The Committee will meet at 10.00 am in Committee Room 5.

1. **Declaration of interests:** Mary Mulligan will be invited to declare any relevant interests.

2. **Item in private:** The Committee will consider whether to take item 4 in private.

3. **Subordinate legislation:** Hugh Henry MSP (Deputy Minister for Justice) to move the following motion—

   S2M-1874 Cathy Jamieson: The Draft Maximum Number of Judges (Scotland) Order 2004— That the Justice 1 Committee recommends that the draft Maximum Number of Judges (Scotland) Order 2004 be approved.

4. **Emergency Workers (Scotland) Bill:** The Committee will consider further its approach to stage 2 of the Bill.
Papers for the meeting—

Agenda item 3

Note by the Clerk

J1/S2/04/32/1

Agenda item 4

Note by the Clerk (private paper)

Responses to the Committee at stage 2—

T&G Scotland

The Association of Directors of Social Work

The Scottish Trades Union Congress

The Scottish NHS Confederation

RCN Scotland

The Royal College of Physicians of Edinburgh

The Royal National Lifeboat Institution

Loch Lomond Rescue Boat

BMA Scotland

Correspondence from the Deputy Minister for Justice regarding the Fire (Scotland) Bill

Correspondence from an individual (name and address supplied)

J1/S2/04/32/2

J1/S2/04/32/3

J1/S2/04/32/4

J1/S2/04/32/5

J1/S2/04/32/6

J1/S2/04/32/7

J1/S2/04/32/8

J1/S2/04/32/9

J1/S2/04/32/10

J1/S2/04/32/11

J1/S2/04/32/12

J1/S2/04/32/13

Papers for information—

Correspondence from the Minister for Justice to the Convener of the Justice 2 Committee regarding further roll-out of the escorting contract with Reliance Custodial Services

Correspondence from the Deputy Minister for Finance, Public Service Reform and Parliamentary Business regarding the Freedom of Information (Scotland) Act 2002 (Consequential Modifications) Order 2004 (UK subordinate legislation)

J1/S2/04/32/14

J1/S2/04/32/15

Documents not circulated—

Copies of the following have been supplied to the clerk—

- Scottish Executive, *Working group on hate crime report*.

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.

Forthcoming meetings—

Tuesday, 2 November 2004, CR2 (joint meeting with the Justice 2 Committee);
Wednesday, 3 November 2004, CR3;
Wednesday, 10 November 2004, CR2 (joint meeting with the Justice 2 Committee);
Wednesday, 10 November 2004, CR2 (Justice 1 Committee meeting);
Wednesday, 17 November 2004, CR3;
Wednesday, 24 November 2004, CR1;
Wednesday, 1 December 2004, CR4;
Wednesday, 8 December 2004, CR2;
Wednesday, 15 December 2004, CR1;
Wednesday, 22 December 2004, CR3.
The draft Maximum Number of Judges (Scotland) Order 2004

Note by the Clerk

Purpose of the draft instrument

1. This order would amend section 1(1) of the Court of Session Act 1988 in order to increase the maximum number of persons who may be appointed as judges of the Court of Session from 32 to 34 and would revoke the Maximum Number of Judges Order 1999, which had previously increased the number to 32.

Background

The Lord President

2. The Lord President of the Court of Session has statutory responsibility for the programming of the business of the Supreme Courts and has judged an increase in the number of permanent of judges to be necessary for the courts to cope with the volume of business.

Consultation

3. The Scottish Executive’s note on the instrument states that the Scottish Ministers are persuaded that it is essential to provide additional support to ensure the throughput of business in both the Court of Session and the High Court of Justiciary.

Financial consequences

4. The Scottish Executive’s note advises that the salary of an Outer House judge is £150,878 and that the additional cost to the Scottish Consolidated Fund, including additional costs such as national insurance contributions, is expected to be approximately £427,000.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee considered this instrument at its meeting on 21 September 2004\(^1\) and determined that the attention of the Parliament need not be drawn to it\(^2\).

Procedure

6. The Justice 1 Committee has been designated lead committee and is required to report to the Parliament by 1 November 2004.

7. The draft instrument was laid on 16 September 2004. Under Rule 10.6.1(b), the instrument being subject to affirmative resolution before it can be made, it is for the Justice 1 Committee to recommend to the Parliament whether the instrument should be approved. The Minister for Justice has, by motion

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\(^1\) Subordinate Legislation Committee, 25th Meeting, 2004 (Session 2).

\(^2\) Subordinate Legislation Committee, 33rd Report, 2004 (Session 2).
S2M-1874 (set out in the agenda), proposed that the Committee recommends the approval of the instrument. The Deputy Minister for Justice will attend in order to speak to and move the motion. The debate may last for up to 90 minutes.

8. At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendation.

Consideration by the Parliament

9. The instrument will be considered by the Parliament on 3 or 4 November 2004.
T&G Scotland welcomes the opportunity to make a further submission to the committee regarding the Emergency Workers (Scotland) Bill, in advance of the Committee considering amendments at Stage 2.

To reiterate our union’s position to the Justice 1 Committee, T&G Scotland are of the firm view that violence and the threat of violence at work is entirely unacceptable and we regret that the Scottish Executive has not chosen to enact legislation which would offer all public service workers, not only those whom it considers “emergency workers”, the same level of legal protection.

T&G Scotland also remains concerned that the proposed legislation will create unequal levels of legal protection for emergency workers and important non-emergency workers alike.

T&G Scotland concurs with the Stage 1 report of the Committee in giving support to the general principals of the Bill but making it clear that significant changes are required at Stage 2 of the Bill in order to ensure the effectiveness of legislation in this area. We also welcome the fact that the Committee intends to re-examine in more detail Section 3 of the Bill, which makes special provision for health workers in hospital accident and emergency premises where a state of emergency is considered to exist at all times.

The Bill currently defines A&E premises as those whose “purposes are the reception and treatment of persons needing medical attention as a result of an accident or otherwise as a matter of emergency.” Our union has particular concerns in relation to our members in the health service and the amount of attacks carried out against non-emergency workers, and believe that this are of
the Bill, in light of the fact that emergency work is also performed out with A&E departments, should be widened to include other health workers.

A recent case in Scotland, where a health worker was attacked in a non-emergency department would not have been covered by the new offence and, although the perpetrator received a life sentence, this was as a result of the nature and seriousness of the assault and not because the individual carried out an attack on a health workers in the course of their duties.

Indeed, workers who are employed throughout Scotland's health services, not just in emergency departments, can testify to the threats, abuse, assaults and attacks and the fear of such incidents that have become a daily reality of their working lives.

As previously stated, the proposed Bill makes specific provision for health workers in hospital accident and emergency departments. This provision sets out that a state of emergency is considered to exist at all times in such departments. However, from the experiences of our members in the health service, it is our belief that it is regular practice for many patients to be admitted directly to a ward rather than going through A&E departments. In light of this situation, patients will therefore come into contact with other hospital staff, on the ward or in administration departments, for example. However, under the proposed bill a hospital ward and other areas of the hospital would not be considered an emergency location and would not be subject to the same provisions under the law. The existing definitions also raise questions as to the level of protection that would be afforded to health workers carrying out their duties in the community and not on hospital premises.

Following on from these issues, T&G Scotland also think it pertinent for the Committee to consider that the Bill makes specific reference to protection of “emergency workers” and workers in “emergency circumstances” and the protection of the legislation stems from these definitions being met. However, “risk to life” emergency situations can be wide and varied, for example they can include the safety of passengers and the wider public when, transport staff are attacked.

We would also stress the point that acts of violence or obstruction against public service workers can in themselves create an emergency situation, which endangers the public.

Whilst T&G Scotland supports the efforts of the Scottish Executive to introduce new offences to protect emergency workers, we remain of the view that the legislation should be extended to cover all public service workers.
T&G Scotland would have preferred the legislation to be extended to cover other workers, we do however welcome the work being undertaken in terms of bringing forward non-legislative measures aimed at protecting all workers from attacks.

As the Committee has already highlighted it is vital that the effectiveness of the legislation is ensured and T&G Scotland would hope that the Committee would recommend that the effectiveness of new legislation to be closely monitored and if no clear improvements in certain sectors materialise for reconsideration of extending legislation to take place.

