

## ECONOMY, ENERGY AND FAIR WORK COMMITTEE

### PROTECTION OF WORKERS (RETAIL AND AGE-RESTRICTED GOODS AND SERVICES) (SCOTLAND) BILL

#### SUBMISSION FROM: The Scottish Retail Consortium

#### INTRODUCTION

1. The Scottish Retail Consortium's (SRC) purpose is to make a positive difference to the retail industry and the customers it serves, today and in the future.
2. Retail is an exciting, dynamic and diverse industry which is going through a period of profound change. Technology is transforming how people shop; costs are increasing; and growth in consumer spending is slow.
3. The SRC is committed to ensuring the industry thrives through this period of transformation. We tell the story of retail, work with our members to drive positive change and use our expertise and influence to create an economic and policy environment that enables retail businesses to thrive and consumers to benefit. Our membership here in Scotland and across the UK comprises businesses delivering £180bn of retail sales and employing over one and half million employees.
4. In addition to publishing leading indicators on Scottish retail market conditions, our policy positions are informed by our membership and determined by the SRC's Board.
5. The SRC welcomes the opportunity to respond to this consultation.

#### General Comments on Worker Protection

6. The SRC strongly supports additional legal protections for retail colleagues. Whilst we see more arguments for statutory aggravation of all types of violent crime against a retailer worker rather than a specific new offence and a limited class of aggravation, the draft Bill would be very welcome reform to many colleagues. We therefore support the thrust of these proposals, but would hope MSPs would carefully consider adding further protections for workers as the bill progresses.
7. The most recent British Retail Consortium Crime Survey<sup>1</sup> found a worrying growth in severe violent incidents against staff. Across the industry, 115 colleagues were attacked every day of the week. There is no evidence Scottish workers are affected differently, which means ten Scottish workers are attacked daily. We see the same trends from other organisations who track this.
8. This level of violence is despite record spending by retailers on crime prevention: with an annual UK wide figure for the industry of £1 billion<sup>2</sup>.

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<sup>1</sup> [2019 Retail Crime Survey](#), March 2019.

<sup>2</sup> *Ibid*

9. Being a victim of shopworker abuse is horrendous, affecting people both physically, but also causing serious mental harm, including Post Traumatic Stress Disorder.<sup>3</sup>
10. SRC members report career criminals intentionally use violence and abuse when challenged over theft. The increasingly common requirements for retail colleagues to age-check and refuse sales, often triggers increasing threats and violence. We also see an increasing trend of workers being attacked by people intoxicated on alcohol or other drugs.
11. The SRC believe violent or abusive behaviour towards shop staff in Scotland is wholly and utterly unacceptable. Retail workers should be able to work free from fear of violence, intimidation or abuse. The harm from these incidents' spreads, including parents and children worried about their loved ones every time they go to work.
12. The SRC believes this legislative proposal offers an opportunity to revisit the law and ensure it is fit for purpose and that the sentences handed down are stiff enough to offer enough deterrent.

### Specific Responses to the Consultation

#### ***What are your views on the Bill and what impact will it have?***

13. We are very supportive of stronger sentences for those who attack or abuse front-line retail colleagues.
14. The issue of violence and abuse is a human one. The cost is borne by our colleagues, their loved ones and the communities which they together serve. The SRC is strongly supportive of the aims behind the proposals in this consultation: providing proportionate protection of retail workers and penalties for those who use violence and abuse against vulnerable colleagues. It is clear far too many retail workers are faced with escalating levels of violence and abuse, and that a more effective criminal justice response is required. Clearly strengthening sentencing, as has been done for emergency workers, is a critical part of this.<sup>4</sup> The main impacts will be:
  - a. a reduction in the levels of violence and abuse from the clear message being heard amongst offenders and potential offenders. Legislating would be a clear and unambiguous message to criminals;
  - b. a reduction in the levels of violence and abuse from increasing the potential punishment ('the cost') offenders must in future much more carefully consider why they are about to do something ('the benefit'), and this should dissuade many potential attackers;
  - c. as set out below, a reduction in the strain placed on policing, healthcare and other state-provided support services. In practice, in the medium term these

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<sup>3</sup> <https://www.city.ac.uk/news/2019/september/rising-violence-and-verbal-abuse-towards-retailers-stories-from-shop-floor-reveal-lifelong-impact>.

