Passage of the

Emergency Workers (Scotland) Bill 2004

SPPB 75
Passage of the

Emergency Workers (Scotland) Bill 2004

SP Bill 21 (Session 2), subsequently 2005 asp 2

SPPB 75
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. Extracts from the Official Report are re-printed as corrected for the archive version of the Official Report.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.
After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Clerking and Reporting Directorate. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Finance Committee reported to the Justice 1 Committee on the Bill at Stage 1. Its report is included in Annex B of the Stage 1 Report. However, the oral evidence and minutes for the Finance Committee’s meeting of 11 May 2004 were not included in that report and they are therefore included in this volume after the Stage 1 Report.

As well as the more customary Stage 1 evidence, the Justice 1 Committee considered written evidence on specific areas of the Bill before Stage 2. The Committee meeting minutes at which the Committee agreed its approach to this evidence taking, and the written responses received by the Committee are included in this volume.

Forthcoming titles

The next titles in this series will be:

- SPPB 76: Water Services etc. (Scotland) Bill 2004
- SPPB 77: Budget (Scotland) (No.2) Bill 2005
- SPPB 78: Fire (Scotland) Bill 2004
- SPPB 79: Further and Higher Education (Scotland) Bill 2004
Emergency Workers (Scotland) Bill
[AS INTRODUCED]

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Emergency Workers (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make it an offence to assault or impede persons who are providing emergency services; and for connected purposes.

1 Assaulting or impeding providers of emergency services

(1) A person who assaults, obstructs or hinders an emergency worker while the worker is responding to emergency circumstances commits an offence.

(2) A person who assaults, obstructs or hinders another while that other person is assisting an emergency worker who is responding to emergency circumstances commits an offence.

(3) In this Act, “emergency worker” means a person acting in any of the following capacities—

(a) a constable;

(b) a member of a fire brigade maintained in pursuance of the Fire Services Act 1947 (c.41) or a person who, not being a member of such a fire brigade, is paid by a fire authority under section 3(1)(b) of that Act for rendering services and is doing so;

(c) a person acting for the Scottish Ambulance Service Board in the exercise of the function referred to in article 4(1)(a) of the Scottish Ambulance Service Board Order 1999 (S.I. 1999/686) (exercise by Board of function of providing ambulances and other means of transport for ill and other persons);

(d) a prison officer, that is to say—

(i) a person who holds a post, otherwise than as a medical officer, to which the person has been appointed for the purposes of section 3(1A) of the Prisons (Scotland) Act 1989 (c.45); or

(ii) a prisoner custody officer within the meaning of Chapter II of Part VIII of the Criminal Justice and Public Order Act 1994 (c.33);

(e) a member of Her Majesty’s Coastguard;

(f) a member of the crew of a vessel operated by the Royal National Lifeboat Institute or a person who musters the crew of such a vessel or attends to its launch;

(g) a medical practitioner registered under the Medical Act 1983 (c.54);
(h) a nurse registered as such in the register maintained under the Nurses, Midwives and Health Visitors Act 1997 (c.24);

(i) a midwife registered as such in that register.

(4) For the purposes of this Act, an emergency worker is responding to emergency circumstances if the worker—

(a) is going anywhere for the purpose of dealing with emergency circumstances occurring there; or

(b) is dealing with emergency circumstances or preparing to do so.

(5) For the purposes of this Act, circumstances are “emergency” circumstances if they are present or imminent and—

(a) are causing or are likely to cause—

(i) serious injury to or the serious illness of a person;

(ii) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings); or

(iii) a worsening of any such injury, illness or harm; or

(b) are likely to cause the death of a person.

2 Provisions supplementary to section 1

(1) A person may be convicted of the offence under section 1(1) or (2) of this Act if obstructing or hindering notwithstanding that it is—

(a) effected by means other than physical means; or

(b) effected by action directed only at any vehicle, apparatus, equipment or other thing or any animal used or to be used by an emergency worker.

(2) A person who gives false information with the intention that an emergency worker will, while responding to emergency circumstances or instead of doing so, act upon that information is to be regarded, for the purposes of section 1(1) of this Act, as hindering the emergency worker.

(3) Subsection (2) above does not prejudice the generality of subsection (1)(a) above.

(4) For the purposes of section 1 of this Act, circumstances to which an emergency worker is responding are to be taken to be emergency circumstances only if—

(a) the worker believes and has reasonable grounds for believing that those circumstances are or may be emergency circumstances; and

(b) a reasonable person would have grounds for believing that the emergency worker is or might be responding to emergency circumstances.

(5) For the purposes of section 1(2) of this Act, a person is to be taken to be assisting an emergency worker only if a reasonable person would have grounds for believing that to be so.

(6) Evidence from a single source shall be sufficient evidence to establish, for the purposes of section 1(3) of this Act, whether a person is an emergency worker.
3 Assaulting or impeding health workers in hospital accident and emergency premises

(1) A person who, in a 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 an 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 treatment of persons needing medical attention as a result of an accident or otherwise as a matter of emergency.

(3) A person may be convicted of the offence under subsection (1) above of obstructing or hindering notwithstanding that it is—

(a) effected by means other than physical means;

(b) effected by action directed only at any vehicle, apparatus, equipment or other thing used or to be used by the emergency worker referred to in that subsection or the person assisting that worker.

(4) For the purposes of subsection (1) above, a person is to be taken to be assisting an emergency worker of the kind referred to in that subsection only if a reasonable person would have grounds for believing that to be so.

(5) Evidence from a single source shall be sufficient to establish, for the purposes of subsection (1) above, whether a person is an emergency worker of the kind referred to in that subsection.

4 Penalties

A person guilty of an offence under this Act is liable, on summary conviction, to imprisonment for a period not exceeding 9 months or to a fine not exceeding level 5 on the standard scale or to both.

5 Saving for certain other offences

Nothing in this Act affects section 41(1) of the Police (Scotland) Act 1967 (assault etc. of constable in execution of duty or of person assisting a constable) or section 30 of the Fire Services Act 1947 (obstruction etc of member of fire brigade engaged in fire-fighting operation).

6 Power to modify

(1) The Scottish Ministers may by order modify this Act by—

(a) adding a person or description of person to; or

(b) removing a person or description of person from,

those mentioned in this Act as persons the assault, obstructing or hindering of whom is an offence under this Act and by making such provision connected with that modification as they think fit.

(2) The Scottish Ministers shall not make an order under subsection (1)(a) above unless it appears to them that the person to be added (or, as the case may be, each person of the description 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.

(3) An order under subsection (1) above is to be made by statutory instrument.
(4) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.

7 Short title and commencement

(1) This Act may be cited as the Emergency Workers (Scotland) Act 2004.

(2) This Act (except this section) comes into force on such day as the Scottish Ministers may, by order made by statutory instrument, appoint and different days may be so appointed for different purposes.

(3) An order under subsection (2) above may contain such transitional, transitory and saving provision as the Scottish Ministers think appropriate.
Emergency Workers (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make it an offence to assault or impede persons who are providing emergency services; and for connected purposes.

Introduced by:  Mr Andy Kerr
On: 22 March 2004
Supported by:  Tavish Scott
Bill type:  Executive Bill
These documents relate to the Emergency Workers (Scotland) Bill (SP Bill 21) as introduced in the Scottish Parliament on 22 March 2004

EMERGENCY WORKERS (SCOTLAND) BILL

EXPLANATORY NOTES

_AND OTHER ACCOMPANYING DOCUMENTS_

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Emergency Workers (Scotland) Bill introduced in the Scottish Parliament on 22 March 2004:

   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 21–PM.
INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill seeks to support the aims set out in the Policy Memorandum through the introduction of new criminal offences. The Bill introduces an offence of assaulting, obstructing or hindering an emergency worker, or a person assisting an emergency worker, in emergency circumstances. The Bill also introduces a similar offence of assaulting, obstructing or hindering certain emergency workers in hospital accident and emergency premises. These measures are part of the Executive’s wider antisocial behaviour strategy.

COMMENTARY ON SECTIONS

Section 1 – Assaulting or impeding providers of emergency services

5. Subsection (1) creates a new offence of assaulting, obstructing or hindering an emergency worker who is responding to emergency circumstances.

6. Subsection (2) creates a new offence of assaulting, obstructing or hindering someone assisting an emergency worker who is responding to emergency circumstances. Section 2(5) is an evidential provision which ensures that a person may be convicted of the offence only if the fact that the person attacked was assisting an emergency worker would be obvious to a reasonable person.

7. Subsection (3) defines ‘emergency worker’ for the purposes of the Bill: paragraph (a) 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; paragraph (d) covers prison officers in non-contracted out prisons as well as prisoner custody officers in contracted out prisons; paragraph (g) covers doctors registered with the General Medical Council to practice medicine; paragraphs (h) and (i) cover nurses and midwives registered with the United Kingdom Central Council for Nursing, Midwifery and Health Visiting.
8. 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.

9. However, the protection afforded by the Bill to the police and fire-fighters 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). 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. 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. In contrast, the Bill will cover fire-fighters in all emergency circumstances (as defined by subsection 5), regardless of whether they are extinguishing fires. In addition, the maximum penalties on conviction are higher for an offence under the Bill.

10. Subsection (4) specifies what is meant by references in the Bill to an emergency worker ‘responding to emergency circumstances’. Subsection (5) and section 2(4) specify when emergency circumstances can be regarded as occurring.

Section 2 – Provisions supplementary to section 1

11. Subsection (1) provides that the offences under section 1(1) or (2) can be committed by non-physical means or by action directed only at the equipment or other items used by an emergency worker (see paragraph 11 above).

12. Subsection (2) specifically provides that an offence of hindering an emergency worker can be committed through the provision of false information. Subsection (3) provides that the more general offence of hindering is not restricted to that of providing false information.

13. Subsection (4) provides that emergency circumstances are to be taken to exist where an emergency worker believes and has reasonable grounds to believe that there are or may be emergency circumstances and where it would be obvious to a reasonable person that the emergency worker is or might be responding to emergency circumstances. This will cover, for example, a hoax call, where emergency circumstances do not actually exist, but the emergency worker has reasonable grounds for believing that they do. However, subsection (4)(b) ensures that where, for example, there is nothing obvious to indicate that an emergency worker is responding to emergency circumstances, a person does not commit an offence under section 1(1) or (2) of the Bill.

14. Subsection (6) is an evidential provision and provides that the capacity of a person as an ‘emergency worker’ may be proved by uncorroborated evidence. Thus, for example, the fact that the victim was a ‘medical practitioner’ in terms of section 1(3)(b) may be proved by evidence from a single source. This is an exception to the general rule of evidence in criminal
These documents relate to the Emergency Workers (Scotland) Bill (SP Bill 21) as introduced in the Scottish Parliament on 22 March 2004

proceedings in Scotland that the crucial features of an offence must be established by evidence from at least two sources.

Section 3 – Assaulting or impeding health workers in hospital accident and emergency premises

15. Subsection (1) creates a new offence of assaulting, obstructing or hindering certain emergency workers (ambulance, medical and nursing personnel defined by reference to section 1), or those assisting them, in hospital accident and emergency premises (as defined by subsection (2)). There is no provision requiring that emergency circumstances exist since emergency circumstances may be assumed to exist or be imminent in accident and emergency premises at all times.

16. Subsection (3) provides that an offence under subsection (1) can be committed by non-physical means or by action directed only at the equipment or other items used by the emergency worker.

17. Subsection (4) is an evidential provision which ensures that a person may be convicted of an offence only if the fact that the person attacked was assisting an emergency worker would be obvious to a reasonable person. Subsection (5) is also an evidential provision and provides that the capacity of a person as an ‘emergency worker’ may be proved by uncorroborated evidence (see paragraph 9 above).

Section 4 – Penalties

18. Section 4 provides that a person found guilty of an offence under this Bill is liable on summary conviction to a period of imprisonment not exceeding 9 months and/or a fine not exceeding level 5 on the standard scale (currently £5000).

Section 5 – Saving for certain other offences

19. The conduct constituting an offence under the Bill may also constitute an offence under the relevant provisions of the Police (Scotland) Act 1967 or the Fire Services Act 1947. Section 5 ensures that it will still be open to the Crown to prosecute such conduct under either the 1967 or 1947 Act or the Bill.

Section 6 – Power to modify

20. If there are categories of emergency worker which are not included in section 1(3), they can be brought within the protection of the Bill by the operation of this power. For example, mountain rescue teams might be added to section 1(3) using this section.
INTRODUCTION

21. The Executive believes that it is unacceptable that emergency workers who are regularly putting their own lives at risk to save others should be subject to attacks while undertaking their essential duties. The common law already provides protection from assault for all workers but the Executive believes that the particular demands facing the emergency services justify the creation of specific statutory offences. This is intended to make clear that such attacks are entirely unacceptable in a modern Scotland and, by highlighting the issue, serve to have a deterrent effect. This legislation is part of a wider programme of actions addressing the problem of attacks on public sector workers generally. All of this is part of the Executive’s wider antisocial behaviour strategy: to deal with the causes and effects of antisocial behaviour in order to make a real difference in communities and to improve the quality of life for all of Scotland’s people.

COSTS ON THE SCOTTISH ADMINISTRATION

22. It is not anticipated that there will be any significant additional on-going costs incurred as a result of the introduction of the new offences since most cases of assault and obstruction of emergency workers can at present be prosecuted under common law or under specific legislation applying to the police and fire services. This is supported by the results of the Executive’s consultation (Protection of Emergency Workers: A Consultation Paper) as no responses suggested that additional costs would arise.

23. In 2002, there were 882 direct sentenced receptions to prisons for serious assault/attempted murder and 1,071 for petty assault. However, statistics do not currently record how many of these cases related to emergency workers. One of the advantages of the introduction of a specific offence is that it will facilitate the recording of such information in future and ensure that any trends can be accurately tracked.

24. The Bill’s provision for specific offences of hindrance or obstruction of certain emergency workers working in hospital accident and emergency premises and emergency workers in emergency circumstances, or those assisting them, criminalises behaviour which does not necessarily constitute a crime at common law or under the specific legislation applying to the police and fire services. It is uncertain how many additional prosecutions will result from these provisions but it is anticipated that there will be relatively few, in comparison to the incidence of existing prosecutions. At the same time it is intended that the Bill will have a deterrent effect, reducing the number of attacks on emergency workers and their equipment, thereby leading to some savings in resources. Achieving a cost saving as a result of the anticipated deterrent effect is not however a primary purpose of the legislation and it is anticipated that any such savings are likely to be relatively minor in the context of the overall criminal justice budget. It is however anticipated that savings arising from the deterrent effect of the legislation is likely to outweigh the costs of any additional prosecutions for the new offences created by the Bill’s provisions.
25. The Scottish Executive believe that the introduction of the new offence will not result in any significant change in sentencing pattern for those charged with the new offences, compared to those charged with an offence under common law in similar circumstances.

COSTS ON LOCAL AUTHORITIES

26. There are no anticipated additional costs for local authorities as a result of the Bill.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

27. Individuals who are convicted of the new offences will be expected to pay any fine imposed on them by a court as a result of that conviction. There are no costs for other bodies or businesses.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

28. On 22 March 2004, the Minister for Finance and Public Services (Mr Andy Kerr) made the following statement:

“In my view, the provisions of the Emergency Workers (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

29. On 19 March 2004, the Presiding Officer (George Reid) made the following statement:

“In my view, the provisions of the Emergency Workers (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
EMERGENCY WORKERS (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Emergency Workers (Scotland) Bill introduced in the Scottish Parliament on 22 March 2004. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 21–EN.

POLICY OBJECTIVES AND CONTEXT – GENERAL

2. The Bill’s policy objective is to create a specific offence of attacking an emergency worker, or someone assisting an emergency worker, who is responding to emergency circumstances. It stems from a commitment in Building a Better Scotland: A Partnership Agreement to ‘protect emergency workers from assault and obstruction’. This is part of a wider drive against antisocial behaviour and the Bill should be seen in the context of the Antisocial Behaviour etc. (Scotland) Bill which aims to protect and empower communities, and as part of a wider package to protect public service workers.

3. Emergency workers, like all persons, are protected from assault by the common law. Following a debate in the Parliament in February 2003, the Lord Advocate made clear in guidance to procurators fiscal that ‘Incidents involving attacks on public sector workers, for example, doctors, nurses and other staff in hospitals, ambulance drivers and paramedics, train and bus drivers, fire-fighters and others providing a service to the public should be taken seriously. The locus and the fact that the worker is providing a service to the public are both aggravating factors which should be borne in mind by prosecutors in deciding the appropriate forum for the case.’

4. The Executive is also working in partnership with employers, trade unions and professional bodies to develop a wider package of measures to address the problem of attacks on all public service workers. The measures, which will take into account and build on what exists already, may include a public awareness campaign, measures to improve training of managers and staff and increased education of children and young people about the unacceptability of assaulting people at work. Improved recording and reporting of incidents are likely to be a vital part of this package.

5. This Bill provides specific protection for emergency workers similar to that provided for police officers in the Police (Scotland) Act 1967. This is in recognition of the fact that these...
This document relates to the Emergency Workers (Scotland) Bill (SP Bill 21) as introduced in the Scottish Parliament on 22 March 2004

workers perform a vital service to society in difficult and often dangerous circumstances. They need to respond quickly and if they are assaulted or obstructed the consequences may be very grave, not only for the emergency workers but for those they are trying to help. The legislation is intended to make clear that such attacks are entirely unacceptable and, by highlighting the issue, serve to have a deterrent effect. As a side-effect, the introduction of a specific offence should also make monitoring of the numbers of attacks on emergency workers and tracking of trends in this offence easier in future.

6. Section 1 of the Bill defines emergency circumstances and the groups that are to be considered emergency workers. Section 2 contains provisions supplementary to section 1. Section 3 is a special provision covering hospital accident and emergency premises.

CONSULTATION

7. Over the summer of 2003 the Minister for Finance and Public Services held an extensive series of consultations with trade unions and professional bodies, including the Scottish Trades Union Congress, the Educational Institute of Scotland, the British Medical Association, the Royal College of Nursing, Unison and the Transport and General Workers Union. The STUC has had an ongoing input into thinking on policy and since January 2004 a STUC official has been seconded to the Executive to help with the development of a wider package of measures to protect all public service workers.

8. A formal written consultation paper (Protection of Emergency Workers: A Consultation Paper) was published on 8 December 2003. The consultation period formally closed on 6 February 2004, though a number of responses were received after that date. As at 1 March, a total of 62 replies had been received. Responses to the consultation were broadly supportive of the proposals to provide extra statutory protection for emergency service workers and there was widespread welcome for the proposed package of wider measures. All responses to the consultation with the exception of those specified as confidential are lodged in the Scottish Executive Library and will be made available to Scottish Parliament Information Centre. A summary of the main themes emerging from the consultation will also be made available.

DETAILED POLICY OBJECTIVES

Section 1

9. The aim of this section is to create a criminal offence of assaulting, obstructing or hindering emergency workers and persons assisting them in emergency circumstances. This section provides definitions both of which groups are to be considered as emergency workers and what constitutes emergency circumstances. Circumstances are considered to be “emergency” circumstances if they are present or imminent and are causing or are likely to cause: serious injury to or the serious illness of a person; serious harm to the environment; or a worsening of any such injury, illness or harm; or if they are likely to cause the death of a person. The groups defined as emergency workers on the face of the Bill are police, fire, ambulance and coastguard services, lifeboat crews, medical practitioners, nurses, midwives and prison officers. Persons can be added to or removed from the list of emergency workers by the order-making power contained in Section 6, which is subject to negative resolution procedure in the Scottish Parliament. This 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 – for example, mountain rescue teams or environmental emergency workers.

Section 3

10. This section makes special provision for health workers in hospital accident and emergency premises, indicating that a state of emergency is to be considered to exist at all times in such departments. This is in view of the nature of these departments, whose purpose is to be always ready to receive and treat casualties, and the significant number of attacks on medical personnel that occur there. Section 1 ensures that ambulance personnel, medical practitioners, nurses and midwives will be covered when responding to emergencies, as will those assisting them, both elsewhere in hospitals and in the community.

ALTERNATIVE APPROACHES

11. Alternatives to new statutory provision for the protection of emergency workers were examined in the Executive’s consultation paper, Protection of Emergency Workers. The main alternatives examined were the provision of a statutory aggravation for attacks on all public service workers or reliance on the current protection offered by the common law. The paper made clear the Executive’s belief that the flexibility afforded by the common law provided the best protection for public service workers as a whole, as it is reinforced by the Lord Advocate’s guidelines to procurators fiscal emphasising that an attack on any worker delivering a public service is an aggravated offence. The paper also stated the Executive’s opinion that the creation of a specific statutory offence of attacking an emergency worker in an emergency situation was considered the best approach to bring protection for these workers in line with that provided for police officers in the Police (Scotland) Act 1967 and to underline the specific demands of operating in emergency situations.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC

12. The purpose of the Bill is to create a specific offence of attacking an emergency worker in an emergency situation. It is not anticipated that this will have a differential effect on women or men, on different social groups, on disabled or non-disabled persons or on different ethnic or religious groups. The consultation paper was sent to equal opportunities groups including the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission. No adverse comments were received on any equality issues.

