JUSTICE 1 COMMITTEE

AGENDA

27th Meeting, 2004 (Session 2)

Thursday 9 September 2004

The Committee will meet at 2.00 pm in Committee Room 4.

1. **Emergency Workers (Scotland) Bill (in private)**: The Committee will consider a draft stage 1 report.

Alison Walker
Clerk to the Committee
Tel: 0131 348 5195
Papers for the meeting—
Agenda item 1

Note by the Clerk
Subordinate Legislation Committee, Emergency Workers (Scotland) Bill
Delegated Powers Scrutiny – Stage 1 Report

Papers for information—
Judicial Studies Committee for Scotland, The Work of the JSC
Correspondence from the Deputy Minister for Justice - Contract
between the Scottish Executive and Reliance Monitoring Services Ltd
A copy of the contract can be accessed at the following link
http://www.scotland.gov.uk/library5/finance/serpems-00.asp

Documents not circulated—
Copies of the following have been provided to the Clerk:

- HM Inspectorate of Prisons, HMP Dumfries – Inspection: 3-4 March 2004;
- HM Inspectorate of Prisons, HMP Greenock – Inspection: 10-11 March 2004
- HM Inspectorate of Prisons, HMP Low Moss – Inspection: 31 March to 1 April 2004;
- HM Inspectorate of Prisons, HMP Barlinnie – Inspection: 27-29 April 2004;
- HM Inspectorate of Prisons, Report on HM Young Offenders Institution – Polmont;
- Scottish Executive, The Scottish Fire and Rescue Service: Proposals for Legislation – Consultation Analysis Report;
- Law Society of Scotland, Lawyers of the Future – A consultation paper by the Law Society of Scotland directed towards a Foundation Document for the future development of Professional Legal Education in Scotland;
- Office of the Deputy Prime Minister, A Draft Practical Guide to the Strategic Environmental Assessment Directive Proposals by ODPM, the Scottish Executive, the Welsh Assembly Government and the Northern Ireland Department of the Environment for practical guidance on applying European Directive 2001/42/EC ‘on the assessment of the effects of certain plans and programmes on the environment’;
- Scottish Executive, Modernising bankruptcy and diligence in Scotland – draft bill and consultation;
• The Sentencing Commission for Scotland, *The Use of Bail and Remand – Consultation Paper*.

Copies of these documents are available for consultation in room T3.60. Additional copies may also be obtainable on request from the Document Supply Centre.
The Committee reports to the Justice 1 Committee as follows—

1. At its meetings on 4th and 11th May 2004 the Subordinate Legislation Committee considered the delegated powers provision in the Emergency Workers (Scotland) Bill. The Committee submits this report to the Justice 1 Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.
Committee remit

1. Under the terms of its remit, the Committee considers and reports on proposed powers to make subordinate legislation in particular Bills or other proposed legislation and on whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

2. The term “subordinate legislation” carries the same definition in the Standing Orders as in the Interpretation Act 1978. Section 21(1) of that Act defines subordinate legislation as meaning “Orders in Council, orders, rules, regulations, schemes, warrants, bye-laws and other instruments made or to be made under any Act”. “Act” for this purpose includes an Act of the Scottish Parliament. The Committee therefore considers not only powers to make statutory instruments as such contained in a Bill but also all other proposed provisions conferring delegated powers of a legislative nature.

Report

Introduction

3. This Bill creates a new offence of assaulting or impeding persons who provide emergency services.

4. The Bill is part of a campaign against anti-social behaviour, and thus aims to deter assaults on certain emergency workers as defined in the Bill. The wider campaign will include the recording of incidents affecting emergency workers and an awareness and education campaign.

5. This Bill will not affect the application of similar legislation for the protection of firemen and policemen namely the Police (Scotland) Act 1967 and the Fire Services Act 1947, nor the common law offence of assault.

6. The Bill contains powers to make delegated legislation and the Executive supplied a Memorandum on those powers for the assistance of the Committee in carrying out its scrutiny function in respect of those powers. A copy of the Executive Memorandum is attached as Appendix 1 to this Report.
Delegated Powers

Section 6  Power to modify

7. Subsection (1) of this section allows the Scottish Ministers by order made by statutory instrument subject to annulment to amend the Bill to add or remove a person or description of person to or from those listed in the Bill as a person the assault, obstructing or hindering of whom is an offence.

