

Consultation Responses for Hugh Henry MSPs proposal for a 'Workers (Aggravated Offences) Bill (Scotland)'

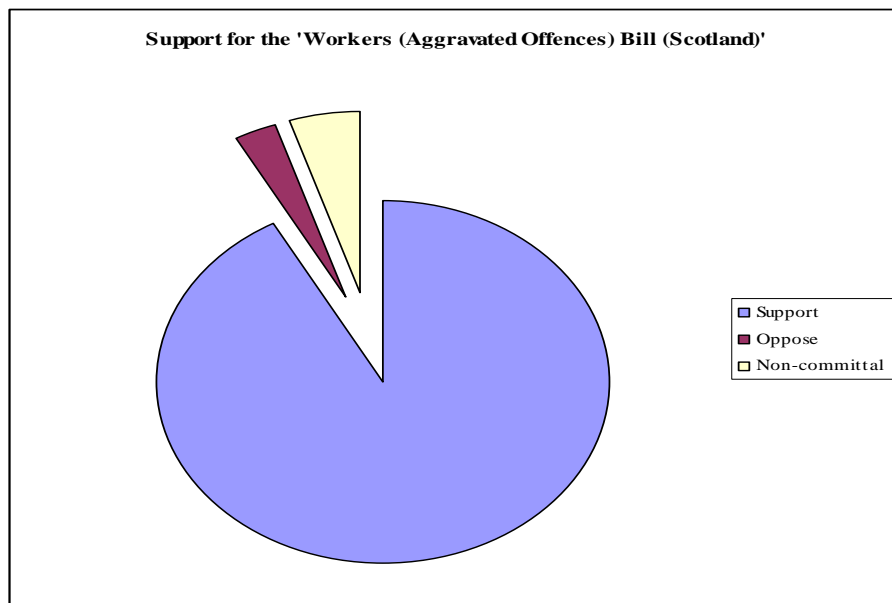
Over the summer I conducted a consultation to garner support and opinion on my proposal for a Workers (Aggravated Offences) Bill that I intend to bring before the Scottish Parliament. This proposed Bill, extending the principles of the Emergency Workers Act 2005, seeks to raise criminal penalties against those who commit assault upon workers employed in professions involving face to face contact with the public.

1. Summary

- *The proposed Bill received overwhelming support with over 90% of respondents registering their express support.*
- *Strong support came from the Scottish trade union movement, local councils and the transport bodies. Opposition to the proposal was largely limited to those groups representing the interests of workers already covered by the Emergency Workers legislation.*

2. The Consultation

The consultation was launched on June 22nd of this year and ended in September 25th 2009. On page 2 is an overview of the responses I received from the organisations and individuals who contributed to my consultation.



There were 192 in total. These came from:

- o 92 were from individuals
- o 64 were from trade unions or declared members of trade unions
- o 15 from local authorities
- o 6 Health bodies
- o 5 from Transport bodies
- o 4 from legal bodies
- o 2 from Police and Fire representative bodies
- o 1 MSP
- o 1 from a community council

177, or 92%, supported my proposal, with 6 (3%) expressing opposition and 9 (5%) offering neither support nor opposition to the proposal.

2.1 General comments

The overwhelming support for my proposal you see above was provided in the main by trade unions, trade union activists, local councils and transport bodies. Also the Law Commission of Scotland supported the proposal as well as NHS Regional Boards and one MSP.

Trade unions based the justification for this proposed Bill on the sharp rise in assaults being committed against workers who in carrying out their public service duties come into face to face contact with the public. Local council's and organisations representing the legal fraternity expressed more qualified support and were more likely to raise issues of legal certainty and costs. From this many questions and issues were raised which need to be addressed.

3. The seven questions of the consultation

Q1. My proposal is to apply the proposed bill to workers who provide a face to face service to the public. Are there any other groups of worker that you think should be captured in the Bill?

Of the 192 responses to the consultation 40 responded to this question. On this question there was a consensus in support for a broader definition to cover more workers than the Emergency Workers Act currently covers. One suggestion was made that this proposal should apply to all workers. Additionally, some questions were raised as to how, in legal terms, particular workers would be covered by the proposed Bill. There were also concerns raised that any extension of the Emergency Workers Act may not cover workers like teachers and workers who work in call centres. Those who argued that the penalties of the Emergency Workers legislation

should not be extended at all came from those groups representing the emergency service professions already covered by the 2005 Act.

It was clear from the responses that there was a degree of uncertainty as to whom the Bill will apply. The Member will give further consideration to the definition of a public facing worker in the course of formulating his proposed bill.

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

In 2005 the Emergency Workers Act was introduced in order to give the courts powers to impose tougher sanctions on those assaulting, hindering or obstructing emergency workers. The intention was to deter attacks upon emergency workers. The intention of this proposal is to extend the protections within the Emergency Workers Act to all public facing workers. With that in mind, the question invited respondents to indicate how effective they had found the Emergency Workers Act.

