



Workers (Aggravated Offences) (Scotland) Bill

**UNISON Scotland's Submission to the consultation on the Workers
(Aggravated Offences) (Scotland) Bill**

September 2009

Executive Summary

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.

One of the advantages of the EWA was the clause that provided for hindrance and/or obstruction of the workers specified in it to be included and we believe that any further legislation or amendments should continue this pattern.

UNISON Scotland campaigned for and welcomed the introduction of the EWA in 2005 although we would have wished to see legislation much wider in scope than the Bill as originally drafted.

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

If the EWA is to make a stronger contribution to the public policy objectives it needs to be strengthened, in particular by extending the scope of workers covered by the Act.

As attempts to further amend the EWA are proving difficult to implement UNISON Scotland would be happy to see new legislation such as the proposed Workers (Aggravated Offences) (Scotland) Bill enacted

If separate legislation is required we would suggest a different title for the Bill.

Further thought needs to be given to sentencing powers for these offences

The EWA concept of 'hinder or obstruct' is particularly useful in circumstances where a strict assault may be difficult to prove. However, some thought is required as to how to apply this in the context of the wider public service grouping envisaged in this Bill.

Introduction

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.

UNISON Scotland welcomes the opportunity to comment on the proposals contained in Hugh Henry's Private Members Bill.

General Comments

Background

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.

We followed up our concerns with the Minister for Public Health who agreed to consider extensions to the scope of the Act and these discussions reverted to the Cabinet Secretary for Justice who has responsibility for general matters in relation to the Act. Following a meeting with Justice Department officials a potential solution was identified to overcome the limitations of the legislation. This solution focused on using the current Criminal Justice and Licensing Bill to amend the EWA in a way that meets the public policy objective of protecting public service workers.

However, the Cabinet Secretary subsequently decided that he was not prepared to make this more radical revision to the EWA but has agreed to extend the scope of the act using the secondary legislation powers in the Act. There will be an informal consultation on the specific groups to be included in the wider scope. It of course remains an option to amend the Criminal Justice and Licensing Bill and we set out the options below. This may be a quicker mechanism than a private members bill.

One of the advantages of the EWA is the clause that provides for hindrance and/or obstruction of the workers specified in it to be included and we believe that any further legislation or amendments should continue this pattern.

Context

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. 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. We also had concerns over some of the restrictive definitions.

There were significant objections to the 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, we and the Justice Committee took the view that their position failed to take account of the wider public policy grounds for the Bill. In particular, the need to make an unambiguous legislative statement to deter assaults on workers who are serving the public.

The Act has been used extensively with well over 1000 prosecutions to date and a number of cases attracting publicity, primarily at local level. It is difficult to evaluate the effectiveness of the Act as the statistical record keeping is very poor. In particular no record is kept of occupational groups. It should be remembered that more serious assaults are dealt with under the common law provisions. It is claimed that the Crown Office and Procurator Fiscal Service adopt a vigorous policy of prosecuting cases where public service workers are involved but there is no statistical evidence to support this and again record keeping is non-existent.

Public Policy Considerations

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.

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 a group of workers that took part in the survey. The Trauma 2003 Report highlighted some horrific instances of assault, across all parts of the public sector.

Since that time, the issue of workplace violence has been 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 include 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, the Scottish Government has been working with trade unions to examine ways to tackle the problem of workplace violence. In 2004 they published a report entitled “Protecting Public Service Workers: When the customer isn’t right”, which came out of a consultation exercise on the “Protection of Emergency Workers”. The report laid out a package of initiatives to start to address the problem of attacks on public service workers, which included an awareness raising campaign, training and education courses, and a programme to monitor and evaluate progress. A range of TV and newspaper adverts promoted the campaign, together with posters and leaflets, which were all well received. The campaign has also organised a number of conferences to promote best practice and published innovative guidance on phone rage.

In 2006 UNISON published a major report on violence against public service staff. This identified some 20,000 violent incidents each 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 important inadequate monitoring. There has been some strengthening of measures in NHS Scotland since then and work is currently being undertaken with Scottish local government to develop best practice guidelines.

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).

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. This highlights the fact that it is not just emergency workers who are at risk – public facing staff like social workers and local government administrative staffs also face significant risks. 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 that was not identified in the original policy memorandum.