13. The Bill does not give rise to any issues under the European Convention on Human Rights (ECHR).

14. This Bill introduces new criminal law to facilitate the operation of emergency services by providing protection for emergency workers. It does not place any additional burden on business, local authorities or the voluntary sector. As discussed above the Executive plans to explore whether they should benefit from the protection provided by the Bill. Any additional groups may be added through the order-making power under Section 6.
15. No consultation responses suggested that the Bill contained issues for island communities and it is not anticipated that this Bill will have any differential impact on them.

16. It is unlikely that the Bill will lead to a significant increase in the number of prosecutions for attacks on emergency workers. Cases of assault and obstruction of emergency workers can at present be prosecuted under common law. It is intended that the Bill will have a deterrent effect, reducing the number of attacks on emergency workers and their equipment. Positive sustainable development effects might therefore be a diminishing of the numbers of imprisoned offenders and a reduction in harm to emergency personnel (with consequent reduction of lost working days as well as personal distress) and in damage to equipment. The safety and security of communities should also be improved. If as a consequence of the Bill emergency workers are better able to do their job of responding to and containing emergencies, some positive environmental effects may be anticipated (for example fires could be put out sooner). It is also possible that the order-making provision in section 6 will lead to workers responding to environmental emergencies being covered by the legislation.
Justice 1 Committee

10th Report, 2004 (Session 2)

Stage 1 Report on the Emergency Workers (Scotland) Bill
Justice 1 Committee

10th Report, 2004 (Session 2)

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Oral Evidence

Scottish Executive
Crown Office and Procurator Fiscal Service

Associated Written Evidence

Scottish Executive
Crown Office and Procurator Fiscal Service

21st Meeting 2004 (Session 2) 26 May 2004

Written Evidence

Scottish Police Federation
Association of Chief Police Officers in Scotland
Association of Scottish Police Superintendents

Oral Evidence

Law Society of Scotland
Faculty of Advocates
Scottish Police Federation
Association of Chief Police Officers in Scotland
Association of Scottish Police Superintendents

Associated Written Evidence

Law Society of Scotland

22nd Meeting 2004 (Session 2) 2 June 2004

Written Evidence

Chief and Assistant Chief Fire Officers Association
Royal College of Nursing (Scotland)
British Medical Association
Royal College of Physicians of Edinburgh
T&G Scotland
Oral Evidence

Chief and Assistant Chief Fire Officers Association
Fire Brigades Union Scotland
Royal College of Nursing (Scotland)
British Medical Association
Royal College of Physicians of Edinburgh
Unison Scotland
T&G Scotland
GMB Scotland
Scottish Trades Union Congress

23rd Meeting 2004 (Session 2) 9 June 2004

Written Evidence

Association of Directors of Social Work
British Association of Social Workers
Minister for Finance and Public Services

Oral Evidence

Association of Directors of Social Work
British Association of Social Workers
Prison Officers Association Scotland
Scottish Prison Service – Trade Union Side
Minister for Finance and Public Services

Associated Written Evidence

Minister for Finance and Public Services

ANNEX E – OTHER WRITTEN EVIDENCE

Jackie Baillie MSP
Central Scotland Fire Brigade
COSLA
City of Edinburgh Council
Falkirk Council
Fife Council
Forth Valley Acute Hospitals NHS Trust
Glasgow City Council
Grampian Fire Brigade
Guild of Healthcare Pharmacists
Historic Scotland
Individual
Lothian and Borders Fire Board
National Grid Transco (Scotland)
NHS Borders
NHS Grampian
NHS Greater Glasgow Primary Care Division
NHS Great Glasgow Yorkhill Division
NHS Lothian Primary and Community Division
North Glasgow University Hospitals Division
Royal College of General Practitioners
Royal College of Midwives UK Board for Scotland
Royal College of Paediatrics and Child Health Scotland
Sheriffs Association
Scottish Ambulance Service
Scottish Environmental Protection Agency
Scottish Partnership Forum
Scottish Water
SOLACE
Strathclyde Fire Board
UNIFI
USDAW
West Lothian Healthcare Trust
Justice 1 Committee

Remit and membership

**Remit:**

To consider and report on matters relating to the administration of civil and criminal justice, the reform of the civil and criminal law and such other matters as fall within the responsibility of the Minister for Justice, and the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigations of deaths in Scotland.

**Membership:**

Pauline McNeill (Convener)
Bill Butler
Marilyn Glen
Mr Michael Matheson
Mr Stewart Maxwell (Deputy Convener)
Margaret Mitchell
Margaret Smith

**Committee Clerking Team:**

**Clerk to the Committee**
Alison Walker

**Senior Assistant Clerk**
Douglas Wands

**Assistant Clerk**
Douglas Thornton
Stage 1 Report on the Emergency Workers (Scotland) Bill

The Committee reports to the Parliament as follows—

Introduction and background

1. The Emergency Workers (Scotland) Bill stems from the Scottish Executive’s commitment to “protect emergency workers from assault and obstruction” which forms one element of legislation to tackle anti-social behaviour set out in A Partnership Agreement for a Better Scotland.

2. The policy memorandum states that the policy objective of the Bill is to create a specific offence of attacking an emergency worker, or someone assisting an emergency worker, when responding to emergency circumstances, thus providing specific protection for emergency workers similar to that provided for police officers in the Police (Scotland) Act 1967. Such cases would proceed on summary complaint. The Bill would also make special provision for health workers in hospital accident and emergency premises, with the effect that a state of emergency would be considered to exist at all times in such departments.

Evidence taken by the Committee

3. The Justice 1 Committee issued a call for written evidence on the Bill and received forty-four responses. The Committee also heard oral evidence over four sessions from the Scottish Executive Bill Team; The Crown Office and Procurator Fiscal Service (Crown Office or COPFS); the Law Society of Scotland (Law Society); the Faculty of Advocates; the Scottish Police Federation (SPF); the Association of Chief Police Officers in Scotland (ACPOS); the Association of Scottish Police Superintendents (ASPS); the Chief and Assistant Chief Fire Officers’ Association

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1 Emergency Workers (Scotland) Bill Policy Memorandum (SP Bill 21–PM), para 5
2 Ibid, para 10
(CACFOA); the Fire Brigades Union Scotland (FBU); the Royal College of Nursing (RCN) Scotland; the British Medical Association (BMA); the Royal College of Physicians of Edinburgh; UNISON Scotland (UNISON); the Transport & General Workers’ Union Scotland (T&G Scotland); GMB Scotland; the Scottish Trades Union Congress (STUC); the British Association of Social Workers (BASW); the Association of Directors of Social Work (ADSW); the Prison Officers’ Association Scotland (POA); the Scottish Prison Service Trade Union Side, and the Minister for Finance and Public Services (the Minister).

Scottish Executive consultation

4. The Bill was prepared following a series of consultations between the Minister for Finance and Public Services and trade unions and professional bodies during the summer of 2003. A formal written consultation paper, Protection of Emergency Workers: A Consultation Paper, was published on 8 December 2003. This sought views on the proposal to introduce legislation which would make it an offence to assault, obstruct or hinder emergency workers, or persons assisting them, how an emergency situation might best be defined and suggestions for which groups of emergency workers should be covered.3

5. The consultation paper also noted that a wider package of measures would be taken forward by the Executive to help address the problem of attacks on public service workers more generally, rather than being limited to emergency workers. These measures would include increased use of CCTV, evidence sharing, partnership working and wider awareness and educational campaigns.4

6. The Executive considered that responses to the consultation were broadly supportive of the proposals to provide extra statutory protection for emergency workers and there was widespread welcome for the proposed package of wider measures.5

Conclusion

7. The Committee welcomes the consultation carried out by the Scottish Executive prior to the introduction of the Bill but considers that the failure to publish a detailed analysis of the consultation responses, either as part of the policy memorandum to the Bill or elsewhere, was unhelpful. The Committee recommends that where extensive pre-legislative consultation by the Executive has taken place, an analysis of the responses received should be published as a matter of course.

General reaction to the Bill

8. The vast majority of responses to the Committee’s call for written evidence welcomed the intent of the Bill as an attempt to provide

3 Protection of emergency workers: a consultation paper, para 2.11
4 Ibid, para 3.5
5 Policy memorandum, para 8
additional protection for emergency workers. However, many respondents sought significant changes to the legislation, or alternative approaches, in order to best serve the interests of their organisation, employees or members. In oral evidence to the Committee, many witnesses tended to address the Bill they would have liked to see (which would be much wider in scope) rather than the Bill as drafted.

Fire organisations

9. CACFOA considered that the Bill would be an important measure in the programme of dealing with anti-social behaviour.\(^6\) In oral evidence, CACFOA suggested that the Bill would give staff greater confidence that action will be taken against people who perpetrate attacks on fire crews or fire service personnel and would also give greater prominence in society to the fact that such events are unacceptable to society at large.\(^7\)

10. In oral evidence, the FBU suggested that the Bill would give firefighters better protection. The union submitted that, under the common law, it had been difficult to get convictions for attacks suffered over the past few years. The Bill was therefore considered a specific measure under which emergency workers will receive more protection.\(^8\) However, paradoxically, the FBU went on to say that, while welcoming the Bill, the union did not want to see firefighters being viewed as a special case and singled out as different from other workers.\(^9\) The union representative explained that “our ability to stay neutral has been very precious to us over the years and has kept us out of a lot of trouble”.\(^10\) He went on to say, “We do not want to be seen as a target. Instead, we pride ourselves on our neutrality and will help everyone, regardless of their circumstances or who they are. I do not think that the bill will provide our people with much more than a feeling of comfort”.\(^11\)

Police organisations

11. ACPOS welcomed and supported new legislation to address the increase in violence towards emergency workers. However, it raised questions about how the Bill would relate to the provisions of the Police (Scotland) Act 1967.\(^12\)

12. In its written submission, ASPS recognised the need for all emergency workers to be protected from assault or obstruction whilst going about their duties and hoped that the legislation would help to address the under-reporting of violent incidents. However, ASPS also considered that there may be an over reliance on additional legislation and insufficient consideration of what is already available through the common law.\(^13\)

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\(^6\) CACFOA, written evidence, 30 April 2004
\(^7\) Official Report, Justice 1 Committee, 2 June 2004; c 865 - 866
\(^8\) Ibid; c 865
\(^9\) Ibid; c 876
\(^10\) Ibid; c 885
\(^11\) Ibid.
\(^12\) ACPOS, written evidence, 23 April 2004
\(^13\) ASPS, written evidence, 7 May 2004
13. In oral evidence, both ACPOS and ASPS agreed that the Bill would provide emergency workers, other than the police, with greater protection than they have at present. ACPOS focused on the proposed higher penalties for attacks on emergency workers available to summary courts than currently available under the common law.

Prison officers
14. The Prison Officers Association Scotland and Scottish Prison Service trade union side gave oral evidence to the Committee that the Bill would give prison officers added protection as it would act as a deterrent to prisoners assaulting or obstructing prison officers. They acknowledged that such incidents could be dealt with under the common law but expressed concern that some cases had been dropped by procurators fiscal as it was not deemed to be in the public interest to prosecute. The POA considered that the Emergency Workers (Scotland) Bill would be welcome if it served to emphasise the need to protect public servants more.

Medical organisations
15. The Royal College of General Practitioners' written submission welcomed the aim of the Bill to extend the level of protection for NHS staff but argued that the level of protection given to accident and emergency departments should be extended to out of hours and general practice settings. It argued that the threat of an emergency situation is equally imminent in GP surgeries or when attending house calls and that GPs are also more likely to routinely come into contact with patients who display violent behaviour.

16. NHS Forth Valley submitted that the Bill appears to create a two-tier system, as workers attacked outwith an emergency situation are not included. It considered that all staff should be afforded the same protection of the law. It also considered that the Bill does not address the issue of identification of emergency workers who are not in uniform. Nonetheless, the response from NHS Forth Valley suggests that in order to tackle violence and aggression from the public against staff, a strong and clear message from the Parliament in the form of a new Bill would be very much appreciated.

17. The BMA expressed support for the principles of the Bill as, in its view, it should offer protection to doctors working in emergency situations. The association considered that the Bill would act as a deterrent to those considering acts of violence against doctors and, as part of a broader strategy, hoped that it would reduce the number of violent attacks against doctors. However, the BMA response went on to suggest that the definition of an emergency situation should be extended to include the
provision of medical care in any setting, not just accident and emergency premises. The association also suggested that more comprehensive protection for doctors should be provided by extending the scope of the Bill to protect doctors attending to patients in all circumstances, regardless of whether or not it is an emergency situation.  

18. RCN Scotland also welcomed the publication of the Bill but stressed that it and other health-related organisations and trade unions had argued strongly at the consultation stage that all public service workers should be covered. It submitted that if the current scope of the Bill is not widened it will be a missed opportunity to provide adequate legal protection for all healthcare workers and that the proposals will risk the creation of two ‘classes’ of staff.  

19. In oral evidence, RCN Scotland, the British Medical Association and the Royal College of Physicians of Edinburgh all agreed that the intent behind the Bill was welcome but that it had limitations. RCN Scotland submitted that all health care professionals are affected, including porters, domestics and nursing care assistants, whether they work in accident and emergency or in any ward that receives emergency admissions.  

20. The BMA suggested that it would be preferable for the definition of emergency workers to simply focus on workers who at some stage are required to carry out emergency work for the benefit of the public.  

21. The Scottish Ambulance Service submitted written evidence to the Committee with support from its trade union partners, T&G Scotland and UNISON. The service highlighted the increasingly diverse nature of its work which does not only provide an emergency response and suggested that ambulance staff carrying out “urgent, planned or unplanned emergency work” should be protected by the provisions of the Bill.  

Trade unions  
22. UNISON Scotland submitted written evidence that the risks faced by public service workers in both emergency and non-emergency situations are fundamentally the same. It considered that any attempt to make a distinction between assaulting a public service worker in an emergency situation and assaulting one in a non-emergency situation to be illusory. UNISON favoured the introduction of a statutory aggravation charge (replacing common law aggravation) to cover attacks on all workers delivering a public service.  

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19 British Medical Association, written evidence, 7 May 2004  
20 RCN Scotland, written evidence, 4 May 2004  
21 Official Report, Justice 1 Committee, 2 June 2004; c 886  
22 Ibid; c 887  
23 Ibid; c 895  
24 Scottish Ambulance Service, written evidence, 30 April 2004  
25 UNISON, Written Evidence, 7 May 2004, page 1
23. T&G Scotland declared broad support for the action by the Scottish Executive to introduce legislative and non-legislative measures to protect workers. The union stated its belief that “all workers providing a service to the public should benefit from the same protection” and it would have favoured a wider definition in the legislation. In the context of the Emergency Workers (Scotland) Bill, it made a specific request for the definition of emergency workers to be extended to include social workers, home care workers, hospital support staff (for example porters and reception staff) and all health workers whether in hospital accident and emergency premises or in the community.  

24. In oral evidence, the STUC stated that, in its view, the Bill is not wide enough and should cover more than only emergency workers. It submitted that attacks on workers are widespread throughout the public and private sectors and so the definition should cover public service workers as that would broaden it out as widely as possible. The STUC went on to state that a “protection of workers bill might be more appropriate than a bill that covers only emergency workers”. 

25. GMB Scotland concurred with the STUC view as a wider bill would provide cover for more of the members of the union. In terms of the definition of the circumstances in which the legislation would apply, the GMB expressed support for the definition agreed by the STUC and submitted to the Executive’s consultation exercise. This defined an emergency situation as “any situation where obstruction or assault of a worker or workers would cause consequent and immediate impact on the safety of another person or persons”. 

26. UNISON dissented somewhat from this view as it considered that it was inevitable that the line would be drawn somewhere and suggested that public service workers can be distinguished from other workers as “the nature of performing a service in the public sector means that people have a duty to continue to be in contact with some difficult customers, clients and service users”. The union further clarified that workers performing a public service role should be covered irrespective of whether they worked for a public or private sector organisation. 

Law Society of Scotland and Faculty of Advocates
27. The Law Society expressed support for the policy intention behind the Bill as it believed that emergency workers should not be subjected to violence and intimidation. The Law Society argued that sufficient protection should be available to ensure that emergency workers can carry out their duties without fear of attack but that consideration should be given to “whether the creation of a new offence is the most effective way to address this issue”. It also expressed the view that there is an
argument that the creation of a statutory offence “may detract from flexibility and impose evidential burdens on the Crown which would not apply at common law”\textsuperscript{32} In oral evidence, the Law Society highlighted a range of common law offences, such as assault, breach of the peace and malicious mischief, which could potentially meet some of the offences covered in the Bill.\textsuperscript{33} The Faculty of Advocates concurred, stating that “the existing common law and statute provisions probably address all such situations”.\textsuperscript{34} These are examined in more detail in the section on existing provisions later in the report.

Conclusion

28. The Committee has heard and received a considerable quantity of evidence regarding the general principles of the Emergency Workers (Scotland) Bill. Much of this evidence has been conflicting, firstly with regard to the need for the legislation and secondly with respect to proposed amendments to it. It has, therefore, been exceptionally difficult for the Committee to reach a conclusion on the general principles of the Bill.

Main provisions

Offences

29. Section 1 creates a statutory offence where someone assaults, obstructs or hinders an emergency worker responding to emergency circumstances. The section goes on to provide that it is also a statutory offence to assault, obstruct or hinder any other person assisting an emergency worker responding to emergency circumstances.

30. Section 3 creates a statutory offence where someone assaults, obstructs or hinders certain types of emergency worker (ambulance, medical and nursing personnel), or a person assisting such a worker, in a part of a hospital used wholly or mainly for the reception and treatment of persons needing medical attention as a result of an accident or otherwise as a matter of emergency.

Penalties

31. The proposed offence of assaulting, obstructing or hindering an emergency worker in an emergency situation will carry a maximum sentence of 9 months’ imprisonment for a first or subsequent offence under summary proceedings, whereas the maximum term of imprisonment for common law assault, under summary proceedings, is 3 months for a first offence and 6 months for subsequent offences. More serious offences may still be tried under solemn procedure.

Emergency workers

32. There are nine groups of workers included within the definition of emergency worker at section 1(3) of the Bill. The definition covers police

\textsuperscript{32} Ibid.
\textsuperscript{33} Official Report, Justice 1 Committee, 26 May 2004; c 823 - 825
\textsuperscript{34} Ibid; c 826
constables, fire fighters, ambulance staff, prison officers, members of HM Coastguard, various people connected with the operation of RNLI lifeboats, doctors, nurses and midwives. Further comment on who is, or is not, covered by the definition is set out in paragraph 7 of the Explanatory Notes published with the Bill.

**Emergency circumstances**

33. The offences created by section 1 of the Bill only apply where an emergency worker is responding to 'emergency circumstances'. The Explanatory Notes published along with the Bill state that this is not a specified requirement in relation to an offence under section 3, Assaulting or impeding health workers in hospital accident and emergency premises, “since emergency circumstances may be assumed to exist or to be imminent in [hospital] accident and emergency premises at all times”.

34. ‘Emergency circumstances’ is, for the purpose of the offences created by section 1, defined in section 1(5) of the Bill. The definition covers circumstances which are present or imminent and are causing, or are likely to cause, any of the following:

- serious injury to or the serious illness of a person;
- serious harm to the environment (including the life and health of plants and animals and the fabric of buildings);
- a worsening of any such injury, illness or harm;
- the death of a person.

35. Section 1(4) of the Bill states that an emergency worker is “responding” to emergency circumstances where the worker is on the way to deal with, is preparing to deal with, or is actually dealing with emergency circumstances.

36. Section 2 (4) provides the definition of when emergency circumstances are to be considered in effect:

- only if the emergency worker believes and has grounds to believe that those circumstances are or may be emergency circumstances; and
- a reasonable person would have grounds for believing that the emergency worker is or might be responding to emergency circumstances.

**Policy intentions**

*Protection of emergency workers*

37. In the policy memorandum, the Scottish Executive states that the creation of a specific statutory offence of attacking an emergency worker in an emergency situation was considered the “best approach to bring protection for these workers in line with that provided for police
officers in the Police (Scotland) Act 1967 and to underline the specific demands of operating in emergency situations”. The Committee considers this statement to be misleading as the protection for police constables provided under the Police (Scotland) Act 1967 applies not only in emergency circumstances, but at all times in the execution of a constable’s duty. The construction of the Emergency Workers (Scotland) Bill is, therefore, considerably different and much narrower in its scope.

38. In supplementary written evidence from the Minister for Finance and Public Services, it was emphasised that society depends on emergency workers to “save and protect our wellbeing, environment and possessions in difficult, and often dangerous circumstances”. The Executive “believes that it is absolutely unacceptable that such committed workers should face the additional threat of abuse, assault or obstruction”.