8. The Committee noted that subsection (1) includes an unrestricted power to remove persons from the list and also authorises Ministers to make such provision (which might include amending other provisions of the Bill) as the Ministers see fit in connection with modification of the list under the section. While the Committee accepted that it might be necessary from time to time to adjust the list to reflect changes in the description of persons on the list, it had concerns that the power in section 6(1)(b) of the Bill appeared to be unlimited and that it might be capable of being used to effect more material changes by removing classes of person from being treated as “emergency workers” for the purposes of the Bill.

9. Subsection (2) qualifies the power to the effect that an order is not to be made unless it appears to the Scottish Ministers that the person to be added to the list is one whose functions or activities are such that the person is likely, in the course of these activities to have to deal with emergency circumstances. The power also includes power to make such provision in connection with that modification as the Minister see fit.

10. The Committee noted that subsection (2) will only apply to orders extending the Bill to apply to other emergency workers. The Committee was concerned that the Bill proposed that material changes even if appropriate to subordinate legislation should be effected by an instrument subject only to negative procedure.

11. The Committee normally expects at the very least that a power to amend primary legislation by subordinate legislation will be exercised by statutory instrument subject to affirmative procedure rather than negative procedure as proposed in this instance. The Committee therefore suggested that if the Executive were to propose to exercise the power by affirmative procedure the power as it otherwise stands might be more acceptable to the Committee.

12. The Committee was also concerned that there are no restrictions on the exercise of the powers conferred by section 6(1)(b) nor is there any requirement on the face of the Bill for prior consultation with organisations representing persons that might be affected by such a change before the power is exercised.

13. The Committee noted the statement in paragraph 6 of the Executive’s Memorandum on the delegated powers in the Bill that the power to modify the provisions of the Bill will not be used in most cases. Nevertheless, the Committee remained concerned that there was no provision in the Bill for consultation prior to the making of any order under the power and considered that notwithstanding the restriction in subsection (2) the power to amend the Bill remains very wide.
14. The Executive acknowledged the Committee’s views on the matter and undertook to take full account of them in laying amendments for Stage 2 of the Bill. The Executive’s intentions in this regard were confirmed by Andy Kerr, Minister for Finance and Public Services, in a letter to the Convener of the Justice 1 Committee dated 22 June 2004. A copy of the letter is attached at Appendix 2 to this report.

15. The Committee will therefore be able to consider the point again in its scrutiny of the Bill as amended at Stage 2 in light of the Executive’s proposed amendment. **At this Stage, therefore, the Committee simply draws the Executive’s undertaking to the attention of the lead committee for information.**

16. The Committee has no further comment to make on the Bill at Stage 1.
Purpose
1. This memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.6.2 of the Parliament's Standing Orders, of provisions of the Emergency Workers (Scotland) Bill conferring power to make subordinate legislation. It describes the purpose of each such provision and explains why the matter is to be left to subordinate legislation. This memorandum should be read in conjunction with the Explanatory Notes and Policy memorandum for the Bill (documents SP Bill 21-EN and SP Bill 21-PM).

Policy Context
2. The Emergency Workers Bill was introduced in the Scottish Parliament on 22 March 2004. It fulfils a commitment in the Partnership Agreement Building a Better Scotland of May 2003 to ‘protect emergency workers from assault and obstruction’. The Bill is part of a package of measures promoted by the Executive, aimed at protecting public service workers. This package, including the Bill, forms part of a wider drive against antisocial behaviour, including the Antisocial Behaviour (Scotland) Bill, which aims to protect and empower communities.

Outline and scope of the Bill
3. Section 1 of the Bill creates a specific offence of assaulting, obstructing or hindering an emergency worker, or a person assisting an emergency worker, who is responding to emergency circumstances. It also defines ‘emergency circumstances’ and provides, at section 1(3), a list of persons who are to be considered ‘emergency workers’; namely police, fire, ambulance and coastguard services, lifeboat crews, prison officers, medical practitioners, nurses and midwives. Section 3 introduces a similar offence of assaulting obstructing or hindering certain emergency workers (a medical practitioner, nurse, midwife or ambulance worker) in hospital accident and emergency premises.