<sup>4</sup> <http://www.legislation.gov.uk/asp/2005/2/contents>.

changes may will render the new legislation cost-neutral or actively beneficial;

- d. greater trust in the Criminal Justice System and the wider political community amongst the victims of these crimes: retail colleagues and their families. The Scottish Parliament could build trust and support by taking the proposed step;
- e. a reduction in acquisitive crime from retail premises, given that violence and threats are knowingly used as a technique to allow people to escape with stolen goods. This would directly improve the economic future of retail in Scotland and the communities of all sizes which rely upon it; and
- f. a reduction in 'higher' forms of criminality, which seem in part to be linked to retail crime as a 'funding stream' and driver for. The 2018 Centre for Social Justice report 'Desperate for a Fix' highlighted the links between retail crime and human trafficking and drug-based crimes.<sup>5</sup>

***Having regard to existing offences (e.g. common law assault), is there a need for a new statutory offence of assaulting, threatening, abusing, obstructing or hindering a retail worker?***

*and*

***What are the potential benefits or problems in having such an offence?***

*and*

***Should any new offence include all of the elements proposed in the Bill (e.g. should obstructing or hindering a retail worker be a crime, as is already the case in relation to various providers of emergency services)?***

15. The SRC supports the proposal to legislate to strengthen the legal protections available to retail workers. The current situation is untenable and action is needed. However, we continue to believe there are advantages to the adoption of a slightly different model for the legislation over the proposed 'new offence and partial aggravation' approach in the draft Bill, although we acknowledge that that is the approach adopted with regard to Scottish emergency workers.

16. We believe the gap in existing legislation is length of sentences, rather than a loophole which stops otherwise criminal or reprehensible behaviour from being prosecuted. Given that, our suggested model would be to have a blanket statutory aggravation for existing offences around violence and harassment of retail workers in all contexts. Importantly, sentences would get stronger at all levels of culpability under the specified offences. It would also require less litigation to establish the meaning of various new terms and/or less of a 'prosecutorial leap of faith' to be used successfully than relying on the existing, well understood, criminal offences (but with stiffer sentences).

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<sup>5</sup> <https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2018/06/CSJ-Desperate-for-a-fix-WEB-1.pdf>

17. We would also argue it may produce perverse outcomes for the aggravation to only apply to age-restricted sales, over and above the detailed points below. By limiting the aggravation to those situations, the law is implicitly saying that such attacks are worthy of greater protection than others, even in the same setting, in the same way and causing the same harm. We do, however, see the counter-argument that in age verifying retail colleagues are discharging a duty placed on them by the law.

***Is the focus on retail workers appropriate (e.g. is it too narrow in not covering other workers who may, because of their work, be vulnerable to abusive behaviour)?***

18. We believe the definition of retail worker<sup>6</sup> in law makes it clear anyone involved in customer transactions should be protected from abusive behaviour. Whilst this clearly envisages supporting retail workers in traditional stores, it should also include workers in hospitality, including food to go and quick service restaurants.

19. Just as crucially, in the modern retail economy e-commerce has become more important. Delivery workers, who are often employed directly by retailers, face the same challenges with age verification as other workers, and can often be in a very vulnerable position by dint of not being in a store environment with other colleagues. One key justification for this legislation is to ensure these workers are adequately protected, and that potentially abusive individuals are deterred.

***What difference will the proposed aggravation, where the enforcement of a statutory age restriction is involved, make?***

20. We think that the impacts would be similar to the new offences, save that the effect would be stronger as the aggravation would work to enhance all sentences for relevant offences within a retail setting. As such it might be a preferable model.

