with the definition of a worker. It has been clearly stated that the bill does not create the danger that people will avoid prosecution.

The question would be, what is the definition of a worker? I will leave Mike Dailly to explain that more fully, but it is fairly simple: it is those who are engaged in occupations where a service is provided to the public. Would that be everybody in the country? No, of course it would not. Would it be everybody in a single workplace? No, because some people in some workplaces do not serve the public and do not engage with the public. They would not be covered, but the people in a workplace who engage with the public would. Could a substantial number of people be covered by the bill? Yes. I do not have the exact number of workers who serve the public at one point or another during their working day, but I accept that it is significant. Someone asked why those workers should get extra protection, which the rest of us walking down the street do not get. The Parliament has already examined that logic in relation to the 2005 act and aggravated offences. Perhaps for political reasons—you can put whatever label you want on it—we who are sent to this place to serve the people of Scotland believe that it is sometimes important to send a message that we take the plight of those affected seriously and that sometimes they will be treated differently, depending on their circumstances.

Mike Dailly: You asked about definitions. The bill would protect workers who engage with the public. In section 1(3) we define employment in fairly wide terms. The bill is fairly robust. We have used conventional language from previous acts of Parliament.

The cabinet secretary gave evidence—I think that this was in his letter to the convener—that the bill could cover 1.025 million workers. I am not entirely sure that it is necessarily a bad thing that lots of people would be protected, but it is also fair to say that Kenny MacAskill used the caveat that the figures carry a significant health warning. A lot of people who work in sales and customer services work in call centres, so they would not be covered by the bill. There are clearly a lot of people who would not be covered by the bill at all. The figure of 1.025 million is grossly overstated—I do not think it is correct.

Hugh Henry: Some workers would be covered by the bill at certain times of the working week and not be covered at others, depending on what they were doing and who they were serving.

Lewis Macdonald: It is interesting that the 2005 act proceeds on the basis of defined groups, relating to a worker’s occupation, profession or employment. The amendment that the current Government made extended that to other defined groups and defined them in the same way. The scope of the working population that you seek to
protect through the bill does not really allow for that, does it? It does not allow for a definition that says, “Work groups or occupations A, B, C and D.” It has to be cast in the way that you have described to achieve the effect that you want.

**Mike Dailly:** You are right that you could, in theory, do it in the way that you have described and have a schedule of people who are covered, but that would be very difficult because we are trying to get at people who are providing a service to the public, whether it be in the private sector, the third sector—the charitable sector—or the public sector. After much thought and deliberation, we took the view that the best way to do that—it comes back to previous questions about prosecutions and not causing complexities or difficulties; nobody wants that—was to keep it as simple and straightforward as possible. I would say this, but I think that the way it has been done is the best way it could be done to keep such flexibility but target it. That is never an easy job.

**Lewis Macdonald:** That is very helpful.

Some of the issues that will arise will relate to the grey areas, where people may or may not be covered by the bill. For example, evidence from the Federation of Small Businesses suggested that dealing with the public, rather than being employed to deal with the public, is what is important. It asked whether the bill would cover employers, as well as employees, when they were dealing directly with the public. We all know of agencies or businesses that use voluntary guides, for example, or that have students on placements who act as guides and such like, who are not employed in the sense that they receive a wage or salary. Do those groups come within the scope of the bill? Would further amendment be required to protect them?

**Mike Dailly:** In the third sector in particular, lots of people give up their time without payment and work as volunteers—I understand that it may be called the big society. They would be covered by the definition in section 1(3), because we have defined employment to include unpaid work, whether under a contract or not as the case may be. I think that that would be covered. I think that the definition of employment is sufficiently wide to allay those fears but, obviously, if there was any particular concern that there may be a lack of certainty, I would say that it is always better to err on the side of caution and make the position certain, if the committee thought it necessary, if the bill progresses. We have cast the net fairly wide.

**Lewis Macdonald:** Does a shopkeeper or publican employ himself and therefore obtain cover from the bill?

**Mike Dailly:** I concede that that is one issue that may need to be clarified. I again come back to Rob Gibson’s point. You do not want any technical problems down the line and, given that solicitors often look for such issues, we would clearly want to anticipate them. It may be a fair point that that is an issue that could be addressed at stage 2, to put the situation beyond doubt.

**Hugh Henry:** I am not an expert on how small businesses are structured, but many people draw wages from them. Some people structure their businesses so that they exist on dividends. That may be an issue that we need to consider further, but those who draw a wage are in paid further. We are talking about a small number of people who nevertheless provide a significant service.

**Gavin Brown (Lothians) (Con):** I am keen to explore in a bit more detail the “deterrent effect” that is referred to in the policy memorandum. I think that both witnesses have used that phrase and that both have suggested that the 2005 act has had something of a deterrent effect. Will you expand on that and provide the basis for saying it?

**Hugh Henry:** Part of our problem and part of the problem with the 2005 act is the lack of empirical evidence. Members have heard from others about the frustration that exists because statistics are not kept. To some extent, we are in the same situation with the bill. Members have heard evidence from Unison that its members who are employed in occupations that are covered by the 2005 act are reporting fewer assaults, and they have heard evidence from others who represent people who are employed in occupations that are not covered by the act that the number of assaults is increasing. I suppose that the arguments are a bit like those that members had when aggravation for different categories of people was being debated in the Parliament. What do we base our empirical evidence on? I concede that that is a difficult question.

Deterrence is important. I do not necessarily accept the argument that an increase in the number of prosecutions shows that something is not a deterrent or a success. Not all assaults necessarily lead to prosecutions, and a number of successful prosecutions could lead to a fall in the total number of assaults in workplaces.

The picture is confused, but it does not pertain only to the Protection of Workers (Scotland) Bill; it pertains to the 2005 act, aggravated offences and quite a lot of issues—hence the parliamentary questions that are often lodged by members.

**Mike Dailly:** It seems to me that nobody really wants to prosecute people for the offence of not having their seat belt on or for using their mobile phone. Such offences are enacted in order that
there will be a deterrent effect. They do not always work, of course. There will always be some people who ignore them, but they have a deterrent effect.

I think that Dave Watson from Unison made the point to the committee that it is unfortunate that the Scottish Government no longer collects civil and criminal court statistics. It has not done so for many years; the Scottish Executive stopped collecting them. Therefore, all we have is anecdotal evidence. As I said earlier, criminal defence practitioners tell me that the 2005 act makes people sit up and take notice.

Hugh Henry: I would like to expand on that. Mike Dailly mentioned seat belts. Periodically, the police carry out blitzes on drink driving. There will be times when the number of people who drink and drive go up. If the number of prosecutions and the number of incidents apparently go up, does that show that the legislation is not effective or is not a deterrent, or does it show perhaps that complacency can sometimes creep into the minds of members of the public and that it is right for the police to carry out such exercises occasionally just to remind people of the seriousness of what they are doing?

10:15

Gavin Brown: I will take the question about a deterrent effect a bit further. You have suggested, and the policy memorandum states, that attacks on health workers are falling, which is part of the basis for this legislation. Can you give me your sources for that claim?

Hugh Henry: Paragraph 7 of the policy memorandum states:

“According to figures provided by UNISON, in 2007/08 the number of assaults of health workers fell by more than 1,000 from the previous year.”

I refer you back to Unison on that.

Gavin Brown: I asked to ensure that we are getting the information from the same place. Unison, as you know, carries out an annual survey of attacks on public service workers. The most recent survey was published some three weeks ago, on 22 October. It states that, during the year, attacks on health workers increased by 1,510 to 15,212. According to Unison, which is the organisation on which you rely in your submission, there has been a 10 per cent increase in such attacks. What do you make of Unison’s most recent figures, in comparison with what you say in the policy memorandum?

Mike Dailly: That is the difficulty in not having proper, robust academic research. There could be a number of variable factors; it could be that more people are starting to report such attacks because they believe that they are now being treated seriously under the 2005 act.

The Federation of Small Businesses said in its evidence to the committee that there is an issue with underreporting, because people think, “What’s the point in coming forward?” It brings us back to the fact that we have no solid, academic evidence to go on; we can go only on anecdotes.

You asked about the deterrent effect. Colin Borland from the FSB said that if the bill was progressed and Parliament deemed it to be worth passing, it could—accompanied by a proper campaign—have a significant impact. We are all concerned about crime, but it would send out a strong message to those workers that Parliament is thinking about them.

Hugh Henry: I do not know whether it is the same set of statistics to which Gavin Brown referred, but the Sunday Post recently carried an article that referenced a piece of work by one of the health agencies, which mentioned assaults. The problem, as Mike Dailly said, is that we do not have detailed evidence.

We need to see what has followed from the 2005 act. Has it resulted in prosecutions? Has the number of prosecutions gone up significantly, to reflect the trend? Were the assaults that were reported prosecuted in other ways? What exactly do those assaults refer to? Without all that evidence, it is hard to give a detailed response.

Although I refer to Unison’s figures for 2007-08, that in and of itself is not the justification for the bill. We would not say as a justification for any bill that it will eliminate the problem. Sometimes, for socioeconomic reasons, there are patterns of behaviour in certain areas, and things happen.

As Mike Dailly said, we need a tool to enable police and prosecutors to respond to anything that occurs for whatever reason.

Gavin Brown: For the record, convener, the document to which I refer is “Violent Assaults on Public Service Staff in Scotland: Follow up Survey 2010”, produced by Unison Scotland on 22 October.

Hugh Henry: According to the parliamentary questions that were answered by the cabinet secretary, violent assaults would not necessarily be covered by prosecutions under the 2005 act. He indicates that all serious assaults are recorded under a separate crime classification.

Gavin Brown: I take that point, but it appears that the basis on which Unison has been collecting its evidence over the period has not changed dramatically; therefore, it appears that Unison is comparing like with like over the piece.

Hugh Henry: That is as maybe.
Gavin Brown: I accept that there are various reasons for your introducing the bill. One of the reasons that you suggest is the deterrent effect that the bill could have, which is based on the fact that the number of attacks on health workers decreased by 1,000 following the implementation of the EWA. However, the most recent statistics from the same organisation’s source suggest that the number of such attacks has since risen by 1,500. Do you accept that that reason for introducing the bill is negated slightly by Unison’s most recent statistics?

Hugh Henry: Not necessarily. If you take that to its logical conclusion, you could say that the crime of serious assault is not having a deterrent effect, so you could question whether we need it. If the number of murders in the country rose, we would not say that there was no longer a need to prosecute on the basis of murder because that was not having a deterrent effect. Statistics will rise and fall. The issue is whether the crime makes people think twice about what they do. I think that being able to charge people with a specific crime for an assault on a worker would, on balance, have more of a deterrent effect than not being able to do so.