Delegated Powers

Section 6 Power to modify

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution
4. Section 6 of the Bill allows the Scottish Ministers by order to add (subsection (1)(a)) or remove (subsection (1)(b)) a person or a description of person to or from those mentioned in the Act as a person the assault, obstructing or hindering of whom is an offence under the Bill i.e. those persons mentioned in section 1(3) and section 3. Thus the Scottish Ministers may by order add a person or a description of person to those mentioned in section 1(3) with or without making a similar addition to those mentioned in section 3 and vice versa. In addition, the Scottish Ministers may by order remove a person or a description of person from those mentioned in section 1(3) with or without making a similar removal from those mentioned in section 3 and vice versa.

5. The Scottish Ministers may only exercise the power to add under subsection (1)(a) where it appears to them that the person to be added is one whose functions or activities are such that the person is likely, in the course of them, to have to deal with emergency circumstances.

6. Section 6(1) also allows the Scottish Ministers to make such provision connected with modification as they think fit. In most cases, it is unlikely that the power to modify will be used to make such connected provision. However, it is thought that there might be occasions where circumstances which are dealt with by a person to be added in terms of the power under subsection (1)(a) might be of such a particular nature that although they may be regarded as emergency circumstances in the wider sense, they might not clearly fall within the definition of ‘emergency circumstances’ in the Bill. On such occasions, the power to make connected provision would permit the definition of ‘emergency circumstances’ to be amended to take account of the particular emergency circumstances which such a person might deal with in the course of his / her functions or activities.

Reason for taking power

7. The order-making power will enable the Scottish Ministers to add other groups of emergency workers to the list in the future if it appears they are faced with attacks or obstruction when responding to emergency circumstances – for example, mountain rescue teams, environmental emergency workers and others. The flexibility and speed of secondary legislation will enable Scottish Ministers to respond quickly if new organisations or groups are formed to respond to emergencies. It will also enable groups to be removed if responsibilities of groups of emergency workers change and it is no longer necessary or appropriate that they be covered by the provisions of the Bill.

8. The consultation paper, Protection of Emergency Workers, which informed discussion on the scope of the term ‘emergency worker’ mentioned a number of groups of workers that might be included as emergency workers in the legislation. Among these were mountain rescue workers, workers responding to environmental emergencies, and emergency workers from Scottish Water or Transco responding to water contamination emergencies or gas-leaks. Relatively few responses were received regarding these groups of workers and responses did not in general indicate widespread concern about assaults involving them. However, some responses did indicate a belief that there is a case for extending the provisions of the Bill to include them and the Executive will consider the issue further in liaison with these groups and in the light of any further evidence which can be gathered.
Section 7  Short title and commencement

Power conferred on:  The Scottish Ministers
Power exercisable by:  Order made by statutory instrument
Parliamentary procedure:  None

9. Subsection (2) provides for Scottish Ministers to appoint a day when the provisions of the Bill shall come into force. It also provides that different days may be appointed for different purposes. Subsection (3) provides for an order under subsection (2) to make such transitional, transitory and saving provision as the Scottish Ministers think appropriate.

Reason for taking the power
10. This is a standard commencement provision to enable effective commencement of the Bill.
Letter from Andy Kerr, Minister for Finance and Public Services to the Convener of the Justice 1 Committee

Thank you for your letter of 16 June, requesting clarification on a number of points relating to the Emergency Workers (Scotland) Bill. As you will be aware, the Executive places considerable significance in progressing this Bill in order to meet its Partnership Agreement commitment to protect emergency workers from assault and obstruction. As you may recall, this Partnership Agreement commitment responded to the widespread concern about such attacks which came up time and again in my early contacts with the Trades Unions and Professional Associations. Perhaps surprisingly, there were strong representations from a number of them, including the BMA, for action to be taken to address less serious attacks. While they considered that serious incidents were being properly addressed they felt that something needed to be done to address less serious incidents and the Bill responds to that need.

I know that the same concerns were also reflected in the responses to your Committee’s consultation on this Bill. I note that the summary paper on your consultation recorded that “respondents welcome the proposals contained in the Bill as a response to a growing problem of attacks on emergency workers. They hope that the creation of a specific statutory offence of assaulting, obstructing or hindering an emergency worker, or a person assisting an emergency worker, in emergency circumstances will serve to have a deterrent effect, thus reducing such attacks.” I am pleased to note that the majority view of the respondents to your consultation corresponds so closely with the Executive’s belief in the merits of this Bill.