39. In his oral evidence, the Minister sought to clarify the policy intention behind the Bill. He explained that it was a sub-set of the Executive’s wider drive against anti-social behaviour and part of the strategy to tackle the problem. He told the Committee that he had started with a wider perspective on the legislation but, following examination of its intentions, considered what would happen if the provisions were spread to cover every public services worker. He had concluded that were the protection extended to such an extent “it would become no protection at all because the effect of the legislation would become diluted”. He explained that the common law would continue to play a role in protecting other workers.

Focus on emergency circumstances

40. Again, in supplementary written evidence, the Minister confirmed that the decision to confine the legislation to emergency circumstances was taken in recognition of “the far-reaching consequences of disruption to an emergency response” which could have “life-threatening implications for the individuals awaiting emergency services”.

Deterrence

41. In oral evidence, the Scottish Executive Bill Team explained that in addition to creating a new statutory offence, the Bill was introduced in order to highlight the fact that the Executive believes that attacks on emergency service workers are entirely unacceptable. The Executive hopes that by highlighting this the Bill will have a deterrent effect.

42. In supplementary written evidence, the Executive stated that the new legislation will send out a message that assaulting, obstructing or hindering an emergency worker is unacceptable. Labelling and

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36 Policy memorandum; para 11
37 Scottish Executive, supplementary written evidence, 22 June 2004, annex A, page 3
38 Official Report, Justice 1 Committee, 9 June 2004; c 950-951
39 Scottish Executive, supplementary written evidence, 22 June 2004, annex A, page 3
40 Official Report, Justice 1 Committee, 5 May 2004; c 735
stigmatising perpetrators, the Executive believes, will help to “influence potential offenders away from such conduct”.41

Impact on prosecution rates
43. The policy memorandum to the Bill states that it is unlikely that the Bill will lead to a significant increase in the number of prosecutions for attacks on emergency workers as at present, such cases can be prosecuted under common law. The memorandum goes on to say that as the Bill is intended to have a deterrent effect, the number of attacks on emergency workers and their equipment will be reduced, thus perhaps reducing numbers of imprisoned offenders and reducing harm to emergency personnel.42 In supplementary written evidence, the Executive acknowledges that the new legislation might lead to a higher proportion of cases being reported. However, it argues that the deterrent effect is expected to “reduce the total number of offences, thereby effectively negating the impact of higher incidences of reporting”.43

Evidence of increase in offences
44. A considerable amount of anecdotal evidence has been presented to the Committee, both orally and in writing, suggesting that attacks on various groups of emergency workers, and other workers, have increased in recent years. The Committee acknowledges this evidence but considers that a sound base of statistical data is required in order to fully justify the introduction of new legislation to tackle the issue.

45. The Committee made strenuous efforts to find reliable and consistent evidence of trends of violence against emergency workers in emergency circumstances and requested specific evidence from the Executive and other relevant organisations. The Committee has tried to separate out two categories of statistical evidence: general levels of violence and violence experienced in emergency circumstances. Evidence of general levels of violence is presented in the appendix to this report. The Committee notes significant inconsistencies in this evidence and is, therefore, seriously concerned about its reliability.

Statistical evidence from the Scottish Executive
46. When he appeared before the Committee, the Minister gave an undertaking to provide the Committee with statistics showing an increasing trend of attacks on emergency workers, including the police.44

47. The Executive was able to provide some limited data relating to the number of serious assaults on prison officers from 1999-00 until 2002-03 and a recent report by NHS Scotland containing occupational health and safety pilot data for 2000-01 to 2002-03. Partial figures for

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41 Scottish Executive, supplementary written evidence, 22 June 2004, annex A, page 4
42 Policy memorandum; para 16
43 Scottish Executive, supplementary written evidence, 22 June 2004, annex A, page 5
44 Official Report, Justice 1 Committee, 9 June 2004; c 958
attacks on fire service personnel in 2002-03, compiled by Her Majesty’s Fire Services Inspectorate, were also supplied.45 In a further submission, statistics for attacks on fire service personnel in 2003-04 were provided which appeared to show a significant increase in incidents in the Strathclyde and Lothian and Borders Brigade areas from the partial data provided for the preceding year.46 The Committee considers that as the basis of this limited information is unclear it must be treated with extreme caution.

48. No information was received regarding the trend of attacks on police officers.

Attacks in emergency circumstances

49. Of the 44 written submissions received by the Committee, only one, from West Lothian Healthcare Trust, provided data specifically related to attacks on emergency workers in emergency circumstances, in this case, in hospital accident and emergency premises. The response stated that in the nine months to the end of January 2004, 30 forms completed by accident and emergency staff reported verbal abuse; of these, three involved threats of violence to staff, two involved actual damage to the fabric of the accident and emergency department and four involved actual violence inflicted on staff.47

Under-reporting of offences

50. Several organisations submitted evidence suggesting that there is a significant under-reporting of the number of attacks on emergency workers and other public service workers reported both to management and to the police. The Scottish Ambulance Service suggested that ambulance staff routinely report only 50 per cent of the occasions where they have been assaulted.48 The Prison Officers Association Scotland gave oral evidence that, on some occasions, prison officers have been advised by their managers or their governors in charge not to report assaults to the police.49

51. The Executive has stated in the policy memorandum to the Bill that, as part of the anticipated wider package of measures to address the problem of attacks on all public sector workers, “improved recording and reporting of incidents are likely to be a vital part of this package”.50

Conclusion on statistical data

52. Statistical data on assaults and other offences on emergency workers operating in emergency circumstances which would support the policy intention of the Bill have been almost impossible for the Committee to obtain. Despite repeated requests to the Scottish Executive for statistical data to justify the inclusion of the nine groups of emergency

45 J1/S2/04/23/3, Scottish Executive, supplementary written evidence, 1 June 2004, annex
46 Scottish Executive, supplementary written evidence, 22 June 2004, annex C
47 West Lothian Healthcare Trust, written evidence, 15 April 2004
48 Scottish Ambulance Service, written evidence, 30 April 2004
49 Official Report, Justice 1 Committee, 9 June 2004; c 941
50 Policy memorandum, para 4
workers included in the Bill, little if any such information has been forthcoming.

53. None of the limited data presented to the Committee provide a basis to assess the current level of attacks suffered by emergency workers in emergency circumstances and there is no robust data over a sufficient time period to allow the Committee to confidently discern any increasing trend of attacks.

54. Given the limited and inconsistent information made available to the Committee it has been unable to reach any firm conclusion on whether the nine groups of emergency workers on the face of the Bill have suffered a significant increase in attacks on them when dealing with emergency circumstances in recent years. The Committee considers that the absence of such information seriously undermines the policy intentions behind the Emergency Workers (Scotland) Bill.

Statutory aggravation

55. The consultation paper noted that the Executive had “given detailed consideration to introducing a statutory aggravation to cover attacks on all workers delivering a public service, such as teachers, social workers and bus and train drivers” but that it did not believe that such an approach would improve the protection provided under the common law, “not least because of a loss of flexibility”. The issues identified by the Executive centred upon difficulties of creating a fixed definition of the category of workers that the statutory aggravation would apply to. It considered that there was a risk of creating classes of worker against whom an attack could be perceived as less serious because they fall outside the definition. Finally, the Executive was concerned that the burden of proof might be greater which could cause problems in prosecuting and obtaining a conviction for the aggravated offence. It considers that these problems do not arise when proceeding with a common law aggravation.

56. In supplementary written evidence, the Executive restated its view that to extend 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 those who would be excluded by that approach (e.g. pensioners and the unemployed). The Executive considered that beyond 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 also considered that this approach would dilute the impact of the legislation.

51 Protection of Emergency Workers: a consultation paper, para 3.1
52 Ibid; para 3.2
53 Scottish Executive, supplementary written evidence, 22 June 2004, annex A, page 4
**Lord Advocate’s guidance**

57. In oral evidence, the Minister considered that the implementation of the common law has been bolstered by guidance issued to prosecutors by the Lord Advocate. This was issued in February 2003 following a debate in the Parliament. The full text of the Lord Advocate’s guidance to procurators fiscal is as follows:

“Incidents involving attacks on public service workers e.g. doctors, nurses and other staff at hospitals, ambulance drivers and paramedics, train and bus drivers, fire-fighters and others providing a service to the public should be taken seriously. The locus and the fact that the worker is providing a service to the public are both aggravating factors which should be borne in mind by prosecutors in deciding the appropriate forum for the case”.

58. It is important to note that this guidance refers to public service workers rather than the more narrowly defined group of emergency workers in the Bill.

**Consequences of assaults on emergency workers**

59. The Executive considers that emergency workers perform a vital service to society and, if they are assaulted or obstructed when responding to an emergency, the consequences may be very grave, not only for the emergency workers but for those they are trying to help.

60. In evidence to the Committee, the Minister stated that “the difference between the workers to whom the Bill refers and other workers is that obstructing the workers in the Bill puts other people’s lives at risk”. However, the Committee had previously heard, from the Royal College of Physicians of Edinburgh, personal anecdotal evidence that in no incident of being either verbally abused or physically assaulted was the life of a patient put at risk.

**Policy memorandum**

61. The Committee considers that the policy memorandum to the Bill to be generally lacking in detail and seriously deficient with regard to clearly establishing the policy intentions behind the Bill. The Committee has had to piece together, through oral evidence and an unprecedented volume of correspondence with the Executive, its own interpretation of the Executive’s policy intentions. The Committee considers this to be unacceptable and to have caused unnecessary delay in its consideration of the general principles of the Bill.

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54 Official Report, Justice 1 Committee, 9 June 2004; c 956
55 Policy memorandum, paragraph 5
56 Official Report, Justice 1 Committee, 9 June 2004; c 960
57 Official Report, Justice 1 Committee, 2 June 2004; c 901
Conclusion on policy intention

62. The Committee has heard evidence of the Scottish Executive’s desire to protect emergency workers from assault and obstruction given the grave consequences which may result from such offences. However, it is not absolutely clear from reading the Bill or from evidence taken by the Committee whether the principal focus of the legislation is intended to be the protection of the emergency workers or those they seek to assist.

63. The Committee has concluded that the Executive’s policy intention is to provide statutory legal protection from assault or obstruction for specific groups of workers who are regularly and routinely called upon to respond to emergencies in order to protect the lives and health of the general public and the environment.

64. The Committee supports this policy intention and welcomes action to give additional protection to emergency workers but has significant questions about how the legislation would work in practice. A detailed examination of the likely effectiveness of the provisions of the Bill and possible alternative approaches is set out below.

Existing provisions

65. Some witnesses have argued that existing provisions are sufficient to protect emergency workers from attack and obstruction. The Committee examined both statutory and common law offences to assess what added value the offences proposed under the Emergency Workers (Scotland) Bill would bring.

Police (Scotland) Act 1967

66. Police officers have additional protection under the Police (Scotland) Act 1967. Section 41 of the 1967 Act states that:

   (1) Any person who –

   (a) assaults, resists, obstructs, molests or hinders a constable in the execution of his duty or a person assisting a constable in the execution of his duty, or

   (b) rescues or attempts to rescue, or assists or attempts to assist the escape of, any person in custody

   shall be guilty of an offence…

67. In its written submission, ACPOS highlighted that section 1 of the Emergency Workers (Scotland) Bill creates the offence of assaulting, obstructing or hindering an emergency worker, which would include a constable and a member of a fire and rescue service. The association considers that this would result in direct conflict between the proposed
legislation and the Police (Scotland) Act 1967 and the Fire Services Act 1947, and consequently suggests that further work is required to eliminate any ambiguity in the circumstances under which the legislation will require to be enforced. In oral evidence ACPOS explained that in order for a police officer to use the new legislation to make an arrest without warrant, he or she would need to be clear that an emergency situation was in effect.

58 ACPOS, written evidence, 23 April 2004
59 Official Report, Justice 1 Committee, 26 May 2004; c 859
60 Scottish Executive, supplementary written evidence, 22 June 2004, annex B, page 11
61 Law Society of Scotland, supplementary written evidence, 25 June 2004

68. The Scottish Executive, in supplementary written evidence, submitted that one area which may not be covered by an offence under the Police (Scotland) Act 1967 is giving false information to a constable or other emergency worker. The Law Society submitted that the inclusion in section 2(2) of the Bill that the provision of false information to an emergency worker would be an example of non-physical conduct which will be regarded as “hindering”, differs from the position in relation to section 41(1) of the Police (Scotland) Act 1967 where it would appear that some physical element is required for a conviction of obstructing or hindering a police constable in the execution of his or her duty.

69. By way of comparison, it may be noted that the existing legal protection enjoyed by the police officers under section 41(1) of the Police (Scotland) Act 1967 requires that a constable is acting in “execution of his duty” but does not restrict the scope of the offence to emergency circumstances.

70. The maximum penalties available under the Emergency Workers (Scotland) Bill and the Police (Scotland) Act 1967 are the same; nine months’ imprisonment or a £5,000 fine.

**Fire Services Act 1947**

71. Fire services also benefit from additional statutory protection, although to a more limited extent, under the Fire Services Act 1947. Section 30(2) of that Act states that:

“Any person who wilfully obstructs or interferes with any member of a fire brigade maintained for the purposes of this Act who is engaged for fire-fighting purposes shall be liable on summary conviction to a fine not exceeding level three on the standard scale [currently £1,000].”

72. This compares with the intention, under the Emergency Workers (Scotland) Bill to introduce a maximum penalty of nine months’ imprisonment or a £5,000 fine, or both. The Bill would also extend protection to firefighters engaged in responding to emergency circumstances other than firefighting.
In its consultation paper, the Scottish Executive stated that it proposed to include new provisions in the forthcoming Fire Services Bill extending equivalent protection to firefighters as currently provided for the police by the Police (Scotland) Act 1967.  

Section 23 of the Fire (Scotland) Bill, as introduced in the Parliament on 28 June 2004, does make provision to replace and extend the 1947 Act, but the proposed penalty for obstructing or interfering with an authorised employee of a fire and rescue service when tackling an emergency is restricted, on summary conviction, to a fine not exceeding level 4 on the standard scale (currently £2,500).

Existing statutory offences

The Law Society offered some examples of existing statutory offences which might be applicable to circumstances involving emergency workers. It suggested that nuisance or hoax calls could be covered by offences in the Telecommunications Act 1984 and the Fire Services Act 1947, while bomb hoaxes may be covered by the Criminal Law Act 1977.

Common law

The Law Society outlined for the Committee the range of common law offences which might cover behaviour made criminal by statutory offences proposed in the Bill.

The Faculty of Advocates submitted that the existing common law and statutory provisions probably address all offences which the Bill seeks to create. The faculty expressed concern that legislation is being introduced that might not be necessary and that if the Bill is passed, "situations that would have been prosecuted at common law will be more difficult to prosecute because of the complexities of the legislation and of meeting its provisions."

Similarly, the Crown Office, in supplementary written evidence to the Committee, acknowledged that the common law and statutory offences set out above might apply depending on the particular facts of the case. The fact that the victim was an emergency worker responding to emergency circumstances, or someone assisting the emergency worker, would be an aggravating factor of any assault, obstruction or hindrance. In accordance with the Lord Advocate’s guidance, this would be taken into consideration by procurators fiscal in deciding the appropriate forum for prosecution.

The Crown Office’s response went on to state that the flexibility of the common law “makes it difficult to conceive of circumstances in which
the assault, hindrance or obstruction of an emergency worker responding to emergency circumstances might not be capable of prosecution”, although it could not rule out circumstances in which the absence of a specific offence might result in difficulties in future.68

80. In previous oral evidence the Crown Office had suggested that one area where prosecutors might have difficulty in framing a charge at common law would be the provision of false information to an emergency worker.69 This is discussed in the next section of the report.

Assault
81. Section 1 of the Bill proposes to make it an offence to assault, obstruct or hinder an emergency worker, or a person assisting an emergency worker, while the worker is responding to emergency circumstances. Categories of emergency workers other than the police or fire services are currently protected from assault only under the common law. It is an offence at common law for a person to assault any other person, regardless of that person’s status.70 The Law Society told the Committee that the common law offence of assault can be aggravated by factors such as the nature of any injury or the nature of the person who is assaulted.71

Obstructing or hindering
82. The Scottish Executive had previously given evidence that at present, there is no specific offence at common law or at statute of obstructing or hindering an emergency worker, as defined in the Bill.72 Section 2(1)(b) of the Bill would make it an offence to obstruct or hinder an emergency worker by action directed at vehicles or other equipment. In oral evidence, the Law Society suggested further common law offences which might cover this and other behaviour covered by offences proposed in the Bill. It suggested that a charge of malicious mischief could cover a situation in which damage is done to the property of an emergency worker, for example an ambulance.73

83. Section 2(2) of the Bill would make it an offence to hinder an emergency worker by giving false information to that worker. The Law Society reflected on evidence from the Executive Bill Team, and the Crown Office that situations in which a person gives false information to an emergency worker are not covered at common law. However, in the opinion of the society, a charge of culpable and reckless conduct or an elaborated breach of the peace could cover false reporting.74 The society was also of the opinion that a refusal to give information to an emergency worker which resulted “in other people being alarmed or

68 COPFS, supplementary written evidence, 18 June 2004, page 2
69 Official Report, Justice 1 Committee, 5 May 2004; c 754
70 Ibid; c 735
71 Official Report, Justice 1 Committee, 26 May 2004; c 823
72 Official Report, Justice 1 Committee, 5 May 2004; c 736
73 Official Report, Justice 1 Committee, 26 May 2004; c 824
74 Ibid; c 824 - 826
distressed…could amount to a breach of the peace”, but that “there would have to be a test case on that”\(^{75}\) to determine whether it could extend to such a situation.

**What difference will the legislation make to existing provisions?**

84. The Committee has given careful consideration to the potential of the Bill to provide emergency workers with additional legal protection from assault and obstruction when responding to emergency circumstances, and to make a difference to the level of attacks on emergency workers. The Committee believes that this is a fundamental test which the legislation must pass if it is to be considered to achieve the Executive’s stated policy intention. The potential benefits of introducing the legislation for each of the nine groups of emergency workers, and for those assisting them, is considered below.

\(^{75}\) Official Report, Justice 1 Committee, 26 May 2004; c 826
<table>
<thead>
<tr>
<th>Emergency workers</th>
<th>Existing statutory protection?</th>
<th>Physical assault or obstruction</th>
<th>Non-physical obstruction</th>
<th>Common law protection</th>
<th>Added value from Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>Yes, Police (S) Act 1967 provides more extensive cover to constables in the course of their duty.</td>
<td>Covered by 1967 Act.</td>
<td>Unclear whether this is covered by 1967 Act. Bill Team evidence suggests that Emergency Workers Bill (Section 2(2)) creates new offence of hindering, by non-physical means, an emergency worker dealing with emergency circumstances. This would include giving false information.</td>
<td>Law Society and Faculty evidence suggests that existing common law and other statutory offences could provide sufficient cover for offences included in the Bill. Scottish Executive evidence suggests that applicability of common law would depend on circumstances.</td>
<td>Possible additional protection from hindrance, by non-physical means, in emergency circumstances.</td>
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<tr>
<td>Persons assisting</td>
<td>Yes, also covered by Police (S) Act 1967.</td>
<td>Covered by 1967 Act.</td>
<td>As above but false information clause does not apply.</td>
<td>As above.</td>
<td>As above but false information clause does not apply.</td>
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<tr>
<td>Emergency</td>
<td>Current Law</td>
<td>New Law</td>
<td>Punishment</td>
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<td><strong>Fire</strong></td>
<td>Yes, Fire Services Act 1947 creates a lesser offence of obstructing or interfering with firefighters engaged for fire fighting purposes only. New Fire (Scotland) Bill proposes extension to emergency situations other than fire fighting and an increase in the maximum penalty for summary conviction.</td>
<td>No specific cover for assault under 1947 Act. Obstruction and interference covered. Section 31 of 1947 Act makes it an offence to knowingly give a false alarm. No other existing statutory protection.</td>
<td>As above. Bill extends cover to firefighters in all emergency circumstances, whether or not they are fighting fires. Increased summary sentencing powers of up to 9 months imprisonment or £5000 fine.</td>
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<tr>
<td><strong>Persons assisting</strong></td>
<td>None. Common law protection only.</td>
<td>Common law protection only.</td>
<td>As above. Increased summary sentencing powers of up to 9 months imprisonment or £5000 fine.</td>
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<tr>
<td><strong>Ambulance</strong></td>
<td>None. Common law protection only.</td>
<td>Common law protection only.</td>
<td>As above. Increased summary sentencing powers of up to 9 months imprisonment or £5000 fine.</td>
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<tr>
<td>Persons assisting</td>
<td>None.</td>
<td>Common law protection only.</td>
<td>Common law protection only.</td>
<td>As above.</td>
<td>Increased summary sentencing powers of up to 9 months imprisonment or £5000 fine.</td>
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<td>Prison officers</td>
<td>None.</td>
<td>Common law protection only.</td>
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<td>As above.</td>
<td>Increased summary sentencing powers of up to 9 months imprisonment or £5000 fine.</td>
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<tr>
<td>Persons assisting</td>
<td>None.</td>
<td>Common law protection only.</td>
<td>Common law protection only.</td>
<td>As above.</td>
<td>Increased summary sentencing powers of up to 9 months imprisonment or £5000 fine.</td>
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<td>Coastguard</td>
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<td>Common law protection only.</td>
<td>As above.</td>
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</tr>
<tr>
<td>Persons assisting</td>
<td>None.</td>
<td>Common law protection only.</td>
<td>Common law protection only.</td>
<td>As above.</td>
<td>Increased summary sentencing powers of up to 9 months imprisonment or £5000 fine.</td>
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<td>Role</td>
<td>Protection</td>
<td>Summary Reporting</td>
<td>Conviction</td>
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<td>Common law</td>
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<td>Common law</td>
<td>None.</td>
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<td>£5000 fine.</td>
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<td>Doctors</td>
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<td>Common law</td>
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<td>Common law</td>
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<td>£5000 fine.</td>
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<tr>
<td>Nurses</td>
<td>None. Common law</td>
<td>Common law</td>
<td>None.</td>
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<tr>
<td>Midwives</td>
<td>None.</td>
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<td>Common law protection only.</td>
<td>As above.</td>
<td>Increased summary sentencing powers of up to 9 months imprisonment or £5000 fine.</td>
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</table>
85. To summarise the Committee’s consideration of existing provisions, the common law offences of assault, malicious mischief, culpable and reckless conduct and breach of the peace appear capable of covering the vast majority of offences proposed under the Emergency Workers (Scotland) Bill. Other existing statutory offences relating to nuisance or hoax calls may also be applicable.