Gavin Brown: One of the planks of your policy memorandum is the fact that the number of attacks on health workers went down by 1,000, demonstrating the deterrent effect of the 2005 act. That is what you say in the policy memorandum on the bill.

Hugh Henry: That was one of the reasons for introducing the bill. However, I have made it clear all the way along that I am at a disadvantage—as others are—because we do not have detailed empirical evidence of the number of prosecutions. It would be better if all of us, as legislators, had evidence for every bill that we passed. We are sometimes asked to pass legislation without being presented with the full facts or even the implications of what we are passing—in fact, that will happen later today. I can only go on the information that is available at any time. Parliament possibly needs to press ministers on the need to start collecting more detailed evidence.

Mike Dailly: To put the increases in perspective, we would need an academic process involving regression analysis that looked at multiple variables across the board and accounted for those rises to isolate the impact of the 2005 act. I am no statistician, but I have done my time at university. The problem is that you need a piece of proper academic research to be done using robust statistical analysis tools if you are to make the kind of point that you would like to be able to make. Sadly, we are not in that position.

Gavin Brown: I find it curious that when the number of attacks on health workers is down by 1,000 you suggest in the policy memorandum that that demonstrates deterrence, but that when the number is up by 1,500 you suggest that that demonstrates that people are more comfortable about reporting such crimes.

Mike Dailly: It could be anything.

Hugh Henry: To be fair, if you look at the rest of that paragraph you will see that we do not say anything definitive. We say that “it could be suggested”. We add that caveat because we are aware—and we were aware when we were drafting the bill—that there is a lack of robust evidence not just on deterrence, but on a range of things. Of course it would be better if we had such evidence. We suggested that deterrence could be advanced as an argument, but we were not categorical about it—we did not say that it is proven.

Ms Wendy Alexander (Paisley North) (Lab): I was struck by Mike Dailly’s reading out of the guidance on racial aggravation, with the rationale that it offers about the need to send a strong message with regard to that type of crime. Bearing in mind the difficulties with securing evidence in this area, is there a consensus among the legal community that having aggravations of that sort is proving helpful, either as a deterrent or with regard to the severity of the penalties that are meted out?

Mike Dailly: I return to the lack of independent, robust analysis that would allow us to answer that question fairly. All we have is anecdotes—I have mentioned anecdotal evidence from conversations with practitioners. I would say that there is something of a social policy to address. We have created aggravations in terms of race and religion—on so-called hate crimes—and one element of that can be described as social policy. The bill sends out the message that we do not think that such behaviour is acceptable in Scotland in the 21st century. As Hugh Henry has said, there will always be people committing offences. We are not saying that the bill is a panacea but, just like the 2005 act and the aggravated offences, the bill gives an extra tool to the prosecution.

Stuart McMillan (West of Scotland) (SNP): We have heard quite a bit of evidence from different people about the law as it currently stands, and it has been suggested that the existing law is sufficient to protect workers. If existing law already covers workers but businesses are not using the opportunity to prosecute if someone assaults a member of their staff, could it be suggested that, instead of our introducing new legislation in this area, more pressure could be put on businesses to deal with such cases and to protect their workers under existing legislation? I acknowledge that larger
companies will have more resources than smaller businesses to deal with such instances.

**Hugh Henry:** It is not for the business to decide whether there is to be a prosecution; it is for the police to investigate the matter. When an incident is reported to the procurator fiscal, it is for the fiscal to decide whether a prosecution is to follow. I would be disappointed if businesses do not report cases of assault to the police, irrespective of their size.

I think that large businesses in particular should have in place codes of conduct for how staff ought to behave in relation to one other and in relation to the public. Very clear training should be given about how staff should respond if they are confronted by aggressive or threatening customers or members of the public. Businesses need to take their responsibility to their employees seriously—they should take seriously the need to provide a secure and safe working environment for their employees. Most large businesses do so, and those that do not should be encouraged to do so. As I say, I would be very disappointed if it turned out that incidents are not being reported to the police.

You have heard evidence from others about what happens once incidents are reported. Do they go to the procurator fiscal? Does the procurator fiscal pursue the matter to the courts? Do the courts give out the sentences that those who have been victimised feel they should be imposing? Those are separate issues, which others have already raised.

10:30

**Mike Dailly:** If the message goes out that particular behaviour will be treated more seriously, people may be encouraged to co-operate and to report more. When Govan Law Centre had shopfront premises, someone who was drunk came in, saw three women sitting at the front counter and decided to abuse and assault them. We went through a huge process of taking the matter to the district court but, ultimately, there was no conviction as there was some sort of plea bargain. That sort of thing leads people to wonder whether there is any point following through on such incidents. The bill would help to address that; it would protect from assault people such as me, MSPs—when they are working in their constituency offices—and anyone else who provides interface with the public. We are trying to encourage people to think that such behaviour is unacceptable and that they can report it.

**Stuart McMillan:** Earlier you said that the bill, if passed, would provide us with another opportunity to deal with assaults. You have just mentioned plea bargaining. If the bill were regarded as a lesser piece of legislation or as providing for a lesser sentence, could it be plea bargained away more easily between lawyers before or during cases?

**Mike Dailly:** I am not sure that that would be the case. I accept that anecdotal evidence is not satisfactory but, when I speak to criminal defence practitioners, I do not get the impression that the 2005 act is plea bargained away. Rather, I get the impression that if someone decides to plead not guilty to an offence under the 2005 act they had better be wary, because they could be facing a custodial sentence. Whether the bill would result in people being encouraged to plea bargain is another issue. Plea bargaining is a big part of the criminal justice system; the volume of cases is such that, if it did not happen, the system would grind to a halt. However, I am not entirely convinced that the bill, if passed, would be plea bargained away.

**Hugh Henry:** I see no reason for plea bargaining to apply differently in respect of the bill than in respect of any other piece of legislation. Elected members often become frustrated when we hear the outcome of cases following incidents but, as Mike Dailly said, there are often good reasons for that outcome. If the option of plea bargaining were not available, the system would grind to a halt.

**Stuart McMillan:** We have discussed the cabinet secretary’s letter and the number of workers in sales and customer services occupations who are covered by the bill. Mr Dailly indicated that call centre workers are not covered. We have heard evidence about the verbal abuse—as opposed to physical assault—that people suffer; I refer to instances in which a person says to someone who is working in a bar, restaurant or shop, “I will get you afterwards.” People who work in call centres may also suffer verbal abuse, but they are not covered by the bill.

**Mike Dailly:** It is more likely that that could be prosecuted under telecommunications legislation. I think that there is a specific statutory offence of intimidating or abusing folk over the telephone. I can double check that, but I am sure that there is one. That is used in such situations. I suppose that the common law is available, too, in relation to people texting and so on. Other offences exist.

**Stuart McMillan:** I just want to tease out the point that call centre workers would not be covered by the bill although they probably take more verbal abuse than many other workers. I have been into a few call centres to learn a bit about the operation and I have listened in to some conversations. That point has been raised time and again with me.
Hugh Henry: The STUC has vigorously advocated that further protection be given to call centre workers. However, we had to frame the bill in a way that we thought was robust and defensible. We decided that the clear line should be the point of contact with the public in providing a service. That is not to say that there should not be a debate on the issue. If the bill got to stage 2 and members such as you who are listening to the arguments of those who support call centre workers felt that a workable amendment could be made, that would be for others to determine. However, the bill currently does not cover verbal abuse over the telephone.

The Convener: I seek clarification on the potential amendment on obstruction and hindrance that you might wish to lodge if this bill proceeds to stage 2. My recollection is that, when the Emergency Workers (Scotland) Bill was introduced, part of the reason for the obstruction and hindrance provision was the specific concern at the time about emergency vehicles being hindered when they attend incidents and life-threatening situations. Obstruction or hindrance of, for example, a bus driver is not likely to lead to a life-or-death situation, although it might lead to somebody being a bit late for an appointment. I am not sure that there is a like-for-like comparison between the provision in the 2005 act and the proposed amendment.

Hugh Henry: I recognise that, but the issue of hindrance and obstruction applies slightly more widely. An argument on the need for such a provision has been made in the committee and it has been raised with me. I am sympathetic to it, but I cannot give any guarantees about its inclusion in the bill. My duty, as the promoter of the bill, is to bring the bill as written to Parliament, which I have done, and you are considering it. At this stage, we can argue only about what I have proposed. If others wished to articulate an argument about hindrance and obstruction at stage 2—if the bill ever gets to that stage—I would be sympathetic to it, but it would be a matter for Parliament to determine rather than me, because we would have reached a different stage in the process.

The Convener: I accept that. When you did your consultation on the proposals in the bill, was that issue raised by you as part of the consultation or in the responses to it?

Hugh Henry: The issue came up. I will leave Mike Dailly to give more detailed information, but there was an issue with preparing the bill. As Mike Dailly indicated, he stepped in to the process late. Because of the pressures on the non-Executive bills unit, I could not get support from it at that stage. I was faced with having to draw together a proposal for legislation. If I had included a provision that, as you hinted, convener, was complicated, there was a danger that I would have missed the deadline for the bill. I wanted to have a bill that was capable of progressing and that met the core needs.

The issue of hindrance and obstruction has come up. It is fair to say that there are differing views about its significance. Some argue more vociferously than others that there is a need for a provision on it. The issue warrants more detailed reflection. I am not unsympathetic to the arguments. I accept what the convener says, but there are specific instances in which a provision on hindrance and obstruction could help the police and the prosecuting authorities.

Mike Dailly: I am sympathetic to the convener’s point about the comparison with the provision on obstruction and hindrance under the 2005 act. Because of that kind of thought, my advice to Hugh Henry was that we needed to canvass on that aspect. In many respects, it has been helpful to have the evidence that came out before the committee and to reflect on that. At the end of the day, as Hugh Henry said, if the bill progresses, the matter would be for the committee to decide.

From a public policy point of view, arguments can be made that, in certain circumstances, obstructing or hindering somebody who is providing a service to the public could be a sufficiently serious matter. I gave an example earlier about a train full of passengers being stopped because somebody harassed the conductor and the police had been called. It could be argued that that is a pretty serious matter, because all the other trains behind it would be stopped. If that happens on the Glasgow to Edinburgh line, the game is a bogey. As a commuter, I think that that is pretty serious. So a case could be made for such a provision, although I am sympathetic to the convener’s position, which is that it does not just read across from the 2005 act.