The overriding public policy consideration is that legislation, which offers statutory protection to all public service workers, should emphasise the seriousness with which attacks against this important section of the

workforce are viewed. Public service workers are delivering services on our behalf as a community. It also helps inform service users in every school, hospital and college that intimidating and violent behaviour towards public service staff will not be tolerated.

Amending the EWA

If the EWA is to make a stronger contribution to the public policy objectives it needs to be strengthened. In particular by extending the scope of workers covered by the Act.

The strength of the Act over and above common law assault provisions is that it is an offence not only to assault an emergency worker but also to obstruct or hinder them. This is weakened by limiting the provision to those responding to 'emergency circumstances'.

However, a late amendment to the Bill introduced a new provision (s5) for health workers in hospital premises that does not require them to be responding to emergency circumstances. This year's modification order included some community based staff.

This means that it should be possible to amend the Act by recognising two types of staff covered by the legislation. The first covering emergency workers in emergency circumstances and a second broader category covering a wider group of staff in a similar way to the health workers brought into scope through s5 of the EWA.

Another approach that we suggested in 2005 is replacing the multiple tests in the EWA to a simpler "in the performance of their duties". This would be similar to the provisions in the Police (Scotland) Act 1967 that appears to work satisfactorily with between 2000 and 3000 charges proved per annum.

We have identified the following groups that we believe should be added to the list of emergency workers covered by the EWA:

- **Healthcare:** The current list restricts this category to those with a professional registration. There are many healthcare workers who are emergency workers who fall outwith this category. In addition the 'assisting' provisions would not cover them. The main group would be nursing assistants but it could also include a range of ancillary staff including security and porters. Through 'Joint Future' arrangements health and social care staff increasingly work in multi-disciplinary teams. These teams also include Professions Allied to Medicine who also work in A&E and other emergency settings.

- **Social care:** Many social care staff including social workers regularly respond to emergency situations. This is not limited to mental health and child protection roles. Whilst this would primarily be in community settings it could also include some residential settings handling

emergency admissions. Staff in home care alert teams regularly attend emergencies, even if they might not be apparent until they arrive at a client's premises. We should also not forget that a range of health and social care staff in the voluntary sector work in emergency situations.

- **Environmental:** There are several groups of environmental workers who work in emergency situations. Some SEPA staff, port authorities, housing, environmental health, pest control and roads. Even some Leisure services staff including pool attendants regularly manage emergency situations.

- **Utilities:** Scottish Water staff and workers in the energy companies regularly respond to emergency situations. This is not limited to National Grid Transco and 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 could be involved in emergency situations. Similar provisions apply to community wardens who are usually employed by local authorities.

All of the above workers and others are, in the words of the Minister promoting 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".

In addition to extending the scope of the emergency worker provisions we seek a more general section covering a wide range of public service workers that operate in public facing situations. This would build on the s5 provision.

There are two possible approaches. The first would be to specify particular groups of staff in a similar way to the health workers covered by s5. This would be a very long list covering all Scotland's public services including reception staff, housing officers, customer service, planning etc. In effect all public service staff who deal with service users. Not only would this be a long list that would inevitably miss some groups but because these staff are described in different ways by each public body it would be difficult to define them effectively.

The second approach is to include a broad definition of public service worker that would be covered by the Act. The requirement would then be that they met this definition and were operating "in the performance of their duties". The public service worker definition could either be a generic descriptor or defined by the organisation they were employed by (or contracted to) in the same way other legislation defines public bodies.

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.

New Legislation

As attempts to further amend the EWA are proving difficult to implement UNISON Scotland would be happy to see new legislation such as the proposed Workers (Aggravated Offences) (Scotland) Bill enacted and would hope this would further assist all public service workers to receive the protection they need.

If separate legislation is required we would suggest a different title for the Bill. The concept of aggravated offences is normally attached to common law offences and to use this as a title for a statutory offence would be confusing. We also already have Lord Advocate guidance on aggravated offences in assaults involving public service workers and therefore this title is likely to confuse matters further.

Further thought needs to be given to sentencing powers for these offences. The EWA originally had a higher tariff than common assault but the common law provisions in effect caught up with the EWA and therefore took away one of the attractions of using the EWA. It will be important to set out clearly how this Bill will add to the current provisions and a higher tariff could well be one such factor.

The EWA concept of ‘hinder or obstruct’ is particularly useful in circumstances where a strict assault may be difficult to prove. However, some thought is required as to how to apply this in the context of the wider public service grouping envisaged in this Bill.

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