86. The Committee considers that there would appear to be some added value for firefighters under the Bill as the proposals would bring protection for them in line with that provided for police officers by the Police (Scotland) Act 1967, although only when responding to emergency circumstances. The Committee had anticipated that the Fire (Scotland) Bill would extend protection for firefighters still further but the provisions of that Bill do not appear to include significantly increased penalties for those convicted of obstructing or interfering with a member of a fire and rescue service when responding to an emergency.

87. In supplementary evidence, the Law Society acknowledged that sections 2(1) and 3(3) of the Bill provide some guidance as to what will constitute obstruction or hindrance for the purposes of the bill and make it clear that no physical element will be required in proof of these offences. The society pointed out that section 2(2) provides an example of non-physical conduct which will be regarded as “hindering”; the provision of false information to an emergency worker. This differs from the position in relation to section 41(1) of the Police (Scotland) Act 1967 where it would appear that some physical element is required for a conviction of obstructing or hindering a police constable in the execution of his or her duty. The Committee considers, therefore, that in relation to the police, the Bill will add to the provisions of the 1967 Act, albeit at the margins.

88. The Crown Office had also suggested in oral evidence that the provision of false information to an emergency worker, other than a police officer, was one area where prosecutors might have difficulty in framing a charge at common law. At common law, a charge of wasting police time might cover this situation but this would not be applicable to paramedics for example.

Deterrence

89. The Executive has stated that the legislation is intended to make clear that attacks on emergency workers are entirely unacceptable and, by highlighting the issue, serve to have a deterrent effect. The Committee has heard evidence from many witnesses who consider that the enactment of the Emergency Workers (Scotland) Bill will have a deterrent effect on those who might attack or obstruct emergency workers.

76 Law Society of Scotland, supplementary written evidence, 25 June 2004
77 Official Report, Justice 1 Committee, 5 May 2004; c 754
78 Policy memorandum, paragraph 5
90. UNISON considered that publicity around the creation of a new offence would help to create a culture which would make attacks on emergency workers unacceptable.\(^{79}\) The FBU argued that it would be helpful to send out a message that attacks on firefighters are unacceptable.\(^{80}\)

91. In oral evidence, CACFOA argued that current legislation does not deal effectively with attacks on emergency workers.\(^{81}\) The association was clear that it believed that the Bill would have a deterrent effect but that there also needed to be a pro-active approach to tackle anti-social behaviour in order to prevent attacks.\(^{82}\)

92. In response to a suggestion that perhaps enforcement of the current law was the issue rather than the law per se, BASW considered that if the Bill covered social workers it would make a huge difference as it would encourage procurators fiscal to take assaults against social workers seriously.\(^{83}\) The Association of Directors of Social Work argued on the one hand that common law could cover most offences if guidance to prosecutors was clearer, but that the Bill would be a welcome addition to statute as it will clarify the offence of assaulting an emergency worker, tightening the definition and making the charge clearer.\(^{84}\)

93. In oral evidence, the Minister argued that, in the context of a wider package of measures, enacting the Bill and creating a specific offence will reduce the number of threats against emergency workers because “the offence will be viewed as much more serious in the eyes of offenders and those who wish to copy them, as the sentences will be greater”.\(^{85}\)

**Extending summary jurisdiction**

94. In evidence to the Committee concerning the current law and its application, the Minister argued that there were some cases which might not get to higher level courts but which cannot be dealt with adequately by lower-level courts. Although serious assaults, for example stabbings, will go to a higher court other offences may be missed in the process.\(^{86}\) He also stated that the extension of the sentencing powers of sheriffs under summary proceedings might avoid the need to hear cases under solemn proceedings.\(^{87}\) He explained that the intention was that in the situations with which the Bill deals, it would be possible to impose sentences of up to nine months in the summary system.\(^{88}\)

95. The Committee questions the argument advanced by the Minister that some offences may be missed in the current prosecution

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\(^{79}\) Official Report, Justice 1 Committee, 2 June 2004; c 905-906

\(^{80}\) Ibid; c 866

\(^{81}\) Ibid; c 880

\(^{82}\) Ibid; c 867

\(^{83}\) Official Report, Justice 1 Committee, 9 June 2004; c 932

\(^{84}\) Ibid; c 929

\(^{85}\) Ibid; c 957

\(^{86}\) Ibid; c 955-956

\(^{87}\) Ibid; c 952

\(^{88}\) Ibid.
process. The Committee considers that there should be no question of a possible downgrading of cases from solemn to summary proceedings under the provisions of the Bill. The Committee notes the examples, given in the consultation paper and highlighted by the Crown Office in its letter to the Committee, of cases of assault on emergency and other public service workers prosecuted under common law. The majority of these cases were prosecuted on indictment and sentences of up to three years imprisonment were returned. The Committee considers that the choice of solemn proceedings for these cases demonstrates that procurators fiscal are treating such assaults with appropriate seriousness.

Alternative approaches

Increasing penalties

96. An alternative option for extending the sentencing powers of sheriffs was suggested by the Law Society. It explained that section 13 of the Crime and Punishment (Scotland) Act 1997 could be implemented, amending section 5 of the Criminal Procedure (Scotland) Act 1995, which would extend the general sentencing powers of sheriffs in summary proceedings in relation to common law offences to 6 months (12 months for second or subsequent offences).

97. The report of the Summary Justice Review Committee chaired by Sheriff Principal John McInnes has also made a recommendation regarding sentencing powers. At paragraph 7.87 it states:

“The Committee therefore recommends that, in order to equip summary judges with the disposals that will be necessary to deal with cases that will be heard summarily in future, they should be able to imprison for a period of up to 12 months and impose a maximum fine of up to £20,000 (maintaining the 3 months-£5,000 ratio) with no distinction in the maxima for a first or subsequent offence”.

Lord Advocate’s guidance

98. In oral evidence, the Scottish Police Federation suggested that, rather than implementing new legislation, police officers could be better protected by treating offences under current legislation more seriously, in part through stronger guidelines issued to procurators fiscal by the Lord Advocate.

99. In the consultation paper, the Executive stated that the effect of the guidance is that attacks are treated more seriously than ordinary attacks.

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89 The Law Society of Scotland, supplementary written evidence, 21 May 2004, page 2
90 Official Report, Justice 1 Committee, 26 May 2004; c827 and 836
91 Official Report, Justice 1 Committee, 26 May 2004; c 840 - 841
and the likelihood of solemn proceedings, with the potential for longer sentences, is greater.  

100. The Law Society, in its written submission, considered that from the cases cited in the Emergency Workers consultation paper, the guidelines appear to be operating well in practice. The society considers that cases involving emergency and other public service workers are being dealt with seriously with many cases proceeding on indictment which offers the possibility of increased penalties beyond those currently available at summary level. The society highlights two examples given in the consultation paper where sheriffs imposed a sentence of three years imprisonment which was the maximum sentence available in the sheriff court [now five years].  

101. The Committee has received no evidence to suggest that the Lord Advocate’s guidance is not being adhered to by procurators fiscal. The Committee recommends that the Scottish Executive carry out an objective analysis of the operation of this guidance in order to assess the impact of its introduction, including details of charges brought against offenders and rates of conviction. In light of the apparent successful implementation of the guidance, it would be helpful to the Committee if the Executive would set out why alternative approaches were rejected in favour of introducing primary legislation. Further clarification of the reasons for omitting other groups of public service workers from the Bill, when they are included in the Lord Advocate’s guidance, would also be helpful as the policy memorandum fails to give logical reasons for this decision.  

Plea bargaining  

102. The Scottish Police Federation was also particularly concerned that charges of assaulting police officers were sometimes plea bargained away and marked “no proceedings” or that sentences for such offences were lenient. SPF asked that offences against police officers should be treated as seriously as other groups of public service workers mentioned in the Lord Advocate’s guidance. This concern about plea bargaining was reiterated by both ACPOS and ASPS in their oral evidence although both organisations supported the introduction of the Bill. BASW also emphasised its concern about the extent of plea bargaining of charges relating to assaults against social workers which has the effect of denigrating such offences.  

103. An alternative approach could be for the Lord Advocate to issue guidance for dealing with cases of assault and obstruction involving emergency...
workers which could specifically prohibit the plea bargaining of such charges by procurators fiscal.

Amending existing legislation

104. In May 2003, the First Minister announced the Scottish Executive's legislative programme which included a commitment to publish draft primary legislation in the first year of the new Parliamentary session. On 1 October 2003, the Scottish Executive launched its consultation paper The Scottish Fire and Rescue Service: legislative proposals. The proposals were debated in the Scottish Parliament on 8 October 2003.

105. In its written evidence, the Scottish Police Federation noted that the protection for firefighters from obstruction or interference is currently restricted to circumstances where they are engaged on fire fighting duties. The SPF suggested that an amendment to the Fire Services Act 1947 could achieve an extension to this provision to reflect the intentions of the Emergency Workers (Scotland) Bill and create equivalence for firefighters with the Police (Scotland) Act 1967.

106. The FBU expressed the view that rather than introduce new legislation, it would be more beneficial to amend, in forthcoming fire services legislation, the Fire Services Act 1947, to extend protection to fire personnel in the course of their duties. This, combined with a range of wider measures to educate the public, the union submitted, would be a better way to prevent attacks.

107. CACFOA, although accepting that fire services legislation could be amended, argued that the Bill would contribute to the overall ability to deal with people who perpetrate attacks and that firefighters should be included within the generic definition of emergency workers.

108. In his evidence to the Committee, the Minister for Finance and Public Services acknowledged the increasing trend of attacks on fire service workers and explained that part of the policy intention behind the Bill was to level up the protection for police and fire services, as well as other emergency services which have emerged and developed in recent years.

109. Despite the statement by the Executive in the consultation paper, that it proposes to include new provisions extending protection to firefighters in a wider range of circumstances in the fire services bill to be introduced to the Parliament in 2004, the Fire (Scotland) Bill, introduced on 28 June 2004, does not appear to propose a level of protection for firefighters consistent with the police. The Committee invites the Executive to
explain why it is proposing to legislate to protect fire service workers to different degrees in two Bills before the Parliament at the same time. The Committee believes that this causes confusion and the Executive should include provisions to protect firefighters in one Bill only.

Conclusion

110. The Committee supports the Emergency Workers (Scotland) Bill, which aims to protect emergency workers, and persons assisting them, from assault and obstruction when dealing with emergency circumstances as it considers that the Bill will add, at the margins, to existing common law and statutory provisions. There is also the potential for the Bill's enactment, as part of a wider package of measures, to have a deterrent effect on those who might attack or obstruct emergency workers. Nevertheless, the Committee would expect significant changes to be made at Stage 2 (including to the section specifying groups of emergency workers on the face of the Bill, the section defining emergency circumstances and the section defining which parts of hospital premises are deemed to be in a constant state of emergency) to ensure the effectiveness of the Bill. To aid the process, the Committee will take evidence at Stage 2. The Committee considers it essential that the Bill forms part of a wider package of measures, including a sustained campaign of public awareness and education, to promote respect for the importance and value of the work undertaken by emergency workers and public service workers more generally.¹⁰³

Application of the legislation

111. The Committee has carefully considered the possible implications for the legal system from the application of the provisions contained in the Bill.

¹⁰³ The Convener moved that the conclusion at paragraph 110 be agreed to. On division, the conclusion was agreed to: For: 6; Against: 1. Margaret Mitchell dissented from this conclusion and put forward the following alternative conclusion— "The Committee welcomes the policy intentions behind the Emergency Workers (Scotland) Bill, but considers that existing common law and statutory provisions offer better protection for emergency workers from assault and obstruction in emergency circumstances. The Committee believes that such protection can best be enhanced through extending the general sentencing powers of sheriffs in summary proceedings in relation to common law offences by implementing section 13 of the Crime and Punishment (Scotland) Act 1997, amending existing legislation to give additional protection from assault and obstruction to police and firefighters in the course of their duties, and through continuing implementation of the Lord Advocate's guidelines to procurators fiscal to treat such offences with appropriate seriousness. The Committee considers that a sustained campaign of public awareness and education is also essential to promote respect for the importance and value of the work undertaken by emergency workers and public service workers more generally in order to stigmatise the offence and in effect to act as a deterrent in the same way as the anti-drink driving campaigns achieved this effect".
Tests

112. Once evidence is presented to show that assault or obstruction has taken place, the fact that the offences contained in the Bill focus on emergency workers raises two further evidential issues. Firstly, there is the question of what evidence is needed to establish that a worker is in fact an emergency worker as defined in the Bill. Sections 2(6) and 3(5) establish that evidence from a single source shall be sufficient to establish whether a person is an emergency worker. The Committee notes that this is an exception to the general rule of evidence in Scots criminal law that essential elements of an offence must be established by evidence from at least two sources.

113. The second question relates to the state of knowledge of any person accused of an offence under the Bill. Is it sufficient that the worker was an emergency worker, or must there also be evidence that the accused knew that the worker was an emergency worker? The Bill does not contain any specific guidance on this point. However, there is authority in relation to existing offences (both common law and statutory) suggesting that the prosecution would have to produce evidence establishing that an accused was, or should have been, aware that the worker was of a type covered by the Bill.

Accused’s state of knowledge

114. The Scottish Executive confirmed this point in supplementary written evidence to the Committee. The submission clearly states that the Crown will have to lead evidence from at least two independent sources to prove the accused knew, or ought to have known, that his or her victim was an emergency worker. The Crown would then require to lead further evidence in relation to the other elements of the offence, for example, that there were emergency circumstances and that the emergency worker was responding to them.104

Law Society evidence

115. The Law Society’s Criminal Law Committee provided further written evidence to the Committee on the evidential tests which may apply when it is alleged that the victim is either an emergency worker or a person assisting an emergency worker. It points out that the sections of the Bill which create the offences of assaulting, obstructing or hindering an emergency worker (or person assisting an emergency worker) in emergency circumstances “make no specific reference to the mens rea or mental element required to prove these offences”.105

116. With regard to offences against an emergency worker, the Law Society cites discussion of statutory interpretation by Sheriff Gordon in his book, “Criminal Law” (third edition) in which he considers two opposing ways of approaching the interpretation of a statutory offence, firstly by a presumption that mens rea is always required or, secondly by a literal interpretation of the statute. The Law Society then highlights that the

104 Scottish Executive, supplementary written evidence, 2 June 2004, J1/S2/04/23/4
105 Law Society of Scotland, supplementary written evidence, 25 June 2004, J1/S2/04/25/12
Scottish Executive’s written evidence has clarified the approach which they intend to be taken to the interpretation of these sections and confirmed that the prosecution will, in the Executive’s view, have to produce evidence to establish that the accused knew or ought to have known that his or her victim was an emergency worker. The Law Society also highlights that written evidence from the Crown Office supports this approach. However, the Law Society points out that the Bill makes no reference to this point and suggests that it would be helpful to “state clearly on the face of the Bill the nature of the mens rea which the Crown will be required to prove for an offence under sections 1(1) and 3(1)”.  

117. The Law Society submission suggests that if the test referred to by the Executive is adopted by the courts, then the Crown would have to establish from two sources of evidence that the accused knew or ought to have known that the victim was an emergency worker. It considers that this may be more problematic in cases where a doctor or nurse, for example, is acting in the community and is not wearing a recognisable uniform.

118. The Committee recommends that in order to clarify interpretation, the nature of the mens rea which the Crown will be required to prove for an offence under section 1(1) (assaulting, obstructing or hindering an emergency worker while responding to emergency circumstances) and section 3(1) (assaulting, obstructing or hindering an ambulance worker, doctor, nurse or midwife or a person assisting such a worker in hospital accident and emergency premises) should be stated clearly on the face of the Bill.

Persons assisting an emergency worker – reasonable person test

119. In a further written submission, the Executive explained that in respect of persons assisting, 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.

Law Society evidence

120. The Law Society considered that in order to prove an offence against someone assisting an emergency worker, the reasonable person test would be used in connection with the accused’s knowledge, but that this evidence would need to be corroborated.

121. Again, the additional submission from the Law Society states that sections 1(2) and 3(1) of the Bill which create such offences “make no specific reference to the mens rea or mental element required to prove these offences”. Although the Law Society suggests that on the basis of established principles and case law there would be a presumption in favour of mens rea in relation to these sections of the Bill, “clarification

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106 Law Society of Scotland, supplementary written evidence, 25 June 2004, J1/S2/04/25/12
107 Ibid.
108 Scottish Executive, supplementary written evidence, 22 June 2004, J1/S2/04/25/11
109 Official Report, Justice 1 Committee, 26 May 2004; c 833
would again be welcomed as to the nature of the test to be applied in establishing the necessary mens rea”.  

122. The Committee acknowledges the question raised by the Law Society and asks the Executive to provide clarification.

123. In the Law Society’s view, “much will depend on the interpretation of sections 2(5) and 3(4) of the Bill”. These subsections state that “a person is to be taken to be assisting an emergency worker only if a reasonable person would have grounds for believing that to be so”. The Law Society considers that if these subsections are to be regarded as providing the relevant test which is to be applied in proving the mens rea element of the offences, “then the Crown would require to show from evidence of two sources that a reasonable person would have grounds for believing that the victim is a person assisting an emergency worker. It would not be a defence in these circumstances for the accused to state that he or she did not know that the person was assisting the emergency worker”.  

124. However, the Law Society goes on to say that “if the purpose of these subsections is not related to the mens rea of the offence but rather to clarify the evidence necessary to establish the fact that a person is assisting an emergency worker, then the Crown would have to lead corroborated evidence from which that inference could be drawn and then lead evidence of the accused’s knowledge of the victim’s status”. The society calls for clarification of the position in this regard.

125. The Committee acknowledges the Law Society’s request for clarification of the interpretation of sections 2(5) and 3(4) of the Bill (reasonable person test) and asks the Executive to provide a clear statement on this point.

Emergency circumstances

126. Section 2(4)(b) of the Bill provides that an offence is not committed under section 1 unless it is established that “a reasonable person would have grounds for believing that the emergency worker is or might be responding to emergency circumstances”. The evidential requirement in this provision relates to the ‘reasonable person’ rather than trying to establish what a particular accused actually knew. The Crown will be required to prove this regardless of whether the victim was an emergency worker or a person assisting an emergency worker.

127. The Law Society submission states that “where there is nothing obvious to indicate that an emergency worker is responding to emergency circumstances, a person will not be guilty of an offence under section 1”. The society is, however, concerned that “as currently drafted this objective test may defeat the policy intention of the bill in certain

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110 Law Society of Scotland, supplementary written evidence, 25 June 2004, J1/S2/04/25/12
111 Ibid.
112 Ibid.
situations, as it takes no account of the accused’s actual knowledge of the situation”. In a situation where an emergency worker is responding to an emergency situation but there are no obvious signs that this is the case, an accused, who was aware of the circumstances, could avoid conviction under the Bill as a reasonable person would have had no grounds for believing that the emergency worker was responding to emergency circumstances. The Law Society suggests that section 4(2)(b) could perhaps be amended to insert reference to the accused’s actual knowledge of the situation as an alternative to the objective ‘reasonable person’ test.113

128. The Committee recommends that section 4(2)(b) be amended to insert reference to the accused’s actual knowledge.

129. The Committee acknowledges that due to the more complex evidential requirements for the Crown to prove an offence under the Bill than a common law offence of assault there may potentially be a loss of flexibility for prosecutors.