***What are the financial implications of the proposals?***

21. The SRC believes that the adoption of appropriate new legislation could have positive financial implications for Scottish public services in two ways. First, by supporting retail as an industry it could improve economic growth and employment, increasing tax (and other) income. Second, by creating a more effective deterrent against violence and abuse (including through messaging) the change could reduce expenditure on, for example, healthcare provision and the police.

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<sup>6</sup> Under the 1996 Employment Rights Act 1996 (<http://www.legislation.gov.uk/ukpga/1996/18/introduction> ) a Retail Worker is defined as: (2) In the following provisions of this Part “retail employment”, in relation to a worker, means employment involving (whether or not on a regular basis)—  
(a) the carrying out by the worker of retail transactions directly with members of the public or with fellow workers or other individuals in their personal capacities, or  
(b) the collection by the worker of amounts payable in connection with retail transactions carried out by other persons directly with members of the public or with fellow workers or other individuals in their personal capacities.

22. We would also note many retailers are having to significantly increase spending on worker protection in the absence of support from the police and an increase in violence. Whilst our Members will always take the necessary steps to protect their colleagues, it would be economically beneficial if that investment could be repurposed to economically more productive investment.

***What other action is or should be taken to protect retail and other workers?***

23. A range of policy and operational suggestions has been agreed by a number of senior leaders from across the industry, as set out in an open letter to the UK Government's Home Secretary<sup>7</sup>.

***Are there any other aspects of the Bill you would like to comment on?***

In addition to the above, we have some suggestions on points of detail:

24. **cl. 1(1) and (2) etc** – the new offence will only apply where the victim is “engaged, *at the time*, in retail work” [our emphasis]. We understand the policy need to tie the offence to the individual's role as a retail worker in some way. But we do question whether the temporal test of when the offence is committed is the right way given that it might not capture an assault which happens later on. For example, a retail worker in a community store completes their shift and on their way home is attacked half an hour after a problem over age verification finished and ten minutes after the engagement in retail work has finished (pending it restarting the next day). The attack was entirely related to the age verification issue, but would not attract the protection of the new offence simply because the attacker had the patience to wait for the working day to finish;

25. **cl.1(3)** – the maximum sentence appears to position this offence as potentially less serious than high-level common assaults, and significantly less so than assault occasioning Actual Bodily Harm. This may not be the best approach to adopt, as it might remove some of the deterrent effect upon potential violent criminals.

26. There may be a case for separate maxima depending on whether the offence is eg abusing or eg assaulting;

27. **cl. 2(3)(a)** – this sub-clause will define “obstructing or hindering” by reference to “prevent[ing] or imped[ing]”. Preventing could, potentially, include quite a wide range of behaviour, and care will have to be taken that it does not draw the net too widely to criminalise a wide range of essentially harmless activities. We note that “preventing” does not appear to be used in the 2005 Act;

28. **cl. 2(3)(b)** – this clause creates the *mens rea* for the “obstructing or hindering” offence, requiring specific intention. Intention can be difficult to prove, and there may here be a case for including (as has been done for threatening or abusing in cl. 2(1)(b)) a recklessness limb;

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<sup>7</sup> This letter has been sent alongside this submission – labelled Annex A