The Bill therefore targets in particular the primary responders to emergencies – mainly the traditional 999 services, but also prison officers who are the primary responders within prisons. In addition, it extends protection to all who assist these emergency services when responding to an emergency – covering the wide range of other services, organisations and individuals who might be part of the response teams in emergency circumstances. A detailed description of the differences between the Bill and existing common and statutory law for the emergency workers identified in the Bill is set out at Annex B.

The extent to which the new provisions in the Bill are used will of course be determined by the extent to which such offences continue to be committed. The Executive believes that the range of measures we are taking to address attacks on public service workers, including the Bill, but also a public awareness campaign, work on training and identifying and spreading best practice will help reduce the number of incidents.

I believe that all the available evidence indicates that such attacks are currently at an unacceptable level. I simply cannot agree with the BMA’s reported view that there isn’t a problem when the recently published first ever NHS Scotland Occupational Health & Safety Survey revealed that an average of two NHS staff are violently or
verbally attacked in Scotland every hour of the day. I think it is imperative that we progress with this legislation as part of our plan of action to address that problem.

The issues you raise in your letter are responded to in detail in annex A.

I hope this information is helpful. I am copying this response to Dr Sylvia Jackson, Convener, Subordinate Legislation Committee.
Annex A

EMERGENCY WORKERS (SCOTLAND) BILL

Policy development process

The Emergency Worker’s Bill is part of the Executive’s wider strategy for protecting public service workers and tackling anti-social behaviour. The Partnership Agreement states our commitment to “make communities safer, and people feel safer” and specifically undertakes to “protect emergency workers from assault and obstruction”. That undertaking was given in response to the increasing number of attacks on emergency workers, and reflects the heightened public and media interest in, and concern over, this issue.

Prior to the formal consultation period for this Bill, I undertook a series of consultative meetings with trades unions and professional bodies. At those meetings, we discussed the increasing problem of assaults on a variety of public sector workers, and sought views on the best way to address this problem for different categories of worker. Following those meetings, the view was reached that additional protection for emergency workers could best be provided through specific legislation, but that a broader package of non-legislative measures should be developed to discourage assaults against any worker serving the public.

Reasons for focusing on emergency workers responding to emergency circumstances

The Bill focuses on emergency workers in recognition of the invaluable service they provide society. We depend on them to save and protect our well-being, environment and possessions in difficult, and often dangerous, circumstances. The Executive believes it is absolutely unacceptable that such committed workers should face the additional threat of abuse, assault or obstruction.

The decision to confine this legislation to emergency circumstances was taken in recognition of the potentially far-reaching consequences of disruption to an emergency response. Such disruption – whether caused by assault, obstruction or hindrance – could have life-threatening implications for the individuals awaiting emergency services.

In listing emergency workers, the Bill is focusing on those who can reasonably expect to deal with emergency situations as a matter of course, and are therefore entitled to whatever additional protection we can provide them. Clearly, it is unacceptable for any one to be assaulted, no matter what their professional status, and the package of non-legislative measures we are developing seeks to address the issue of abuse of a broader range of workers. The Executive believes, however, that due to the routinely “emergency” nature of their work, emergency workers merit specific legislative attention.
Compilation of 9 groups of workers in section 1(3)

The Bill has focused primarily on the traditional 999, “blue light” services (police, firefighters, ambulance services, coastguard and RNLI members), in recognition of the fact that those workers will be responding to emergency circumstances as a matter of routine.

Prison officers have been added to the list in section 1(3)(b) of the Bill as, in the prison environment, they effectively replicate the role of police officers, and will respond to emergency circumstances accordingly.

The Bill’s protection has been extended to cover GPs, nurses (including community health visitors) and midwives, as the inherent nature of those workers’ jobs also requires them to respond to emergency situations.

Annex B sets out in some detail the difference between the Bill and existing common and statutory law protection for the identified groups of workers.