130. The Committee considers that the requirement to prove that emergency circumstances were in effect when an offence took place may act as a barrier to successful prosecutions. In order to satisfy section 1(5) of the Bill and to prove the offence beyond reasonable doubt, the prosecution will need to show that emergency circumstances were present or imminent and causing or likely to cause serious injury to or the serious illness of a person; serious harm to the environment; a worsening of such injury, illness or harm; or likely to cause the death of a person. The Committee considers that this definition will be open to subjective interpretation and could lead to the involvement of expert witnesses for both defence and prosecution, thus adding further complexity to a case.

131. The Committee will further investigate at Stage 2, the narrow definition of emergency circumstances and the effectiveness or otherwise of the definition in the Bill as drafted as it is not persuaded that the existing definition is sufficient.

Police powers

132. ACPOS called for police to be provided with a power of arrest without warrant as a tool which could be used, where necessary, when dealing with an offence under the proposed legislation.114 The Scottish Police Federation gave its support to this suggestion.115

133. The Committee would welcome a response from the Executive on this point.

113 Law Society of Scotland, supplementary written evidence, 25 June 2004, J1/S2/04/25/12
114 ACPOS, written evidence, 23 April 2004, paragraph 5
115 Official Report, Justice 1 Committee, 26 May 2004; c 848
Who should be covered?

134. Section 1(3) sets out a list of workers to be defined as emergency workers for the purposes of the Bill. Many witnesses argued for the list of emergency workers to be extended to include groups of workers they considered to be in need of additional legal protection from assault or obstruction.

Definition

135. The current definition of “emergency worker” included in section 1 of the Bill includes a list of nine specific groups. These are police constables, firefighters, ambulance staff, prison officers, members of HM Coastguard, various people connected with the operation of RNLI lifeboats, doctors, nurses and midwives.

136. The Executive provided the Committee with written evidence which set out the reasons for focusing on these specific groups. This explains that 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 a matter of routine”. Prison officers have been added as in the prison environment, they “effectively replicate the role of police officers and will respond to emergency circumstances accordingly”. The Executive goes on to explain that the Bill’s protection has been extended to cover GPs, nurses (including community health workers) and midwives, as “the inherent nature of those workers’ jobs also requires them to respond to emergency situations”.

137. The Committee has concluded, therefore, that the key test for the inclusion of a specific group of workers in the defined list of emergency workers is that their job must require them to respond to emergency circumstances on a regular and routine basis. The definition of emergency circumstances is discussed further in the next section of the report.

138. The Committee has considered the case for the inclusion of the nine groups of workers presently on the face of the Bill and also other groups of workers for which a case for inclusion has been presented.

Police

139. The Committee considers that police officers act routinely as a last line of defence for other workers and the general public in emergency situations and so should be included in the list of emergency workers in the Bill.

Firefighters

140. The Committee considers that firefighters also regularly and routinely respond to emergency circumstances, whether fighting fires or

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116 Scottish Executive, supplementary written evidence, 22 June 2004, annex A, pages 3 and 4
responding to road traffic accidents, and should, therefore, be included in the Bill.

141. The Committee has heard evidence suggesting that other fire service support personnel such as fire hydrant operatives should be included within the definition but considers that despite the essential nature of their work, these workers do not meet the terms of the definition and should not be included.

*Scottish Ambulance Service*

142. As another 999, blue-light service called upon regularly to attend emergency situations, the Committee considers that those ambulance workers who meet the key test outlined in paragraph 137 above should be included in the Bill.

*Prison officers*

143. The Committee heard evidence from the Prison Officers’ Association Scotland that the provisions of the Bill would enhance protection for Prison Officers in emergency circumstances, particularly with regard to obstruction when, for example, officers were attempting to activate an alarm or summon assistance. The association considered that one outcome would be that procurators fiscal would be likely to give more careful consideration to assaults on staff than at present.\(^{117}\)

144. Supplementary written evidence from the Executive stated that prison officers have been added to the list of emergency workers as “in the prison environment, they effectively replicate the role of police officers, and will respond to emergency circumstances accordingly”.\(^{118}\)

145. The Committee disagrees with the Executive on this point. Although prison officers are required to maintain order in the prison environment, they do not share the same range of powers exercised by police officers. Indeed, in situations where control of prisoners is lost by prison staff it is the police who are called to assist.

146. **Whilst the Committee would wish to enhance the protection available to Prison Officers, it does not believe that they fall within the key test outlined in paragraph 137 above.**

*Her Majesty’s Coastguard*

147. Members of Her Majesty’s Coastguard regularly respond to emergencies and the Committee considers that it is appropriate that they should be included as emergency workers.

*Royal National Lifeboat Institute*

148. In common with HM Coastguard considered above, members of the RNLI are regularly and routinely called upon to respond to emergency circumstances. However, the Committee recommends that the Executive

\(^{117}\) Official Report, Justice 1 Committee, 9 June 2004; c 942

\(^{118}\) Scottish Executive, supplementary written evidence, 22 June 2004, annex A
should consider extending the definition to include the crew of both RNLI and other inshore lifeboats and inland rescue boats.

Healthcare workers

149. A large number of responses to the call for evidence suggested that the scope of the Bill should be widened to include a greater proportion of healthcare workers. In its written submission, the Royal College of Nursing Scotland expressed the fear that two levels of protection would be created, one level for those staff covered by the Bill and another, lesser one for those who are not covered, but who may be working alongside those in the first group. It considered that it will be a missed opportunity not to include all healthcare staff in the Bill. 119

150. In oral evidence, RCN Scotland, the British Medical Association and the Royal College of Physicians of Edinburgh all agreed that the intent behind the Bill was welcome but that it had limitations.120 RCN Scotland submitted that all healthcare professionals are affected, including porters, domestics and nursing care assistants, whether they work in accident and emergency or in any ward that receives emergency admissions.121

151. The BMA suggested that it would be preferable for the definition of emergency workers to simply focus on workers who at some stage are required to carry out emergency work for the benefit of the public.122

152. The Committee considered the nature of team working in the NHS, in particular the chain of people who might be involved in responding to an emergency. There was some concern that an assault on a porter taking blood to an emergency situation in another part of the hospital might be difficult to prosecute under the Bill if it was not possible to show that a reasonable person would have grounds for believing that he or she was assisting an emergency worker responding to emergency circumstances.123

153. The Committee considers that the case for including doctors, nurses and midwives has been clearly established as they are regularly called upon to respond to emergency situations, whether within an accident and emergency department, other hospital acute receiving unit or in the community. However, the Committee believes that the Executive should give further consideration to the inclusion of other healthcare premises in section 3 of the Bill.

Trade union position

154. In written submissions, trade unions generally welcomed the introduction of the Bill although some concerns were raised about the scope of the legislation and the groups of workers which would be covered.

119 RCN Scotland, written evidence, 4 May 2004, page 1
120 Official Report, Justice 1 Committee, 2 June 2004; c 886
121 Ibid; c 887
122 Ibid; c 895
123 Official Report, Justice 1 Committee, 9 June 2004; c 966
155. Trade union witnesses expressed the view that unions would have preferred the scope of the Bill to be wider and cover more than just emergency workers.\(^{124}\) The STUC, in oral evidence argued that the definition should cover public service workers “because that would broaden it out as widely as possible.”\(^{125}\) T&G Scotland submitted that the Bill should be widened to cover transport workers, for example bus drivers, who if attacked, could result in passengers being endangered. GMB Scotland suggested the Bill should be replaced with another Bill which would cover more workers.\(^{126}\)

156. Given the absence of a uniform approach to the Bill by the trade unions in their evidence, it was difficult for the Committee to establish from the unions what formulation of legislation they would wish to see. The Committee is not persuaded by their request to widen the scope of the Bill to include all public service workers. However, it was clear that they all supported a package of wider measures to increase protection of public service workers to a greater or lesser degree.

**Social workers**

157. Several respondents to the call for written evidence suggested that social workers and social care staff should be included in the list of emergency workers. In its written submission, the British Association of Social Workers (BASW) highlights that violence to staff is a critical issue within social care but questions what ‘added value’ would come from this type of legislation. The association places greater emphasis on the introduction of safer working practices and greater awareness from employers, politicians and society at large of the difficult and violent situations social care staff often face.\(^{127}\)

158. ADSW and BASW gave further evidence to the Committee of the type of emergency work which social workers carry out. They stressed the emergency nature of staff responding to child protection orders and emergency mental health assessments where action must be taken within a certain timeframe. Emergency detentions under the Mental Health (Care and Treatment) (Scotland) Act 2003 have to be carried out within a matter of minutes. ADSW submitted that social workers can face risky situations in these circumstances and would not automatically ask the police to accompany them.\(^{128}\) When presented with this evidence, the Minister agreed to reflect on this point.\(^{129}\)

159. The Committee calls upon the Executive to fulfil this commitment and to consider, in particular, the emergency role fulfilled by mental health officers and social workers with an emergency child protection role.

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\(^{124}\) Official Report, Justice 1 Committee, 2 June 2004; c 907-908  
\(^{125}\) Ibid; c 907  
\(^{126}\) Ibid; c 908  
\(^{127}\) BASW, Written Evidence, 5 May 2004, page 1  
\(^{128}\) Official Report, Justice 1 Committee, 9 June 2004; c 935 - 936  
\(^{129}\) Ibid; c 961
Other agencies

160. A number of other organisations also submitted written evidence to the Committee suggesting that their staff should be included in the list of emergency workers. In its response, Scottish Water expressed strong support for the Bill and asked whether it would be possible to extend the protections available under the Bill to Scottish Water and other utility workers responding to emergency situations without the fire or police services being in attendance.\(^{130}\) SEPA welcomed the inclusion of ‘serious harm to the environment’ in the definition of emergency circumstances and submitted that staff involved in such situations require protection. It supported the order making provisions of the Bill and the acknowledgement that environmental emergency workers may be added to the list by this mechanism.\(^ {131}\) National Grid Transco stated that it is the operator of the gas emergency service and has staff that have to attend emergency situations on a daily basis.\(^ {132}\) Historic Scotland proposed that its Park Rangers and Royal Parks Constabulary should be included given their role in responding to emergencies on its sites e.g. rock rescues.\(^ {133}\)

161. The Minister justified restricting the definition of emergency workers and the reason for choosing specific groups of workers for inclusion in the Bill on the basis that the role emergency workers play is different from the role of other workers in the public services. In his view, the crucial point was that, “emergency workers are out in the community protecting life and limb. They are out there to protect us and any hindrance to them puts other people’s lives at risk.”\(^ {134}\)

162. The Committee accepts that the Bill should extend only to workers likely to respond regularly and routinely to emergency circumstances. The Committee considers that the power conferred upon Scottish Ministers to modify by order, the groups of emergency workers mentioned in the Bill, allows sufficient flexibility to ensure that appropriate amendments can be made without the need for amending primary legislation.

Prison officers – “resisting”

163. The Prison Officers Association supported the suggested inclusion of the offence of resisting an emergency worker as this situation could occur in prison if, for example, prisoners refused to return to cells.\(^ {135}\)

164. The Scottish Executive had previously given evidence that the term “resists” had not been included in the Bill as, unlike the Police (Scotland) Act 1967 which makes express provision for someone who is resisting

\(^{130}\) Scottish Water, written evidence, 5 May 2004, page 1
\(^{131}\) SEPA, written evidence, 7 May 2004, page 1
\(^{132}\) Transco, written evidence, 19 May 2004, page 1
\(^{133}\) Historic Scotland, written evidence, 6 May 2004, page 1
\(^{134}\) Official Report, Justice 1 Committee, 9 June 2004; c 959
\(^{135}\) Ibid; c 940-941
arrest, offences intended to be established by this Bill are covered by the words “obstructs or hinders”.136

165. The Committee considers that the term “resists”, as included in the Police (Scotland) Act 1967, relates principally to a police constable’s power of arrest and, as such, need not be included in the Emergency Workers (Scotland) Bill, as other groups of emergency workers do not have such powers.

Emergency circumstances

166. The definition of “emergency circumstances” at section 1(5) of the Bill has been the subject of considerable debate. A considerable amount of evidence has been taken by the Committee suggesting amendment or removal of this provision from the Bill. SOLACE suggested that an alternative would be to adopt the wider definition contained in the Civil Contingencies Bill currently being considered at Westminster.137 The current definition in the Emergency Workers (Scotland) Bill is:

(5) For the purposes of this Act, circumstances are “emergency” circumstances if they are present or imminent and—

(a) are causing or are likely to cause—

(i) serious injury to or the serious illness of a person;

(ii) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings); or

(iii) a worsening of any such injury, illness or harm; or

(b) are likely to cause the death of a person.

167. The offences created by the Emergency Workers (Scotland) Bill only apply when the emergency worker is “responding to emergency circumstances”138.

168. Evidence from the Scottish Executive set out the intention of the definition:

“It is intended to capture the types of emergency circumstances to which emergency workers, as defined in section 1, respond and therefore to catch any assaults or obstruction that take place while they are in the process of responding.”139

136 Official Report, Justice 1 Committee, 5 May 2004; c 747
137 SOLACE, written evidence, 10 May 2004
138 Emergency Workers (Scotland) Bill, section 1(1)
139 Official Report, Justice 1 Committee, 5 May 2004; c 739
“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”.140

On duty

169. Fire organisations have conveyed their concerns that the protection offered by the Bill as currently drafted would not extend protection to cover personnel at all times. In its written submission, Grampian Fire Brigade asked that the Committee extend the definition of an aggravated offence to protect members of fire services (uniformed and support staff) whilst on authorised duty and not confine it to the narrower definition prescribed in subsection 1(5).141 In its submission, CACFOA considered the wording at subsections 1(1) and (4) ‘responding to emergency circumstances’ should be replaced with ‘on duty’ in order to ensure that staff engaged in routine (non emergency) work are covered by the legislation.142 In oral evidence, the FBU raised the example of hydrant operatives who maintain and service fire hydrants. Although these workers do not operate necessarily in emergency situations, their work has a “direct impact on the operational capability of firefighters in emergencies”. The Union considered that it would be helpful if the phrase “operational capability” was included in the Bill in order to protect such support workers.143

170. The Committee heard evidence from trade union witnesses which suggested that the legislation should cover the period when someone is “on duty” rather than in a defined emergency situation.144

171. ACPOS suggested that it would be appropriate to define an emergency situation as “Where a person has reasonable cause to believe they are dealing with an emergency situation.”145

172. Medical organisations, in several written responses and oral evidence, submitted that the provisions of the Bill should apply whether or not defined groups of emergency workers are responding to emergency circumstances.146

Serious health risk

173. Social work organisations suggested that the definition of emergency circumstances should be extended to include “serious health risk”. ADSW submitted that health risk is a wider term than illness and would encompass mental health and substance misuse issues.147

140 Official Report, Justice 1 Committee, 5 May 2004; c 739
141 Grampian Fire Brigade, written evidence, 23 April 2004, pages 1 & 2
142 CACFOA, written evidence, 30 April 2004, pages 1 & 2
143 Official Report, Justice 1 Committee, 2 June 2004; c 872-874
144 Ibid; c 919
145 ACPOS, written evidence, 23 April 2004
146 Official Report, Justice 1 Committee; 2 June 2004; c 900 - 902
147 Official Report, Justice 1 Committee, 9 June 2004; c 937
174. The Committee will further consider all of the above evidence at Stage 2.

Accident and emergency premises

175. Hospital accident and emergency premises are given special status within the Bill. The Explanatory Notes published along with the Bill state that under section 3, "emergency circumstances may be assumed to exist or to be imminent in [hospital] accident and emergency premises at all times". In that way any assault or obstruction of a doctor, nurse, midwife or ambulance, or someone assisting these workers, in such premises would be an offence under the provisions of the Bill.

176. Sections 3(1) and (2) of the Bill must be considered together to establish the definition of accident and emergency premises. This is taken to be a part of a hospital used wholly or mainly for the reception and treatment of persons needing medical attention as a result of an accident or otherwise as a matter of emergency.

177. In oral evidence, medical organisations considered that all hospital premises should be treated in the same way as emergency work is also performed outwith accident and emergency departments. RCN Scotland submitted that the definition should not depend on accident and emergency premises, because emergency situations arise in all areas within the health service and within any acute hospital.

178. The BMA and Royal College of Physicians of Edinburgh both agreed that the Bill’s scope should be extended beyond the accident and emergency department. The Royal College acknowledged that accident and emergency departments probably do experience more verbal and physical attacks than other areas but that acute admissions wards are also prone to this situation. The BMA suggested that while there may be a higher prevalence of such incidents in accident and emergency, overall, general practice experiences a higher number of attacks because of a higher volume of work.

179. The Minister explained to the Committee that the specific provisions relating to accident and emergency premises would not “set up an exclusion zone” around these premises as other departments may be included, depending on the situation and circumstances. Scottish Executive officials went on to clarify that the definition was intended to include other places in hospitals which deal with the reception of emergencies.

180. The Committee will further consider all of the above evidence at Stage 2.

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148 Emergency Workers (Scotland) Bill, SP Bill 21-EN; explanatory notes para 15
149 Official Report, Justice 1 Committee, 2 June 2004; c 890
150 Official Report, Justice 1 Committee; 2 June 2004; c 897 - 898
151 Official Report, Justice 1 Committee, 9 June 2004; c 965
152 Ibid; c 966
Wider measures

181. The policy memorandum to the Bill highlights that the Executive is also working in partnership with employers, trade unions and professional bodies to develop a wider package of measures to address the problem of attacks on all public service workers. It suggests that the measures may include a public awareness campaign, measures to improve training of managers and staff and increased education of children and young people about the unacceptability of assaulting people at work. Improved recording and reporting of incidents will form part of the package.153

182. A large proportion of written submissions expressed strong support for the anticipated package. COSLA considered that benefits from such a package will be felt by all public sector workers including those staff covered by the Bill.154

183. Strathclyde Fire Board suggested that legislation is only one aspect of responding to this overall issue. The Board identified a need for educational and awareness programmes within communities, with a particular focus on youth as another key area for development and something the Board will look to develop and progress.155 Lothian and Borders Fire Board felt that it is imperative that more work is carried out to develop good working and sound relationships with a wide variety of community groups and organisations that would prove useful in successfully engaging with disaffected youth and others who become involved in socially unacceptable behaviour of this kind.156

184. UNISON Scotland welcomed the Executive’s commitment to introduce a wider package of non-legislative measures designed to protect those who serve the public. The Union is pleased that these measures will include initiatives to educate the public and to reinforce the message that attacks on public service and other workers are totally unacceptable.157

185. In oral evidence, the Committee heard strong support from witnesses for wider measures to tackle the problem. Trade union witnesses advocated a public awareness campaign and schemes to educate school children and young people. UNISON suggested that employers should be encouraged do more to protect their staff.158 The STUC acknowledged that it had been involved with the Executive in considering a wider package of measures and welcomed the Executive’s commitment to this work. The STUC went on to say:

“We see the non-legislative measures as being key to reducing the number of violent attacks. It would be good to see in five years that the Bill had had a deterrent effect and

153 Policy memorandum; paragraph 4
154 COSLA, written evidence, 7 May 2004, page 2
155 Strathclyde Fire Board, written evidence, 14 May 2004, page 2
156 Lothian and Borders Fire Board, written evidence, 9 January 2004
157 UNISON, written evidence, 7 May 2004, page 3
158 Official Report, Justice 1 Committee, 2 June 2004; c 920
that the non-legislative measure had reduced the number of violent attacks against workers”.159

186. The Minister was unable to provide the Committee with any considerable detail on the proposed package at this time as the Executive is considering how to support the campaign. He gave an undertaking to share with the Committee, the Executive’s thoughts on the matter in due course. The Minister was able to confirm that the intention was to reflect wider issues of assaults on public service workers rather than emergency workers alone. The package would be likely to include a general public awareness campaign to promote respect for workers and zero tolerance of abuse and assault. The campaign will be targeted in schools, the health service and through local government. The Executive also intends to support the organisation Scotland’s Health at Work to put in place training packages to increase the awareness of what emergency workers do. A system to record, categorise and deal with incidents will also be developed.160

187. Although outwith the scope of the Bill, the Committee wishes to record its strong support for the proposed package of wider measures to deter attacks on all public service workers. The Committee considers that a sustained campaign of public awareness and education will do much to promote respect for the importance and value of the work undertaken by public service workers. The Committee asks the Executive to provide details of the proposed measures contained in the package and to confirm the timescale for implementation at the earliest opportunity.

Policy memorandum

188. The policy memorandum sets out the Bill’s policy objectives, what alternative approaches were considered, the consultation undertaken and an assessment of the effects of the Bill on equal opportunities, human rights, island communities, local government, sustainable development and other matters considered relevant.