29. **cl. 4 (including 4(5))** – this clause creates the (separate) statutory aggravation for when the offence is committed in the consequence of “enforcing a *statutory* age restriction” [our emphasis]. We think that the requirement for the age verification to be statutory may limit the impact unhelpfully and perversely. There are a number of areas where the requirement for age-verification is in agreed practice or policy (e.g. between the retailers and the Home Office on knives pending the implementation of the Offensive Weapons Bill). To not extend the additional protection to those circumstances seems unwarranted – certainly the harm is exactly the same, as is the force (if not the nature) of the socially created requirement upon the retail worker;
30. **cl. 4(2)** – this sub-clause is at the heart of the aggravation section, creating a requirement (for aggravation) for the offence to have occurred “*because* of the enforcement of the statutory age restriction” [our emphasis].
31. ‘Because’ creates a requirement for a strong causal link. It might be open, for example, for an offender to argue that both the age verification and other factors influenced their decision to assault, and that the aggravation consequently does not apply (as the offence was not committed purely because of the age verification). That would appear a perverse outcome;
32. **cl. 5(1)(c) in conjunction with 6(1)** – we fully welcome the policy intention to give the same protection to delivery drivers as to those who work in a physical shop. We would ask the drafters to check that the present formulation would give that protection in situations where the delivery driver is not operating to deliver the goods from that physical shop. In many cases they will, for example, be working from a delivery centre or depot, which we think would be captured by the drafting in s. 6(1), but some clarification may assist; and
33. **cl. 6(3)** – similarly to our query on cl. 1(1) and (2) above, the additional protection might be read as finishing once the immediate delivery has halted irrespective of whether, for example, an attack as a direct result of the delivery occurs very shortly afterwards (eg when the driver steps out of the front door onto the street). That appears slightly odd.
34. The SRC believes when the Scottish Government and Parliamentarians consider further legislation on age-restrictions on sales in the future they should consider whether the measures add significantly to the cumulative burden faced by retail workers and consequently if those measures are proportionate.

The Home Office and Ministry of Justice

Via [www.gov.uk](http://www.gov.uk)

28<sup>th</sup> June 2019

Dear Home Secretary, Lord Chancellor and Minister for Crime, Safeguarding and Vulnerability,

### **Action to Prevent Violence Towards Shop Staff**

Retail is the largest single private sector employer in the UK, with roughly 3 million direct employees. Perhaps uniquely, it is woven into the fabric of each and every community and constituency in the country.

As an industry retail faces a range of challenges, but perhaps the most pressing and difficult is the rising tide of violence against retail workers (for the avoidance of doubt, including charity shop volunteers). The data are unanimous, describing a problem which has grown across the industry. The British Retail Consortium's analysis shows that 115 workers are attacked each and every day. The Association of Convenience Stores' research estimates there were almost 10,000 incidents of violence in convenience stores in the last 12 months. USDAW's work highlights that, on average, a shopworker is abused, threatened or assaulted 21 times a year - that is once a fortnight. According to research by the Charity Retail Association, one quarter of charity retailers report that incidents of violence against volunteers have increased in the past two years and nearly a third of charity retailers report that incidents of verbal abuse against volunteers have increased in the past two years. The Home Office's own Commercial Victimization Survey shows the retail sector consistently suffers several times more crime per premises than any other business sector surveyed.

The evidence multiple retail organisations are providing in response to the Call for Evidence, linked to other publications over past years, highlights one inescapable fact — violence against retail colleagues is a hugely problematic and serious area of crime, with weapons, particularly knives, increasingly significant. This violence is commonly triggered by shopworkers delivering what the state asks of them: enforcing age restriction policies or refusing to serve intoxicated customers, or dealing with shop thieves, who might be carrying weapons.

The only conclusion is that there is a serious imbalance in the relationship between risk and reward for these criminals.

For us, it is the human angle that matters most. These are not victimless crimes. They impact on the skilled, passionate, determined individuals who make the industry such a vibrant place to work; their families and loved ones; the communities to which they contribute so much; and those who rely on the public services retail indirectly supports. Irrespective of whether they are volunteers or employees, work during the day or overnight, or from set retail premises or remotely, they deserve to be acknowledged and supported as victims of crime.

For the Government this must be seen as a considerable public policy challenge played out daily in every High Street, neighbourhood parade and village square.

The growth in violence has come despite record spending by retailers on crime prevention, deploying new technology and additional colleagues to tackle this problem. Clearly a new approach is required, and we are writing to urge you to give effect to a range of recommendations, which are set out in more detail in the annexed paper. We will play our role, but need your consistent support and efforts to drive forward desperately needed reform.