Consequences of new offences

We believe that the creation of a specific offence of assaulting, obstructing or hindering an emergency worker will act as a deterrent to those who might otherwise be tempted to stray into that type of conduct. The new legislation will send out a message that such behaviour is unacceptable and will enable us to categorise this type of unacceptable conduct more clearly than at present. Labelling this behaviour and stigmatising perpetrators accordingly should help to influence potential offenders away from such conduct.

Protection for any worker responding to emergency circumstances

Although the Executive believes that specific legislation is appropriate to mark and address the particular problems of emergency workers responding to emergencies, we will continue to rely on the common law, in conjunction with the wider package of preventative measures we are developing with the STUC and others, to protect all public service workers.

Section 1(2) of the Bill nevertheless extends protection to those outwith the categories of emergency worker listed in section 1(3), by establishing the offence of assaulting, obstructing or hindering a person who is assisting an emergency worker who is responding to an emergency situation. The professional status of those assisting makes no difference to the protection afforded to them by the Bill.

Extending the Bill to cover any “worker” in an emergency situation would give rise to problems of definition as to what groups were to be covered by the term “worker” and to issues as to those who would presumably be excluded by that approach (e.g. pensioners and the unemployed). Outwith those not generally recognised as emergency workers it would be very much more difficult to prove that an accused knew that a person was a “worker” responding to an emergency situation. It would also dilute the impact of the legislation. As indicated, we believe that it is important
specifically to recognise and protect those who routinely deal with emergencies under often dangerous circumstances.

**Approaches of other jurisdictions**

I am not aware of whether other jurisdictions have undertaken approaches similar to this in tackling the problem of assaults and obstructions of emergency workers.

**Statistics**

The Bill Team has already provided the Committee with the statistics we have available on assaults and other attacks on emergency workers, including a copy of NHS Scotland Occupational Health & Safety Survey (1 June 2004 letter from Gery McLaughlin to Alison Walker)

Since that time, we have been provided with some updated information relating to attacks on fire fighters in 2003/04. That information is attached at Annex C.

We have also received some self-report data from prison staff surveys, detailing incidents of assaults:

**Assaults on SPS Staff**

<table>
<thead>
<tr>
<th>Year</th>
<th>Incidents</th>
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<tbody>
<tr>
<td>1999-2000</td>
<td>13</td>
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<tr>
<td>2000-2001</td>
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<td>2001-2002</td>
<td>12</td>
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<td>2002-2003</td>
<td>29</td>
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One of the key benefits of the new legislation will be the degree to which it enables us to monitor more accurately this type of offence.

**Impact on prosecution rates**

Assaulting any person, regardless of their professional status, is already an offence under common law. The intention is for the new legislation to have a deterrent effect, which should decrease the number of offences and prosecutions.

Clearly, in raising awareness around this issue, and providing emergency workers with the reassurance that any incidents of assault, obstruction or hindrance will be dealt with appropriately, the new legislation might lead to a higher proportion of cases being reported. The deterrent effect of the legislation, however, is expected to reduce the total number of offences, thereby effectively negating the impact of higher incidences of reporting.

The Bill provides for more severe sentences than can currently be passed in the sheriff summary court. Its impact will be felt by those whose conduct is not sufficiently grave to result in a prosecution under solemn procedure – e.g. where assault does not result in substantial injury; where the accused does not have a
The Bill makes it possible to try summarily, cases which might otherwise have been referred for trial under solemn procedure. This is likely to lead to a change in sentencing patterns in the summary courts, but the resulting reduction in cases being tried under solemn procedure means that any overall shift in sentencing patterns is unlikely.

**Does the Executive anticipate any problems in proving the accused’s knowledge in relation to an offence?**

The Bill Team has worked closely with Crown Office in the drafting of the Bill and the Executive is satisfied that the provisions are workable and capable of being operated by prosecutors and understood by courts.

(i) Emergency Worker – Sections 1 and 3

The Crown will be required to show that the accused knew, or ought to have known, that the victim was an emergency worker. In the majority of cases, the emergency worker will be clearly identifiable as such by virtue of his or her uniform and the matter of proving that the accused knew, or ought to have known that a person was an emergency worker will be relatively straightforward.