189. When the Minister appeared before the Committee members stressed that the Committee would have found it helpful if the policy memorandum had included reference to the Executive’s expectation that, once enacted, the Bill would not result in an overall increase in the number of prosecutions but rather, cases relating to offences against emergency workers which might have been heard under solemn proceedings could be moved to a summary court.161

190. The policy memorandum makes reference to the consultation process conducted by the Executive including the formal written consultation paper “Protection of Emergency Workers: A Consultation Paper” which

159 Official Report, Justice 1 Committee, 2 June 2004; c 920
160 Official Report, Justice 1 Committee, 9 June 2004; c 973
161 Official Report, Justice 1 Committee, 9 June 2004; c 976
was issued in December 2003. The memorandum notes that 62 responses to the paper were received but provides no analysis of these responses.\(^\text{162}\)

191. The Committee has already expressed in this report its disappointment at the poor quality of the policy memorandum to the Bill, considering it to be generally lacking in detail and seriously deficient with regard to clearly establishing the policy intentions behind the Bill. The Committee would have benefited, in particular, from a more expansive section on alternative approaches clearly setting out the Executive’s rationale for rejecting these in favour of introducing the Bill. The Committee recommends that in order to strengthen policy memoranda in future, where extensive pre-legislative consultation by the Executive has taken place, an analysis of the responses received should also form part of the policy memorandum.

192. The Executive states in the policy memorandum that the consultation paper was sent to equal opportunities groups including the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission and that no adverse comments were received on any equalities issues.\(^\text{163}\)

193. In response to the call for evidence, one written submission to the Committee made specific reference to the problem of racial abuse of Asian doctors in accident and emergency premises.\(^\text{164}\) West Lothian Healthcare Trust suggests that it would be helpful to include reference to racial abuse in the Bill.

194. The Committee considers all cases of racial abuse to be abhorrent regardless of the circumstances. However, the Committee considers that such incidents are best dealt with under existing statute law and does not recommend that provision be made within this Bill.

Financial memorandum

195. Under Standing Orders, Rule 9.6, the lead committee in relation to a Bill must consider and report on the Bill’s Financial Memorandum at Stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

196. The Finance Committee took oral evidence from the Scottish Executive Bill Team and considered written correspondence submitted by the Scottish Court Service, and the Crown Office and Procurator Fiscal Service and made the following recommendations. The Committee reported that it felt that more effort could have been made to substantiate

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\(^\text{162}\) Policy memorandum; paragraphs 7 and 8  
\(^\text{163}\) Policy memorandum; paragraph 12  
\(^\text{164}\) West Lothian Healthcare Trust, written evidence, 15 April 2004
the claim made in the Financial Memorandum that there will be relatively few additional prosecutions resulting from the Bill’s provisions.

197. The Finance Committee was also unconvinced by another claim made in the Financial Memorandum, that the deterrent effect of the Bill may even negate the costs of any additional prosecutions for the new offences created. The Committee feels that a lack of hard evidence means that such a claim is no more than speculation.

198. A third major concern relates to the Executive’s efforts to tackle the wider problem of attacks on all public sector workers, under which Ministers may introduce a package of measures, including a public awareness campaign. Members questioned both the cost and likely effectiveness of these measures.

199. The more general point was also made that the Committee’s consideration of Financial Memoranda would be aided if the cost of wider measures such as these, which are relevant to the Bill, were made clearer to the Committee at this stage.

200. In summary, the Finance Committee regrets the fact that the more detailed information that could have aided the Committee’s scrutiny is not provided in the Financial Memorandum. It hopes that the specific concerns it has raised in relation to the Emergency Workers (Scotland) Bill can now be pursued by the Justice 1 Committee.

Scottish Executive response

201. These issues were raised with the Minister by the Justice 1 Committee. In response to the question regarding the assumption that there would be relatively few additional prosecutions resulting from the Bill’s provisions, the Minister said that the Bill would act as a deterrent because it seeks to “name and shame” those who commit the crime of assaulting an emergency worker. The Bill was designed to tackle cases in the middle ground, allowing cases which despite the Lord Advocate’s guidance, have not been treated seriously enough in the legal system. He stated that very serious offences, for example a higher level assault would still be dealt with under the common law.165

202. On the question of the wider package of measures, the Minister explained that this was still being developed but that resources had been set aside. He expressed the view that the Executive would have preferred not to have to legislate. The wider package was designed to prevent attacks on emergency workers happening, but if these measures did not succeed then the courts needed appropriate powers to deal with offenders.166

203. The Justice 1 Committee shares the Finance Committee’s concerns about the lack of clear information presented by the Executive

165 Official Report, Justice 1 Committee, 9 June 2004; c 975
166 Ibid.
regarding the anticipated effect of the Bill on prosecution rates. It considers, however, that evidence submitted subsequent to the consideration by the Finance Committee has clarified the Executive’s position to some degree.

204. The Justice 1 Committee also shares the view of the Finance Committee that further detail on the wider package of measures would have assisted consideration of the Emergency Workers (Scotland) Bill.

Delegated powers

205. The Subordinate Legislation Committee has considered the delegated powers provision in the Emergency Workers (Scotland) Bill and submitted its report to the Justice 1 Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

Section 6 – Power to modify

206. 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.

207. The Subordinate Legislation 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.

208. 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.

209. The Subordinate Legislation 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.

210. The Subordinate Legislation 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.

211. The Subordinate Legislation 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.

212. The Subordinate Legislation 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.

213. The Executive acknowledged the Subordinate Legislation 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 as part of the evidence related to this report.

214. The Subordinate Legislation 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 Subordinate Legislation Committee simply draws the Executive's undertaking to the attention of the lead committee for information.

215. The Subordinate Legislation Committee has no further comment to make on the Bill at Stage 1.

216. The Justice 1 Committee shares the Subordinate Legislation Committee's concerns that section 6 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. The Committee acknowledges the Executive’s commitment to amend the Bill at Stage 2 to make the power to modification subject to affirmative resolution procedure.

Conclusion of the report

217. The Committee supports the general principles of the Emergency Workers (Scotland) Bill as it considers that the Bill will add, at the margins, to existing common law and statutory provisions which aims to protect emergency workers, and persons assisting them, from assault and obstruction when dealing with emergency
circumstances. There is also the potential for the Bill's enactment, as part of a wider package of measures, to have a deterrent effect on those who might attack or obstruct emergency workers. Nevertheless, the Committee would expect significant changes to be made at Stage 2 (including to the section specifying groups of emergency workers on the face of the Bill, the section defining emergency circumstances and the section defining which parts of hospital premises are deemed to be in a constant state of emergency) to ensure the effectiveness of the Bill. To aid the process, the Committee will take evidence at Stage 2. The Committee considers it essential that the Bill forms part of a wider package of measures, including a sustained campaign of public awareness and education, to promote respect for the importance and value of the work undertaken by emergency workers and public service workers more generally.\textsuperscript{167}

\textsuperscript{167} Margaret Mitchell dissented from this conclusion
Appendix

General evidence of violence against emergency workers

Compilation of information gathered
1. Following a review of responses to the Committee’s call for written evidence, statistics were noted in submissions from—West Lothian Healthcare Trust; CACFOA; the Scottish Ambulance Service; Transco; RCN Scotland; NHS Glasgow Primary Care Division; Royal College of General Practitioners Scotland and USDAW. The Committee sought to separate the information received into two categories, firstly a general category where it was not specified in what circumstances an incident occurred and secondly, where it is specified that the incident occurred when responding to emergency circumstances as defined by the Bill or in a hospital accident and emergency department.

General evidence of violence
2. Strathclyde Fire Brigade submitted figures relating to violent attacks on fire crews in the brigade area. In 2001 – 02 there were 72 reported incidents, rising to 167 in 2002 – 03 but falling slightly in 2003 – 04 to 161 reported incidents. The response also highlights that since 2001 this represents an overall increase of 45%.

3. CACFOA also supplied the following table of figures for attacks on firefighters in Scottish brigades in the period 1 April 2002 – 31 March 2003—

Attacks on Firefighters – Scottish Brigades: 01 April 2002 - 31 March 2003

<table>
<thead>
<tr>
<th></th>
<th>Verbal</th>
<th>Physical (armed)</th>
<th>Physical (unarmed)</th>
<th>Missile</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operational Personnel:</strong></td>
<td></td>
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<td></td>
<td></td>
<td></td>
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<tr>
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<td>7</td>
<td>0</td>
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<td>10</td>
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<tr>
<td>Highlands &amp; Islands</td>
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</tr>
<tr>
<td>Strathclyde</td>
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<td>2</td>
<td>72</td>
<td>8</td>
<td>104</td>
</tr>
<tr>
<td>Dumfries &amp; Galloway</td>
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<td>0</td>
<td>3</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>Grampian</td>
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<td>0</td>
<td>1</td>
<td>6</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Lothian &amp; Borders</td>
<td>9</td>
<td>1</td>
<td>7</td>
<td>22</td>
<td>5</td>
<td>44</td>
</tr>
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<td>Tayside</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total (Ops)</strong></td>
<td>48</td>
<td>2</td>
<td>10</td>
<td>120</td>
<td>21</td>
<td>201</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Verbal</th>
<th>Physical (armed)</th>
<th>Physical (unarmed)</th>
<th>Missile</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
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<tr>
<td><strong>Non-Operational Personnel:</strong></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Central Scotland</td>
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<td>0</td>
<td>0</td>
<td>0</td>
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</tr>
<tr>
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<tr>
<td>Highlands &amp; Islands</td>
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<td>0</td>
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</table>

It is not clear from the response what definition of “operational” and “non-operational” personnel is used.
4. The response from the Scottish Ambulance Service states that in the 12-month period 1 January – 31 December 2003, there were 183 reported assaults on ambulance service staff, of which 104 were physical assaults and 79 were verbal, an average of 15 assaults per month.\textsuperscript{169}

5. In response to a request for comparative information in respect of prior years, the ambulance service stated that it was difficult to supply retrospective data because of the introduction of a revised reporting procedure in January 2003, so data prior to that was gathered and analysed differently.\textsuperscript{170}

6. The response went on to give comparative figures for January to May 2004 which showed 45 physical and 36 verbal assaults reported. The Scottish Ambulance Service argued that if multiplied up for the year this would give 194 incidents, an increase of 6% over 2003. It suggested that this represented an average of 16 assaults per month, compared to 15 per month in 2003, and that the Service believes that there remains some under-reporting.\textsuperscript{171}

7. The response from NHS Glasgow Primary Care Division stated that 24% of staff in Greater Glasgow who responded to the 2003 NHS staff survey indicated that they had personally experienced a violent/aggressive incident.\textsuperscript{172}

8. The BMA provided the Committee with evidence from a survey it had conducted which explored the incidence of violence against doctors in the workplace.\textsuperscript{173} The association carried out a postal survey of a stratified random sample of 3,000 doctors across the UK which elicited a 30% response rate. The extent to which respondents considered that violence is a problem in their current workplace is replicated below.

<table>
<thead>
<tr>
<th>Strathclyde</th>
<th>1</th>
<th>0</th>
<th>0</th>
<th>1</th>
<th>0</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dumfries &amp; Galloway</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>Lothian &amp; Borders</td>
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<td>0</td>
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<tr>
<td>Tayside</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>0</td>
</tr>
<tr>
<td><strong>Total (Non-Ops)</strong></td>
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<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>

Table 4. Extent of violence as a problem in workplace by type of doctor (%)

<table>
<thead>
<tr>
<th></th>
<th>General Practitioner</th>
<th>Hospital Doctor</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very much a problem</td>
<td>7.9</td>
<td>7.1</td>
<td>7.5</td>
</tr>
<tr>
<td>Somewhat of a problem</td>
<td>40.4</td>
<td>44.3</td>
<td>42.3</td>
</tr>
<tr>
<td>Not really a problem</td>
<td>35.3</td>
<td>38.1</td>
<td>36.5</td>
</tr>
</tbody>
</table>

\textsuperscript{169} Scottish Ambulance Service, written evidence, 30 April 2004
\textsuperscript{170} Scottish Ambulance Service, supplementary written evidence, June 2004
\textsuperscript{171} Ibid.
\textsuperscript{172} NHS Greater Glasgow Primary Care Division, written evidence, 7 May 2004
\textsuperscript{173} BMA survey, “Violence at work: the experience of UK Doctors”, October 2003
9. The survey also found that more than a third of respondents (39%) reported that they had experienced some form of violence in the workplace in the last year. Although the survey was not broken down below the UK level, in its written evidence, the BMA suggested that in Scotland this would equate to more than 4,300 doctors.

10. Respondents who have experienced violence were fairly evenly split between hospital doctors (55%) and GPs (45%). The table reproduced below shows the relative proportion of hospital doctors reporting experience of violence broken down by specialty.

| Table 8. Whether experienced violence in the workplace by hospital specialty (%) |
|----------------------------------|-----------|-----------|
|                                  | Yes      | No        |
| A&E                             | 72.7     | 27.3      |
| Psychiatry                       | 55.6     | 44.4      |
| Obstetrics & Gynaecology         | 50.0     | 50.0      |
| General medicine (& medical oncology) | 38.3     | 61.7      |
| Surgery                          | 37.1     | 62.9      |
| Paediatrics                      | 34.9     | 65.1      |
| Anaesthetics                     | 18.9     | 81.1      |
| Radiology (& clinical oncology)  | 13.0     | 87.0      |
| Pathology                        | 9.1      | 90.9      |
| Geriatrics                       | 0.0      | 100.0     |


11. For hospital doctors, the most frequently cited location for violent incidents was the hospital ward (45%) or A&E (18%).\(^{174}\)

12. For around half of respondents (51%), the violence experienced was from patients and 34 percent experienced violence from patients’ families or relatives.\(^{175}\) 22 percent of respondents who had experienced violence had suffered a physical assault.\(^{176}\)

13. The Royal College of General Practitioners Scotland pointed out that almost two thirds of respondents to the British Medical Association survey

\(^{174}\) BMA survey, "Violence at work: the experience of UK Doctors", October 2003, Table 9
\(^{175}\) Ibid, Figure 1
\(^{176}\) Ibid, page 10
reported that they had witnessed violence from patients directed at others in their workplace, including nurses (36%) and receptionists/administrators (33%).¹⁷⁷

14. Transco provided a series of tables showing details of 18 reported violent assaults and 42 verbal assaults on staff in Scotland in the period 1 January 2000 to 30 April 2004.¹⁷⁸

15. The response from the Union of Shop Distributive and Allied Workers stated that, according to the Scottish Retail Consortium’s Second Scottish Retail Crime Survey, four per 1,000 shopworkers were victims of physical violence in 2002 and 24 per 1,000 were victims of either physical violence, threats of violence or verbal abuse. Of the latter category, 60% of incidents were either physical violence or threats of physical violence.

¹⁷⁷ Royal College of General Practitioners Scotland, written evidence, 11 May 2004
¹⁷⁸ National Grid Transco Scotland, written evidence, 5 May 2004
ANNEX A

Subordinate Legislation Committee

Emergency Workers (Scotland) Bill

Delegated Powers Scrutiny

Stage 1 Report

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.
Appendix 1

SCOTTISH EXECUTIVE MEMORANDUM
TO THE SUBORDINATE LEGISLATION COMMITTEE
ON
SUBORDINATE LEGISLATION PROVISIONS

EMERGENCY WORKERS (SCOTLAND) BILL

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.
Appendix 2

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, fire-fighters, 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:

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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
record of similar, previous convictions; or where the obstruction does not result in adverse circumstances for the third party awaiting delivery of an emergency service.

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
Remit:

1. The remit of the Finance Committee is to consider and report on-

   (a) any report or other document laid before the Parliament by members of the Scottish Executive containing proposals for, or budgets of, public expenditure or proposals for the making of a tax-varying resolution, taking into account any report or recommendations concerning such documents made to them by any other committee with power to consider such documents or any part of them;

   (b) any report made by a committee setting out proposals concerning public expenditure;

   (c) Budget Bills; and

   (d) any other matter relating to or affecting the expenditure of the Scottish Administration or other expenditure payable out of the Scottish Consolidated Fund.

2. The Committee may also consider and, where it sees fit, report to the Parliament on the timetable for the Stages of Budget Bills and on the handling of financial business.

3. In these Rules, "public expenditure" means expenditure of the Scottish Administration, other expenditure payable out of the Scottish Consolidated Fund and any other expenditure met out of taxes, charges and other public revenue.

*(Standing Orders of the Scottish Parliament, Rule 6.6)*

Membership:

Des McNulty (Convener)
Wendy Alexander
Ted Brocklebank
Fergus Ewing (Deputy Convener)
Kate Maclean
Jim Mather
Dr Elaine Murray
Jeremy Purvis
John Swinburne

Committee Clerking Team:

Clerk to the Committee
Susan Duffy

Senior Assistant Clerk
Terry Shevlin

Assistant Clerk
Emma Berry
the Financial Memorandum of the Emergency Workers (Scotland) Bill

The Committee reports to the Parliament as follows—

Background

1. Under Standing Orders, Rule 9.6, the lead committee in relation to a Bill must consider and report on the Bill’s Financial Memorandum at Stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee in relation to the Financial Memorandum published to accompany the Emergency Workers (Scotland) Bill, for which the Justice 1 Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.

Introduction

3. At its meeting on 11 May 2004, the Finance Committee took oral evidence on the Financial Memorandum from—

   Richard Scott, Head, Criminal Justice Division and Gery McLaughlin, Bill Team Leader, Criminal Justice Division, Scottish Executive.

4. The Committee subsequently received additional information from Scottish Executive officials in response to various points raised at this meeting. This correspondence is attached at appendix A.

5. The Committee also considered written correspondence submitted by the Scottish Court Service, and the Crown Office and Procurator Fiscal Service. This correspondence is reproduced at appendix B.

Financial Memorandum

6. The Explanatory Notes published to accompany the Bill state that it introduces an offence of assaulting, obstructing or hindering an emergency worker, or a person assisting an emergency worker, in emergency circumstances. The Bill also introduces a similar offence of assaulting, obstructing or hindering
certain emergency workers in hospital accident and emergency premises. These measures are part of the Executive’s wider antisocial behaviour strategy.

7. The Financial Memorandum says that the number of additional prosecutions which will result from these provisions is uncertain, but that these are likely to be relatively few. Neither does the Financial Memorandum anticipate any significant, additional, on-going costs incurred through the introduction of the new offences. Indeed, it states that there may be a relatively minor cost saving from reducing the number of attacks on emergency workers, which could actually outweigh the costs of any additional prosecutions for the new offences. Finally, the Financial Memorandum does not anticipate any additional costs for local authorities, for other bodies or businesses.

8. The correspondence from the Crown Office and Procurator Fiscal Service said it was satisfied that it was capable of meeting any consequential costs from existing resources.

Summary of Evidence

Savings resulting from the Bill

9. The Committee sought information on the bill’s likely costs, as these were not specified in the Financial Memorandum. Specifically, one of the Committee’s main lines of questioning was to focus on the likelihood of the savings resulting from the bill outweighing the costs of any additional prosecutions.

10. Executive officials acknowledged that they could not provide detailed costs, but reconfirmed that there is unlikely to be any significant increase in the number of prosecutions as a result of the bill. They also acknowledged that the deterrent effects of the bill are hard to quantify, but could materialise in the following ways:

“we hope that the bill will deter people from attacking emergency workers, which will mean fewer court cases, fewer people sent to prison, savings on manpower and loss of days' work, savings on damaged equipment and, generally, a more effective response to emergency situations.”

11. Members were concerned that these financial benefits, while laudable, are based solely on speculation on the part of the Executive, and asked whether justification could be provided by other sources. The Committee asked whether there were data from any other jurisdictions showing that similar legislation had had a deterrent effect; whether the Police (Scotland) Act 1967, could provide comparable information on the likely deterrent effect of the bill; or whether any new offences have been introduced in Scotland, since the establishment of the Parliament, on which data have been captured showing a deterrent effect.

12. Executive officials said that they did not have comparable data from any other jurisdictions. Subsequent correspondence, however, did provide information on the other points raised by the Committee. There is an average of 2,730

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1 Scott, Official Report, 11 May 2004, Col 1411.
persons per year, from 1993 – 2002, with a charge proved under section 41 of the Police (Scotland) Act. Second, in terms of a comparable offence, the correspondence said that the closest analogy is perhaps the statutory aggravation for offences related to religious hatred introduced by section 74 of the Criminal Justice (Scotland) Act 2003, but there has not yet been sufficient time for associated offences to be reflected in official statistics.

13. It was suggested that the Financial Memorandum could be strengthened by calculating the current costs of impeding or assaulting emergency workers and then using this information to calculate a target for savings. This would also help to provide the basic justification that the bill is actually needed.

14. The Executive officials confirmed that “if the bill is enacted, monitoring will be put in place to see what kind of savings are being achieved in relation to the number of prosecutions (for example)”.

Wider Scottish Executive policy

15. The Policy Memorandum states that the bill is part of a broader strategy to deal with antisocial behaviour. Correspondingly, Ministers are considering whether to develop a wider package of measures to address attacks on all public service workers. These measures - which could comprise advertising, publicity and an awareness-raising campaign – are complementary to the bill but, as they have not been finally agreed, associated costs have not been included in the Financial Memorandum.