For further information please contact Nicola Fotheringham or Jackson Cullinane at T&G Scotland, 290 Bath Street, Glasgow, G2 4LD
Dear Mrs. McNeill,

Association of Directors of Social Work
Request For Further Written Evidence Emergency Workers (Scotland) Bill

ADSW welcomes the Committee’s Stage 1 Report and its willingness to include Mental Health and Child Protection workers in the list of emergency workers. We have sought to address the Committee’s request for further written evidence on the above two types of worker, recognising the key test that “their job must require them to respond to emergency circumstances on a regular and routine basis”.

We would again like to make the point that all social workers and social care staff are often the very first to respond to emergency situations involving vulnerable people. Such situations almost always involve children or adults who are deemed to be at immediate risk of harm either from others or to themselves, or at risk of harming others. It is the very business of social work to respond to these situations that commonly involve challenging and often volatile individuals and environments where clients and their families/carers may be emotionally/mentally distressed or under the influence of drink and/or drugs.

Below is the evidence you have sought on the duties of mental health and child protection workers and the emergency situations they regularly deal with. The Association would also ask you to further consider another type of social worker who responds to emergency circumstances on a regular and routine basis: the social worker who carries out community care assessments.

Assessment and intervention under the Mental Health Act (Scotland) 1984
One of the core tasks of the Mental Health Officer (MHOs) is to undertake emergency assessments, at the request of a doctor, of individuals being considered for emergency detention in hospital under Section 24 of the Mental Health (Scotland) Act 1984. This is a regular and routine part of their work. Most authorities operate duty rotas to enable the availability of MHOs to respond to emergencies. A typical authority reports such detentions taking place at the rate of one per week over the last 18 months between April 2003 and Sept 2004. In addition, over the same period, the same authority undertook emergency assessments under Section 25 of voluntary patients in hospital requiring compulsory detention at the rate of one per week.
Assessment and intervention under the Children Scotland Act
Child Protection workers are routinely required to investigate emergency situations involving the protection, and removal, of children in exercise of their duties under the Children (Scotland) Act, specifically under Section 53; such situations may arise from their own caseload or that of colleagues, or may be new referrals. This will almost always involve visiting and entering the child’s home.

Assessment under the NHS and Community Care Act 1990
In addition to the two categories above we would urge the committee to also consider including community care workers. Under Section 55 of the NHS and Community Care Act 1990 a social worker may be called to carry out emergency assessments of adults with physical disabilities, adults and children with learning disabilities, frail older people, people suffering from dementia, people with problems of substance misuse, AIDS and HIV sufferers, the homeless, victims of domestic violence, and refugees and asylum seekers. A number of these assessments are completed without incident, however, if it’s an emergency referral, the combination of the circumstances in which it must be carried out (e.g. a substance misusers home) and the state of mind of the client and/or their family/friends can contribute to an extremely difficult environment and set of circumstances. Whilst we have no desire to criminalise vulnerable people, attacks on staff can have a hugely damaging impact on individuals and can seriously undermine the service. We would argue that community care workers respond to such emergency circumstances on a regular and routine basis and when carrying out these duties in an emergency situation should be afforded the same protection as other emergency workers who may be assisting them.

Out of Hours Staff
These staff respond to social work emergencies that occur outside office hours including evenings, weekends and bank holidays that cannot wait until offices reopen on the next working day. By definition, OOHS deal exclusively with emergencies arising out with normal office hours that involve vulnerable individuals in crisis, with corresponding heightened risks of violent incidents occurring. The nature of the work they undertake will be mental health, child protection and community care referrals.

In defining what social workers will be classed as ‘emergency workers’ and to ensure that all social workers that carry out the above duties are included in the Bill, it may be an idea to look to the statutory definition of a social worker and the duties rather than job titles/roles. For example
‘a social worker as registered under the Regulation of Care (Scotland) Act 2002 who carries out duties under:-
Sections 24 and 25 of in the Mental Health (Scotland) Act 1984;
Section 53 of the Children (Scotland) Act 1995; or
Section 55 of the NHS and Community Care Act 1990

The kind of emergency circumstances social workers respond to
In preparing this evidence, we asked 8 urban and rural local authorities to give us examples of recent incidents involving staff that were carrying out statutory duties in ‘emergency situations’. A number of local authorities reported that where a situation can be identified as potentially violent, actual incidents may be avoided through requesting police presence and assistance, or visiting with colleagues. However, these authorities also pointed out that good risk assessment and taking precautionary measures does not guarantee the avoidance of violence. There will be many situations where the emergency nature of the circumstances is only identified on attendance/assessment or where an emergency rapidly develops. For example, it is not always desirable or possible for police to be present at a removal of a child and
there may be situations where the attendance of the police would be unhelpful (e.g. an emergency Mental Health assessment).

Some recent examples
1. Mental Health Officer and a general practitioner went to a client’s house to assess for emergency detention. As they were about to leave the client physically assaulted the Mental Health Officer.
2. Mental Health Officer, general practitioner, and parents went to a client’s house to make assessment. The client pushed her mother out of flat and was verbally abusive and threatening. Mental Health Officer told by the father that the client had knives about the flat.
3. Female Mental Health Officer visited serving member of Armed Forces who had called expressing suicidal thoughts. He was drinking, dressed inappropriately, and told workers he had firearms. He was extremely ill and unpredictable. Serious incidents were averted and he was admitted to hospital.
4. Male Mental Health Officer assaulted by female client armed with a knife while carrying out an emergency detention under the Mental Health Act. The worker was injured by the knife and required medical treatment.
5. Out of Hours Service responded to call alleging 8 children left unattended. Mother of 7 of the children arrived during visit, under the influence of alcohol, attempted to physically assault the worker, but was restrained by another adult until police arrived.
6. A child was seen at an A & E Dept. and was diagnosed with a non-accidental injury. Out of Hours Service obtained a Child Protection Order, but when the worker presented the papers the parents reacted violently. At one point 10 police officers were involved in restraining the assailants, one of who made serious threats of physical violence against the worker.
7. Worker visited a family to serve a Child Protection Order granted earlier in the day. Although accompanied by social work colleagues, with police in attendance, the worker was physically threatened by a male relative, who then left, was assaulted by the mother, and would have been subsequently assaulted again by the male relative returning to the scene, were the male relative not restrained.
8. One rural authority reports Mental Health Officers being threatened with a variety of weapons including firearms; child protection workers being threatened with damage to property and harm to their families (this can be more threatening in a rural community where workers may be less anonymous).
9. 5 situations within the last 18 months within the State Hospital where social workers undertaking statutory duties have been threatened directly or implicitly with violence, and one subjected to an indecent exposure.
10. A Mental Health Officer having to jump clear of a car being reversed towards him by a client who was hypo manic, suffering from paranoid and delusional thoughts, and likely to be detained under mental health legislation.
11. Community care worker required to deal with evacuation and getting to safety of homeless people following a shoot out at their hostel.
12. Mother of parent unhappy about a child protection workers attendance following an emergency referral drove her car at the social worker as she left.
13. Mental Health Officer attending an emergency referral discovered that the person had taken an overdose. His brothers were very agitated at the presence of the police (there were drugs on the premises) and the possible hospitalisation of their brother. Police agreed to remain outside while the worker dealt with an extremely volatile situation and negotiated man’s admission to hospital.
14. Child protection worker attending referral witnessed the serious assault of mother by her partner. Worker had to protect the baby and was threatened with a sword. Partner stole the social workers phone and car to escape the scene.

15. A social worker, serving a place of safety order on a child who had been reported missing following the Children's Hearing that had approved the order, required the close support and protection of two police officers to prevent physical assault. She was subjected to continual physical threats, extreme verbal abuse, and racial abuse, not just from the child's family but also from neighbours.

16. Following an emergency community care referral involving a drug user the social worker was verbally abused and stabbed with a needle.

17. A community care social worker was assessing a victim of domestic abuse and her children for emergency assistance. The woman's partner returned to the house and attacked the social worker. The social worker was injured and signed off sick for 4 months.

18. Responding to a call from neighbours, a social worker entered the house of an old man known to the social work department who had a drink problem. It became clear that the man was seriously ill and the social worker tried to call an ambulance. The man's son sought to prevent this and cut the telephone wires, assaulted the social worker who was trying to use her mobile phone, and physically threw her out of the house.

