

Criminal Justice Directorate

Criminal Justice Division
Criminal Law, Practice and Licensing Unit
Scottish Government
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Dear Sir/Madam

Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Act 2021

I am writing to draw your attention to the fact that certain remaining provisions in the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Act 2021 (“the 2021 Act”) will come into force on 24 August 2021.

These provisions to come into force are contained in sections 1 to 3 and section 4(3) of the 2021 Act and further details are given below. The other provisions of the 2021 Act (including the main definitions) came into force the day after Royal Assent on 25 February 2021.

The 2021 Act, and explanatory notes that accompany the 2021 Act may be accessed at:

<https://www.legislation.gov.uk/asp/2021/6/contents>
<https://www.legislation.gov.uk/asp/2021/6/notes/contents>

Summary of the Act

The Act is in seven sections:

- Section 1 establishes the offence of assaulting, threatening or abusing a retail worker.
- Section 2 further defines behaviour that constitutes threatening or abusing a retail worker.
- Section 3 provides for the offence to be aggravated where the offending behaviour occurred because the retail worker was enforcing a statutory age restriction.
- Section 4 defines “retail worker”.
- Section 5 defines “retail premises” and “retail work”.
- Sections 6 and 7 deal with commencement and the Act’s short title.

Details of the provisions contained within the 2021 Act

Coming into force 24 August 2021:

Section 1 – Offence of assaulting etc. retail worker

This section makes it an offence for a person to assault, threaten or abuse another person who is a retail worker and who is engaged, at the time of the offence, in retail work. It also provides that the offence is only committed if the person who carried out the assault, threat or abuse knew, or ought to have known, that the person was a retail worker and was engaged, at the time, in retail work. Otherwise, no offence is committed (although the behaviour may, of course, still constitute a different criminal offence – such as the common law offence of assault).

This section also specifies the maximum penalties for committing the offence of assaulting, threatening or abusing a retail worker. That is, a person who commits an offence of assaulting, threatening or abusing a retail worker will be liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the “prescribed sum” (which is currently £10,000 by virtue of section 225(8) of the Criminal Procedure (Scotland) Act 1995)) (or both). It should be noted the offence can only be prosecuted summarily (without a jury, in the Justice of the Peace or sheriff court).

This section also allows evidence from a single source to be sufficient to establish whether a person is a retail worker and whether they were engaged, at the time the offence was committed, in retail work. This removes the normal requirement for all evidence in criminal matters to be corroborated.

It should be noted however, other essential elements of the offence require corroboration in the normal way.

Coming into force 24 August 2021:

Section 2 – Behaviour constituting an offence under section 1

This section provides clarification of the meaning of “threatening or abusing” a retail worker. That is the offence of threatening or abusing a retail worker is committed by a person only if the person:

- behaves in a threatening or abusive manner towards the worker, and
- intends by the behaviour to cause the worker or any other person fear or alarm or is reckless as to whether the behaviour would cause such fear or alarm.

Therefore, by virtue of this section the offence of threatening or abusing a retail worker can be committed by someone issuing verbal threats, and by behaviour consisting of a single action or course of conduct.

In these respects, behaviour constituting the new offence is liable also to constitute the existing offence of threatening or abusive behaviour under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

Coming into force 24 August 2021:

Section 3 – Aggravation in relation to enforcement of age restriction

This section provides the offence of assaulting, threatening or abusing a retail worker can become an aggravated offence if the assault, threat or abuse occurred because the retail worker was enforcing a statutory age restriction (e.g the purchasing of cigarettes or alcohol etc.).

This section also provides in order to establish that the offence is so aggravated, the prosecutor must specify the aggravation in the complaint (that is, the document that sets out what the accused person is charged with) and prove it in court (for which evidence from a single source is sufficient).

This section further provides that if the accused is convicted of the aggravated offence, it must be stated in court and recorded that it was so aggravated, and the aggravation must be taken into account in sentencing.

It should be noted this may, but need not, increase the penalty imposed; and the court must state the extent of any difference in penalty and the reason for it or, where there is no difference, the reason for there being no difference.

This section defines “enforcement” of a statutory age restriction as including:

- seeking information as to a person's age,
- considering information as to a person's age, and
- refusing to sell or supply goods or services,

for the purposes of complying with the restriction.

This broadly, covers all the steps that a retail worker would be expected to take to establish whether a customer is above the relevant age limit. This means (for example) that in proceedings for assault on a retail worker, it would be possible to demonstrate aggravation of the offence not just where the assault was triggered by the retail worker refusing to sell alcohol to the customer, but also where the trigger was the initial request to provide proof of age.

This section also provides a definition for “statutory age restriction”. It is framed so as to include situations where the offence is set out in one enactment and the age specification in another. For example, section 11 of the Fireworks Act 2003 creates the offence of breaching firework regulations but it is the regulations themselves which impose the age restriction on sale.