16. Nevertheless, officials were asked whether the cost of this package of measures should have been reflected in the Financial Memorandum, given that it could be expensive to implement. The efficacy of such campaigns in general was also questioned, given their impact on the public purse:

“...there is a basic question to be answered if we are going to spend money and are being asked to hand over a chequebook, if not sign a blank cheque. There is now considerable doubt whether public awareness campaigns—whether directed towards health or towards stopping criminal behaviour—actually work. Can you point us to any data that show that a public awareness campaign would work?”

17. Executive officials replied that they did not have such data to hand, but repeated the fact that they did not envisage the bill creating any particular cost.

18. The purpose of the awareness-raising campaign was also questioned, given that there was no evidence provided to show its deterrent effect, and given that the introduction of the new offence will not result in tougher penalties being imposed. It was suggested that it was not necessary to introduce a bill to try and change public attitudes:

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5 The section covers any person who assaults, resists, obstructs, molests or hinders a constable or police custody and security officer in the execution of his duty or a person assisting a constable or any such officer in the execution of his duty.
“The bill will have a cost in legislative and civil service time and a public awareness campaign will have a cost. The bill will generate a lot of additional costs, when the heart of the matter might be dealt with through a public awareness campaign to make it clear that it is absolutely unacceptable to assault or impede an emergency worker.”

Other Concerns

19. Officials were also asked if there was a possibility that additional paperwork and bureaucracy could result from the bill, if procurators fiscal were to pursue both the common-law offence and the statutory offence in respect of one accused. The Executive officials confirmed that this matter had been considered in conjunction with Crown Office and that they are content that it has been resolved.

Conclusions

20. The Committee is clearly supportive of the principle that emergency service workers should be afforded the protection they need in order to carry out their essential work, but has serious reservations about the information provided in – or omitted from – the Financial Memorandum.

21. The Committee feels that more effort could have been made to substantiate the claim made in the Financial Memorandum that there will be relatively few additional prosecutions resulting from the bill’s provisions.

22. On a related point, the Committee is unconvinced by another claim made in the Financial Memorandum, that the deterrent effect of the bill may even negate the costs of any additional prosecutions for the new offences created. The Committee feels that a lack of hard evidence means that such a claim is no more than speculation.

23. A third major concern relates to the Executive’s efforts to tackle the wider problem of attacks on all public sector workers, under which Ministers may introduce a package of measures, including a public awareness campaign. Members questioned both the cost and likely effectiveness of these measures.

24. The more general point was also made that the Committee’s consideration of Financial Memoranda would be aided if the cost of wider measures such as these, which are relevant to the Bill, were made clearer to the Committee at this stage.

25. In summary, the Committee regrets the fact that the more detailed information that could have aided the Committee’s scrutiny is not provided in this Financial Memorandum. It hopes that the specific concerns it has raised in relation to the Emergency Workers (Scotland) Bill can now be pursued by the Justice 1 Committee.

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APPENDIX 1
Thank you for your email of 12 May to Richard Scott, following our provision of evidence to the Finance Committee on the Emergency Workers Bill. You ask about the collection of data on comparable offences introduced by the Scottish Parliament and about offences under section 41 of the Police (Scotland) Act 1967.

Comparable Offences

The most closely analogous offence introduced by the Scottish Parliament is perhaps the statutory aggravation for offences related to religious hatred introduced by section 74 ("Offences aggravated by religious prejudice") of the Criminal Justice (Scotland) Act 2003 While this is not an exact parallel with the offences created by the Emergency Workers Bill (and the consultation paper Protection of Emergency Workers set out the reasons why the Executive do not view that as the best approach in this instance) it is similar in that the statutory provision facilitates the recording, collection and reporting of associated offences and will enable any trends to be accurately tracked. However, the provisions of the 2003 Act only came into force last year and there has not yet been sufficient time for their introduction to be reflected in officially reported statistics.

Police (Scotland) Act 1967

Section 41 of the Police (Scotland) Act 1967, in contrast, has been in operation for a significant period of time. While the existence of the statutory provisions means that we have information on the occurrence of offences of this kind since the Act came into force we do not have that information on the era before then.

The number of persons with a charge proved under section 41 in each year 1992-2002 is as follows:

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As was explained to the Committee, there is some degree of overlap between the provisions of the Bill and the 1967 Act but the offences in the Bill make specific provision for the inclusion of non physical means of obstruction. This is because case law on the 1967 Act indicates that there is not absolute certainty that such offences are covered in all instances. However, as indicated in the Financial Memorandum, the Executive believe that there is unlikely to be any significant increase in the overall numbers of prosecutions. The separate written evidence requested by the Finance Committee from the Scottish Court Service and the Crown Office & Procurator Fiscal Service agreed with that conclusion.

Gery McLaughlin
Scottish Executive Justice Department
Emergency Workers Bill Team
APPENDIX 2
SUBMISSION FROM SCOTTISH COURT SERVICE

Thank you for your letter inviting John Ewing to submit written evidence to the Finance Committee in respect to the above. As Mr Ewing has now moved I am replying on behalf of the Scottish Court Service.

As the Bill introduces a new category of offence it is in my view that it will have no financial implications for Scottish Court Service.

Alan Swift, Acting Chief Executive

SUBMISSION FROM CROWN OFFICE AND PROCURATOR FISCAL SERVICE

Thank you for your letter of 22 April 2004 in which you invite written evidence from the Crown Office and Procurator Fiscal Service on the Financial Memorandum of this Bill.

The provisions in the Emergency Workers (Scotland) Bill introduce two new offences of assaulting, obstructing or hindering emergency workers or those assisting them in certain situations. Assault is an offence at common law and behaviour that would be caught by this aspect of the Bill’s provisions would at present be capable of prosecution under existing law. While obstruction or hindrance of emergency workers are not specific offences at common law, this type of behaviour would normally constitute a different common law offence, such as breach of the peace, or in the case of police officers and fire-fighters, might amount to an existing statutory crime.

We accordingly anticipate that there are likely to be few, if any, additional prosecutions as a result of the Bill’s provisions. We are satisfied that the Crown Office and Procurator Fiscal Service is capable of meeting any consequential costs from existing resources.

Robert Gordon
Present:
Bill Butler                  Marlyn Glen
Michael Matheson           Mr Stewart Maxwell (Deputy Convener)
Pauline McNeill (Convener)  Margaret Mitchell
Margaret Smith

The meeting opened at 10.07 am.

Emergency Workers (Scotland) Bill: The Committee considered its approach to consideration of the Bill at stage 1 and agreed an initial list of witnesses to invite to give oral evidence.
Present:

Bill Butler Marlyn Glen
Mr Stewart Maxwell (Deputy Convener) Pauline McNeill (Convener)
Margaret Mitchell Margaret Smith

Apologies were received from Michael Matheson.

The meeting opened at 11.12 am.

Emergency Workers (Scotland) Bill: The Committee took evidence from—

Gery McLaughlin, Bill team leader, and Beth Staffell, Bill team member, Criminal Justice Division, and Alison Coull, Bill team solicitor, Legal and Parliamentary Services, Scottish Executive;

Shona Barrie, Team Leader, Policy Group, Crown Office and Procurator Fiscal Service.
Present:
Bill Butler                                      Margaret Mitchell
Michael Matheson                                Pauline McNeill (Convener)
Mr Stewart Maxwell (Deputy Convener)            Margaret Smith

Apologies were received from Marlyn Glen.

The meeting opened at 10.07 am.

**Item in Private:** The Committee agreed to consider in private, at forthcoming meetings, a draft stage 1 report on the Emergency Workers (Scotland) Bill.

**Emergency Workers (Scotland) Bill:** The Committee considered written evidence on the general principles of the Bill at stage 1. The Committee agreed to invite organisations representing social workers to give oral evidence.

**Emergency Workers (Scotland) Bill:** The Committee took evidence from—

Gerard Brown, Convener, Criminal Law Committee, and Anne Keenan, Deputy Director, Law Reform Department, the Law Society of Scotland, and Morag Jack, the Faculty of Advocates;

Douglas J Keil QPM, General Secretary, Scottish Police Federation;

Assistant Chief Constable Ricky Gray, Secretary, Road Policing Standing Committee, Association of Chief Police Officers in Scotland, and Chief Superintendent Clive Murray, Vice President, Association of Scottish Police Superintendents.
JUSTICE 1 COMMITTEE
MINUTES
22nd Meeting, 2004 (Session 2)
Wednesday 2 June 2004

Present:
Bill Butler Margaret Mitchell
Michael Matheson Pauline McNeill (Convener)
Mr Stewart Maxwell (Deputy Convener)

Apologies were received from Marlyn Glen and Margaret Smith.

The meeting opened at 10.15 am.

Emergency Workers (Scotland) Bill: The Committee took evidence from—

David Wynne and John Ironside, the Chief and Assistant Chief Fire Officers' Association; Ken Ross and Roddy Robertson, the Fire Brigades Union Scotland.

Stewart Maxwell declared an interest as a former professional associate of the witnesses representing the Chief and Assistant Chief Fire Officers' Association and the Fire Brigades Union Scotland. The Committee then took evidence from—

Paul Hopson, Vice Chair, UK Health and Safety Committee, Royal College of Nursing; Dr Peter Terry, Deputy Chairman, Scottish Council, British Medical Association; Dr William G Morrison, Faculty of Accident and Emergency Medicine, Council of the Royal College of Physicians of Edinburgh.

There was a suspension from 12.21 pm to 12.28 pm.

The Committee then took evidence from—

Peter Hunter, Legal Officer, UNISON Scotland; Martin Gaughan, Regional Organiser, T & G Scotland; Alex McCluckie, Senior Organiser, GMB Scotland; Ian Tasker, Health and Safety Officer, Scottish Trades Union Congress.

Pauline McNeill and Bill Butler declared interests as members of GMB Scotland; Margaret Mitchell and Bill Butler declared interests as members of the Educational Institute of Scotland.
Present:
Bill Butler
Michael Matheson
Mr Stewart Maxwell (Deputy Convener)

Margaret Mitchell
Pauline McNeill (Convener)
Margaret Smith

Apologies were received from Marlyn Glen.

The meeting opened at 10.11 am.

Emergency Workers (Scotland) Bill: The Committee took evidence from—

James Pinkerton, member of the Association of Directors of Social Work and Manager of the Emergency Social Work Service, the City of Edinburgh Council; Colin Mackenzie, Vice President of the Association of Directors of Social Work and Director of Housing and Social Work, Aberdeenshire Council; Ruth Stark, Professional Officer, British Association of Social Workers;

David Melrose, Chair, John Speed, National Officer, and Alan Golightly, National Officer, Prison Officers Association Scotland; Andy Hogg, Secretary, SPS Trade Union Side;

There was a suspension from 11.36 am to 11.41 am.

The Committee then took evidence from—

Andy Kerr, Minister for Finance and Public Services, Gery McLaughlin, Bill team leader, Criminal Justice Division, and David Cassidy, Legal Officer, Legal and Parliamentary Services, the Scottish Executive.
Present:
Bill Butler Margaret Mitchell
Michael Matheson Pauline McNeill (Convener)
Mr Stewart Maxwell (Deputy Convener) Margaret Smith

Apologies were received from Marlyn Glen.

The meeting opened at 10.05 am.

**Emergency Workers (Scotland) Bill (in private):** The Committee considered a draft stage 1 report and agreed to seek further information from the Scottish Executive, the Crown Office and Procurator Fiscal Service and the Law Society of Scotland.
JUSTICE 1 COMMITTEE
MINUTES
25th Meeting, 2004 (Session 2)
Wednesday 23 June 2004

Present:
Bill Butler               Margaret Mitchell
Michael Matheson         Pauline McNeill (Convener)
Mr Stewart Maxwell (Deputy Convener) Margaret Smith

Apologies were received from Marlyn Glen.

The meeting opened at 10.05 am.

**Emergency Workers (Scotland) Bill (in private):** The Committee considered a draft stage 1 report. Various changes were agreed.
Present:

Bill Butler  Michael Matheson
Pauline McNeill (Convener)  Mr Stewart Maxwell (Deputy Convener)
Margaret Smith

Apologies were received from Marlyn Glen and Margaret Mitchell.

The meeting opened at 9.45 am.

**Emergency Workers (Scotland) Bill (in private):** The Committee considered a draft stage 1 report.
Present:
Bill Butler
Michael Matheson
Mr Stewart Maxwell (Deputy Convener)
Margaret Smith

Marilyn Glen
Pauline McNeill (Convener)
Margaret Mitchell

The meeting opened at 2.13 pm.

Emergency Workers (Scotland) Bill (in private): The Committee considered a draft stage 1 report. Various changes were agreed to.
Present:

Bill Butler Marlyn Glen
Michael Matheson Pauline McNeill (Convener)
Mr Stewart Maxwell (Deputy Convener) Margaret Mitchell
Margaret Smith

The meeting opened at 9.11 am.

**Emergency Workers (Scotland) Bill (in private):** The Committee considered a draft stage 1 report. Various changes were agreed to.

**Emergency Workers (Scotland) Bill (in private):** The Committee considered further a draft stage 1 report. Various changes were agreed to, one by division.
Emergency Workers (Scotland) Bill: Stage 1

The Convener (Pauline McNeill): Good morning and welcome to the Justice 1 Committee. As usual, I ask members to switch off their mobile phones. I have received apologies from Michael Matheson.

Item 1 is consideration of the Emergency Workers (Scotland) Bill. I welcome the bill team from the Scottish Executive—Gery McLaughlin, who is the bill team leader, Beth Staffell and Alison Coull.

Mr Stewart Maxwell (West of Scotland) (SNP): Good morning. Will you explain to us the extent to which behaviour that is not already covered by existing law is made criminal by the bill?

Gery McLaughlin (Scottish Executive Justice Department): The answer to that is slightly complex and I will ask our solicitor to deal with it. In general, protection is already available to the police under the Police (Scotland) Act 1967 and to the fire services under the Fire Services Act 1947. Common law deals with assaults and, to some extent, obstruction.

As well as adding to existing legislation and to common law, the reason for introducing the bill is to highlight the fact that the Executive believes that attacks on emergency service workers are entirely unacceptable. By highlighting that, the bill serves the purpose of having a deterrent effect—which is what the introduction of the bill and the placing of its provisions on statute is intended to achieve—that is not available under the current law. I ask Alison Coull to deal with the legal questions.

Alison Coull (Scottish Executive Legal and Parliamentary Services): I will speak about the general common law and then move on to the existing provisions that relate to the police and the fire services, highlighting the differences.

It is obviously an offence at common law for a person to assault any other person, regardless of that person’s status or whether they are an emergency worker. To that extent, the bill does not provide anything new, other than that it describes a specific statutory assault in specific circumstances. There is no specific offence at common law or at statute of obstructing or hindering an emergency worker as defined in the bill. To that extent, the provisions go beyond existing criminal law, although it may be possible to include such obstructing or hindering within existing criminal offences, such as breach of the peace.

11:15

The committee will be aware from the papers that relate to the bill that the existing statutory position, under the Police (Scotland) Act 1967, is that an offence is committed by any person who "assaults, resists, obstructs, molests or hinders a constable ... in the execution of his duty".

The bill covers police officers, but there is existing case law to suggest that the “obstructs” or “hinders” element of the 1967 act would not apply unless there was a physical element to the obstruction or hindrance. The bill makes it clear that obstructing or hindering a police officer will be an offence even if means other than physical means are used. Section 2(2) of the bill gives a specific example of such conduct—giving false information. Therefore, the protection afforded to police officers goes slightly beyond the 1967 act—providing, of course, that the police are acting in emergency circumstances.

The protection of firefighters is covered in section 30 of the Fire Services Act 1947, which says that an offence is committed by any person who

"obstructs or interferes” with a firefighter

"who is engaged in operations for fire-fighting purposes”.

In contrast, the bill will cover firefighters in all emergency circumstances, regardless of whether they are extinguishing fires. The protection therefore goes beyond existing statutory protection. In addition, the maximum penalties in the Fire Services Act 1947 are lower than the penalties provided for under the bill.

The other distinction between the bill and common law is that the statutory penalty in the bill is higher than the maximum penalty that would normally be available under sheriff summary proceedings. The bill provides for imprisonment for nine months, whereas the normal penalty under sheriff summary proceedings is imprisonment for three months, or six months for a second offence.

Mr Maxwell: You say that, in certain ways, the bill takes us beyond the Police (Scotland) Act 1967 and the Fire Services Act 1947. However,
does the bill make anything criminal that is not criminal already? I am not clear about that. It seems that, for all the actions that you have mentioned, people could be arrested and charged with an offence at the moment, under criminal law or common law. We are not really creating any new criminal offences, are we?

Gery McLaughlin: As Alison Coull said, assault is already covered by the common law. Obstruction may amount to a breach of the peace or some other common-law offence, but that would depend on the circumstances. In the bill, we have specifically defined behaviour. Depending on the circumstances, some actions might not be a criminal offence at present.

As I have said, the intention is to make clear the Executive’s view that such behaviour is unacceptable. We can send that message by enshrining that view in statute, so that it will have a deterrent effect.

Mr Maxwell: I absolutely accept that and I agree with the message that is being sent out. However, I am concerned about some of the logic behind the bill, rather than about the public relations message, which, as I say, I think is good.

What evidence led to the introduction of the bill? Have certain types of behaviour, which are not clearly covered by existing criminal offences, led the Executive to introduce the bill? Has evidence that certain activities particularly affect emergency workers led to the bill’s introduction, or is the bill simply about sending out a message?

Gery McLaughlin: There is clear evidence that there are attacks on emergency workers in the fire services, the ambulance service and so on. In the partnership agreement, the Executive agreed to take action to deal with those attacks. The policy memorandum makes it clear that the bill is part of the Executive’s response and that there is a wider programme of action in relation to attacks on public service workers. From the evidence, the Executive views the level of attacks on emergency service workers as unacceptable.

Mr Maxwell: I think that Alison Coull referred to sheriff—

Alison Coull: Sheriff summary proceedings.

Mr Maxwell: I am sorry—that is right. Are sentences at the moment failing to act as a deterrent? If so, will the new sentences turn that situation around?

Gery McLaughlin: Sentences are a matter for the court. The legislation simply specifies the maximum sentence that can be passed. As Alison Coull said, the nine-month sentence specified in the bill is longer than the sentence that would usually be passed under summary procedure. In fact, that nine-month penalty is the exact equivalent of the current protection provided for the police under police legislation, and the intention was to replicate that provision for other emergency service workers.

Mr Maxwell: I assume from your response that you feel that the existing law is not sufficiently severe or that available sentences for such an offence might not be severe enough.

Gery McLaughlin: The bill certainly provides for more severe sentences to be passed in the sheriff summary court. At the moment, if the offence were sufficiently serious, it could be tried under solemn procedure or in the High Court, where the offender could receive a more severe sentence.

The Convener: In that case, could you simply have issued guidance to the prosecution on referring attacks on emergency workers to a higher court to ensure that they attracted more severe sentences?

Gery McLaughlin: In “Protection of Emergency Workers: A Consultation Paper”, the Executive considered the ways in which it could take action to protect emergency workers. Although it noted that the Lord Advocate had issued to procurators fiscal guidance on how to deal with attacks on public service workers, it concluded that statutory protection in the form of the bill that we have introduced was a better way of dealing with emergency workers’ needs.

The Convener: So it would be possible to follow the Lord Advocate and issue guidance that such cases could be referred to a higher court, but the Executive prefers to do things this way.

Gery McLaughlin: Yes. The consultation makes it clear that the Executive feels that the Lord Advocate’s guidance is an appropriate way of dealing with attacks on workers other than emergency workers. The point is that emergency workers perform a very difficult service in trying circumstances. They need to respond quickly and if they are assaulted or obstructed the consequences can be very severe, not only for themselves but for the people caught up in the emergency. That is why we are taking specific and different action for them.

Marlyn Glen (North East Scotland) (Lab): I want to ask about the definition of emergency circumstances in section 1(5). I accept that such circumstances might cause “serious injury”, “serious illness” or “death”, but could you give us examples of circumstances that are “present and imminent” or that are “likely to cause … serious harm to the environment”?

What does “serious harm” mean in the context of section 1(5)(ii), which refers to “plants and animals and the fabric of buildings”? 
Gery McLaughlin: It is worth while to consider the definition of emergency circumstances alongside the definition of emergency workers in section 1, because the two are meant to match up. The reference to serious threats to the environment is intended to cover specific instances, such as fire services responding to major fires—for example, in the case of buildings, the Edinburgh old town fire or, in the case of plants, forest fires. I accept that it might seem odd to refer to "plants" otherwise.

Marilyn Glen: So you are talking about large-scale fires, as well as serious ones.

Gery McLaughlin: The phrase "serious harm to the environment" is meant to encapsulate that. In any individual circumstance, it would be for the court to interpret whether something was an emergency under that definition.

Marilyn Glen: I was concerned in case the provision was open to interpretation.

Gery McLaughlin: It is intended to capture the type of emergency circumstances to which emergency workers, as defined in section 1, respond and therefore to catch any assaults or obstruction that take place while they are in the process of responding.

Marilyn Glen: I was also worried about the fact that circumstances can be "present or imminent", because if an emergency were only imminent, somebody would have to make a judgment call.