The Convener: It was not a position; it was a question. We will have to explore the issues if an amendment is to be lodged at a later stage in the legislative process.

I thank Mike Dailly and Hugh Henry for giving evidence and for answering our questions fully. I also thank Hugh Henry for his attendance at previous meetings in which we considered the bill. The committee will now consider its stage 1 report and there will be a debate in Parliament in due course.

I suspend the meeting for a few moments while we change witnesses.

10:42

Meeting suspended.
ANNEXE D: LIST OF WRITTEN EVIDENCE

Copies of all other written and supplementary evidence received by the Committee can be found on the Scottish Parliament website (www.scottish.parliament.uk)

SUBMISSION FROM ASLEF (Associated Society of Locomotive Engineers and Firemen)

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK’s largest train driver’s union representing approximately 18,000 members in train operating companies and freight companies as well as London Underground and Overground.

2. ASLEF welcomes the fact that Hugh Henry MSP has raised the issue of worker protection and hope this will lead to a proper debate on the issue of assault on transport workers. We also support the proposal that will lead to stricter sentences for those who attack staff providing a service to the public.

3. The primary role of a trade union is to protect its members. This takes many forms the most important of which are the welfare and physical health of members. ASLEF has continuously campaigned to improve the health and safety within the rail industry. The railways have the potential to be extremely dangerous working environments. Through joint working with employers and various agencies, the union has significantly improved the health and safety environment of many of our members. As a result of this one of the biggest threats to our members safety is, in fact, the travelling public whom they serve.

4. ASLEF would point out that the SRM (Safety Risk Model) estimates that 11% of all workforce risk is due to assaults. Three quarters of this risk is from physical assaults. The remainder comprises shock and trauma arising from verbal abuse and threats. In 2009/10, the British railway workforce had to endure eight major injuries, 527 minor injuries, and 727 cases of shock/trauma to the workforce, as a result of assault. ASLEF believes that one injury due to violence is one too many and this problem must be alleviated.

5. As would be expected, regarding this issue the welfare of our members is our main priority. However, there are other consequences of assaults on staff. It can also lead to major disruption to the rail network which will affect passengers and in turn revenue. It may also lead to the perception that rail travel is unsafe and prevent people using rail services in the future.

6. There are of course many measures which could be introduced to prevent such crimes and there should be a new offence created to deal with this. ASLEF strongly agrees with the proposals that tougher sentencing should be introduced as a preventative measure. The union agrees with the new offence carrying a prison sentence of up to 12 months and a fine of £5000.

7. The union does not believe that there would be a significant cost associated with this bill. In fact, as previously mentioned, crime on the rail network can lead to reduced revenue due to delays and lower passenger numbers. Therefore a reduction in staff assaults would lead to higher revenues. In addition, the union feels that there should be no cost cutting measures when it comes to the safety of train drivers who provide an essential service.
8. We would additionally point out that in 2009/2010 there were 1776 physical assaults on railway staff along with 683 threats and 2413 verbal assaults. These incidents had a significant impact both on the staff involved as well as the operation of rail services. In the average week, for instance, four to five workers will suffer injury from an assault which will lead to at least one day’s absence from work. Of those assaults resulting in absence, 26% will be over a week and 11% lead to over 5 weeks away from work. This causes a great strain on the railways which simply cannot function if understaffed.

9. ASLEF believes that it is essential that workers who deliver a public service are given the same protection as those covered by the Emergency Workers Act. An attack on either can affect public services and in turn public safety. ASLEF therefore strongly supports the bill and hopes it can make progress in ensuring that the 4872 assaults to railway staff in 2009/10 dramatically reduce over the coming years.

ASLEF
August 2010
Q1. Are there any other groups of workers that you think should be captured in the Bill?

The proposal to extend the Bill to all workers who provide a face to face service to the public, would in essence, represent the vast majority of those employed in the extensive public and private service sectors. There would therefore, be no recommendation for further extension.

Q2. How effective have you found the Emergency Workers Act 2005?

Application of this legislation is now well established throughout Scotland and the legislation provides a useful statutory tool to be considered when dealing with such crimes.

There is little evidence to suggest that assaults on emergency workers have increased since the Act’s inception and a dip sample of court disposals for such cases (ranging from assaulting / obstructing ambulance personnel) in one Force, showed outcomes ranging from offenders being admonished to receiving up to 4 months imprisonment.

It is worth noting that the provisions of the 2005 Act were introduced to recognise the key roles played by all emergency services. This reflects the fact that emergency workers may find themselves subjected to abuse, violence or be exposed to the risk of injury when attempting to assist individuals or save lives. The sanctions detailed within the Act recognise that this type of behaviour will not be tolerated against those individuals who seek to deliver a unique service. Additionally, it should be noted that emergency workers have no option to refuse service provision, as compared to other workers.

The definition of emergency within the legislation does not cover the day to day activities of emergency services, and the penalties imposed reflect the serious nature of such offences and the detrimental impact they have on these workers’ ability to respond to emergency situations.

The Act was modified in 2008 to include medical practitioners, midwives etc engaged in their “daily activities” in hospital premises. This exception to emergency circumstances was deemed necessary, due to the importance of these roles and the particular situations such workers may encounter.

Q3. Do you think there will be additional cost associated with this Bill?

No additional costs were anticipated in relation to the proposed Bill.
Q4. Are the penalties proposed in this document sufficient, and if not, what penalties would you propose?

Q5. Do you have any other comments or views on extending the tougher penalties contained in the Emergency Workers Act 2005, to workers providing a face to face services to the public?

In general terms, the principle that persons who work in public facing roles should expect adequate protection by the law should they fall victim to crime, is a sound and accepted one. At present there are provisions under common law to protect these individuals.

The current Standard Police Report (SPR2) provides the opportunity to highlight fully the circumstances of an assault, be it upon a ‘shop worker’ or whomever, and provides the Crown with sufficient evidence and information to ensure the Sheriff (etc) is sighted on the particulars of each case to pass an appropriate sentence.

Any penalties imposed by such a Bill would have to reflect the detrimental impact to the service of each individual service provider. For the reasons highlighted above in response to Q2. In relation to the unique role of emergency services, to compare or attempt to reflect the penalties imposed by the Emergency Workers (Scotland) Act 2005 would be inappropriate.

Q6. In what ways will the proposed Bill extend equal opportunity provisions and should it go further?

It would not appear to be the case that the Bill would extend equal opportunities. Any legislation to deter and punish individuals, who assault etc those who provide any public service, should be progressed on its merits, as opposed to attempting to mirror the Emergency Workers (Scotland) Act 2005.

Q7. Should hindrance and/or obstruction of the workers specified in the proposal be included in this proposed bill in the same way as is in the Emergency Workers Act?

The interpretation of which workers are, or are not, protected by the Bill could be extremely problematic with the phrase, ‘providing a service face to face with the public’, being wide ranging.

There may also be significant issues with extending the use of the offences of hindrance / obstruction when applied to general public facing employees. The interpretation of what would merit hindering or obstructing a bus driver or shop worker for example, is open to interpretation and in some cases could criminalise extremely minor acts. The work being carried out by a paramedic or fire-fighter responding to an emergency situation or assisting a critically injured person and being obstructed or hindered from doing so, is obviously far more easily defined.
There is also a danger that by encompassing such offences for all public-serving workers, this may devalue the aggravating nature of the current legislation to protect emergency service personnel.

As you will be aware, Violence is recognised as a very high priority in the Scottish Control Strategy, with crimes and offences in the category covered by the proposed legislation clearly falling within this area and receiving a considerable amount of attention and scrutiny. Additionally, forces, as active participants in the Campaign against Violence, have already put into place additional processes and initiatives to address this type of offending behaviour.

In conclusion, whilst the general principle that people working in public facing roles should expect appropriate protection under the law is agreed, ACPOS believes that current common law provisions and Forces’ priorities adequately protect such workers, without the need for further legislation.

ACPOS would therefore not support the proposed Bill.

August 2010
Economy, Energy and Tourism Committee, 9th Report, 2010 (Session 3) — Annexe D

SUBMISSION FROM CAPABILITY SCOTLAND

1. BACKGROUND

1.1. Capability Scotland is one of Scotland’s leading providers of employment, education and support services to disabled people, their families and carers.

1.2. The organisation’s direct service provision is combined with campaigning, consultancy and advice to ensure that the organisation functions as an ally of disabled people as they strive to gain full equality, choice and control in their lives.

1.3. Capability employs approximately 1,000 staff across a broad range of occupational disciplines from social care and nursing through to shop work, marketing and campaigning.

1.4. Capability Scotland is committed to taking all reasonable precautions necessary to secure the health and safety of all employees carrying out work activities, including helping to combat violence and aggression.

1.5. Capability recognises that the likelihood of experiencing challenging behaviour, which may lead to injury and/or verbal abuse in the workplace, is a genuine concern for many of our staff.

1.6. It is also recognised that the nature of the services Capability provides may sometimes place particular groups of staff at risk.

1.7. Capability supports staff with effective use of personal planning and risk assessment to seek to remove, minimise or manage the risks and effects of challenging behaviour.

1.8. Our staff have the right to involve the police if they have been assaulted or feel that their personal safety is in jeopardy as a result of a service user’s challenging behaviour or the behaviour of a member of the public.

1.9. We are aware that the Economy, Energy and Tourism Committee are considering evidence on the general principles of the Protection of Workers (Scotland) Bill.

1.10. This Bill seeks to create a specific statutory offence dealing with assaults on people whose work brings them into contact with members of the public.

1.11. Capability Scotland is pleased to provide written evidence in relation to this draft Bill.

1.12. We are broadly supportive of the general principles of the bill and are very pleased to see unpaid workers included within the scope of the legislation.
2. **SPECIFIC COMMENTS**

2.1. We are aware that there has been significant debate in the Scottish Parliament around the necessity for additional legislation in this area given the protections already offered to public-facing workers under the common law of assault and the common law of breach of the peace.

2.2. As an organisation Capability Scotland is pleased that successive Scottish Governments have recognised the nature and the scale of the problem in relation to violence against workers in the public services.

2.3. We believe extending protections provided by the EWA to all public-facing workers will send a clear public policy message that violence against workers who are serving the public should not be tolerated.