Even where the emergency worker is not in uniform, there are any number of ways by which it may be possible to show that the accused ought to have known the emergency worker’s status. The emergency worker might have declared himself verbally, or shown a warrant card. In the case of emergency medical workers, they might have been tending to an injured person inside an ambulance, carrying a stretcher, or have had a medical bag at their side. Such evidence would require to be considered on a case by case basis.

(ii) Persons Assisting – Section 1:

Section 1(2) of the Bill relates to a person assisting an emergency worker who is responding to emergency circumstances, rather than simply assisting in emergency circumstances. The evidence test would be that a reasonable person would have thought that the person was assisting the emergency worker.

It will therefore be dependent on the circumstances of the case whether or not someone is seen by the court as “assisting.” For example, in the case of a hospital porter cleaning up a pool of blood, it is likely to depend on how closely the porter’s actions are related to the emergency circumstances themselves. If the pool of blood was at a doctor’s feet, and there was a risk that the doctor would slip if the blood was not cleared up (thus impeding the response to the emergency situation), then it would seem likely that the porter would be recognised as assisting the emergency worker, and therefore entitled to the Bill’s protection.
If, however, the porter was cleaning up blood at a distance from where an emergency worker listed in the Bill was responding to the emergency situation, it is probably unlikely that the porter would be considered to be “assisting” that emergency worker. Should the porter be assaulted in those circumstances, the accused would be prosecuted under common law, and with reference to the Lord Advocate's guidance to procurators fiscal, the fact that the porter was a worker serving the public would be treated as an aggravating factor.

(iii) Persons Assisting – Section 3:

“Assisting” is also relevant to section 3 of the Bill, which makes it an offence to assault, obstruct or hinder an emergency health worker, or a person assisting such a worker, in hospital accident and emergency premises. In order for an “assisting” offence under section 3 to be made out, it is not necessary to prove that the emergency worker benefiting from the assistance was responding to “emergency circumstances” since these are effectively taken to exist at all times in hospital accident and emergency premises. This is in contrast to the position of persons assisting under section 1 of the bill. The key evidential provision is contained in section 3(4), which states that a person is taken to be assisting an emergency health worker only if a reasonable person would have grounds for believing that to be so.

Again, it will depend on the circumstances as to whether or not a person will be taken as “assisting” for the purposes of section 3(4). However, it seems likely that “assisting” will require a degree of proximity between the assistance being provided and the general work which is being performed by the emergency health worker (which need not be related to a particular set of emergency circumstances) such that a reasonable person on viewing that scene would have grounds for thinking that assistance was being rendered.

Thus, in most cases where a hospital porter is mopping up blood in accident and emergency premises, it seems likely that section 3(4) could be met, since the mopping up could fairly easily be viewed as assisting the emergency workers in the general performance of their work (keeping the reception area hygienic, minimising the risk of personnel slipping, etc). In the absence of a requirement that the emergency health worker should be responding to emergency circumstances, there is no need for the porter’s actions to be so closely related to the performance of a particular task by the emergency health worker.

On the other hand, it might be more difficult to show that a reasonable person would have ground for believing that the actions of the hospital window cleaner (who passes through A&E premises once every 6 months) “assisted” the emergency health worker. The degree of proximity between the window cleaning and the work of the emergency health worker is clearly less.

(iv) Emergency Circumstances – Section 1

The existence of emergency circumstances is another aspect of the offence that requires to be proved, reflecting the policy desire to restrict the Bill to emergency
circumstances. Sections 1(5) and 2(4) of the Bill clearly set out when emergency circumstances should be taken to exist.

In particular, whether the accused knew that an emergency worker was responding to emergency circumstances will be determined by reference to the evidential provision in section 2(4)(b), that a reasonable person would have had grounds for believing that the emergency worker was, or might have been, responding to emergency circumstances.

Does the Executive anticipate any particular problems in proving the accused’s knowledge in relation to offences committed against emergency workers who are not at the scene of the emergency? (for example, a person carrying a bag of blood along a corridor in a hospital to an emergency being dealt with elsewhere on the premises)

The same evidential provisions would apply as they would to alleged offences committed against emergency workers who are physically at the scene of the emergency. Thus, the prosecution would have to show (amongst other things) that the accused knew, or ought to have known, that a reasonable person would have had grounds for believing that the emergency worker was, or might have been, responding to emergency circumstances.

