



Protection of Workers (Scotland) Bill

**UNISON Scotland's Response to the Economy, Energy and Tourism
Committee's Call for Written Evidence on the Protection of Workers
(Scotland) Bill**

September 2010

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 participate in the Call for Written Evidence on the Protection of Workers (Scotland) Bill

General Comments

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).

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.

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 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, Minister for Community Safety, but these discussions are proceeding at a very slow pace.

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.

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.

UNISON Scotland is pleased that successive Scottish Governments have recognised the nature and the scale of the problem in relation to violence against

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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 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.

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.

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*”.

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. 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.

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:

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- **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.

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".

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.

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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.

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.

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.

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”*.

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.

UNISON Scotland will aim to amend these anomalies at a later stage in the passage of the Bill.

Conclusion

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.

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.

We would urge the Committee to support the Bill through its various stages.

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