Answers (13) on this point were mixed and five contributors stated that the available statistical evidence held regarding prosecutions made under the 2005 legislation is grossly inadequate. However five other contributors believed that the statistics that do exist demonstrate successes. Three contributions argued that it was too early to gauge the 2005 Act's effectiveness. In addition the broader public policy intention of the 2005 Act, and this proposed Bill, was supported by the overwhelming majority of respondents. Many trade unions made an apparent but important point that the Emergency Workers Act does not cover workers in their field or sector and thus not affecting them. This resulted in every trade union with members not already covered by the 2005 Act providing their support for this proposal. There was also an indication amongst the responses that assaults of workers serving the public are under reported and that this legislation could lead to increased reporting of attacks.

Q3. Do you think there will be additional costs associated with this bill and in what areas will they arise?

There were 19 responses to this question. Six respondents expressed the view that it would not lead to any additional costs, with one suggesting that these cases are being pursued through the court system anyway, just not on these grounds. Four respondents argued that while it might in the first instance increase costs, in the long term it would deter attacks thereby reducing costs to the courts, employers and the NHS.

Four respondents considered what these costs might be. Two respondents considered that there would be costs associated with training to improve the reporting of attacks. Two further respondents contended that the increased costs would be primarily associated with publicising the new offence and in turn deterring attacks. One respondent suggested that the

courts would require additional resources to respond to the increased demand.

The general consensus, however, amongst respondents was that the benefits of the legislation would outweigh any additional costs resulting from the Bill.

Q4. Are the penalties proposed in this document sufficient, and if not, what penalties would you propose?

The proposed Bill would create a new 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.

A majority of respondents stated that the penalties of this proposed Bill should mirror that of the Emergency Workers Act. Currently, after a 2008 modification order of the 2005 legislation, the penalties stand at a maximum jail term of 12 months and/or a monetary fine of £10,000 although more serious offences may still be tried under solemn procedure. In light of the draft proposal in the consultation document for the fine to be set at £5000 (as was originally set the Emergency Workers Act 2005 was first passed) the criminal penalties of this proposed Workers Bill will mirror the penalties of the 2005 Emergency Workers Act as they currently stand. Therefore I propose introducing a 12 month jail term and/or a £10,000 fine for those who assault the public service worker.

There were 147 responses to this question. 113 of the respondents felt that the penalties were sufficient.

The remaining respondents argued that the penalties imposed were insufficient. 13 respondents argued that the maximum sentence should be increased to two years. One respondent argued that the maximum sentence should be increased to five years. Three respondents suggested that the 12 months should be a minimum rather than maximum sentence. Amongst these responses, there was a variety of views on what the fine should be, ranging from £5000 to £20,000. A number of respondents, however, suggested that a fine alone was not a sufficient deterrent. Finally one respondent argued that the sentences that could be imposed should be greater than the Sheriff Court can currently impose.

However, as can be seen from the responses, the majority of respondents were content with those penalties of the 2005 Emergency Workers Act being used for this proposed Bill.

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 service to the public?

There were 13 responses to this question. Six took the opportunity to welcome the protections afforded by the proposed bill and the deterrent they will provide. One response highlighted the fact that 32% of workers have been subject to threats and argued that this was why there was an urgent need for enhanced protection of workers. One other respondent noted that in addition to legislative measures there was a need for employers to provide greater protection to their workers.

One respondent noted that in the course of the consideration of the Emergency Workers Act, the possibility of extending its provisions to include workers had been considered, but had been rejected. One other respondent highlighted the difficulties in getting prosecutions due to the problems in obtaining corroborating evidence.

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

There were 16 responses to this question. Only one response questioned whether the proposal would extend equal opportunities. Six respondents contended that the provisions were sufficient to extend equal opportunities in the work place.

There were no suggestions as to how the proposal should be extended.

The remaining respondents welcomed the proposal and explained how they believed it would extend equal opportunities. Seven respondents highlighted the numbers of women and ethnic minorities working with the public and as such indicated that it would extend protection to these groups. The remaining respondent welcomed the parity with emergency workers that the proposal would give.

Q7. 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?

Support (18 from 25 direct responses) for the inclusion of the 'hindrance and/or obstruction' stipulation contained in the 2005 Emergency Workers Act was based on two factors: the advantages of flexibility provided to prosecutors and, as with criminal sentences, to maintain consistency with the Emergency Workers legislation.

Five argued that it should be restricted to assault principally on the grounds that hindering or obstructing a public facing worker was a less serious issue than hindering or obstructing an emergency worker. Two further respondents noted that in situations where a worker is hindered or obstructed, unlike an emergency worker, they have the option to withdraw service.

4. Conclusion

I very much welcome and appreciate the interest that has been demonstrated by contributors to my proposal.

The responses to consultation have affirmed many of the concerns about the growing numbers of assaults on workers providing a face to face service to the public. The responses have also highlighted new information, which will be drawn upon in finalising the proposal.