It is not possible to make generalisations on this point. Each case would require to be considered on its own merits. The fact that the emergency worker was wearing a nurse’s uniform is an example of a way in which the Crown might prove the state of knowledge of the accused. Further, the degree of urgency with which the emergency worker was travelling to the scene of the emergency, or a verbal declaration by the worker that he was responding to emergency circumstances would be examples of ways in which the Crown might establish that the accused knew, or ought to have known, the position.

It should be noted that where an offence is alleged to have taken place on hospital accident and emergency premises, there is no requirement on the Crown to prove the existence of emergency circumstances.

In any particular case, it will, of course, be for the Crown to decide in light of all the circumstances whether it would be in the public interest to prosecute, and if so, the charges which should be brought and the appropriate forum for prosecution.

What will the Crown be obliged to prove in relation to the knowledge of the accused in order to secure a conviction?

In the case of an emergency worker as listed in section 1(3) of the Bill, the evidence test is that the accused knew, or ought to have known, that the person was an emergency worker.

In respect of assisting persons, the evidence test is that a reasonable person would have grounds for believing that a person was assisting an emergency worker who was responding to an emergency circumstance.
As explained above, in respect of emergency circumstances, the evidence test is that a reasonable person would have grounds for believing that the emergency worker was, or might have been, responding to emergency circumstances.

**What degree of obstruction or hindrance will be required to constitute an offence? Will it be necessary to show that the actions of the accused have affected the “operational capability” of the emergency worker before a conviction can be accused?**

For an obstruction or hindrance to be an offence, the person obstructing or hindering must *intend* to obstruct/hinder the emergency worker, and must also have performed some act which constitutes an obstruction or hindrance. Action need not, however, result in damage or injury for the obstruction/hindrance to be an offence. It must simply have obstructed or hindered the emergency worker in his or her attempts to respond to the emergency.

**Section 1(3) – categories of workers**

**Social Workers**

Social workers are not currently listed on the face of the Bill, as it was not considered that they responded, *as a matter of routine*, to emergency circumstances. However, it is recognised that social workers may face assaults from persons in their care who are mentally or emotionally disturbed and whom therefore they would not wish to have prosecuted. I am aware that in written evidence to the Justice 1 Committee, the British Association of Social Workers questioned whether legislation was actually the best solution for its workers, flagging instead the need for preventative action and safer working practices. I hope that the wider package of measures we are developing to discourage attacks against any worker serving the public will be particularly helpful in this regard.

As I indicated to the Committee on 9 June, in light of evidence relating to social workers’ front line response to certain emergency situations, I am happy to consider the matter of social workers’ inclusion in section 1(3) of the Bill further. If a sufficiently strong case is made, it will be possible to extend protection to this category of worker at a future date, through the Bill’s order-making power.

It is important, however, that we identify the right solution to work related violence for each different category of worker, therefore I would wish to consult further with the relevant bodies, before reaching a decision on this matter.

**Fire Personnel**

The provision at 1(3)(b) of the Bill catches only those who are fire fighters. It would not cover those who are employed as officers of the fire authority/joint board. Since, as we understand it, fire hydrant maintenance operators and members of the fire video unit are generally employees of the fire authority/joint board, then to that extent they would only be protected by the Bill’s provisions if they were considered to be “assisting” an emergency worker.
It is useful to note, however, that the Fire Services Act 1947 makes it a specific offence to damage a fire hydrant. The forthcoming Fire Services Bill will consider whether to increase the penalty for such an offence.

Prison staff

The provision at section 1(3)(d) of the Bill relates to prison officers in non-contracted out prisons and prisoner custody officers in contracted out prisons. It does not cover staff working in prisons who are not prison officers or prisoner custody officers. This is in line with the Bill’s policy intention to provide additional protection for those who are likely to have to deal with emergency situations as a matter of course through their employment. Teachers in educational units of prisons, therefore, would only be protected by the Bill’s provisions if they were considered to be “assisting” an emergency worker.

Sections 2(5) and 3(4) of the Bill make it clear that a person is taken to be assisting an emergency worker only if a reasonable person would have grounds for believing that to be the case. Accordingly, the protection afforded by the Bill to persons assisting emergency workers will only be triggered if this requirement is met.

