

EMERGENCY WORKERS (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Assaulting or impeding certain providers of emergency services

4. Subsection (1), as read with subsection (3), creates a new offence of assaulting, obstructing or hindering someone who is acting in the capacity of a police constable, a fire-fighter, or an ambulance worker.
5. Paragraph (a) of subsection (3) only covers constables of the eight Scottish police forces set up under the Police (Scotland) Act 1967 and does not include other persons who are referred to as constables or who have the powers and privileges of constables e.g. constables of the British Transport Police are not covered. Paragraph (b) covers not only members of a fire brigade but also persons who render services for fire-fighting purposes and who are variously referred to as retained, auxiliary or part-time fire-fighters. Paragraph (c) covers ambulance drivers and ambulance paramedics.
6. The police and fire-fighters already benefit from specific legislative protection in performance of their functions in terms of section 41(1)(a) of the Police (Scotland) Act 1967 and section 30(2) of the Fire Services Act 1947 respectively.
7. The protection afforded to the police and fire-fighters by the Act, however, differs from the existing statutory protection in a number of respects. In so far as the police are concerned, it is an offence under section 41(1)(a) of the Police (Scotland) Act 1967 to assault, resist, obstruct, molest or hinder a constable in the execution of his duty. Case law requires a physical element to the act of hindering or obstructing for an offence under section 41(1)(a) to be made out - see, for example, the case of *Curlett v McKechnie* (1938 J.C. 176). Section 4 of the Act makes it clear that an offence of hindering or obstructing may be committed by means other than physical means. It specifically covers an example of such conduct (that of the giving of false information) which would not otherwise be covered under the 1967 Act.
8. In terms of section 30(2) of the Fire Services Act 1947, it is an offence to obstruct or interfere with a fire-fighter who is engaged in fire-fighting operations. The Act goes further, by covering fire-fighters whenever they are on duty, regardless of whether they are extinguishing fires or responding to other types of emergency. In addition, the maximum penalties on conviction are higher for an offence under the Act than they are under the Fire Services Act 1947.
9. 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). The Crown will therefore have to lead evidence to show that the accused was aware of the status of his or her victim as a constable, fire-fighter or ambulance worker.

10. It will not be necessary for the Crown to prove that the accused actually *knew* that his or her victim was a constable, fire-fighter or ambulance worker. It would be sufficient for the Crown to prove that the accused *ought* to have known that to be case.
11. The types of evidence which the Crown might lead in this regard will vary from case to case. Examples might include evidence that the victim was in uniform; was driving a marked vehicle such as a police car, fire engine or ambulance; was carrying a medical bag; or had declared that he or she was acting in a relevant capacity.
12. In referring to the accused's actual knowledge, subsection (2) 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), even in circumstances where that might not be obvious to a reasonable observer.

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 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.

Section 3 – Assaulting or impeding persons assisting emergency workers

21. Subsections (1) and (2) create a new offence of assaulting, obstructing or hindering someone assisting one of the emergency workers listed in section 1(3) or section 2(3) while that worker is responding to emergency circumstances.
22. Subsection (3) 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 assisted is acting in the capacity of an emergency worker (section 3(3)(a));
 - the person being assisted is involved in an emergency response (section 3(3)(b) – explained in more detail in the context of the similar provision in section 2(2)(b) at paragraph 16 above); and,
 - the person being assaulted, obstructed or hindered is assisting someone acting in the capacity of an emergency worker (section 3(3)(c).
23. As with offences under sections 1 and 2, there will be a variety of ways in which the Crown might prove the accused's state of knowledge in relation to these elements of the offence. It will not be necessary, however, for the Crown to prove that the accused actually *knew* that his or her victim was assisting an emergency worker. It would be sufficient for the Crown to prove that the accused *ought* to have known that to be the case. Additionally, reference to the accused's actual knowledge ensures that an offence may nevertheless be committed where an accused has personal knowledge regarding the assisting role of his or her victim, which would not be obvious to a reasonable person.

Section 4 – Provisions supplementary to section 1 to 3

24. Subsection (1) provides that the offences of obstructing and hindering under sections 1, 2 and 3 can be committed by non-physical means or by action directed only at the equipment or other items used by the victim.
25. Subsections (2) and (3) specifically provide that an offence of hindering any of the emergency workers mentioned in sections 1(3) and 2(3) can be committed through the provision of false information. Subsection (4) provides that the more general offence of hindering is not restricted to that of providing false information.
26. Subsection (5) provides that emergency circumstances are to be taken to exist where the person responding to them believes and has reasonable grounds to believe that there are or may be emergency circumstances. This means that the Act will cover, for example, a hoax call, where emergency circumstances do not actually exist, but the emergency worker has reasonable grounds for believing that they do.

27. Subsection (6) is an evidential provision and provides that a person's capacity as one of the emergency workers listed in sections 1(3) or 2(3) of the Act may be proved by uncorroborated evidence. Thus, for example, the fact that the victim was a 'medical practitioner' in terms of section 2(3)(d) may be proved by evidence from a single source. This is an exception to the general rule of evidence in criminal proceedings in Scotland that the crucial features of an offence must be established by evidence from at least two sources.

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).

Section 6 – Penalties

34. **Section 6** provides that a person found guilty of an offence under this Act is liable on summary conviction to a period of imprisonment not exceeding 9 months and/or a fine not exceeding level 5 on the standard scale (currently £5000). This penalty is higher than the current maximum sentence of 3 months imprisonment available at Sheriff Summary level (i.e. for cases which sit without a jury) for common law offences.

Section 7 – Saving for certain other offences

35. The conduct constituting an offence under the Act may also constitute an offence under the relevant provisions of the Police (Scotland) Act 1967 or the Fire Services Act 1947. Section 7 ensures that it will still be open to the Crown to prosecute such conduct under either the 1967 or 1947 Acts or this Act.

Section 8 – Power to modify

36. If there are categories of worker which are not included in sections 1(3), 2(3) or 5(3), they can be brought within the protection of the Act by the operation of this power.
37. This power may also be used to remove a category of worker from sections 1(3), 2(3) or 5(3) of the Act.
38. Similarly, this power can be used to move a category of worker from one section of the Act to another. For example, a category of worker currently listed in section 2(3) of the Act, and so protected when responding to emergency circumstances, might be moved to section 1(3), so that the Act's protection was extended to them whenever they were on duty.
39. The exercise of the power under section 8 is subject to the test set out in subsection (2).