We believe that the foregoing clearly demonstrates that those social workers described above meet the key test for definition of 'emergency worker' under the draft legislation, that they regularly and routinely deal with emergency situations where they are exposed to the real threat of injury or harm, and that measures proposed in this Bill will afford additional protection to such staff and place them on an equal footing with their professional colleagues in the other emergency services.

Other workers
We continue to have some concerns about other social work and social care staff that will be excluded from the Bill. In particular home care and residential care workers who make up the bulk of logged violent incidents. For example, in Edinburgh during the period of January to September 2004, 222 incidents of violence and threatening behaviour were logged: of these there were 95 reports of injury, ranging from bruising, cuts, scratches and general pain and soreness. The majority of those were from staff that worked in residential care homes/units (caring for people with learning disabilities, substance misuse problems, young people, the elderly and the homeless) and providing home care.

Whilst the statistics do not indicate if they were responding to emergencies, dealing with emergency circumstances (e.g. accidents, incidents or violence between residents and/or family members/visitors as well as those towards staff) is unfortunately - and despite increased risk management measures - part of the job. With the gender proportion of staff in social services at around 85% women, such statutory protection would greatly assist a workforce vulnerable to physical attack.

For further information please do not hesitate to get in touch.
Yours faithfully

Colin Mackenzie
Vice President of ADSW
Introduction

The STUC is Scotland's Trade Union Centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the Trade Union Movement in Scotland reflecting the aspirations of trade unionists as workers and citizens.

The STUC represents around 630,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. The STUC believes that all workers should be allowed to carry out their duties without physical injury or damage to their health.

Following the issue of the Stage 1 report the STUC has met with our affiliates and considered the comments of the Committee and would like to make this additional submission to reflect the outcome of these discussions.

Key Points

Groups of Workers Covered

The STUC, following further discussion with our affiliated organisations has reached the conclusion that, while we would have originally wished to see this Bill providing protection for a far wider range of workers, there are positive points to this legislation that we believe could act as a sufficient deterrent and discourage attacks of such workers eventually covered by the Bill.

We continue to participate in the work being carried out by the Scottish Executive to introduce non-legislative measures to combat the increasing trend of threatening behaviour against workers.
The STUC acknowledges the request from the Justice 1 Committee to provide detailed justification for including additional categories of staff. Given the short period of time we have not had the opportunity to carry out full consultation to identify additional groups. However, we are aware that Unison has provided some suggestions to the Committee.

Following further discussions with the Prisoner Officers Association (Scotland), we share their concerns at the view from the Justice 1 Committee that they should not be included in the new Bill.

Prison Officers deal with emergencies as part of their employment and we are aware that various emergency procedures are in place to ensure that isolated colleagues are provided with support, quite often within stipulated response times.

While we accept that there has been, in the past, a number of high profile incidents that attract additional penalties in excess of those available under the new legislation, there are many instances where violent and abusive attacks by prisoners may not be seen as serious, but clearly amount to hindrance of the officer in the course of their duty and perhaps could place other colleagues or prisoners at risk.

The STUC believe that it is only reasonable that prison officers should be afforded the same protection as police officers against attacks carried out against them in the course of their duties. Therefore, we believe that prison officers should remain protected by the increased penalties offered by the Bill.

Additionally, we believe that there are strong arguments for the inclusion of building maintenance workers attending properties to deal with emergency situations such as plumbing leaks, vandalism and securing properties. Previous discussions with affiliates in the construction industry have identified these workers as being at risk of attack.

While we accept that the workers that can be covered by the Bill can be added to we are keen to ensure that as wide a range as possible are included at the out set.
Definition of an emergency worker

The STUC notes that the Committee has sought to define a test to be met in order for workers to be considered as emergency workers. This places additional qualifying factors than contained in the introduction to the Bill.

In the introduction to the Bill the purpose of the proposals was to protect “persons who provide emergency services”. The STUC agrees with Unison’s view that there should be an element of the post that indicates the provision of an emergency service within the post. We would also agree that the imposition of the condition that such provision should be on a “regular and routine” basis narrows the scope of those who can be protected by the Bill.

Defining an Emergency Situation

The STUC also has reservations on the effect the “emergency situation” test could have on successful prosecution under any new legislation. The definition of an emergency circumstance, and of who decides an incident is an emergency circumstance is unclear and, we believe open to legal debate between prosecutors and defence agents. Our concern is that many charges under the new legislation may be plea-bargained and could render the legislation ineffectual.

We would, therefore, suggest that a more general definition more in line with the current provisions of the Police Act that covers officers in the course of their duty.

A broader definition would, we believe address previous concerns of the Fire Brigades Union that even less serious attacks on emergency workers during the course of their duties, and not solely when responding to emergency situations, could have implications on the effectiveness of emergency services to respond to more serious life-threatening incidents.
Hospital premises.

The STUC believes that there are strong arguments for extending the protection for medical staff beyond accident and emergency premises. Many staff in other medical services can be subjected to attacks and abuse. Unison has cited the example of mental health units as a good example where workers could be at high risk of attack. We believe that further consideration should be given to the range of health service premises covered by this legislation.

Conclusion

The STUC accepts that although the Bill is limited in scope it will still provide increased protection for a number of groups of workers. As a result we believe that the Bill is worth supporting if suitably amended as suggested in this submission.
Dear Ms McNeill,

**Emergency Workers (Scotland) Bill**

Thank you for your letter of 7 October to our Chairman, Christine Lenihan, inviting the Confederation to submit written evidence on the above Bill. I am responding on Ms Lenihan’s behalf and the Confederation is grateful for the opportunity to submit written evidence on this Bill.

The Scottish NHS Confederation is the independent membership body for NHS boards and special health boards in Scotland. We have consulted with our members on the points that we address below and our submission reflects the views expressed to us by them.

The Scottish NHS Confederation broadly supports the aims and principles behind the Emergency Workers Bill, and in particular the cultural message that it sends about the unacceptability of the abuse of public service workers. However, we believe that, as the bill stands, it is in danger of creating two tiers of protection for NHS staff and excluding many. We will address three specific points in this submission:

1. The range of healthcare staff covered by the bill
2. The scope of the bill with regard to healthcare premises
3. Whether the scope of the bill overall is too narrow.

1. The Confederation believes that all healthcare staff should be covered by the bill, not just doctors, nurses and midwives. (Ambulance staff are, of course, covered in a separate specific category.) A wide range of NHS staff – such as nursing assistants, practice nurses, AHPs, receptionists and porters – regularly find themselves in precisely the same risk situations as the clinicians specified in the bill; indeed many of them are the first point of contact for the public and very often the first in line of attack in any violent incident. We do not believe that it is acceptable for one healthcare worker to be afforded a lesser level of protection than another. The bill should contain a simple category of ‘NHS staff’, not broken down into individual professions in order to ensure that no group of NHS workers is excluded and that non-clinical staff, in particular, are not discriminated against.
2. The bill should also either cover all healthcare premises, or the specific section on accident and emergency departments should be removed altogether. Healthcare staff may potentially be called on to attend an emergency in the full range of healthcare settings. Emergency treatment is provided to the general public in settings other than A&E departments; it may be provided in a maternity unit, at a road traffic accident, in an acute medical setting or in a range of community settings, such as drop-in centres and patients’ own homes. Some of our members have pointed out, for example, that in acute settings the majority of violent incidents take place during visiting hours and may also occur within medical admission areas, where it has become increasingly common for staff to have to deal with drink and drug-related incidents. If the protective effect of the bill is not to be merely partial, then it should cover all healthcare premises. However, we would also ask why accident and emergency departments are picked out for specific attention in the text of the bill: they are the only premises or location to be specified. If this section of the bill were removed altogether, would not the full range of healthcare premises be covered by default, as are, presumably, a wide range of other locations, such as police stations, fires or road accident sites?

3. Looking further than these specific points about the content of the current bill, however, the Confederation would support the view already expressed by a number of your witnesses, such as the STUC, that in fact the scope of the bill may be altogether too narrow and should be extended to protect any worker who provides a service directly to the public, whether they are employed by the public sector or not. A wide range of workers – from job centre staff to bus drivers – are subject to exactly the same pressures of dealing with ‘difficult customers’ as are the workers listed in the bill, and are potential victims of violence or abuse as a result. We believe that to exclude these workers from this bill would represent a missed opportunity to send a clear and consistent message about the unacceptability of attacks on those who provide our public services.