The key recommendations are:

- legislating for a specific new offence of assaulting a retail worker (including charity shop volunteers), giving them the same status as emergency workers. This visible and clear offer of support and protection will finally provide for effective sentencing responses and will help drive improved reporting;
- urgent work on the use of community disposals, looking in more depth and where and how they are used and culminating on appropriate guidance to support and appropriate response. This change will be rendered more necessary if plans to abolish short prison sentences further increase criminals perceived incentives to offend;
- inclusion of retail violence in the next iteration of the Strategic Policing Requirement and for Home Office Ministers to work with Police and Crime Commissioners to support inclusion in each and every Police and Crime Plan; and
- an immediate and fully funded HM Inspectorate of Policing thematic review of policing of retail violence, including attitudes to retail victims, response frameworks and relevant prioritisation. These will help identify the better performing forces and allow the less effective ones to learn much-needed lessons.

We remain absolutely committed to going even further to do our part. Across the industry, the record spending on crime prevention we spoke of earlier is increasingly focused on staff protection. Beyond that, we are leveraging the industry's power to tackle the root causes of the symptoms we face, with the Shop Safe Alliance in Brixton shortly due to start an excellent example of our determination to resolve these issues and harness the power of the retail for the whole community's benefit. We are also developing training and guidance to help the smallest businesses.

We understand the importance of reporting more of the crimes we witness to police. Each undersigned retailer and representative body pledges to retain their focus on this area, to work to ensure that reporting within their organisation and to the police remains unencumbered. This will include greater use of the new Business Impact Statement and crime reporting guidance which we are grateful to the Home Office and National Business Crime Centre for publishing. We also ask the Home Office and senior police officers to ensure that, when reported, such crimes are recorded and reacted to as appropriately serious, which will build confidence in the Criminal Justice System and help reporting. No violent incident should be recorded as a simple shop theft and not attended rapidly.

Given the nature of the issues we have described, delay is not an option. There is no scope to kick the can down the road by waiting for a further consultation – the actions below must be agreed to, along with others which arise from the Call for Evidence, turned into a proper plan and delivered rapidly, co-ordinated through the National Retail Crime Steering Group.

Yours sincerely,

*The following members of the British Retail Community, making a positive difference to the retail industry and the customers it serves today and in the future:*

Aldi Stores Ltd – Giles Hurley, Chief Executive Officer – UK and Ireland

Anne Summers – Jacqueline Gold CBE, Chief Executive

Asda – Roger Burnley, Chief Executive Officer

A S Watson UK – Peter Macnab, Chief Executive Officer

B&Q UK and Ireland – Graham Bell, Chief Executive Officer

Boots UK – Sebastian James, Chief Executive Officer

British Independent Retailers Association – Andrew Goodacre, Chief Executive Officer