2.4. Our specific comments relate however to the need for the following in any extension of EWA protections to public-facing workers:

- clarification as to who would constitute a member of the public
- assurances that provisions within the draft Bill would apply suitably to the care settings that many of our workers operate in
- clarification as to whether non-physical assault would be covered by this legislation if it led to obstruction of a service (verbal assaults/threatening behaviour that can be physically damaging to a worker for example)
- clarification as to whether hindrance and/or obstruction of workers will be proposed in the same way in this Bill as it is in the EWA.

**BILL SECTIONS**

1.1. Section 1(1) of the draft Bill makes it an offence for a person, defined as a member of the public, to assault a worker during (a) the course of that worker's employment or (b) by reason of that worker's employment. At present the Bill does not elaborate on who this might exclude from the scope of the offence. We would welcome clarification about who would be covered by the definition of member of the public – would this new offence cover disabled people who use our services and their families and supporters if they assaulted a member of our staff?

1.2. Section 1(2) of the draft Bill states that no offence is committed unless the person who assaults knows or ought to know that the worker is acting in the course of the worker's employment. If our service users are covered in the definition of member of the public, it may be difficult to establish prior knowledge or malice towards a worker's employment in this context particularly when there are doubts over a person's capacity.
1.3. Non-physical assault, principally threatening or violent verbal abuse towards staff that leads to staff absence and sick leave can be as obstructive to service delivery as a physical assault in some cases. Are there any plans to apply tougher penalties to breaches of the peace directed at public facing workers?

1.4. In relation to hindrance and/or obstruction of workers, will this be proposed in the same way in this Bill as it is in the EWA? We are unclear that hindrance and obstruction would apply as readily to the delivery of services that we provide as to the provision of an emergency service.

Capability Scotland,
September 2010
I understand that at the evidence session on 22 September 2010, in relation to Stage 1 of the Protection of Workers (Scotland) Bill, a number of issues were raised which relate to the work of Crown Office and Procurator Fiscal Service (COPFS). The Committee has sought a response from COPFS and I am grateful for the opportunity to submit evidence to the Economy, Energy and Tourism Committee.

I understand that concerns were raised in the evidence given to the Committee that criminal proceedings are not being taken in cases involving public service workers and indeed in cases involving offences under the Emergency Workers Act 2005.

I am obviously concerned to learn of this perception among those who represent workers. I would like to take this opportunity to reassure the Committee and all interested parties that COPFS takes a robust approach in relation to crimes against both emergency and public service workers. Clear guidance has been issued to Procurators Fiscal that where a decision has been taken to raise criminal proceedings in a case involving a charge under the Emergency Workers Act 2005 ("the 2005 Act") or in a case involving an assault on a public service worker, proceedings in the Sheriff Court will usually be appropriate.

This has been our prosecution policy as far back as 2004, when my predecessor, Mr. Colin Boyd QC took part in Parliamentary debates in relation to the Emergency Workers (Scotland) Bill. He stated inter alia the following:-

“It is completely unacceptable that anyone should be the subject of assault or abuse at work. We want to make sure that the law is an effective tool in ensuring the safety and welfare of emergency workers and all public service workers. We are prudent to recognise that legislation is not the answer in every case. In some situations the best possible solutions lie within existing law. I am firmly of the view that this is true for the protection of public service workers. However, the situation is different for emergency personnel. These workers perform a unique and vital role in our society. The nature of their work renders them, and those who assist them, particularly vulnerable to attack. When emergency workers are assaulted, obstructed, or hindered, in the course of dealing with an emergency, it is not only their lives which are put at risk, but the lives of those they are working to protect.”

I wholeheartedly endorse these comments. The prosecution of assaults committed against workers who have face to face contact with the public can be appropriately dealt with under the existing common law, which also allows for offences of particular gravity to be prosecuted on indictment. The common law allows for greater flexibility and penalties than the statutory provisions. I can give two recent examples of this in practice.

In the case of PF Dundee v Simpson, the accused assaulted two paramedics who came to his assistance when he was reported as being unconscious in the street.
He was only 16 years of age and extremely drunk. One of the complainers sustained a fractured rib.

The Crown proceeded on a charge under the 2005 Act and a common law assault to injury. The accused was sentenced to 8 months detention. In HMA v Lamont, the accused was prosecuted on indictment for offences under the 2005 Act, breaches of the peace, possession of offensive weapons and police assaults. He was sentenced in total to 21 months imprisonment.

These cases highlight occasions where the Crown has libelled a mixture of common law and statutory offences involving emergency workers, with a positive outcome. Data about cases prosecuted under the 2005 Act between 2006 and 2010 is also enclosed with this letter to provide information about the approach by procurators fiscal and subsequent sentencing by the courts.

The normal rules of evidence apply and if there is insufficient evidence providing the necessary corroboration to prove the charge then criminal proceedings cannot be raised.

The data indicates that of the 2,313 cases reported to COPFS under the 2005 Act between 2006 and 2010, procurators fiscal took action in 90% of cases and 85% of cases proceeded in the Sheriff Court. In 5% of cases Direct Measures were deemed to be appropriate. The majority of these were issued prior to the changes made by Summary Justice Reform.

Of the cases prosecuted, procurators fiscal subsequently discontinued proceedings in only a tenth of these cases with the most common reasons being the incapacity or death of the accused or a change in the evidence available leading to insufficient to continue proceedings.

In terms of sentences for EWA offences, the courts have imposed prison sentences in a third of cases and direct alternatives to imprisonment particularly probation and community service in over a quarter of cases. There is a small percentage (around 12%) where absolute discharges were granted. Whilst the matter of sentencing is not for COPFS, it does appear that the courts regard these offences seriously and sentence accordingly.

I understand that frustration was expressed about the lack of information publicly available in relation to the incidence of common law offences, such as assaults or breaches of the peace, involving public service workers. COPFS cannot provide this information as the COPFS database is designed to meet the needs of COPFS, as the prosecution authority. The database can provide information according to particular offences. Offences are not categorised by whether the offence occurred at a place of work nor are Victims categorised according to their occupation.

The COPFS database was never intended to be a statistical database and, although we have made many improvements in order to assist criminal justice colleagues, providing the type of information sought would be highly resource intensive, involving an individual examination of every case submitted to COPFS by the police where a particular charge is involved. In addition, given the
integrated criminal justice system, many of the statistics we provide rely on other criminal justice agencies such as Scottish Courts Service which records all disposals in court.

I note from the comments made at Committee on 22 September 2010, that there appears to be some confusion in relation to the meaning around the terminologies of ‘aggravations’, ‘statutory aggravations’ and ‘aggravating factors’. It might assist if I were to provide some further explanation.

Offences under the 2005 Act are specific offences and are not aggravations to the common law offences of assault or breach of the peace. Matters which are not part of the crime itself may nevertheless assume importance as aggravations, that is, circumstances which are included on indictments or complaints in order to add further gravity to the charge and, possibly, to any sentence. There are a number of statutory aggravations which, if established, the court is obliged to take into consideration when sentencing. Examples of such aggravations are that the offence was motivated by racial or religious prejudice or a prejudice based on someone’s perceived disability, sexual orientation or transgender status.

However, if an assault was committed against a victim who was in the course of their employment, that fact would be considered to be an aggravating factor, in terms of aggravating the seriousness of the offence, and is a fact that the Crown would narrate to the court in the event that the accused plead guilty or which would be led in evidence at trial to enable the court to consider the full circumstances of the offence.

It is suggested in the evidence given on 22 September that there is anecdotal evidence that Procurators Fiscal remove aggravations as part of plea negotiations. The statutory aggravations are not removed as part of plea negotiation where there is sufficient evidence to support the aggravation and, equally, the fact that an offence occurred during the course of a victim’s employment forms part of the facts of the case and is not a matter which would be withheld from the court in the event of a plea of guilty.

I hope that the Committee finds this evidence useful. I would be happy to answer any additional questions as the Bill progresses.
SUBMISSION FROM THE FEDERATION OF SMALL BUSINESSES

Introduction

1. The Federation of Small Businesses is Scotland’s largest direct-member business organisation, representing around 20,000 members in every sector of the economy and every area of the country. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

2. Given that our members play an integral role in their communities by delivering important services, we welcome the opportunity to submit our comments to the consultation on the Protection of Workers (Scotland) Bill.

Background

3. The Emergency Workers (Scotland) Act 2005 introduced tougher criminal penalties for those who assault, hinder or obstruct specified emergency service workers in the course of their work. Others who also provide a service to the public, such as shop workers and bus and taxi drivers, were not covered and so this Bill aims to extend a similar protection to them.

4. This, we believe, is a most laudable objective. A range of workers provide essential services – from transport to retail – without which communities would not remain viable. Thus, we welcome moves to send a strong message that violence against people delivering those services is completely unacceptable and to extend to them the same protection enjoyed by emergency workers.

5. The FSB responded to the consultation on the Workers (Aggravated Offences) (Scotland) Bill in September 2009. In that response, we raised a question about whether the self-employed / owner-managers would be covered by the legislation. It is on this issue that we would again seek clarification.

FSB Research

6. A recent FSB/ICM survey of FSB members found that 28 per cent of respondents in Scotland had experienced threatening behaviour, intimidation or aggression in the course of the last year. We feel that these findings are relevant to this response. (Details of full survey results are available on request.)
FSB-ICM ‘Voice of Small Business’ Panel Survey (June 2010)
Online Fieldwork: 18th June - 4th July 2010

Q4 In the course of your business activities have you suffered from any of the following crimes in the past year?

