

EMERGENCY WORKERS (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 2 – Assaulting or impeding certain emergency workers responding to emergency circumstances

13. Subsection (1) creates a new offence of assaulting, obstructing or hindering a person who is acting in one of the capacities described in subsection (3) when that person is responding to emergency circumstances.
14. Subsection (2) is an evidential provision which makes it clear that an offence under subsection (1) will only be committed if the accused knows, or ought to know that the person being assaulted, obstructed or hindered:
 - is acting in the capacity of one of the listed emergency workers (section 2(2)(a)); and,
 - is, or might be, responding to emergency circumstances (section 2(2)(b)(i)), or as if there were emergency circumstances (section 2(2)(b)(ii)).
15. The Crown will therefore have to lead evidence of the accused's knowledge of these matters.
16. Section 2(2)(b) makes it clear that the Crown does not have to prove that the accused knew that the victim was *in fact* responding to emergency circumstances – it would be sufficient for the Crown to prove that the accused knew or ought to have been aware that his or her victim *might* have been responding to emergency circumstances or was acting in a manner consistent with an emergency response.
17. As explained in paragraph 11 above, there will be a variety of ways by which the Crown might prove the accused's state of knowledge in relation to his or her victim's emergency worker status. Similarly, evidence of the accused's knowledge in relation to his or her victim's response to emergency circumstances might take a variety of forms. For instance, the Crown might lead evidence that the accused saw the victim, a doctor, treating an injured person.
18. As is the case with section 1(2), referring to the accused's actual knowledge in subsection (2) of this section ensures that an offence may nevertheless be committed where an accused has personal knowledge that his or her victim is acting in a capacity referred to in subsection (3) or personal knowledge of the victim's emergency response in circumstances where that might not be obvious to a reasonable observer.
19. Subsection (3) defines the capacity in which the assaulted, obstructed or hindered person must be acting in order for an offence to be committed under this section of the Act. Paragraph (a) covers prison officers in publicly operated prisons as well as prisoner custody officers in contracted out prisons (e.g. private prisons, such as HMP Kilmarnock). Paragraph (c) covers members of both the Royal National Lifeboat

*These notes relate to the Emergency Workers (Scotland) Act
2005 (asp 2) which received Royal Assent on 1 February 2005*

Institution and other organisations operating a water rescue vessel whether inshore or at sea, together with those who page rescue boat crews and who arrange for the launch of lifeboats. This ensures that the provisions of the Act apply to rescue teams such as the Loch Lomond Rescue boat, based at Luss. Paragraph (d) covers doctors registered with the General Medical Council to practice medicine. Paragraphs (e) and (f) cover nurses and midwives registered with the Nursing and Midwifery Council. Paragraph (g) covers social workers who are involved in the implementation of child protection orders under section 57 of the Children (Scotland) Act 1995 or authorisations under section 61 of that Act which makes provision for the emergency protection of children where a child protection order is not available.

20. Subsection (4) specifies what is meant by references in the Act to an emergency worker 'responding to emergency circumstances'. Subsection (5) specifies when emergency circumstances can be regarded as occurring. Reference at subsection (5)(a)(ii) to the life and health of plants, ensures that circumstances such as forest fires (which might not necessarily involve danger to the life or health of persons by reasons of their remote location) are considered to be emergency circumstances for the purpose of the Act.