C & J Clark International Ltd – Ben Fletcher, Managing Director UK and Europe

Card Factory – Karen Hubbard, Chief Executive Officer

Carpentryright PLC – Wilf Walsh, Chief Executive Officer

Central England Co Operative – Deborah Robinson, Chief Executive Officer

Co-op Food – Jo Whitfield, Chief Executive

Co-op Food – Catherine Muirden, Director of People

Company Shop Group – Jane Marren, Group Managing Director

Costcutter Supermarkets Group Ltd – Darcy Willson-Rymer, Chief Executive

Officer Debenhams – Terry Duddy, Interim Executive Chairman

DFS Furniture – Tim Stacey, Chief Executive Officer

Dixons Carphone Group – Alex Baldock, Group Chief Executive

Dreams Ltd – Mike Logue, Chief Executive Officer

Fenwick Ltd – Robbie Feather, Chief Executive Officer

Greggs PLC – Roger Whiteside OBE, Chief Executive Officer

Henderson Retail – Mark McCammond, Retail Director

Homebase – Damian McGloughlin, Chief Executive Officer

Iceland Foods Ltd – Sir Malcolm Walker CBE, Founder & Executive Chairman

Iceland Foods Ltd – Richard Walker, Managing Director

J Sainsbury's – Mike Coupe, Group CEO

John Lewis Partnership – Sir Charlie Mayfield, Chairman

L'Occitane Ltd – Alia Hawa, Managing Director UK & Ireland

Lidl GMBH – Christian Härtangel, UK Managing Director

Marks & Spencer - Steve Rowe, Chief Executive Officer

McKesson UK – Toby Anderson, Chief Executive Officer

Musgrave Group PLC – Chris Martin, Chief Executive Officer

National Guild of Spar UK – Dominic Hall, Chairman

New Look Retailers Ltd – Alistair McGeorge, Executive Chairman

New West End Company – Jace Tyrrell, Chief Executive

Next PLC – Lord Wolfson of Apsley Guise, Chief Executive

Savers Health and Beauty Ltd – Doug Winchester, Managing Director

Scotmid Co Op Group – John Brodie MBE, Chief Executive

Scottish Grocers' Federation – Pete Cheema OBE, Chief Executive

Screwfix – John Mewett, Chief Executive Officer

Spar UK – Jackie Mackenzie, Managing Director

Steinhoff UK – Mark Jackson, Chief Executive Officer

The Body Shop International – David Boynton, Chief Executive

The Body Shop International – Linda Campbell, Managing Director

The Perfume Shop, Gill Smith, Managing Director

W H Smith PLC – Stephen Clarke, Chief Executive

Wilko Retail Limited – Andrew Moore, Chief Commercial Officer

*The following associated organisations:*

McColl's Retail Group – Jonathan Miller, Chief Executive

Motor Fuel Group Limited – Jeremy Clarke, Chief Operating Officer

One Stop – Jonny McQuarrie, Managing Director

Association of Convenience Stores – James Lowman, Chief Executive

British Retail Consortium – Helen Dickinson OBE, Chief Executive

Charity Retail Association – Robin Osterley, Chief Executive Officer

USDAW – Paddy Lillis, General Secretary.

## Annex A: Policy Recommendations

### *Central Leadership*

- Review the terms of reference for the National Retail Crime Steering Group (NRCSG) to build stronger relationships with a range of stakeholders throughout the Criminal Justice System, including but not limited to: policing, prosecutors, the sentencing framework, and the court system.
- Set up a new fund specifically for tackling violence in the retail sector. The fund would periodically invite bids for capital to support the development or deployment of promising initiatives to tackle retail violence, including technological, human and systematic solutions.

### *Tackling the Root Causes of Offending*

- Increase penalties and sentences for offenders attacking shopworkers serving the public and review the sentencing guidelines for assault. We support the move away from the use of short custodial sentences, but the government must consider what credible alternatives will be used in their place to deal with violent offences.
- A comprehensive review of the Out of Court Disposals system to ensure that interventions are tackling the root cause of offending such as drug and alcohol addiction, instead issuing fines to repeat offenders.

### *Police Response to Retail Violence*

- The Home Office should commission and fund H.M. Inspectorate of Constabulary and Fire Services (HMICFRS) to undertake a thematic review of violence against retail colleagues and invite representatives from retail onto the Steering Group.
- Include retail violence as a strategic priority in the Strategic Policing Requirement, accompanied by appropriate resources for local police forces to properly prioritise this issue.
- Encourage Police and Crime Commissioners to make provision for retail violence in their Police and Crime Plans, making retail violence a local priority for each force.

### *Triggers for Abuse and Reporting Incidents*

- Acknowledge the key triggers for violence and abuse in the retail sector; managing shop theft, refusing to serve intoxicated customers and enforcing age restriction policies.
- Amend the Section 182 guidance to make clear that crime against a business cannot count towards alcohol licensing reviews.