

RESPONSE FORM

PREPARATION OF THE ELEVENTH PROGRAMME OF LAW REFORM

We hope that by using this form it will be easier for you to respond to the questions set out above in the consultation paper. Respondents who wish to address only some of the questions may do so. The form allows you to enter comments in a box after each one. At the end of the form there is also space for any general comments you may have.

Please note that information about this consultation paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act.

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are commenting on only one or two of the questions, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

Please save the completed response form to your own system as a Word document and send it as an email attachment to info@scotlawcom.gov.uk. Comments not on the response form may be submitted via that email address or by using the [general comments form](#) on our website. If you prefer you can send comments by post to the Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR.

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Questions

1. Do you have any suitable law reform projects to suggest?

To introduce legislation that will create an offence for assaulting, threatening or abusing railway sector staff.

2. If suggesting a new project:-

- (a) Please provide us with information about the issues with the law that you have identified:

The British Transport Police (BTP) propose the introduction of legislation that will create an offence for assaulting, threatening, or abusing railway sector staff. The general principle is to provide additional protection for relevant workers in this sector and would be directly comparable to the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Act 2021¹; which created standalone offences for assaulting, threatening or abusing against those who work in the retail sector.

There is little doubt that those in the railway sector can and do experience abuse and violence on a regular basis; whether it is rail-specific disputes such as fare evasion, ticket irregularities or frustrations due to delays, or alcohol-fuelled violence. The Railway Safety and Standards Board (RSSB) reported that '94.1% of front-line [railway] staff experienced workplace abuse, with 25.6% experiencing physical assaults' with the most recent RMT Violence Against Railway Staff Survey revealing '72% of its members in front line transport roles have experienced workplace violence in the last 12 months'²; highlighting the extent of the problem. Also, it was reported that since 2019 there has been an 11% increase in violence-related offences committed against railway staff in Scotland³. This is unacceptable and continues to present a significant risk. This proposal could help tackle this problem by increasing confidence to reporting matters to Police and ensuring offenders are punished accordingly as well as many other benefits.

Whilst we recognise the Police can report such behaviour now, some may argue against this reform (perhaps suggesting current adequate provisions currently in place under existing common and statutory law i.e. S.38 of the Criminal Justice and Licensing (Scotland) Act 2010⁴), we would argue that the creation of such legislation will enhance the safety of the victims it aims to protect.

A proposal such as this has been attempted before. In 2010 the Protection of Workers (Scotland) Bill was introduced. Its objective was to strengthen criminal penalties against those who assault workers who deal with the public, which would have covered both retail and railway employees. This bill was rejected as it was claimed common law assault already covered this behaviour. However, since then, the introduction of the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Act 2021⁵ undermines this notion as it set a precedent allowing workers in certain sectors to have recognised, protected legal status. The BTP would like to ensure railway sector employees are afforded

¹ [Protection of Workers \(Retail and Age-restricted Goods and Services\) \(Scotland\) Act 2021](#)

² 'Work-Related Violence and Trauma' - Railway Safety and Standards Board (Published: February 2022)

³ 'ScotRail anti-social behaviour team assaulted on train' – The Herald (Published: May 2022)

⁴ [S.38 Criminal Justice and Licensing \(Scotland\) Act 2010](#)

⁵ [Protection of Workers \(Retail and Age-restricted Goods and Services\) \(Scotland\) Act 2021](#)

such protection. It is important to recognise the legislative imbalance between railway and retail employees who, by virtue of their position interacting and serving members of the public, fulfil similar public facing functions, yet retail employees are better protected under the law and treated differently in the course of justice should they be victims of the same offence.

This Act, under the definition of 'retail workers'⁶ and 'retail work'⁷, provides clear provision and protection to rail staff selling drinks or food in Scotland. However, it does not provide the same protection to those who check or sell train tickets at barriers or in booking offices (under the Scottish Crime Recording Standards, tickets are tokens for a service, rather than goods); this highlights a significant gap and unfairness in the application of the current legislation.