I hope that these comments are helpful. The Scottish NHS Confederation would be happy to provide oral evidence to the Committee, if it feels that this would be of use.

Yours sincerely,

Hilary Robertson
Director
Dear Ms McNeill,

Re: Emergency Workers (Scotland) Bill – request for further written evidence

Thank you for your letter dated 7 October to Paul Hopson requesting further written evidence in relation to the definition of hospital accident and emergency premises contained within the Bill. Paul has asked me to respond on his behalf, as he is a member of the RCN Scottish Board and works full-time as a nurse in Forth Valley.

As you will be aware RCN Scotland was one of several organisations that pointed out the narrow definition of hospital premises i.e. accident and emergency departments, contained in the Bill. We felt it was important to emphasise that the majority of assaults against nurses and other staff do not happen in ‘emergency’ situations as defined in the Bill but in their ‘normal’ working environments and during the course of their usual duties. We note that this was addressed by the Committee’s Stage 1 report and also raised by several MSP’s during the Stage 1 debate on the Bill on 30th September.
In terms of directly addressing the definition on hospital premises we would repeat our earlier call for the definition to be widened to include all hospital premises, as well as other healthcare premises i.e. community health centres. All of the health and medical bodies that submitted evidence on the Bill were able to highlight situations that their members encounter which may fall out with the current scope of the Bill but which are nevertheless very serious in nature.

We would therefore want to see the definition cover any healthcare premises in which emergency workers are providing care. We believe that this would eliminate many of the potential loopholes identified within the Bill as it is currently drafted and be a more powerful deterrent to potential attacks on healthcare workers.

We do not have specific suggestions on the exact wording that should replace the current definition at this point, although we would be happy to contribute to discussions on this in conjunction with Anderson Strathern our legal advisers. We would also be happy to give evidence on this at Stage 2 if required by the Committee.

We hope these comments are helpful.

Yours sincerely

Pat Dawson
Head of Policy & Communications
I am in agreement that the scope of section 3 of this bill should be extended. However, it remains my view, and also the view of the other organisations represented at the taking of verbal evidence, that the scope of the bill requires to be extended in general terms when applied to healthcare professionals. I appreciate that the Bill has been introduced specifically for ‘Emergency Workers’ and there is existing legislation, at least in common law, for protection of other health professionals not engaged in ‘emergency’ work, but I remain unconvinced that the ‘emergency’ nature of the work should receive such special legislative provision. The vast majority of verbal and physical assaults on myself and colleagues have, to my knowledge, occurred outwith situations where emergency care was being dispensed and would therefore not have been covered by the bill in its present form. Nevertheless it is my perception that the general public do regard assault etc on a healthcare professional, while that professional is discharging their duty, as an act requiring particular legal consideration and on that basis I am in favour of new legislative powers but with less restriction than the current bill allows.

I would hope that the following points could be given specific consideration.

- Emergency Care in the medical sense is dispensed in many situations and environments. Within the hospital environment this can be in acute admission units, general wards, outpatient clinics, psychiatric units as well as the accident and emergency premises. However emergency care can also be given in the prehospital environment at the scene of an accident, primary care premises or in a patients home etc. It is also fair to say that the majority of care which takes place in any of these environments is not of an emergency nature. Even in an accident and emergency premises, most of the care dispensed is more mundane and this is increasingly likely to become the norm with the changes in the GP contract, Out of Hours care and the trends which are being established by NHS24. It is a little melodramatic to state that ‘a state of emergency is considered to exist at all times’ in A&E premises when they are being increasingly used as alternative primary care centres.

- It is quite clear that health professionals in any of the areas mentioned above should have adequate protection and be confident that due legal process will be used if they are obstructed, assaulted etc while carrying out their duties. That should apply whether they are involved in an ‘emergency’ or not – for the most part they all have the potential to be involved in an emergency and would still come under the category of ‘Emergency Worker’.

- I have no doubt that the thinking behind this bill is clear and well intentioned but I fear that at the moment it is not fulfilling what I believe to have been the original intent, at least where health workers are concerned. It is my belief that under section 3 there requires to be a much broader context, without the geographical and clinical constraints in the present wording. A statement
indicating that the bill applies to “health workers involved in the discharge of their duty of care”, may be the simplest way of achieving this.

William G Morrison
Consultant in Accident and Emergency Medicine
Faculty of Emergency Medicine
Royal College of Physicians of Edinburgh
Dear Ms McNeill,

EMERGENCY WORKERS (SCOTLAND) BILL - DEFINITION OF EMERGENCY WORKERS

The RNLI is very aware that there are other organisations operating rescue vessels both at sea and on inland waters. With regard to extending the definition to cover these other organisations, I believe the following approach should be adopted.

In most cases the activities of these other rescue units will be coordinated by either the Police or the Maritime and Coastguard Agency (MCA). The MCA use the term "declared facilities" to cover all their known search and rescue resources. In effect, these other units are "registered" with the MCA. I believe that the Police have a similar system. Therefore the definition could be extended to cover all personnel operating a rescue vessel when a search and rescue vessel has been tasked to assist in search and rescue operations by either the Maritime and Coastguard Agency or the Police.

I believe that this definition will cover all those personnel who regularly respond to emergency circumstances. I would strongly recommend that consultation with the MCA and the Police is undertaken before adopting this definition.

Yours sincerely,

JOHN CALDWELL
Divisional Inspector of Lifeboats, Scotland
Loch Lomond Rescue Boat

Boat Shed Tel.No /Fax. 01436 860 210  E-Mail lochlomond@rescueboat.freerave.co.uk

Secretary - Ian Bistland,  "Bon-Accord", Middleton Street, Alexandria, Dunbartonshire, Scotland, G83 0DG, Phone/Fax (01389 752 362)

Mr. Douglas Wands,  c/o Justice 1 Committee Clerks, T3.60, The Scottish Parliament, Edinburgh, EH99 1SP.

Dear Mr. Wands,

**EMERGENCY WORKERS (SCOTLAND) BILL.**

Further to your letter of 07/10/04 requesting information regarding the possible inclusion of the Loch Lomond Rescue Boat in the above Bill, please find attached copies of the following:

- Background of the Loch Lomond Rescue Boat.
- Annual Report 2001
- Annual Report 2002
- Annual Report 2003
- Call log to date 2004
- Incidents of threat or violence towards crew. (13)

Management and Boat Committee Chairman - Archie McKenize, Milleninst, Baghead Road, Dumbarton.
Management and Boat Committee Vice Chairman - James McCue, Burnside Cottage, Carseochtrail, Alexandria.
Caretaker - David Cameron, 2, Brookes Road, Cardross.
Crew Representatives - Jim Wilson, 34 Glenhill Place, Dumbarton.
Assistant Secretary - Lena Cameron 2, Brookes Road, Cardross.
SCOTTISH CHARITY NO. SC 420874
As you will see from these reports, there is a very real need for the Loch Lomond Rescue Boat. The number of calls responded to exceeds that of many RNLI stations around Britain.

Considerable benefit comes to everyone concerned, from our very close co-operation with the Loch Lomond and Trossachs National Park Authority. Their boats dealt with 50 incidents in 2003, mainly breakdowns, to which the Loch Lomond Rescue Boat would probably have been called.

We are also logging details of all calls where there was an element of threat or violence against the crew.

If I can be of any further assistance, please do not hesitate to contact me.

Yours sincerely,

Ian Bisland,
Secretary,
Loch Lomond Rescue Boat.
THE LOCH LOMOND RESCUE BOAT

Loch Lomond is the largest stretch of inland water in mainland Britain, much frequented by commercial pleasure boats, speed boats, yachts and motor cruisers.

From spring to autumn, the loch is thronged with holiday-makers, anglers, swimmers, water skiers, jet skiers etc., and along the lengthy eastern shore lies the much trodden West Highland Way with no road access for the whole of its northern portion. It is essential that some form of rescue service be available, and the Loch Lomond Rescue Boat answers this need.

Because the Royal National Lifeboat Institution originally restricted its activities to salt water, it was necessary in 1977 to provide the service independently.

