

# **EMERGENCY WORKERS (SCOTLAND) ACT 2005**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 5 – Assaulting or impeding health workers in hospital premises***

28. Subsection (1) creates a new offence of assaulting, obstructing or hindering ambulance, medical and nursing personnel (as defined in subsection (3)), or those assisting them, in a hospital building, or on hospital grounds. This would include, for example, hospital car parks and areas outside hospital buildings, which nevertheless form part of the hospital campus. There is no provision requiring proof that emergency circumstances exist, on the basis that emergency circumstances may be assumed to exist or be imminent in hospital premises at all times.
29. Health workers are covered by this section whenever they are in a hospital, in their capacity as health workers. This ensures that their professional capacity to respond to any emergency at any time is safeguarded.
30. 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:
  - was acting in a capacity referred to in subsection (3); or,
  - in respect of an offence against a person assisting a health worker, was assisting a health worker and that the person being assisted was acting in that capacity.
31. As with offences under sections 1, 2 and 3, it will not be necessary for the Crown to prove that the accused actually *knew* that his or her victim was a health worker, or was assisting a health worker. It would be sufficient for the Crown to prove that the accused *ought* to have known that to be the case. Again, reference to the accused's actual knowledge ensures that an offence may nevertheless be committed where an accused has personal knowledge regarding the status of his or her victim, which would not be obvious to a reasonable observer.
32. Subsection (4) provides that an offence under subsection (1) can be committed by non-physical means or by action directed only at the equipment or other items used by the emergency worker.
33. Subsection (5) is an evidential provision and provides that the capacity of a person as one of the workers listed in subsection (3) may be proved by uncorroborated evidence (explained in paragraph 27 above).