Furthermore, there is a statutory aggravating factor under Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Act 2021⁸ where a retail worker is 'enforcing a statutory age restriction'; offering recognition where an offence is committed against a retail employee seeking to uphold the law. In comparison, there is no such recognition for offences committed against those checking tickets on trains or at barriers, who are in a similar capacity, operating to uphold the law. In England and Wales, under S.156⁹ [commenced 28th June 2022] of the Police, Crime, Sentencing and Courts Act 2022, an aggravating factor is to be applied by the courts in cases of assault where an offence is committed against a person providing 'services, goods and facilities to the public'. This would cover railway staff however not in Scotland; highlighting the disparity and imbalance of the application of the law within the industry.

(b) Please provide us with information about the impact this is having in practice:

The impact of the lack of protection in law is evident as crimes against railway sector staff remains high and is increasing; this is considered a priority crime for the British Transport Police. Furthermore, a report released by the Railway Safety and Standards Board states that evidence suggests '[railway] staff exposed to work-related violence are more likely to report depressive disorders, anxiety and sleep problems compared to those not exposed to work-related violence' directly leading to an increase in absenteeism, reduced productivity and loss of confidence interacting with members of the public. Moreover, reduced staffing levels has been associated with more cases of violence on the railways¹⁰. The various Railway Unions and Staff Associations are all too aware of the issues and disparities caused to their members (as illustrated by the 'Transport Workers: Charter of Protection'¹¹ published by the RMT).

In turn, there is a perpetual cycle of violence resulting in significant health and safety issues for staff, concerns for their welfare, reduction in performance whilst hindering the effectiveness of the whole of the transport system, a risk to members of the public as well as significant financial implications. With incidents being reported on platforms, concourses, trains, in booking offices and at ticket barriers the scope and frequency of victimisation spans the entire railway network; with the BTP, out of necessity, identifying hotspot locations to offer targeted intervention.

⁶ [S.4 Protection of Workers \(Retail and Age-restricted Goods and Services\) \(Scotland\) Act 2021](#)

⁷ [S.5 Protection of Workers \(Retail and Age-restricted Goods and Services\) \(Scotland\) Act 2021](#)

⁸ [S.3 Protection of Workers \(Retail and Age-restricted Goods and Services\) \(Scotland\) Act 2021](#)

⁹ [S.156 Police, Crime, Sentencing and Courts Act 2022](#)

¹⁰ ['Identifying measures to prevent customer-on-staff work-related violence in the UK rail industry'](#) See 'Summary Report' – Railway Safety and Standards Board (Published: 2021)

¹¹ [Transport Workers: Charter of Protection](#) – RMT (Published: 2013)

Comparatively, the imposition of the Protection of Workers (Retail and Age-restricted Goods and Services)(Scotland) Act 2021 (which came into force in August 2021 to tackle a similar problem) has been well-received and has resulted in higher levels of confidence in reporting incidents of violent and threatening behaviour to the Police, as evidenced by the British Retail Consortium who report over 1600 incident reports in the 6 months preceding its enactment¹².

(c) Please provide us with information about the potential benefits of law reform:

Reform in this area and introduction of such legislation would result in many benefits. Firstly, it would ensure that railway sector staff are protected equally from various forms of unacceptable behaviour. It is likely to lead to an increase in confidence reporting incidents to the Police which will help secure victim engagement which is crucial to successfully detecting and reporting offenders. It may act as a deterrent as it could lead to more frequent and harsher penalties for those who seek to threaten or assault railway staff; this may reduce the number of repeat victims of crime. It will raise public awareness and educate people that such behaviour is unacceptable and is likely to result in prosecution. It could lead to enhanced performance of those working in the railway sector, but also those attracted to seek rail sector career, as it is likely to boost confidence interacting with members of public as well as improving health, safety and wellbeing. It would lead to a safer network for all as members of the public are less likely to witness or become involved in offences against railway employees. With increased reporting confidence, this will inform intelligence-led policing so the BTP can direct resources more efficiently, this will alleviate pressure on officers as well as improving relations with railway sector staff who may have more confidence overall in the criminal justice system overall.

3. Do you consider that your suggested law reform project would be suitable for the law reform process in the Scottish Parliament; or, in relation to reserved matters, for the House of Lords procedure for Commission Bills?

Either process.

Any Other Comments

N/A

Thank you for taking the time to respond to this consultation paper. Your suggestions and comments are appreciated and will be taken into consideration when preparing our Eleventh Programme of Law Reform.

¹² ['New research shows need for shop worker protection legislation'](#) – British Retail Consortium (Published May 2022)