The first Loch Lomond rescue boat was launched in 1978 by H.R.H. Prince Charles, and was replaced in 1993 by the current boat "SIR HUGH FRASER". This 6 metre Avon Sea Rider with twin 90 hp engines, is based at Luss, 8 miles north of Balloch. With a maximum speed of 48 knots, response times of 10 mins. south to Balloch and 20 mins. north to Ardlui are possible from launch. The all volunteer crew are on 24 hour call every day of the year.

The boat is not restricted to carrying out rescues, but is also used to evacuate casualties from the West Highland Way, transport the Emergency Services to the islands in the event of a fire etc. and to provide safety cover at many of the events held on and around the loch. This means that the Loch Lomond Rescue Boat must work in close co-operation with Strathclyde and Central Scotland Police forces, the Fire and Ambulance services, local mountain rescue teams and the National Park Authority to provide an integrated response to any incident.

Call outs, which peaked at 71 in 1995, have shown a decrease to date and now average 50 per annum. However, upkeep and running costs still require approximately £12,000 per annum. A new boat will be required by 2006, and without the help of a major donor, it is essential that strenuous fund raising efforts continue to meet an estimated purchase cost of £80,000.

SCOTTISH CHARITY NO. SCO 20014
### LLRB Incidents of Threat or Violence towards crew

<table>
<thead>
<tr>
<th>Date</th>
<th>Pager Code</th>
<th>Zone</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>26/03/1993</td>
<td>4</td>
<td></td>
<td>LLRB crew attended the Boathouse on 3 occasions in response to Malicious pager calls. See report 27 March 93.</td>
</tr>
<tr>
<td>27/03/1993</td>
<td>4</td>
<td></td>
<td>Another Malicious pager call received. See report dated 26 March 1993. As a result of these Malicious calls, the crew pager number was changed.</td>
</tr>
<tr>
<td>04/07/1993</td>
<td>7</td>
<td></td>
<td>Report of a boat in trouble off Inchmurrin. LLRB could find no trace. Operator held telephone line open and traced the call to Inchmurrin Hotel. Resulted as a Malicious call.</td>
</tr>
<tr>
<td>02/08/1994</td>
<td></td>
<td></td>
<td>LLRB requested to convey police to Doune Bath where youths were drinking and causing damage.</td>
</tr>
<tr>
<td>21/06/1994</td>
<td>4</td>
<td></td>
<td>LLRB called to attend a collision between a jet skier and a water skier near Inchman. Police (crew) were present and a male was reported to the proctoror Fiscal. Female skier sustained slight injury.</td>
</tr>
<tr>
<td>20/04/1997</td>
<td>4</td>
<td></td>
<td>Called to recover a broken down boat off of Luss. Boat taken to Luss pier. Gentleman on board became abusive when he realised that the LLRB would not tow him to Cameron House.</td>
</tr>
<tr>
<td>Date</td>
<td>Pager Code</td>
<td>Zone</td>
<td>Event</td>
</tr>
<tr>
<td>------------</td>
<td>------------</td>
<td>------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>18/07/1998</td>
<td>4</td>
<td></td>
<td>Loch Lomond Rescue Boat: See previous report 15 July 98. LLRB launched to transport 3 people from dingy in the 'Narrows' to Luss. 1 male taken to Dunbarton Police, 1 male &amp; 1 female treated in boathouse.</td>
</tr>
<tr>
<td>07/08/2002</td>
<td>999</td>
<td>4</td>
<td>Loch Lomond Rescue Boat: Call for assistance. Two males causing a disturbance on Inchmurrin. Both apprehended. Two of three LLRB crew were Police Officers.</td>
</tr>
<tr>
<td>24/05/2003</td>
<td>4</td>
<td></td>
<td>Loch Lomond Rescue Boat: Boat stolen from Luss pier. Someone shouting for help in middle of loch. 1st casualty to ambulance, 2nd recovered to shore</td>
</tr>
<tr>
<td>24/05/2003</td>
<td>4</td>
<td></td>
<td>Loch Lomond Rescue Boat: 2 x fletters crashed in Luss Bay. Assistance given to female with serious injuries</td>
</tr>
<tr>
<td>Date</td>
<td>Pager Code</td>
<td>Zone</td>
<td></td>
</tr>
<tr>
<td>--------</td>
<td>------------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>10/07/04</td>
<td>999</td>
<td>7</td>
<td></td>
</tr>
</tbody>
</table>

**Event:** Ferry police officers to Inchmurrin. Report of a man trying to kill his wife with a machete.
Introduction
The BMA welcomes the opportunity to provide additional evidence to the Justice 1 Committee for its considerations of the Emergency Workers (Scotland) Bill. The BMA believes that this legislation could be effective in acting as a deterrent to violence against emergency workers. Legislation would send a clear message that violence will not be tolerated. It should also go some way to reassure staff, who are subjected to violence or abusive behaviour as part of their job, that they will receive support from their employers, encouraging better reporting of incidents and ensure that those who behave in a violent manner will be subject to the full force of the law.

However it is the view of the BMA that this legislation, as introduced, does not go far enough to protect the majority of health service workers who, through the nature of their work, are most at risk from violence.

This paper provides supplementary information to support the BMA’s evidence submitted at Stage 1 (see Appendix 1).

Definition of ‘emergency worker’
Under the Bill, the definition of emergency workers covers all doctors registered with the General Medical Council to practice medicine. However, they are only considered ‘emergency workers’ when their work falls under the definition of an ‘emergency circumstance’ as defined in 1(5) of the Bill. As identified in our previous evidence to the Committee, doctors working in all areas of the health service can be subject to violence. It is our view that this Bill, as introduced, creates two levels of workers: the minority who are protected by this legislation and the majority who are excluded from protection, not because of the nature of their work but because of where they work.

Definition of ‘emergency circumstances’
Emergency circumstances are defined in clause 1(5). However, as highlighted in our previous evidence, the definition does not clarify whether a doctor providing life saving treatment in a hospital department, other than accident and emergency premises would be protected by this legislation. There is no distinction between doctors working, for example, in a maternity unit or primary care, who may have to provide life saving treatments, but will not be protected under this legislation. In the Policy Memorandum accompanying the Bill it is stated that “This Bill provides specific protection for emergency workers similar to that given to police officers in the Police (Scotland) Act 1967.” However, section 41(1) of the Police (Scotland) Act provides that any person who “assaults, resists, obstructs, molests or hinders” a police constable in the execution of his/her duty, commits an offence. This is not similar to the provision included for emergency workers in the Emergency Workers (Scotland) Bill. The BMA believes that in order to protect doctors attending to patients in hospital and community environments, the definition of an emergency circumstance should be extended.

Section 3: Accident and Emergency Departments
There is a logical argument to broaden the protection provided by this Bill. If it were to be agreed that this section should be extended beyond accident and emergency premises and beyond emergency situations, redrafting legislation should be relatively straightforward.
At present clause 3(1) and (2) of the Bill state:

“(1) A person who, in part of a hospital being a part which is used wholly or mainly for the purposes specified in subsection (2) below, assaults, obstructs or hinders and emergency worker within the meaning given by section 1(3)(c), (g), (h), or (i) of this Act or a person assisting that worker commits an offence.

(2) Those purposes are the reception and the treatment of persons needing medical attention as a result of an accident or otherwise as a matter of emergency.”

The definition in subsection (2) clearly limits the scope to emergency situations. In addition, subsection (1) limits the clause strictly to treatment in hospitals.

It is the view of the BMA that a more consistent approach could be achieved by amending the Bill in line with the recommendations made in our previous submission. This would mean replacing subsections (1) and (2) with the wording similar to that in the Police (Scotland) Act 1967. This could make clear that anyone who “assaults, obstructs or hinders an emergency worker in the execution of his/her duty commits an offence”.

**Conclusion**

- The BMA believes that this Bill, as part of a wider package of measures, will act as a deterrent to violence against emergency workers.
- Doctors working in all areas of the health service are subject to and affected by, violence in the workplace.
- The Bill, as introduced, is restrictive in its definition of emergency circumstances.
- The BMA recommends that in order to achieve the objective of the Bill, which is to offer protection to emergency workers similar to that afforded to the police, the definition should be redrafted with wording similar to that in the Police (Scotland) Act 1967.
APPENDIX 1

Emergency Workers (Scotland) Bill

Written Evidence to the Scottish Parliament Justice 1 Committee
May 2004

1. Introduction

1.1. The British Medical Association in Scotland represents doctors from all branches of medicine. It is a registered trade union and a voluntary association with more than 80% of practicing doctors in membership.