Power to modify (section 6)

The Subordinate Legislation Committee was concerned that the power to make regulations to modify the Bill by adding or removing categories of worker covered by the Bill’s protection, and to make provision in connection with that modification, was too far reaching to be subject to annulment.

Having considered these concerns, I am content to amend the Bill to make the power to modification subject to affirmative resolution procedure.

Andy Kerr MSP
Minister for Finance and Public Services

June 2004
Annex A

EMERGENCY WORKERS BILL: COMPARISON WITH EXISTING COMMON AND STATUTORY LAW

For most of the specified groups of emergency workers the Bill provides a clear statutory basis for protection in relation to the offence of obstructing or hindering emergency workers as compared with the common law. The Bill also provides differences in protection in comparison to the existing statutory protection for police and fire fighters.

Before setting out the detailed differences it is important to point out that it is not unusual to have overlaps between statutory offences and common law. The Executive believes that the kind of behaviour targeted by the Bill is sufficiently serious to be marked by a specific statutory offence. In doing this, the Bill sends out a message that this type of behaviour is unacceptable, and enables us to categorise this type of unacceptable conduct more clearly than at present. Ability to label this behaviour and stigmatise perpetrators accordingly will add to the armoury of the police and prosecution.

In terms of existing legal protection, it is an offence at common law for a person to assault any other person regardless of whether they are an “emergency worker” within the definition provided for by the Bill. However, there is no specific offence at common law or under statute of obstructing or hindering emergency workers as defined by the Bill (or persons assisting such workers) unless the conduct could be brought within an existing criminal offence, for example breach of the peace or malicious mischief. To the extent that any existing conduct could not be brought within for example breach of the peace, the Bill makes such acts a criminal offence, for example perhaps giving false information to an emergency worker.

The other distinction between the Bill and the common law is that the penalty under the Bill is higher than the maximum sentence which would normally be available at sheriff summary level – 9 months as compared with 3 months. More serious cases will continue to be prosecuted under solemn procedure, using the common law, where a higher penalty would be appropriate. The Bill’s impact will be felt by those whose conduct is insufficiently grave to result in a prosecution under solemn procedure – e.g. assault without substantial injury; assault without record of similar previous convictions; or obstruction without adverse consequences for 3rd party awaiting delivery of emergency services.

In addition to the common law, the police and fire fighters currently benefit from specific statutory provision and the extent to which the provisions of the Bill are additional differs to some extent.

**Police** – 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. The courts have interpreted an element of obstruction or hindering as requiring a physical element in order for an offence under section 41 to be made out. Section 2(1) of the Bill 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, provided of course the constable is acting in emergency circumstances.

Fire fighters – 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 a fire fighting operation. In contrast to this, the Bill will cover fire fighters in all emergency circumstances (as defined by subsection (5), regardless of whether they are extinguishing fires. In addition maximum penalties on conviction are higher for an offence under the Bill (under the 1947 Act, the maximum penalty is a fine not exceeding level 3 on the standard scale which is currently set at £1,000; the maximum penalty under the Bill is a fine not exceeding level 5 on the standard scale which is currently set at £5,000 and/or a period of imprisonment not exceeding 9 months.
Annex B
EMERGENCY WORKERS (SCOTLAND) BILL

Her Majesty's Fire Services Inspectorate began compiling figures for attacks on fire service personnel in 2002-03 based on returns from brigades.

As the request for brigades to record these incidents was made part way through the 2002-03 reporting year, it should be noted that the information shown represents only a partial picture of the problem of attacks on fire service personnel that year. The returns provided by brigades for 2003-04 cover the full reporting year.

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Key:
1 – Central Scotland Fire Brigade
2 – Dumfries and Galloway Fire Brigade
3 – Fife Fire and Rescue Service
4 – Grampian Fire Brigade
5 – Highland and Islands Fire Brigade
6 – Lothian and Borders Fire Brigade
7 – Strathclyde Fire Brigade
8 – Tayside Fire Brigade
9 – Scottish Total
I am writing to let you know that the contract between the Scottish Executive and Reliance Monitoring Services Ltd for the provision of electronic monitoring services is being published on the Scottish Executive website on Thursday 5 August 2004. Five copies of this letter have been placed in SPICE.

Yours sincerely

HUGH HENRY