Base: All respondents

<table>
<thead>
<tr>
<th>Crime Type</th>
<th>England (j)</th>
<th>Scotland (k)</th>
<th>Northern Ireland (l)</th>
<th>Wales (m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unweighted base</td>
<td>1216</td>
<td>1006</td>
<td>122</td>
<td>28</td>
</tr>
<tr>
<td>Weighted base</td>
<td>1216</td>
<td>984</td>
<td>123</td>
<td>49**</td>
</tr>
<tr>
<td>NET: Any mention/crime</td>
<td>772</td>
<td>617</td>
<td>79</td>
<td>30</td>
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<tr>
<td>Criminal damage / vandalism</td>
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<td>63%</td>
<td>65%</td>
<td>61%</td>
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<tr>
<td>Graffiti</td>
<td>152</td>
<td>117</td>
<td>18</td>
<td>5</td>
</tr>
<tr>
<td>Vehicle theft / damage</td>
<td>281</td>
<td>227</td>
<td>27</td>
<td>10</td>
</tr>
<tr>
<td>Threatening behaviour / intimidation / aggression</td>
<td>23%</td>
<td>23%</td>
<td>22%</td>
<td>21%</td>
</tr>
<tr>
<td>Shoplifting</td>
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<td>105</td>
<td>24</td>
<td>12</td>
</tr>
<tr>
<td>Fly-tipping</td>
<td>202</td>
<td>162</td>
<td>21</td>
<td>9</td>
</tr>
<tr>
<td>Arson</td>
<td>16</td>
<td>13</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Burglary</td>
<td>160</td>
<td>133</td>
<td>10</td>
<td>7</td>
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<tr>
<td>Robbery</td>
<td>93</td>
<td>72</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Assault on owners / staff</td>
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<td>5</td>
<td>2</td>
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<tr>
<td>Gun or knife related crime</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>-</td>
</tr>
</tbody>
</table>

Proportions/Means: Columns Tested (5% risk level) - a/b/c/d/e/f/g/h/i/k/l/m - j/k - j/l - j/m - o/p
* small base; ** very small base (under 30) ineligible for sig testing
Prepared for The Federation of Small Businesses by Guided Insight & ICM Research
Definition of ‘worker’ and ‘employment’

7. Section 1(3) defines the individuals to whom the provisions of the Bill will apply. Essentially, “worker” is defined as a, “person whose employment involves dealing with members of the public”. “Employment” is then defined as, “any paid or unpaid work whether under a contract, apprenticeship, or otherwise.”

8. Thus, the section will cover employees, contractors, agency workers, volunteers and apprentices. However, we are unclear whether the term “or otherwise” will include the self-employed or business owners.

9. Looking to the policy memorandum for evidence of intention, examples of the sort of occupations which are key to communities include taxi drivers, who in many cases will be self-employed.

10. The FSB, therefore, would like to see the self-employed and business owners explicitly included on the face of the Bill. This would give our members, such as shop owner/managers, an assurance that they enjoyed the same protection as other individuals within the business who happen to be employees.

Conclusion

11. Small businesses provide vital services (and, of course, the consequent jobs) in communities across Scotland. Indeed, the local pub, shop or Post Office can often be the glue which binds vulnerable rural and urban communities together. The FSB therefore backs any move to recognise the importance of these businesses and their staff and to protect them from violence and intimidation at work.

12. To be equitable and truly effective, however, this Bill must apply to those who are delivering services while self-employed. The FSB therefore calls for the inclusion, on the face of the bill, of confirmation that the protection will extend to the self-employed and other business owners.

Federation of Small Businesses
September 2010
SUBMISSION FROM RCN SCOTLAND

Protection of Workers (Scotland) Bill

1. As the largest trade union for nurses, nursing assistants and nursing students, the Royal College of Nursing (RCN) Scotland welcomes the opportunity to comment on the Protection of Workers (Scotland) Bill at Stage 1.

2. RCN Scotland supports the principle of all workers serving the public being offered extra legislative protection from assaults and abuse. RCN Scotland fought long and hard for the introduction of the Emergency Workers (Scotland) Act and the extension that was made in 2008 to cover healthcare workers based in our communities. This was because assaults against healthcare staff – and a lack of subsequent prosecutions – had almost come to be seen as part of the job, particularly for staff working in accident and emergency departments.

3. However, while our members feel that the Act affords them some protection and serves as a deterrent to some would-be offenders, there is some concern that health boards are not giving staff appropriate levels of support to report assaults to the police and are not necessarily pushing for prosecutions under the Act. Given this concern, RCN Scotland is pleased that the approach taken by Hugh Henry MSP will result in separate legislation to protect other workers serving the public, rather than extending the Emergency Workers Act to cover all types of worker serving the public. This will mean that the existing legislation will not be diluted and there will still be an impetus for health boards to improve the level of support they give to staff who would like to see perpetrators of violence prosecuted under the Emergency Workers Act.

4. RCN Scotland believes that the principle of everyone serving the public being afforded additional legislative protection from assaults is robust and as such we support the principles behind the Protection of Workers (Scotland) Bill.

RCN Scotland
August 2010
SUBMISSION FROM SCOTTISH CHILDREN’S REPORTER ADMINISTRATION (SCRA)

1. Introduction

1.1 SCRA welcomes the opportunity to provide written evidence to the Economy, Energy and Tourism Committee on the Protection of Workers (Scotland) Bill.

1.2 We are pleased to note that assaults on SCRA staff by members of the public are extremely rare but nonetheless we welcome the Bill’s extension of the protections granted by the Emergency Workers (Scotland) Act to other workers providing public services, whether on a paid or voluntary basis.

2. Detailed response

2.1 We understand that the Bill would cover SCRA staff members including Reporters, reception staff and support staff whose role involves face to face contact with members of the public.

2.2 However, SCRA has a question about the definition of “in the same place, at the same time” contained in s.3(a) of the Bill and whether a narrow interpretation of this part of the Bill might unreasonably withhold protection from a cohort of staff who provide a valuable public service. As an example, our Glasgow office includes a number of Hearings suites on the lower floors where children and families come to attend Children’s Hearings. The upper floors accommodate our staff who enter the building by a separate entrance. There are a number of staff members who do not have direct face to face contact with members of the public in the course of their work, but do deal on a regular basis with families over the phone in situations that can often be emotionally highly charged. Should one of them be assaulted leaving the office due to having been identified as an SCRA staff member, it is difficult to see how the provisions of the Bill would apply unless the definition of “in the same place at the same time” was fairly broad. We would not wish to see a lesser degree of protection applied to such staff members and hope that the Committee will consider how this situation might be remedied.

3. Conclusion

3.1 SCRA welcomes the provisions of the Protection of Workers (Scotland) Bill, subject to the comments made above in relation to s.3(a).

SCRA
September 2010
SUBMISSION FROM THE SCOTTISH GOVERNMENT

Introduction

This memorandum has been prepared by the Scottish Government to assist consideration by the Economy, Energy and Tourism Committee of the Protection of Workers (Scotland) Bill (“the Bill”), which was introduced by Hugh Henry MSP on 1 June 2010.

Background

The Bill provides for a specific statutory offence of assault on a public facing worker. A relevant worker is defined under the Bill as a person whose employment involves dealing with members of the public, to any extent; but only if that employment involves:

- being physically present in the same place and at the same time as one or more members of the public; and (either or both)
- interacting with those members of the public for the purposes of the employment, or providing a service to either particular members of the public or the public generally.

The statutory offence would be triable at summary level only and would carry a maximum penalty of 12 months imprisonment and/or a fine up to the prescribed sum (currently £10,000).

The current common law of assault provides legal protections to public facing workers (and everyone else) as they go about their daily lives. The specific statutory offence provided for in Hugh Henry’s Bill would not therefore extend the scope of the criminal law in any way and would rather replicate part of existing common law within a separate specific statutory offence.

Consultation

Mr Henry ran a consultation between June and September 2009. 192 responses were received with significant support offered for the proposals. One third of respondents (64) were from either trade unions themselves or individual members of trade unions. There were 92 individual respondents who did not specify whether they were members of trade unions.

Financial Impact

The Financial Memorandum to the Bill indicates the financial implications of the provisions are relatively limited with no significant on-going costs. We agree with this assessment as the Bill would place on statute conduct that is already against the common law of assault. As such, it is unlikely any significant costs would arise as no new prosecutions would likely emerge. There would be normal minor transitional costs for justice system partners (the Crown Office and Procurator Fiscal Service, the police, the Scottish Court Service) associated with the creation of statutory criminal offences eg. updating IT systems.
Scottish Government’s Position

In many respects, the approach taken with the Bill seeks to develop the content of the Emergency Workers (Scotland) Act 2005 (“the 2005 Act”). Much of the debate during the progress through Parliament of the 2005 Act centred on whether it was necessary to take conduct that was already against the common law of assault and breach of the peace and provide for specific statutory offences relating to assaulting, obstructing or hindering workers who provide emergency services.

The 2005 Act has been in force for some years with the following data collected in relation to its use:

<table>
<thead>
<tr>
<th>Persons with a charge proved in Scottish courts under the Emergency Workers (Scotland) Act 2005(1), by category of offence, 2005-06 - 2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charge</td>
</tr>
<tr>
<td>Emergency workers (Scotland) Act 2005 Section 1(1)</td>
</tr>
<tr>
<td>Emergency workers (Scotland) Act 2005 Section 2(1)</td>
</tr>
<tr>
<td>Emergency workers (Scotland) Act 2005 Section 3(1)</td>
</tr>
<tr>
<td>Emergency workers (Scotland) Act 2005 Section 5(1)</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

1. Where main offence.

As noted above, the 2005 Act provided for specific statutory offences relating to conduct that was already covered by the common law of assault and breach of peace. The way data is collected in relation to common law charges of assault and breach of the peace mean it is difficult to reach any conclusions in respect of what the 2005 Act data shows as no meaningful comparison can be made between the period pre implementation of the 2005 Act and post implementation of the 2005 Act. The reason for this is that the data held in respect of common law assault and breach of the peace does not include information relating to the occupation of the victims and so pre 2005 Act data cannot show the incidences of assaults and breaches of the peace against emergency workers.

Supporters of Hugh Henry’s Bill have pointed to the ‘success’ of the 2005 Act as a reason as to why this Bill should be supported. It is certainly true to say the 2005 Act is being used by prosecutors in libelling charges, but we do not believe this equates to a ‘success’ of the 2005 Act in itself. In fact, one of the main policy drivers for the 2005 Act was to act as a deterrent to those who may attack emergency workers. As such, if we wished to define ‘success’ with only reference to the data, we would expect the number of offences under the 2005 Act to fall in number as the deterrent effect operates rather than rise as has happened. However, it is probably easiest if no final conclusions are drawn at all given the difficulties in analysing what the 2005 Act data shows.

Another justification given by supporters of the Bill is that a specific statutory offence will ensure the justice system takes more seriously offences against public facing workers. The Crown Office have confirmed that prosecutors deal with every case on its own merits with each case being considered on its own facts and circumstances. If it is established that a crime had been committed against a relevant public service worker in the course of their employment, then the fact that the offence is alleged to have occurred while the victim is providing such a public
service is certainly one of the factors which Procurators Fiscal take into account when deciding what action should be taken in the public interest. Moreover it is viewed as a serious common law aggravating factor and a robust prosecutorial approach is adopted.

Anecdotal evidence suggests that courts do take very seriously cases of assault against public facing workers. For example, a recent case where two accused were convicted on indictment at Glasgow Sheriff Court of the assault of a taxi driver with an axe and robbery of his vehicle. The accused were sentenced to 6 years and 45 months imprisonment respectively. Another recent case from Perth, where an accused pled guilty on indictment to assaulting a nurse by lunging at her, seizing and restraining her by the body and holding a syringe and needle at her neck. The accused was sentenced to 16 months imprisonment.

