

EMERGENCY WORKERS (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Assaulting or impeding certain providers of emergency services

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

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

10. It will not be necessary for the Crown to prove that the accused actually *knew* that his or her victim was a constable, fire-fighter or ambulance worker. It would be sufficient for the Crown to prove that the accused *ought* to have known that to be case.
11. The types of evidence which the Crown might lead in this regard will vary from case to case. Examples might include evidence that the victim was in uniform; was driving a marked vehicle such as a police car, fire engine or ambulance; was carrying a medical bag; or had declared that he or she was acting in a relevant capacity.
12. In referring to the accused's actual knowledge, subsection (2) ensures that an offence may nevertheless be committed where an accused has personal knowledge that his or her victim is acting in a capacity referred to in subsection (3), even in circumstances where that might not be obvious to a reasonable observer.