Already in force 25 February 2021:

Section 4 – Meaning of “retail worker”

This section defines “retail worker” as any person whose usual place of work is retail premises, together with any person who, despite not usually working in retail premises, carries out retail work.

In either case, a person can count as a retail worker if the person is an employee of the business, an owner of the business, or someone who works in the premises through agency arrangements. It is also irrelevant whether a person receives payment for their work. Accordingly, someone working without payment in a family business or volunteering in a charity shop could still be a “retail worker”.

This section also includes people making deliveries from retail premises (such as supermarket staff fulfilling home deliveries) and ensures that they can also qualify as “retail workers”.

Coming into force 24 August 2021:

Section 4(3) – prosecution responsibilities in respect of categories of retail worker

Section 4(3) ensures that the prosecution does not need to prove that the accused person knew, or ought to have known, which of the categories mentioned in section 5(1)(b) the retail worker fell into.

For example, in proceedings against a person for assaulting a shop-worker, it is enough for the prosecutor to establish that the accused knew (or ought to have known) that the person assaulted was a retail worker (and was engaged, at the time, in retail work) without also having to prove that the accused knew (or ought to have known) whether the person assaulted was an owner of the retail business, an employee or an agency worker.

Already in force 25 February 2021:

Section 5 – Meaning of “retail premises” and “retail work”

This section defines the terms “retail premises” and “retail work” for the purposes of the 2021 Act.

It defines “retail premises” in such a way so as to cover premises used wholly or mainly for the sale and supply of goods, on a retail basis, to members of the public. This will include all shops other than wholesale outlets that sell exclusively (or largely) to relevant tradespersons, or other outlets that are only open (or mainly open) to specific people, such as members of a club.

The definition of “retail work” covers any work done in retail premises by those for whom that is their usual place of work. So, for example, the “retail work” done in a shop includes all the work done by the shop staff, whether or not the work is directly

concerned with selling (for example, in a supermarket, work re-stocking shelves as well as work at the checkout).

The definition also covers work done by those whose usual place of work is not retail premises, if the work is in connection with the sale or supply of goods, on a retail basis, to the public. This would cover some work in high-street premises that (wholly or mainly) sell or supply services rather than goods (such as a hairdresser or vet) – but only work involving the sale of goods (such as hair-gel or veterinary medicines). It would also cover work not done in premises at all, if it involves the sale of goods to the public (e.g. by a door-to-door seller or street-trader).

In addition, the definition covers work in premises not used wholly or mainly for the supply of goods if the work involves the sale or supply of goods or services to which a statutory age restriction applies. So, for example, in a hotel that includes (as a small part of the premises) a public bar, the staff serving alcohol in the bar would be doing “retail work”, but most other hotel staff (including reception staff, porters and cleaners) would not.

Under this section, retail workers making deliveries from retail premises (e.g. a supermarket) count as doing retail work only during the period when they are at the customer’s premises (regardless of whether they succeed, while there, in making a delivery), and not (for example) while travelling between the supermarket and the delivery address.

This section also clarifies that working in premises includes working on any land forming part of the premises. As a result, those doing “retail work” include, for example, the supermarket worker in the car park collecting trolleys; the staff performing a “meet and greet” function at the entrance to a department store; and a greengrocer selling fruit or vegetables from trestle tables set up on the pavement outside the shop.

Examples of non-retail work would be: work in a high-street solicitors firm (which sells or supplies services rather than goods); work in wholesale-only premises (such as a cash-and-carry) or a private members’ club; and work carried out by tradespersons (such as plumbers or electricians) in the customer’s home or workplace (unless the workplace counts as retail premises and the tradespersons are working in-house).

ENQUIRIES

Should you have any queries in relation to any of the above, please contact the Criminal Law, Practice and Licensing Unit through the details provided at the top of this circular.

Yours faithfully,

Nigel Graham
Criminal Law, Practice & Licensing Unit
Criminal Justice Division
Criminal Justice Directorate/Scottish Government

ANNEX A

Copy List

Daniel Johnson MSP
Aldi
Asda
Lidl
Tesco
Marks & Spencer
Waitrose
Scotmid
Sainsburys
Co-op
Morrisons
Scottish Retail Consortium
Federation of Small Businesses Scotland
Law Society Scotland
Police Scotland
Crown Office and Procurator Fiscal Service
Judicial Institute for Scotland
Crimestoppers
Fearless
Scottish Grocers Federation
Scottish Business Resilience Centre
National Federation of Retail Newsagents
G101 Group Stores
Best One Stores
Day Today and U Save Stores
Lifestyle Express Stores
Spar Stores (CJ Lang)
Nisa Stores
Costcutter, Londis and Mace
Booker Premier Stores
MGF Garage Forecourt Stores
Petrol Retailers Association
Scottish National Party
Scottish Labour Party
Scottish Green Party
Scottish Conservative and Unionist Party
Scottish Liberal Democrat Party
The Union of Shop, Distributive and Allied Workers
The Scottish Trades Union Congress
GMB Scotland