Another recent Perth case, where an accused pled guilty to shoplifting and thereafter struggling with a member of the shop staff causing them injury. The accused was sentenced to imprisonment for a period of 2 months imprisonment for the shoplifting; and 5 months imprisonment for the breach of the peace by struggling with the shop worker. The court instructed that the sentences run consecutively, so that is a total of 7 months imprisonment. Although anecdotal, these cases help show there is no evidence to support the view that the justice system does not take seriously assaults on public facing workers.

There was a Parliamentary debate on 20 May 2010 relating to protection of workers (Labour used some of their opposition time to hold the debate). During the course of that debate, there was considerable discussion of the importance of practical steps that can be taken to help protect public facing workers from assault. The Scottish Government funds the Scottish Business Crime Centre (£777,706 for the period 2008/11) to raise awareness of business crime, including shop lifting, and support businesses to combat business crime. The Centre provides practical advice to the business and commercial sectors on how to develop business crime reduction and prevention strategies and aims to reduce business crime. Its current activities and initiatives include Best Bar None; Safer Shopping Award; Safer Parking Initiative; and Radio Link Schemes.

Also during the Parliamentary debate on 20 May, some MSPs raised the role of rebalancing Scotland’s unhealthy relationship with alcohol as a means of treating the cause of many crimes, including attacks on public facing workers. A Scottish Prison Service 2009 survey found that 50% of prisoners who responded to the survey indicated they were under the influence of alcohol at the time they committed their offences. The situation in relationship to drugs is not significantly different with 45% of prisoners (who responded to the same 2009 survey) indicating they were under the influence of drugs at the time they committed their offences.

**Conclusion**

In summary, we do not see Hugh Henry’s Bill as being necessary given:

- we should be treating the underlying causes of many of the attacks on public workers which includes Scotland’s unhealthy relationship with alcohol
and drugs which is why we have included measures in the Alcohol etc (Scotland) Bill designed to reduce consumption and harm, and why our drugs strategy should be supported;

• the Bill seeks to replicate statutory offences for conduct that is already against the common law of assault and as such does not add value to the criminal law;
• practical steps have a bigger role to play than re-writing the criminal law; and
• there is no clear evidence that the 2005 Act has been a success in acting as a deterrent (with the data showing a moderate increase over time in the number of attacks).

Scottish Government
September 2010
SUBMISSION FROM SCOTTISH TRADES UNION CONGRESS (STUC)

Introduction

1. The STUC is Scotland’s trade union centre. Its purpose is to coordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens.

2. The STUC represents over 650,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace.

3. Our representative structures are constructed to take account of the specific views of women members, young members, Black/minority ethnic members, LGBT members, and members with a disability, as well as retired and unemployed workers.

4. We believe that all workers have the right to work in a safe and healthy working environment and to be treated with dignity and respect by colleagues and members of the public they come across during the course of their work.

5. The STUC is pleased to provide the following evidence to the committee on the proposals from Hugh Henry MSP in the Protection of Workers (Scotland) Bill.

Background

6. The STUC welcomed the introduction of the Emergency Workers (Scotland) Act 2005 as we were firmly of the view that the law as it stood was not seen as having a deterrent effect on those that carry out attacks on workers, especially those who are providing potentially life saving services in communities throughout Scotland. However, along with many of our affiliated organisations we felt that many groups of workers who face verbal and physical abuse as part of their work had been excluded from the protection that the new Act would provide. The previous administration agreed to work with the STUC to introduce a package of non-legislative measures to raise awareness of the issues on workers and the general public. This included publicity campaigns and support for individual trade union initiatives. This approach proved to be extremely successful but cuts in publicity budgets has to a great extent ended this work.

7. The STUC continues to work with the Scottish Centre for Healthy Working Lives, our affiliates and other stakeholders to develop innovative ways to ensure workers are protected against violence, the most recent example involved working with local authorities to develop a toolkit to help manage violence and aggression.

8. Initiatives, such as this are useful in providing employers with resources to protect staff and workers with a greater awareness of the issue but legislation provides the only mechanism where the perpetrators of these attacks are held accountable for their actions. The STUC believes that where the Emergency
Workers Act applies, on the whole attacks are in decline. One caveat to this view would be that we have concerns that attacks against the “blue light” emergency services still appear to be viewed as sport by an element in our society as the recent example of fire-fighters in Edinburgh having hoses slashed exemplifies.

Emergency Workers (Scotland) Act 2005 (EWA)

9. Figures from the Scottish Government show that since the legislation was introduced prosecutions under the Act have increased steadily from 232 in 2005-06 to 524 in 2008-09. A total of 2021 cases have been reported to the COPFS of which 1656 have resulted in court proceedings, out of which 1159 have resulted in convictions with further proceedings continuing at the end of the financial year, 5 April 2010.

10. Around 500 convictions are secured under Section 5 of the Act following assaults of health workers in hospital premises, approximately 300 following assaults on police, fire and ambulance workers and a similar amount following assaults on the remaining categories of workers covered by the legislation.

Protection of Workers (Scotland) Bill

11. The STUC welcomes the Bill being proposed by Hugh Henry MSP as we do not believe that any civilised society can afford to sit back and not take action when over 30,000 citizens are being subjected to unacceptable behaviour that, in some cases, would result in prosecution of the perpetrator had the attacks happened in some other environment other than the workplace.

12. If legislation is not introduced then our fear would be that attacks will continue to increase and verbal and physical abuse against workers delivering services to the public will continue to increase and will result in a greater public acceptance of this type of behaviour. This may result in services being withdrawn from local communities with businesses closing down as a result of rising violence against owners and their staff.

13. As outlined above the amount of prosecutions under the Emergency Workers Act have increased since its introduction. Unison reports a reduction in attacks in public sector workplace they organise where their members, primarily health workers, are covered by the EWA. Where their members are not covered they have witnessed an unacceptable rise in incidents. The STUC believes it would be wrong to assume that this rise can be attributed solely on better reporting procedures. A 50% increase in attacks on local government workers may be partly explained by more effective reporting but we would argue is more likely to reflect a general increase in attacks.

14. The STUC believes that the Government has to decide that all attacks against workers serving the public are unacceptable and should be easier to prosecute. The level of proof for such an offence should include impeding workers delivering public facing services. This is something that has been omitted at this stage of the process and would deliver more effective prosecution of the offence.
15. Evidence from PCS raises concerns that any legislation arising from the Bill may not cover verbal assaults. From discussions with PCS and other affiliates verbal assaults can be extremely threatening and quite often place workers in a state of fear and alarm. These threats include workers being told that the perpetrator knows where they live and what time they finish work. Many see incidents of verbal abuse as being at the lower of violent attacks but incidents where individual workers are being personally threatened have to be within the scope of criminal prosecution.

16. The evidence provided from our affiliate ASLEF provides an example of the scale of assaults on their members, the impact it has and also the level of disruption faced by members of the public. We believe that introducing similar definitions for offences committed under the Emergency Workers Scotland Act and those proposed in the Protection of Workers (Scotland) Bill are justified and logical. It should then be left to the powers of the judiciary to balance the seriousness of attacks against workers carrying out life saving services against other workers when sentencing offenders.

17. The evidence provided to the STUC so far indicates a widespread problem of verbal and physical abuse. The STUC believes that the general public would be appalled if this level of crime was occurring elsewhere in our society and public policy decisions, including to introduce legislation, were not being taken to ensure that the law acts as an effective deterrent in these cases.

18. We believe that attacks against workers are not being prosecuted under existing legislation as some commentators appear to believe. We also to hear unhelpful views expressed that for more serious cases adequate deterrence is provided by the law on common assault and these cases can be tried under solemn procedure with stiffer penalties available. This view only confuses the issue of assaults against workers of the type this Bill seeks to protect.

19. We are fully aware that for more serious assaults, for example those involving weapons and serious injury, then perpetrators will face stiffer penalties in excess of those available under the Emergency Workers Act. This has never been in dispute by trade unions and we would expect this to be the case.

20. The STUC notes from the explanatory notes that there might be an anticipated cost saving on resources as a result of less attacks on public facing workers. As the notes rightly state this should not be the primary purpose of this legislation. However, the STUC believes that consideration should be given to the positive financial impact that effective legislation may have, not just on individuals but also as a result of workers not having to access health services and employers not having to access sick pay or other welfare benefits.

Conclusion

21. The STUC believes that legislation is now necessary to protect all workers who serve the public. We do not agree that the sole purpose of this legislation is to send out a message to the public that this type of behaviour is unacceptable
although that will undoubtedly be a welcome consequence of the Scottish Parliament introducing effective legislation.

22. Legislation is required to address the rising number of attacks against workers. It is wrong to say that this increase is only attributable to better reporting, an outcome of the package on non legislative measures that the STUC supported wholeheartedly.

23. Introducing effective legislation to protect workers serving the public meets some of the Government’s key objectives for a safer and fairer Scotland; workers will feel safer in the work environment and in their communities knowing attackers are more likely to face prosecution. We would envisage fairer communities with public businesses less likely to withdraw services from trouble spots, often deprived communities. In light of the figures provided by ASLEF and Unison we would also envisage a healthier Scotland if levels of absences from work and ill health reduce in line with lower levels of assaults on staff.

Scottish Trades Union Congress
September 2010
SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

INTRODUCTION
1. The Criminal Law Committee of the Law Society of Scotland (“the Committee”) welcomes the opportunity to comment upon the general principles of the Protection of Workers (Scotland) Bill which was introduced into Parliament by Hugh Henry MSP on 1 June 2010. The Committee should like to respond to the Scottish Parliament’s Economy, Energy and Tourism Committee’s call for written evidence upon the general principles of the Bill in the following terms.

GENERAL COMMENTS
2. The Committee previously responded to the Scottish Executive consultation entitled “Protection of Emergency Workers” in February 2004 and also responded to the public consultation by Hugh Henry MSP entitled “Workers (Aggravated Offences) (Scotland) Bill” in August 2009. The Committee remains of the view that, with regard to assaults upon workers employed in professions involving face to face contact with the public, educational programmes and awareness raising events are essential in reinforcing the message that any assault on a public facing worker, especially those in the emergency services, is clearly unacceptable and should be dealt with by the Court severely. The Committee maintains the view that the position with regard to common law at present providing protection from assault for everyone and allowing aggravating circumstances such as whether or not it was an assault of a worker in the course of that worker’s employment can be taken into account, both in determining the forum for prosecution and the level of sentence upon conviction.