1.2. The BMA supports the principles of the Emergency Workers (Scotland) Bill as it should offer protection to doctors working in emergency situations. This legislation will act as a deterrent to those considering acts of violence against doctors and as part of a broader strategy we hope it will reduce the number of violent attacks against doctors.

1.3. It is accepted that existing common law provides protection from assault for everyone. However, despite guidance issued by the Lord Advocate for procurators fiscal to treat attacks on public sector workers more seriously, there has been no measurable reduction in the cases of violent behaviour towards this group of workers.

2. Violence in the workplace

2.1. There are just over 13,000 doctors working in the NHS in Scotland. According to a recent UK-wide survey conducted by the BMA, one in three doctors has experienced some form of violence in the workplace in the past year - more than 4,300 doctors in Scotland.

2.2. The BMA survey revealed that only one third of violent incidents had been reported. In a third of these cases, no action was taken following the incident. One of the reasons for poor reporting of violence in the workplace is the knowledge that no action will result, therefore the introduction of legislation to make it an offence to assault or impede a doctor in an emergency situation should improve reporting levels.

2.3. Worryingly, less than two-thirds of doctors receive support following a violent incident and half stated that the incident had not affected their work, reflecting the commonly held view that violence is to be expected as part of the job.

2.4. Health and safety legislation already exists which places a responsibility on health boards to provide adequate arrangements to ensure the safety of their workers. However, given the ongoing problem of violence against healthcare workers, it is clear that health boards have failed to comply with this legislation. NHS managers must ensure they fulfill health and safety requirements and introduce systems to protect their staff from violence.

3. Accident and Emergency Departments

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1 Scottish Executive Health Department ISD workforce statistics; Edinburgh 2003
3.1. The BMA welcomes the special status given to accident and emergency departments in this Bill to offer protection to doctors and nurses working in the department at all times.

3.2. While we acknowledge that the majority of patients and relatives behave in an appropriate manner, a small minority, often fuelled by alcohol or drugs, are violent towards staff. The level of personal violence perpetrated by patients and their relatives in accident and emergency departments is appalling, particularly since the role of doctors and nurses in these departments is to provide essential and life-saving care to individuals.

3.3. Staff are regularly fearful of their own personal safety as they go about their work. It is little wonder that the NHS struggles to recruit and retain staff given the unnecessary risks that health professionals face on a daily basis. There is no excuse for abusive behaviour and better protection and more effective deterrents are needed to stop this happening.

3.4. Wider measures can also deter violence against healthcare workers such as building design and the presence of security personnel in accident and emergency departments. While some hospitals in Scotland have made good progress in adopting such measures to protect their staff, others are falling behind.

4. Omissions from the Bill

4.1. Violence affects doctors working in all areas of the health service. The BMA survey found that hospital doctors and GPs experience similar levels of violence in their workplace. GPs most commonly experience violent behaviour in their waiting rooms or in their offices, whilst hospital doctors report most cases of violence on hospital wards. Amongst hospital doctors, those working in A&E, psychiatry and obstetrics and gynaecology are more likely to report experience of patient violence.

4.2. The definition of emergency situation does not clarify whether a doctor providing life saving treatment in a hospital department other than accident and emergency, would be protected by the legislation. For example, if a doctor was subject to a violent incident in an A&E department, he or she would be protected by law; whereas a doctor working in intensive care, providing the same treatment to a patient as their A&E counterpart, would not. We should therefore like to see the definition of emergency situation extended to include the provision of medical care in any setting.

4.3. We acknowledge that all healthcare workers are protected from violence under common law and we accept that legislation is only one part of a wider strategy. In general practice, guidance exists to protect doctors and their staff from known violent patients. This guidance requires health boards to provide secure environments where a doctor can treat these patients in safety. However, this guidance does not protect GPs or practice staff from violence in their surgery from patients without a history of violence. There is also no protection for doctors undertaking home visits, which would not be considered an emergency situation under the definitions in the Bill. We suggest an appropriate revision of the definitions to provide more comprehensive protection for doctors.

4.4. Section 41(1) of the Police (Scotland) Act 1967 provides that any person who “assaults, resists, obstructs, molests or hinders” a police constable in the execution of his/her duty, commits an offence. Furthermore, proposals outlined by the Scottish Executive in its planned Fire Services Bill include providing fire-fighters with the statutory protection equivalent to that already enjoyed by the police. We suggest that there is sufficient precedent to include within this legislation the offence of assaulting, obstructing or hindering a doctor in the execution of his/her duty.
4.5. The Emergency Workers (Scotland) Bill will cover fire-fighters in all emergency circumstances (as defined by subsection 5); regardless of whether they are extinguishing fires. We would like to see the Bill extended to protect doctors attending to patients in all circumstances, regardless of whether or not it is an emergency situation (as defined in the Bill).

5. Penalties
5.1. In 2001, the BMA called for assaults on hospital staff to be treated by the judicial system in the same way as assaults on the police. The BMA therefore welcomes the penalties outlined in section four which state that an offender would be liable to imprisonment or a fine.

6. Consultation
6.1. The BMA has been involved in the development of this Bill from the outset. We responded to the consultation document The protection of emergency workers\(^3\) earlier this year. Following the period of consultation, the Scottish Executive considered our representations and we welcome the changes incorporated into this Bill which now offers protection to all doctors attending emergency situations. However we are disappointed that the legislation has not been extended to cover doctors in all circumstances.

6.2. We would hope to continue to be involved in the process as the Bill passes through the Scottish Parliament and in the development of guidance for doctors and other healthcare workers.

7. Conclusion
7.1. The BMA welcomes moves to protect doctors from violence. This legislation sends a clear message that violence against emergency workers is unacceptable and this deterrent, as part of a wider strategy of public awareness and management of aggression training for workers, should reduce the incidence of violence in the workplace.

7.2. Doctors working in the National Health Service provide a vital service and should not be prevented from doing so by assaults from the public or patients. We welcome moves to protect doctors attending emergency situations, but believe that doctors and other healthcare workers attending to patients in all situations should also be protected by this legislation.

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Dear Pauline

FIRE (SCOTLAND) BILL – ASSAULTS ON FIREFIGHTERS

I have been reading the Justice 1 Committee’s Stage 1 Report on the Emergency Workers Bill with interest. I noted that at paragraph 109 the Committee was seeking an explanation of why the Fire (Scotland) Bill does not appear to provide for a level of protection for firefighters consistent with the police and why the Executive was proposing to legislate to protect fire service workers to different degrees in two different Bills before Parliament at the same time. I thought it might be helpful to offer a response as this issue was not raised during the Stage 1 Debate on 30 September.

I can confirm that the Executive’s intention is to table an amendment at Stage 2 of the Fire (Scotland) Bill, which will make it an offence to assault an employee of a fire and rescue authority in the course of their duty. The Fire (Scotland) Bill rightly recognises that assaults are an issue for all fire and rescue personnel whenever they are on duty, and not just when they are responding to an emergency.

The Emergency Workers Bill focuses on emergency circumstances only. In setting a higher penalty than will be provided under the Fire (Scotland) Bill, it reflects our belief that assaults or obstructions in emergency circumstances are particularly abhorrent, and should be punished accordingly.

The provisions contained within the two Bills will therefore complement one another. Together, they will ensure that all fire and rescue personnel are protected from assault at all times, but that firefighters responding to emergency circumstances are afforded an additional layer of protection through the higher penalties provided in the Emergency Workers legislation.
I hope this explanation is of help to you. I am copying this letter to the Convener of the Justice 2 Committee for information also.