3. In its response to the public consultation by Hugh Henry MSP in August 2009, the Committee then stated that it was unclear whether an assault on a worker providing a service to the public and in doing so coming into face to face contact with the public would be libelled as an aggravation of common law assault, or indeed would be libelled as a separate new offence. The Committee now notes that, in terms of the Bill, it is the intention to libel such an assault as a separate new offence.

4. The Committee again refers to paragraph 3 of the Scottish Executive consultation paper entitled “Protection of Emergency Workers” published in 2004, at which consideration was given to public service workers in non emergency situations.

5. In particular, paragraph 3.5 of the consultation paper stated:-

“While for the reasons outlined in this consultation paper we do not consider that the proposed legislation should extend beyond emergency workers, nor introduce a statutory aggravation, the Executive will be taking forward, in partnership with the STUC, other Unions and representative bodies, and relevant agencies, a wider package of measures to educate the public and to reinforce the message that attacks on public service and other workers are totally unacceptable. This is likely to include increased use of CCTV, evidence sharing and partnership working, and wide awareness and educational campaigns”.

101
6. The Committee, believes that such non legislative measures would be more effective in reinforcing the message that it is unacceptable to assault a public service worker, especially those in emergency services as referred to above.

SPECIFIC COMMENTS

Section 1 – Assault of Workers

7. The Committee notes the definition of worker at Section 1(3) meaning a person whose employment involves dealing with members of the public, to any extent, but only if that employment involves –

(a) being physically present in the same place and at the same time as one or more members of the public, and

(b) (either or both) –

(i) interacting with those members of the public for the purposes of employment or

(ii) providing a service to either particular members of the public or the public generally.

“employment” means any paid or unpaid work whether under a contract, apprenticeship or otherwise.

8. With regard to the defence as outlined at Section 1(2)(a) of the Bill, while proof of knowledge on the part of the accused may not be problematic in cases where there is a recognisable uniform worn by an emergency worker, this may be more problematic with regard to other workers whose employment involves dealing with members of the public.

9. Accordingly, the evidential burden of proof under a statutory offence such as the one proposed here may therefore be greater and, conversely it may be more difficult to secure a conviction.

10. The Committee also notes an offence of assault on a worker by reason of that worker’s employment and that no offence is committed unless the assault is motivated, in whole or in part, by malice towards the worker by reason of the worker’s employment.

11. Again, there is an evidential burden of proof for the Crown to establish that the assault was by reason of that worker’s employment and also motivated, in whole or in part, by malice towards the worker by reason of the worker’s employment.

12. The Committee in its response to the Workers (Aggravated Offences) (Scotland) Bill public consultation last year referred to the then Lord Advocate’s comments made to the Scottish Parliament on 15 January 2004, at which the proposal for an Emergency Workers (Scotland) Bill was debated.

13. The Committee should like to reiterate those comments which were as follows:-
“The Lord Advocate referred to a 19th century Scots lawyer who recognised that “assault may be aggravated by it being committed on an official performing a public duty”.

The Lord Advocate further stated that “In the 21st century the principle has developed to recognise the special position of all workers who provide a public service, embracing a vast variety of services on which we as a society now rely. The flexibility to which I have referred has allowed our Criminal Justice system to keep pace with the times, offering effective means of dealing with new or emerging blights on society. Our courts have been able to get on with the business of bringing to justice those who fail to respect people who delivery valuable services to society without getting caught up in the technical arguments about who does or does not fall to be protected in such a way. I suggest that that would inevitably be the result of prescribing in statute the particular category of workers who are entitled to special protection”.

14. The Lord Advocate offered MSPs the following practical example:-

“A bus driver stops a bus at a bus stop and a youth gets on. There is an altercation and a dispute about the youth paying. As a result the youth is asked to leave the bus. Before he does so, he spits at the bus driver – a nasty, disgusting offence that deserves to be punished. As the youth gets off the bus, an old lady in the street remonstrates with him about what he has done. He spits at her and then leaves. Those who argue for a statutory aggravation in those circumstances would have the court impose a greater sentence for the spitting at the bus driver than for the spitting at the old lady in the queue. To some people, that might be appropriate because the first victim was a bus driver. However, I think that most people would suggest that the punishment in both cases should be equivalent. That is the problem of having an aggravation.

15. The Committee endorses these comments.

**Section 2 Penalties**

16. The Committee notes that the statutory penalty proposed for the new offence of assaulting a worker is, on summary conviction, to imprisonment for a period not exceeding twelve months or to a fine not exceeding the prescribed sum within the meaning of Section 225(8) of the Criminal Procedure (Scotland) Act 1995 or to both.

17. The Committee notes that this penalty is identical to the penalty for any common law offence in terms of Section 5 of the Criminal Procedure (Scotland) Act 1995 as amended by section 43 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

18. The Committee further notes that Section 225(8) of the Criminal Procedure (Scotland) Act 1995 which prescribes the standard scale of fines for offences triable only summarily (“the standard scale”) is now, in terms of Section 28 of the 2007 Act, £10,000.
19. The Committee notes that the creation of this new statutory offence with identical penalties to assault at common law tried summarily detracts from flexibility and imposes evidential burdens upon the Crown which would not of course apply at common law.

Section 3 Savings for certain offences

20. The Committee notes that Section 41 of the Police (Scotland) Act 1967 and the Emergency Workers (Scotland) Act 2005 remain unaffected by this proposed legislation.

The Law Society of Scotland  
September 2010
Introduction

1. UNISON is Scotland’s largest trade union representing over 160,000 members working in public services. We represent those working in the public sector, for private contractors providing public services and in the essential utilities. They include frontline staff and managers working full or part-time in local government, health, and education, as well as police staff, those working in the electricity, gas and water industries and those in the voluntary sector.

2. UNISON Scotland welcomes the opportunity to participate in the Call for Written Evidence on the Protection of Workers (Scotland) Bill

General Comments

3. UNISON Scotland is very pleased to support the aims of the Protection of Workers (Scotland) Bill, which we believe will provide greater protection for many of our members who are not covered by the Emergency Workers (Scotland) Act (EWA).

4. UNISON Scotland campaigned for and welcomed the introduction of the EWA in 2005. We would have wished to see legislation much wider in scope than the Bill as originally drafted. We favoured a Bill covering public service workers with similar scope to that set out in the Lord Advocate’s guidance and it remains our view that the Bill should have given statutory effect to that guidance, recognising that workers providing a service to the public should be given specific legal protection.

5. Since the introduction of the Emergency Workers Act (EWA) in 2005 UNISON Scotland has sought to widen the scope of the provisions to incorporate a wider group of public service workers. In January 2005, the Scottish Government promulgated a Modification Order that extended the Act to a limited number of additional health staff. Whilst welcoming any extension we argued that this was only a limited provision that did not cover the main groups of staff at risk of violence and resulted in a two-tier level of protection for staff.

6. We followed up our concerns with the Minister for Public Health and later the Cabinet Secretary for Justice who now has responsibility for general matters in relation to the Act. We are currently in discussions with Fergus Ewing, Minster for Community Safety, but these discussions are proceeding at a very slow pace.

7. One of the main advantages of the EWA was the clause that provided for “hindrance and/or obstruction of the workers specified in it” to be an offence and we believe that any new legislation or amendments should include this principle.

8. There were significant objections to the Emergency Workers (Scotland) Bill including the Law Society and Faculty of Advocates who argued that the common law and other statutory provisions cover most of the Bill’s provisions. It was even claimed that there would be no successful prosecutions. However, the Act has
been used extensively with well over 1000 prosecutions to date and a number of cases attracting publicity, primarily at local level.

9. UNISON Scotland is pleased that successive Scottish Governments have recognised the nature and the scale of the problem in relation to violence against workers in the public services. We view legislation as only one part of a wider package of measures to achieve a reduction in violent incidents.

10. UNISON Scotland has been concerned at the level of violence reported by our members over a number of years. In 2002 research was commissioned and a survey of members carried out to ascertain the level of assaults, both physical and verbal, experienced by the group of workers who took part in the survey. The resulting, *Trauma 2003* Report highlighted some horrific instances of assault, across all parts of the public sector.

11. Since that time, the issue of workplace violence has been moved higher up the public agenda and deliberate acts of violence on public service workers is, rightly, condemned by most members of the public. However, there is a reluctance on the part of some employers and even some staff, to acknowledge assaults by “looked after people”, e.g. children, elderly people, or those with learning disabilities, as there are in some instances perceptions that these types of assaults are just part of the job and have to be tolerated. Since 2003, however, the Scottish Government has accepted the extent of violence against public sector workers and has been working with trade unions to examine ways to tackle the problem.

12. In 2006 UNISON undertook a survey of public service employers under the Freedom of Information Act on assaults against public sector workers and based on the responses, published a major report. This identified some 20,000 violent incidents that year in the NHS and local government alone. This has been followed up with annual surveys that show that the numbers of violent incidents remain high. This may of course partly reflect greater awareness and better reporting, however, it is clear the problem is not going away. The 2006 report highlighted significant failings at employer level over the quality of local violence at work policies, their implementation and most importantly, the lack of adequate monitoring statistics. There has been some strengthening of measures in NHS Scotland since then and work has been undertaken with representatives of Scottish local authorities to develop best practice guidelines. As a result of this work, guidelines for local government were published early in 2010, entitled “Managing occupational violence in the workplace”.

13. UNISON Scotland believes that attacks on any staff delivering public services should be treated under the law as serious assaults, not just attacks on emergency workers. We believe that in practice it is impossible to make a distinction between the risks faced by an emergency worker (e.g. paramedic) and a non-emergency worker (e.g. a porter).

14. The experience of our membership and the results of crime surveys inform us that the most vulnerable workers are not necessarily emergency services workers – all workers who deal with the public are at risk. Care workers faced twice the national average risk of assault and nurses four times. The current EWA list with
its emphasis on ‘blue light’ services has the consequence of providing protection to predominantly male groups of workers. This is an equal opportunities issue.

15. The following groups of our members face daily risks when facing the public, but are not covered by the EWA and we believe that the proposed Bill would protect them:

- Healthcare: The EWA list restricts this category to those with a professional registration but there are many healthcare workers who are not part of this category. In addition the ‘assisting’ provisions would not cover them. The main group would be nursing assistants but it would also include a range of ancillary staff including security and porters, as well as Professions Allied to Medicine who also work in A&E and other emergency settings.