Yours sincerely,

Hugh Henry

HUGH HENRY
Correspondence from an individual in respect of the
Emergency Workers (Scotland) Bill
(name and address supplied)

28/9/2004

Dear Ms McNeill

I have read the report on the Emergency Workers Bill (23/9/2004) by the Justice 1 Committee of which you are Convenor and it is in this capacity that I write to you. I realise that there is possibly very little that can now be done, but I felt compelled to write and express my dismay at the committee's decision not to include Prison Officers within the scope of the Emergency Workers Bill. My name is ____________ and I am a Prison Officer (Operations) at ____________ Prison. I joined the Scottish Prison Service in Jan 2002 and being a Prison Officer is something I get great satisfaction from and take great pride from. However, I do not expect this letter to achieve much. At the very least I hope my arguments will provide you with some food for thought, prior to Stage 2 of the Bill. Anything else will be a bonus, so I shall begin.

In Paragraph 146 it states that Prison Officers will be outside the scope of the Emergency Workers Bill because they do not "respond to emergency situations on a regular and routine basis"(paragraph 137). Up to a point I agree with the committee, however I do not think this is a valid reason for excluding Prison Officers from the bill. This is due to the fact that if Prison Officers are responding to emergency situations on a regular and routine basis, then as Prison Officers we have failed in our job. If we fail, then there are more suicides, more escapes, more property damage, more prisoner on prisoner violence, more prisoner on staff violence and more full scale riots. Yet these situations rarely occur because Prison Officers by and large do their job in a professional manner and to a high standard.

In Paragraph 145 it states "in situations where control of prisoners is lost by prison staff it is the police who are called to assist." Yes, this is true, but it is not the whole picture. The assistance the Police provide is outwith the Establishment. They do not go into an Establishment to restore order. That is the role of the Prison Officer. Prison Officers don riot gear and restore order, not the Police. I can not see how you can use that as reason to exclude Prison Officers from the Bill when it is based on a flawed premise.

Paragraph 168 states, "The word 'imminent' is intended to catch circumstances in which the emergency has not yet developed to its potential full scale but attention is needed to avoid it developing". As I said earlier if it wasn't for Prison Officers doing their jobs properly, small incidents could rapidly spiral out of control. Unlike the Police, Prison Officers are not issued body armour, CS Spray or extendable batons. All we are issued with are wooden staves for personal protection in extremis only. What we do have, however, is very good training in interpersonal skills which allows us to calm and take to control of a situation without needing to resort to force. Which is why you do not have Prison Officers needing to "respond to emergency situations on a regular and routine basis".
You also need to understand Prison is a closed and very regimented community (although some older Prisoners and Prison Officers would disagree!) and every community needs its Police, Fire and Ambulance Service. It is Prison Officers who are by default and training members of the Police, Fire and Ambulance Services to the Prisoners. I can hear you scoff but bear with me please.

Prison Officers provide secure custody and maintain order – Police.

Prison Officers are trained to fight fires albeit on limited scale and in the use of Short Duration Breathing Apparatus for use in cell rescues – Fire Brigade.

Prison Officers are trained in first aid, which also includes the use of defibrillators – Ambulance Service.

You saw fit to grant Emergency Worker status to those three services, and quite rightly so, but you chose not to for Prison Officers. I can not understand why? I could surmise that because we are too good at our job we are therefore denied the protection that Emergency Workers Bill would afford us.

That, however, would be pure arrogance, which would trivialise the work my colleagues do. Although, I do think it has a lot to do with public perception.

When I read paragraph 146, I was stunned. I could not understand why Prison Officers were not considered Emergency Workers, but then I stopped and thought about it. How could we ever be considered Emergency Workers, when virtually no member of general public knows what it is like inside a Prison, let alone to work inside one? It is an almost impossible task. We have become the illegitimate child of the Public Service, everyone knows we exist but no one likes to talk about us.

So, what did the Emergency Workers Bill mean to me? It meant protection and recognition. Added protection in law and the recognition that my work means something to someone outside these walls. By denying Prison Officers the status of Emergency Workers, you have said, my colleagues and I are not worthy of protecting. The job we do to protect the public is not worthy of recognition. We are locked away from the public as surely as anyone convicted by the Courts. Our cell is made up of ignorance, indifference and misunderstanding. This Bill had the chance to begin the unlocking process, but instead you waved the keys in front of us and then walked away.

I hope you take this letter in manner it is intended. Not as a rebuke, but as the heartfelt frustration of someone who had such hopes for this Bill and still does? I would be grateful if you pass this letter on to your fellow committee members for their perusal. Thank you for taking the time to read this, I shall now fade once again from your consciousness.

Yours sincerely
Dear Annabel,

FURTHER ROLL-OUT OF RELIANCE ESCORTING CONTRACT

You will recall that when I appeared before your Committee on 8 June, I gave a commitment to tell you of any further roll-out of the Escorting Contract with Reliance Custodial Services. On 20 September you were advised that Reliance were shadowing the escorts function in the Lothians and Borders area. This area includes HMP Edinburgh, the Edinburgh High and Appeal Courts, 9 Sheriff and 9 District Courts and all of the custody units of Lothians and Borders.

The SPS have conducted a comprehensive assessment of Reliance’s readiness to proceed, based on the criteria set out to the Committee on 8 June. The Chief Executive has provided formal assurance that Reliance are now ready to roll-out this phase of the contract. In addition, formal statements of assurance have been provided to the SPS by the Chief Executives of the Crown Office and Procurator Fiscal Service, the Scottish Court Service and the Chief Constable of Lothians and Borders Police, all of whom have indicated that their organisations are ready for roll-out.

The Chief Executive of the SPS has therefore authorised Reliance to roll out Phase 3A of the Contract in the Lothians and Borders area on Thursday 7 October 2004.

A copy of this letter has also been sent to the Convener and Clerk of the Justice 1 Committee and 5 copies lodged in SPICE.

Best wishes,

CATHY JAMIESON
Dear Ms McNeill

As you know Patricia Ferguson undertook to ensure that the Executive would notify the Parliament when Orders made under the Scotland Act that are subject to UK Parliamentary procedure are only laid in the Scottish Parliament. Such notification would be made to the appropriate lead Committee of the Parliament and the Subordinate Legislation Committee. That undertaking was made in recognition that MSPs may have an interest in such matters even though the responsibility for the relevant legislation rested wholly with Westminster.

The Justice 1 Committee was lead Committee for consideration of the Freedom of Information (Scotland) Act 2002. Accordingly, I am writing to inform you that the Freedom of Information (Scotland) Act 2002 (Consequential Modifications) Order 2004 was laid in the UK Parliament on 12 October. I enclose a copy of the Order, together with its accompanying Explanatory Memorandum for your Committee’s information.

The Order is being made under section 104 of the Scotland Act which as you know is a power to make provision which is considered necessary or expedient in consequence of any provision made by, or under, an Act of the Scottish Parliament. The Policy Memorandum to the Bill which preceded the 2002 Act highlighted that such an Order would be required to enable the UK Information Commissioner to pass information to the Scottish Information Commissioner and to extend data protection subject access rights to information held by Scottish Public Authorities. The Order will also ensure that copyright and database protection rules will not prevent the disclosure of information under the FOI regime.
I am copying this letter to Sylvia Jackson, for her Committee's interest.

TAVISH SCOTT
Draft Order laid before Parliament under section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

FRÉEDOM OF INFORMATION

The Freedom of Information (Scotland) Act 2002 (Consequential Modifications) Order 2004

Made - - - - 2005
Coming into force - - 1st January 2005

Whereas a draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998(1);

Now, therefore, the Secretary of State in exercise of the powers conferred upon him by sections 104, 112(1) and 113 of that Act, and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Freedom of Information (Scotland) Act 2002 (Consequential Modifications) Order 2004 and shall come into force on 1st January 2005.

Data Protection Act 1998

2.-(1) The Data Protection Act 1998(2) is amended as follows.
(2) In section 1 (basic interpretative provisions)–
(a) in subsection (1)(3), for the definition of “public authority” substitute–

(1) 1998 c.46.
(2) 1998 c.29.
(3) Subsection (1) was amended by the insertion of the definition of “public authority” by the Freedom of Information Act 2000 (c.36), section 68(2).
"public authority" means a public authority as defined by the Freedom of Information Act 2000(1) or a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002(2); 

(b) in subsection (5)(b), at the end add "or section 3(2), (4) and (5) of the Freedom of Information (Scotland) Act 2002; and 

(c) in subsection (6)(b) the existing words "section 7 of the Freedom of Information Act 2000 prevents Parts 1 to 5 of that Act" become paragraph (a) and after that paragraph insert the word "or" and the following paragraph:--

"(b) section 7(1) of the Freedom of Information (Scotland) Act 2000 prevents that Act,".

**Freedom of Information Act 2000**

3.—(1) The Freedom of Information Act 2000, is amended as follows.

(2) After section 76, insert--

"Disclosure between Commissioner and Scottish Information Commissioner"

76A. The Commissioner may disclose to the Scottish Information Commissioner any information obtained or furnished as mentioned in section 76(1) of this Act if it appears to the Commissioner that the information is of the same type that could be obtained by, or furnished to, the Scottish Information Commissioner under or for the purposes of the Freedom of Information (Scotland) Act 2002:--.

(3) In section 80, after subsection (2), add--

"(3) Section 50 of the Copyright, Designs and Patents Act 1988(4) and paragraph 6 of Schedule 1 to the Copyright and Rights in Databases Regulations 1997(5) apply in relation to the Freedom of Information (Scotland) Act 2002 as they apply in relation to this Act:--."

Parliamentary Under Secretary of State  
Scotland Office  
Department for Constitutional Affairs

Dover House,  
London  
2004

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2000 c.36.  
Subsection (5) was inserted by the Freedom of Information Act 2000 (c.36), section 68(3).  
Subsection (6) was inserted by the Freedom of Information Act 2000 (c.36), section 68(3).  
1988 c.48.  
S.I. 1997/3032.
EXPLANATORY NOTE
(This note is not part of the Order)

This Order amends the Data Protection Act 1998 ("the DPA") and the Freedom of Information Act 2000 ("the FOIA") in consequence of the enactment of the Freedom of Information (Scotland) Act 2002 ("the FOISA").

Article 2 amends section 1 of the DPA to extend the amendments to that Act made by section 68(2) and (3) of the FOIA so that the relationship between the DPA and the FOISA mirrors that between the DPA and the FOIA in that respect. In that article:

(a) paragraph (1) substitutes a new definition of "public authority" in section 1(1) of the DPA which includes both a "public authority" as defined by the FOIA and a "Scottish public authority" as defined by the FOISA;

(b) paragraph (2) amends section 1(5) of the DPA to the effect that "held" (in relation to information being held by a public authority) shall be construed in accordance with the relevant provisions of the FOIA or section 3(2), (4) and (5) of the FOISA; and

(c) paragraph (3) amends section 1(6) of the DPA to provide that where the provisions of the FOISA are prevented from applying to certain information held by a public authority by virtue of section 7(1) of that Act, such information is not to be treated as held by the public authority for the purposes of paragraph (e) of the definition of "data" in section 1(1) of the DPA.

Article 3 amends the FOIA as follows:

(a) paragraph (1) adds a new section 76A to permit the U.K. Information Commissioner to share certain information with the Scottish Information Commissioner (reciprocal provisions are contained in section 63 of the FOISA); and

(b) paragraph (2) adds a new subsection (3) to section 80 to extend the application of section 50 of the Copyright, Designs and Patents Act 1988 to the FOISA as it applies to the FOIA.
EXPLANATORY MEMORANDUM TO THE
DRAFT FREEDOM OF INFORMATION (SCOTLAND) ACT 2002
(CONSEQUENTIAL MODIFICATIONS) ORDER 2004

1. This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description


3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. The above Instrument is to be made in exercise of the powers conferred by sections 104, 112(1) and 115 of the Scotland Act 1998. The Instrument is by virtue of Schedule 7 paragraph 3(2)(b) to that Act, subject to type C procedure and is subject to affirmative resolution procedure in both Houses of the UK Parliament.

3.2. The Scottish Parliament does not have competence to make laws in reserved areas. However, section 104 of the Scotland Act 1998 provides for subordinate legislation to be made in the UK Parliament containing provisions that are necessary or expedient in consequence of any Act of the Scottish Parliament, in this case, the Freedom of Information (Scotland) Act 2002.


3.4. The Freedom of Information (Scotland) Act 2002 created an office of Scottish Information Commissioner. Consequential on this, this order permits the UK Information Commissioner to share information with his Scottish counterpart. This is a reciprocal measure. The Freedom of Information (Scotland) Act 2002 permits the Scottish Information Commissioner to share certain information with the UK Information Commissioner (see paragraphs 7.4 and 7.5 of this memorandum).

3.5. Intellectual Property is reserved under Schedule 5 to the Scotland Act and so amendments to Freedom of Information Act 2000 in relation to the Copyright, Designs and Patents Act 1988 or the Copyright and Rights in Database Regulations 1997 (S.I. 1997/3032) could not be made on the face of the Freedom of Information (Scotland) Act.
However, in order to properly apply the freedom of information regime, it is both necessary and expedient to ensure that the Freedom of Information (Scotland) Act 2002 interacts with the Copyright, Designs and Patents Act 1988 and the Copyright and Rights in Databases Regulations 1997 in the same manner as with the Freedom of Information Act 2000.

4. Legislative Background


4.2. This order amends the Data Protection Act 1998 so that personal data held by a Scottish public authority will be subject to the same access rights under that Act as personal data held by a UK public authority.

4.3. The order also amends the Freedom of Information Act 2000 to ensure that the UK Information Commissioner may disclose certain information to the Scottish Information Commissioner.

4.4. The order further amends the Freedom of Information Act 2000 to ensure that copyright will not be breached by disclosures of information under the Freedom of Information (Scotland) Act 2002, again to ensure a consistency of application throughout the UK.

5. Extent

5.1. This instrument applies to the UK.


6.1. The Parliamentary Under Secretary of State for Scotland has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of The Freedom of Information (Scotland) Act 2002 (Consequential Modifications) Order 2004 are compatible with the Convention rights.

7. Policy background

7.1. The need for this order was anticipated during the passage of the Freedom of Information (Scotland) Act and was mentioned in the Policy Memorandum for the Bill.

7.2. Amendments to Data Protection Act 1998 – Extension to Scottish public authorities: Part 7 of the Freedom of Information Act 2000 made some amendments to the Data Protection Act 1998 in relation to personal information held by public authorities subject to the scope of the Freedom of Information Act 2000. These amendments come into force on 1st January 2005. In broad terms, the effect of these amendments was to extend the definition of “data” in s1(1) of the Data Protection Act 1998. Any such information which is defined as “data” solely by virtue of this extension of the definition is however subject only to the access rights (s.7 of the Data Protection
Act 1998), the right to have inaccurate information corrected (s.14) and limited rights to compensation.

7.3. The subject matter of the Data Protection Act 1998 is reserved under Schedule 5 to the Scotland Act 1998 and so this order applies the amendments to the Data Protection Act 1998, similar to those described above, to Scottish public authorities who fall under the scope of the Freedom of Information (Scotland) Act 2002.

7.4. **Information Sharing:** In order to facilitate the work of the Scottish Information Commissioner, this order inserts a new section 76A in to the Freedom of Information Act 2000 to provide for the passing of information by UK Information Commissioner to the Scottish Information Commissioner.

7.5. Section 63 of the Freedom of Information (Scotland) Act 2002 allows the Scottish Information Commissioner to pass certain information to the UK Information Commissioner. The new section 76A makes reciprocal provision for the disclosure of information by the UK Information Commissioner to the Scottish Information Commissioner. This ensures a consistent regime across the UK and could not have been achieved on the face of the Freedom of Information Act 2000 since, at that time, the office of Scottish Information Commissioner did not exist.

7.6. **Copyright:** This order extends the protection of the Copyright, Designs and Patents Act 1988 and the Copyright and Rights in Database Regulations 1997 to allow disclosure of materials supplied under the Freedom of Information (Scotland) Act 2002. This will ensure that copyright and database protection rules will not hamper disclosure of information by Scottish public authorities otherwise permitted under the Freedom of Information (Scotland) Act 2002 and, again, ensure a regime consistent with that in the rest of the UK.

7.7. This order is being brought forward at this time in time for the coming into force of the Freedom of Information (Scotland) Act 2002 on 1st January 2005.

8. **Impact**

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2. There will be no substantial impact on the public sector.

9. **Contact**

Clare Jones at the Scotland Office, Tel: 020 7270 6756, or e-mail: clare.jones@scotland.gsi.gov.uk, can answer any queries regarding the instrument.