- Social care: Many social care staff including social workers and those in mental health and childcare protection roles regularly respond to emergency situations, but are not covered by the EWA. We also need to remember that a range of health and social care staff in the voluntary sector are at equal risk.

- Environmental: Several groups of environmental workers work in potentially violent situations. Some SEPA staff, port authorities, housing, environmental health, pest control, roads and even some Leisure services staff including pool attendants are regularly faced with violent members of the public.

- Utilities: Scottish Water staff and workers in the energy companies regularly respond to potentially dangerous situations. This is not limited to National Grid Transco but includes gas workers employed by other energy companies and electricity line and response staff.

- Police: With the increasing civilianisation of the police force a range of police staffs other than constables are faced by violent members of the public. Similar provisions apply to community wardens who are usually employed by local authorities.

16. All of the above workers and others are, in the words of the Minister who promoted the EWA, justification for the definition, “out in the community protecting life and limb. They are out there to protect us and any hindrance to them puts other people’s lives at risk”.

17. Our preference would be for a generic definition of public service worker operating “in the performance of their duties”. This would ensure that all public service workers were offered the same level of legal protection.
Protection of Workers (Scotland) Bill

18. As stated above, UNISON Scotland is pleased to support the introduction of this Bill. However, we believe there are areas where it could be strengthened and we will endeavour to effect this during the Second reading of the Bill.

19. In particular, there needs to be a definition of what is meant by “a member of the public” [S 1(1)], as well as what is meant by an assault.

20. The EWA concept of ‘hinder or obstruct’ is particularly useful in circumstances where a strict assault may be difficult to prove. We believe that more consideration will be required about applying this in the context of the wider public service grouping envisaged in the Bill.

21. We require clarification about Clause 1(3) (a) which states that a worker should be “physically present in the same place and at the same time as one or more members of the public”. This would rule out, for example, phone rage, as the worker would not be “physically” present, but could still experience verbal abuse over the telephone. In addition, there could be occasions when workers experience abuse over the internet or through the e-mail system, but again, would not be physically present with the abuser. The Committee will be aware that the Scottish Government, working closely with the trade unions, under the project, Safe at Work, introduced guidance on phone rage in 2007. They agreed with the HSE advice that "physical attacks are obviously dangerous but serious or persistent verbal abuse or threats can also damage employees' health through anxiety or stress".

22. Other statements in section 1 (3) also appear to contradict paragraph 2 of the Policy Memorandum accompanying the Bill which states that “The offence covers assaults” . . . “that take place at other times but which relate to their work”. Clause (3) (b) (i) and (ii) of the Bill imply that any assault has to take place while the worker is engaging with the member of the public or providing a service whilst at work. UNISON Scotland believes that there can be occasions when workers are attacked outwith their work but as a result of carrying out their duties on another occasion. One obvious example of this would be a worker in a pub who could be attacked after his or her shift, if they had perhaps ejected a customer from the premises. The assault would be as a result of carrying out duties in the pub, but occur after the shift had finished.

23. UNISON Scotland will aim to amend these anomalies at a later stage in the passage of the Bill.

Conclusion

24. UNISON Scotland is happy to support the introduction of the Protection of Workers (Scotland) Bill as we believe the current provision in the Emergency Workers (Scotland) Act does not begin to cover the extent of our membership who suffer violent attacks in the course of their work. We believe that the proposals contained in the Bill will provide far greater protection for our members and we welcome its introduction.
25. As we have said previously, there are points in the bill which require further clarification or amendment, but these can be examined during the later stages of the Bill.

26. We would urge the Committee to support the Bill through its various stages.

UNISON Scotland
September 2010
1. Overview

1.1 Unite represents around 200,000 working people and their families throughout Scotland. We are the UK’s largest trade union with 2 million members in a range of industries including transport, energy, construction, financial services, manufacturing, print and media, the voluntary and not-for-profit sectors, local government and the NHS.

1.2 As Scotland’s largest and most industrially diverse trade union, we are acutely aware of the problems many of our members face with regards to the threat of and actual incidence of physical violence while they try to earn a living and provide quality services to the general public. Unite therefore welcomes the opportunity to contribute to this call for evidence by the Scottish Parliamentary Economy, Energy & Tourism Committee.

1.3 The Bill itself represents a positive and necessary step forward in the progress of statutory coverage that would provide improved health and safety protection for workers providing a public service in Scotland. It would also send out a clear message to the Scottish public that physical and verbal violence against any worker who provides a public service will not be tolerated and such actions could lead to prosecution under law.

2. The Need for Further Legislation

2.1 The need for further legislative intervention is urgent and the case is compelling. In 2007/08 there was a 9% increase on the previous year’s figure for assaults against public sector workers in Scotland. As the author highlights, the British Retail Crime Survey report detailed an alarming 50% increase in physical assaults against shop workers compared to the 2006 figure.

2.2 The Emergency Workers (Scotland) Act (EWA) of 2005, and its subsequent extension in 2007, represented an important step forward. A public sector trade union reported that in 2007/08 the number of assaults on health workers fell by more than 1000 on the 2006/07 figure and suggested this decline could be attributed to the introduction of the EWA provisions. The EWA’s impact is further evident in the Scottish Government’s statistics of increase of persons successfully prosecuted in the Scottish courts under the Act in the immediate period following its introduction (categorised by Policy Authority):
<table>
<thead>
<tr>
<th>Police Authority</th>
<th>2005-06</th>
<th>2006-07</th>
</tr>
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<tbody>
<tr>
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<td>1</td>
<td>8</td>
</tr>
<tr>
<td>Grampian</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>Tayside</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Fife</td>
<td>1</td>
<td>19</td>
</tr>
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<td>49</td>
</tr>
<tr>
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<td>8</td>
</tr>
<tr>
<td>Strathclyde</td>
<td>19</td>
<td>87</td>
</tr>
<tr>
<td>Dumfries and Galloway</td>
<td>5</td>
<td>14</td>
</tr>
<tr>
<td>Scotland</td>
<td>54</td>
<td>200</td>
</tr>
</tbody>
</table>

2.3 While this statistical snapshot indicates both the positive impact and value of the legislation as a deterrent to assaults on these workers the fact remains that such rights should not be exclusive to a specific industry or occupational classification providing a public service - these rights should be extended to all workers defined as providing a public service.

2.4 Given the ‘success’ of the EWA we would warmly welcome the extension of these protections to every worker in Scotland who provides a public service. This must not only be restricted to the parameters of the public sector, it must include coverage to the likes of the transport, finance and retail sectors for example. The underlying principle should be that if dealing with the public or serving the public is part of the job specification then the protection is applied.

2.5 More serious offences made by the public against workers should still be tried under solemn procedure but the introduction of legislation which enshrines the possibility of a maximum 12 month jail sentence or significant financial penalty for any incident of physical or verbal abuse would serve as a further deterrent and tackle the rising tide of violence against workers.

2.6 Until greater protective measures are introduced the vast majority of public service workers employed outside the parameters of the Emergency Workers Act will continue to be more prone to incidents of violence.

3. **Unite Case Study – SPT Subway**

3.1 The extension of the Emergency Workers Act provisions could have a significant impact on the everyday lives of workers like those employed SPT on the Glasgow Subway. Over the last four years workers on the subway have had to contend with a marked rise in the number of anti-social behaviour and assault incidents made against them by members of the public.
3.2 This level of incident peaked in 2007 when approximately 65% of all accident and incident statistics involving employees were of an anti-social / assault nature. This level decreased in 2008 to 33 reported incidents but this still accounted for over 50% of all incidents reported.

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reported Incidents of Anti-Social Behaviour / Assault against Employees</td>
<td>11</td>
<td>50</td>
<td>51</td>
<td>33</td>
</tr>
<tr>
<td>% of all Incidents Reported</td>
<td>38%</td>
<td>54%</td>
<td>65%</td>
<td>51%</td>
</tr>
</tbody>
</table>

Source: SPT Subway Accident & Incident Statistics 2008

3.3 Unite members at SPT have worked hard with their employer in order to tackle the scourge of violence against workers and these efforts have yielded some success after a recent peak in such incidents, as the statistics show. However, our members are clear that voluntary initiatives alone are insufficient to sustain a challenge on the incidence of anti-social and violent behaviour on the subway.

3.4 Unite Convenor at SPT Subway Harry Copland insists that, “If the public are aware that any incidence of abuse - physical or verbal - will not be tolerated and such actions could result in a set criminal conviction or significant financial penalty enshrined by law, I believe you would see a further decline in the levels of violence against our staff.

3.5 The Emergency Workers Act has had a very positive impact in reducing incidents of violence against workers in the health sector and ensuring that perpetrators are prosecuted. It stands to reason that similar legislation covering workers like ourselves in the transport sector would have the same positive impact and it is needed.

3.6 It would be in everyone’s interests. Workers would be more secure in their jobs, employers would have an even more productive workforce and the public experience of the subway service would be further enhanced with a reduced rate of violent incidents.

3.7 In the last year, there have been 18 incidents of anti-social behaviour / assault reported. These range from instances of subway drivers being verbally abused, spat on and Community Safety Officers (CSOs) on the subway being physically assaulted by members of the public.

4. Conclusions

4.1 This call for evidence creates a welcome platform for debate, not only in the Scottish Parliament but in the wider context of the Scottish workforce. It also begs the question on why we have a de facto two-tier legislative system for workers who provide a service to the public.
4.2 Unite welcomes any legislative proposal that makes the world of work a healthier and safer experience and this Bill would help work towards this objective. The concluding remarks are best left to the workers who would benefit from these proposals:

4.3 “We believe Protective rights such as the Emergency Workers (Scotland) Act, while welcome, should not be exclusive to a specific industry or occupational classification providing a public service - these rights should be extended to all workers defined as providing a public service.

4.4 Violence and aggression is an issue which mars the working life of many workers providing a public service – including my own members in local government. Sometimes because we work with challenging or vulnerable people whose reactions to stressful situations is to lash out. Sometimes we are just seen as an easy target to people wanting to vent their frustrations.

4.5 Our branch has had to handle a pattern of frequent violent and aggressive incidents at some times. The worst incidents involved very serious injuries, both physical and mental, hospitalisation, and job redeployment and in the worst instance the premature end to a career. If this Bill can help send a message out that violence and aggression towards our members wherever they work is simply unacceptable then clearly that’s a benefit.”

Kim Smith, Unite Branch Secretary, Dundee Local Government
August 2010
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