Gery McLaughlin: To continue using the example of the fire services, "imminent" might cover a situation in which the fire brigade responds to a fire alarm that has been set off by smoke detectors. The fire might not have started— or it might not have begun to do major damage— but if the fire brigade did not react to the alarm and the emergency were to get out of control, it would become a major incident. 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.

Marilyn Glen: I appreciate that a discussion needs to be had about which workers should be covered, but are the health workers whom the bill covers only those in the accident and emergency department, and not those in the rest of the hospital?

Gery McLaughlin: The bill contains two separate provisions on health workers. You refer to section 3, which covers hospital accident and emergency premises, but section 1 covers medical staff responding to an emergency more generally. Section 3 effectively ensures that, rather than it being necessary to prove that there is an emergency in an accident and emergency department, an emergency is deemed to be in continual operation in such departments. Medical staff who respond to an emergency elsewhere in a hospital would be covered by section 1.

Marilyn Glen: So they are covered. Thank you very much.

Margaret Smith (Edinburgh West) (LD): In the debate on the protection of emergency workers that we had in January, the minister was questioned about hoax calls and said that the bill would act against such calls. There is a big problem with people who make hoax calls in which they say that there is an emergency and who then attack the fire crews or other emergency workers when they get into position. What is the existing legal position in relation to those who make hoax calls, and what would it be under the bill?

Gery McLaughlin: Emergency workers who respond to a hoax call as an emergency will benefit from the protection of the bill. If a hoax call for a fire engine were made and the fire crew were assaulted when they got there, which has happened on occasion, the firemen involved would be protected by the bill's provisions. The penalties for making hoax calls are dealt with not in the bill, but in fire services legislation. I do not have details of those penalties available immediately, but I know that they are covered in that legislation.

Margaret Smith: Does the Executive intend to consider those penalties when it reviews fire services legislation in general?

Gery McLaughlin: Yes, that is the intention.

The Convener: Would a non-medical person who assists an emergency worker be covered if they were obstructed?

Gery McLaughlin: Yes. Sections 1 and 3 provide for a person who is assisting an emergency worker who is responding to an emergency to benefit from the same protection. In a hospital, anyone who was assisting a doctor or a nurse in responding to an emergency would benefit from the protection that is set out in the bill.

11:30

Margaret Mitchell (Central Scotland) (Con): The penalties that are available for a conviction of common-law assault under solemn proceedings are greater than those in the bill, so what cases will be tried under the new offence?

Gery McLaughlin: The short answer is that such cases will be those for which the level of offences in the bill is suitable. The most serious offences will continue to be prosecuted under common law. If a life-threatening assault had been
committed, a nine-month penalty might not be appropriate and the full provisions of the common law in solemn procedure in the High Court might be more appropriate. Perhaps Shona Barrie of the Crown Office will comment on that later. It would be for the Crown Office to decide under which provisions to try an offence. As with the current statutory protection under the Police (Scotland) Act 1967, more serious assaults would continue to be tried under the common law rather than under statutory provisions.

Margaret Mitchell: Would the emergency workers whom the 1967 act and the 1947 act do not cover fit into the new offence, which is not serious enough for a solemn prosecution?

Gery McLaughlin: I started by talking about offences under the bill, rather than categories of people.

Margaret Mitchell: I am thinking about cases.

Gery McLaughlin: It depends on the seriousness of an offence. If an offence were sufficiently serious to merit a longer sentence than nine months, which is the maximum for which the bill provides, the case would be tried under common law, perhaps in the High Court. Sentences of much more than nine months have been given for assaults on emergency workers. That flexibility will continue to be available after the bill is passed. However, the bill deals with a less serious variety of offending behaviour.

Margaret Mitchell: We are asking about cases because the word “offences” sounds remote. If we talk about cases, we are discussing people and scenarios, which gives us a better idea of who the new offence is aimed at and where the gap in provision is that needs to be addressed, which is separate from the deterrent element that has been mentioned as the bill’s raison d’être.

Gery McLaughlin: As I have said, the primary motivation is not necessarily to address the gap in the law. However, as Alison Coull said, the bill will fill potential gaps. The intention is to use the bill to target people who have assaulted or obstructed emergency workers in such circumstances, but not when the assault is serious and would benefit from a longer sentence.

Margaret Smith: One subject on which people dwelled in the recent debate on protecting emergency workers was that of which workers the new offence should cover. You touched on some reasons for focusing on emergency workers and I ask you to expand on that. Is the focus on emergency workers because they are considered particularly vulnerable in what they do or because the consequences of an assault on such a worker could be serious not only for the worker, but for the person whom they were helping? Are the reasons a combination of both those factors?

Gery McLaughlin: It is a combination of both. Your second reason is certainly a major issue behind the bill—assaults on emergency workers implicitly impact on the people who are involved in the emergency. That is a particular reason for the bill and is behind our distinguishing the groups of emergency workers in section 1.

Margaret Smith: Are there any issues connected with the drafting of the legislation, or with the prosecution of offences, that would make it difficult to extend the scope of the legislation to cover other public service workers or other workers who provide a service to the public?

I asked about the vulnerability of workers. One group that we have discussed are public sector workers who might visit people in their own homes. I am thinking about workers such as social workers or housing officials who, because of the nature of the work, are often women and often go alone to people’s homes. Those workers could be vulnerable, so could the legislation be extended to cover them?

Gery McLaughlin: Obviously, the Executive decided that the appropriate groups to protect are those that are set out in the bill. On the question whether the drafting could lead to problems in extending the definitions, from a technical point of view rather than from a policy point of view, the major issue might be that the groups covered by the bill are, in essence, the traditional blue-light services, in which people tend to be uniformed and fairly easily distinguishable. I will ask Alison Coull to talk about the evidential provisions in the bill but, in essence, they require that someone should have known that a person was an emergency worker responding to an emergency. The circumstances that Margaret Smith describes may be more difficult from an evidential point of view.

Alison Coull: I do not have much to add. No doubt, it would be technically possible to produce legislation that covered public sector workers, but issues of proof would arise. In the way in which the bill is drafted, mens rea is required—that is, the person must know, or ought to know, that the worker is an emergency worker. Difficulties could arise in proving that if the bill were extended to cover public sector workers in general, who might not be easily identifiable as such to the accused.

Gery McLaughlin: The specific provision is in section 2(4)(b), according to which circumstances are held to be emergency circumstances only if “a reasonable person would have grounds for believing that the emergency worker is or might be responding to emergency circumstances.”

As I say, that might be more difficult to prove in the circumstances that Margaret Smith has described. Generally, housing officers are not responding to
emergency circumstances—such as life-threatening injuries—as set out in the bill.

**Margaret Smith:** I understand what you are saying and I think that the bill gives an example of a situation in which problems of identification may arise. When somebody such as a general practitioner is responding to an emergency, somebody may assault him for all sorts of reasons, not knowing that he was answering an emergency call. Equally, it could be argued that a social worker going into a child-protection situation may be in an emergency situation in certain circumstances. Those are two examples of difficult situations.

**Gery McLaughlin:** In general, emergency workers wear a uniform, but, as you said, GPs do not. Therefore, that might make a case more difficult to prove in court.

**Margaret Smith:** A GP would have to find a way of making it known to an assailant that they were a doctor.

**Gery McLaughlin:** Yes.

**Margaret Smith:** I want to pick up on another group of workers: mountain rescue teams. It has been said that they are an example of a group that could be brought within the bill’s scope. Is the Executive considering doing that?

**Gery McLaughlin:** The Executive is considering that matter, but it has not come to a firm conclusion on it.

**Alison Coull:** May I clarify something? Your latter line of questioning makes me think that you might be looking at a different aspect of the bill. On whether it is technically possible to extend the bill’s definitions to cover other workers, there is an order-making power in section 6 to add groups of workers. However, that provision is restricted, because a person cannot be added unless it is considered that that person’s functions or activities mean that they are likely to deal with emergency circumstances. Subject to that test, there is scope in the bill to add new categories of people. For example, it would not be possible to add all public sector workers, but it would be possible to add specific categories.

**Margaret Smith:** Okay.

**Mr Maxwell:** I have a couple of points for clarification. Uniformed officers have been mentioned. Obviously, emergency workers’ uniforms are an easy way of identifying them. However, if an off-duty police officer who was not wearing a uniform responded to an emergency, would the bill cover them?

**Gery McLaughlin:** The bill applies to all constables. I do not know whether there is a legal aspect regarding off-duty police.

**Mr Maxwell:** You made the point earlier that a reasonable person would have to be able to tell that someone was responding to an emergency.

**Gery McLaughlin:** Wearing a uniform obviously makes identification easier under section 2(4)(b). However, as has been pointed out, if someone has made it known that they are a doctor or a police constable who is responding to an emergency situation, it would depend on the circumstances of the case whether a court would decide that a reasonable person ought to have understood that the person was responding to emergency circumstances.

**Mr Maxwell:** What would happen if a member of the public was assisting an emergency worker out of doors at the scene of an accident or a fire? Would they be covered in the same way as a member of staff in a hospital who assists a nurse or doctor is covered?

**Gery McLaughlin:** Yes. Section 1(2) states: “A person who assaults, obstructs or hinders another while that other person is assisting an emergency worker who is responding to emergency circumstances commits an offence.” That provision is not exclusive, so it covers the situation that you described.

**Mr Maxwell:** I have a final question. Section 1(3)(a) refers to “a constable”. Does that include special constables? Further, are neighbourhood wardens—a relatively new introduction—also covered as emergency workers?

**Gery McLaughlin:** I am not certain that neighbourhood wardens are constables and that they are covered.

**Alison Coull:** I do not think that a neighbourhood warden would be covered. The definition of “constable” goes back to the Police (Scotland) Act 1967 and it means a constable in a police force.

**Mr Maxwell:** So that would include special constables.

**Alison Coull:** Yes, I understand that that would include special constables.

**Mr Maxwell:** But not neighbourhood wardens.

**Alison Coull:** No.

**The Convener:** I have a general question about who will be covered by the legislation. If the bill is passed, will it mirror the section 41(1) offence in the 1967 act of obstructing or hindering the police? Is that what you are trying to create along with expanding the types of people who will be covered?

**Alison Coull:** It mirrors the language, as it uses terms such as “obstructing” or “hindering”, but case law under the Police (Scotland) Act 1967
requires there to be a physical element to that. The bill makes it clear that hindering or obstructing by non-physical means is covered.

11:45

**The Convener:** On the policy intention, does the Executive think that the police carry out their duties and functions in the same way as other emergency workers? Have you considered the thought that the police are the last line of defence, and that if emergency workers are obstructed in their duties, they are likely to call the police to assist them? Should the provisions in the bill be the same as those in the 1967 act, or should there be added protection for the police as the last line of defence?

**Gery McLaughlin:** That was considered, but the Executive's view is that the appropriate course of action is to provide for equivalent protection for the different categories of emergency worker so that they are on a level footing with the police.

**The Convener:** So there will be no difference in how the law will view the role of the police.

**Gery McLaughlin:** For emergency circumstances, that is correct. The provision in the Police (Scotland) Act 1967 is wider than emergency circumstances.

**The Convener:** The difference is that if someone assaulted or hindered a police officer who was not carrying out an emergency duty, they would still be committing an offence. Under the bill, assaulting or hindering an emergency worker who is in the course of providing emergency assistance will also be an offence.

**Gery McLaughlin:** Yes.

**Bill Butler (Glasgow Anniesland) (Lab):** I turn to the application of the proposed legislation. Will you outline the types of behaviour that will be covered by the “obstructing” or “hindering” elements of the offences in the bill? Will you include examples that do not involve physical means?

I know that section 2(2) mentions “A person who gives false information” but section 2(3) “does not prejudice the generality of subsection (1)(a) above.”

I am interested in further examples of obstructing and hindering that do not involve physical means.

**Gery McLaughlin:** As Alison Coull said, the specific reason for including that was to respond to the case law for the Police (Scotland) Act 1967, which held that non-physical obstruction was not covered by the 1967 act.

**Bill Butler:** Do you have any other examples of non-physical obstruction or hindrance?

**Gery McLaughlin:** The false information provision is the one that I am aware of. I am not sure whether Alison Coull is aware of any others from consideration of case law.

**Bill Butler:** Are there any other examples, or is that the only one?

**Alison Coull:** I do not have specific examples.

**Bill Butler:** Section 2(3) says: “Subsection (2) above does not prejudice the generality of subsection (1)(a) above”.

Is that provision in the bill so that if the bill becomes an act and some other non-physical obstruction pops up, it will then be included?

**Gery McLaughlin:** As I have said, case law under the 1967 act held that non-physical obstruction was not covered.

**Bill Butler:** Ms Coull, will you answer my particular question?

**Alison Coull:** The provision is in the bill more for the avoidance of doubt and to make it absolutely clear that giving false information is to be covered by the legislation, because it is regarded as quite a serious matter in the context of emergency circumstances. It is quite possible that such behaviour would be covered without that provision, but it has been put in to make absolutely certain.

**Bill Butler:** So the bill does not cover any other type of non-physical behaviour.

**Alison Coull:** I am not sure that I would go that far. I do not have examples today.

**Bill Butler:** I have another question about the application of the legislation. Is there any danger that people involved in a stressful emergency situation—anxious relatives waiting at a hospital, people suffering from mental health problems, or someone who is in a distressed state because they have suffered an injury—might be unfairly criminalised under the legislation?

**Gery McLaughlin:** Whether they are charged with an offence under the bill would depend on the circumstances of the case. If it was deemed appropriate for them to be charged, the case would go to court and the court would decide whether they should be found guilty. I am confident that anyone who is found guilty of an
offence under the bill will not have been unfairly criminalised.

**Bill Butler:** Does Ms Coull have anything to add?

**Alison Coull:** Not really. The Crown Office might want to comment on that, as it takes account of all the circumstances.

**Bill Butler:** Why does section 1 not contain the words “molests” or “resists”? Section 41(1) of the Police (Scotland) Act 1967 uses the words, “assaults, resists, obstructs, molests or hinders”.

**Alison Coull:** When we examined the provisions in the existing police legislation, we felt that the concept that is covered by “resists” relates to resisting a constable in the course of his duty—resisting arrest, basically.

**Bill Butler:** It is already covered, in other words.

**Alison Coull:** Again, it would depend on the circumstances. As you have said, the Police (Scotland) Act 1967 makes express provision for someone who is resisting arrest. We have not incorporated that provision because we think that everything that we want to cover is covered by the words “obstructs or hinders”.

We have been unable to find any case law relating to the word “molests” in the 1967 act. I think that it is probably obsolete, in a sense.

**Bill Butler:** Are you saying that it has fallen into desuetude?

**Alison Coull:** Yes. The feeling was that it was a bit of a dead letter. In the new legislation, we wanted to focus on obstructing and hindering behaviour.

**The Convener:** I will put a scenario to you on whether we need to include the word “resists” in the legislation. In my former life, I represented ambulance staff, who regularly complained that the obstruction came not from people in the vicinity, but from patients, who, because they had had too much to drink or whatever, resisted and obstructed emergency workers as they tried to get them into the ambulance. Have you thought about situations in which the victim of the accident obstructs the emergency worker?

**Gery McLaughlin:** I do not know whether Alison Coull wants to comment on whether that scenario is covered by the words “obstructs or hinders”. I am not sure that it would be terribly useful to prosecute in that case, as it would be the individual involved who would suffer the disbenefits of not being treated appropriately.

**The Convener:** I simply mention the point for consideration. Emergency workers have the right to say that they will not treat someone who is kicking and punching them but I cannot think of a person who would do that. Emergency workers want to carry out their function. It might be worth considering the fact that there are a minority of cases in which the person who is obstructing the emergency worker is the person whom the emergency worker is trying to help. Perhaps you would want to send out a message about such situations.

**Margaret Mitchell:** The evidential applications were covered in Margaret Smith’s questions so, if you do not mind, I will return to section 6 and the power to modify the bill. Will the bill in any way cover teachers who find themselves in a violent situation, given the increase in violent assaults on teachers? Will it cover health workers, for example when they are doing psychiatric assessments of people in their homes? Where would any such provisions fit in?

**Gery McLaughlin:** Teachers do not come under the classes of worker that are set out in section 1. A health worker who is either a nurse or a medical practitioner within the meaning of section 1, who is in a situation that is deemed to be an emergency under the terms of the bill, will be covered.

**Margaret Mitchell:** Someone not covered by the bill who was in an emergency situation would simply be covered by the common-law offence of assault; if the incident was particularly grave, the penalties would probably be more severe.

**Gery McLaughlin:** Outside emergency circumstances, everyone, whether they are covered by the bill or not, is covered by common law or, in the case of the fire and police services, by the relevant statutory provisions.

**Margaret Mitchell:** So you do not see any scope to include teachers in emergency situations—potentially violent situations—under the bill. Introducing a new deterrent effect and sending out a strong message that such behaviour is not acceptable are major aspects of establishing the new offence.

**Gery McLaughlin:** In considering how to deal with assaults against and the abuse of public service workers, the Executive decided to deal with emergency service workers in new legislation. The definition of emergency service workers has not included teachers. However, work on a package of measures to cover public service workers more generally is under way. Teachers and other people who work in educational settings could be covered by those measures, which are not legislative in nature.

**Bill Butler:** I refer to paragraph 16 of the policy memorandum. What is the evidential basis for predicting that the proposed legislation will not lead to a significant increase in the number of prosecutions for attacks on emergency workers?”
Gery McLaughlin: I think that the reason behind that relates to our examination earlier in this discussion of the overlap between the bill’s provisions and current common-law provisions and statutory offences. The reasoning is that the provisions under the bill will not criminalise a large section of behaviour that is not already criminal. The intention is for the new legislation to have a deterrent effect, which should decrease the number of offences and prosecutions.

Bill Butler: That might be the logical assumption, and it might be seen to be correct if the bill becomes an act, but what is the evidential basis for making that assumption?

Gery McLaughlin: Obviously, we do not have any evidence about future trends. I cannot show you any statistics about what will happen; I am describing our thought process on what will happen as a result of the introduction of the proposed legislation.

Marilyn Glen: The deterrence argument is an old one—I would reject it in different circumstances and I find it difficult here. How effective will the bill be as a deterrent? Will you expand on the package of measures that are to accompany the bill?

12:00

Gery McLaughlin: I can only repeat the Executive’s view that the bill—which will clearly delineate the type of behaviour that will be criminalised—plus the public commitment to dealing with assaults on emergency workers, should have a deterrent effect. Obviously, the outcomes remain to be seen.

The Executive has been working on the wider package of measures in partnership with employers, trade unions and other professional bodies. A lay member of the Scottish Trades Union Congress has been seconded to the Executive to help to develop the package. The minister may be able to say more about the details when he appears. Little has been announced publicly, other than that the measures may include a public awareness campaign, the provision of training, the education of children and improved recording and reporting of incidents. As the convener has said, because of the wide incidence of assaults on and abuse of workers, they have become so routine that they are not even recorded or reported in some circumstances. That is one of the issues with which the wider package of measures will aim to deal.

Marilyn Glen: What is the timescale for the introduction of the wider package of measures?

Gery McLaughlin: An announcement on the details will be made during the summer. The minister might be able to say more about that when he appears before the committee.

Mr Maxwell: I want to return to the issues that Bill Butler raised. I understand why you say that there will not be a sudden increase in the number of prosecutions, but what is the basis for the prediction, which I think is in the financial memorandum, that the bill will not lead to a significant change in sentencing patterns, given that the bill will introduce new offences and penalties? Surely part of the purpose behind the bill is for the courts to use it to focus on attacks on emergency workers.

Gery McLaughlin: The assumption that sentencing patterns will not change is based on the fact that, while the Executive’s policy will be clearly stated, sentencing in individual cases is a matter for the courts and one in which the Executive does not interfere. We do not start with the assumption that we will interfere in the courts’ sentencing behaviour.

Mr Maxwell: I do not suggest that that is the intention. When I asked earlier about the reason for introducing the bill, the response was that it will provide for more severe sentences. If that is the case, surely the expectation is that the courts will use the measures against those who assault emergency workers, so there will be a change in sentencing patterns because the penalties will be more severe.

Gery McLaughlin: To be clear, the bill will provide for more severe sentences than is the case at present under the summary procedure. We expect a change in the pattern of sentences in the summary courts simply because the bill provides for higher sentences there. However, if we consider sentences for assaults on emergency workers as a whole, in cases in which the current sentencing power of the sheriff summary court is not sufficient, the case would be taken under solemn procedure. That means that the overall sentencing pattern afterwards might not be vastly different from before. Does that answer the question?

Mr Maxwell: I was not talking about solemn procedure because, obviously, that is different. However, I would have thought that there would be a clear shift in sentencing patterns under summary procedure, which could have an impact on prison numbers, with all the financial implications and other problems that follow on from that. The Executive’s current drive is to remove short-term sentences and to put people on non-custodial sentences to keep them out of prison. Therefore, I am interested to hear you say that the bill will not lead to a significant change in sentencing patterns.
Gery McLaughlin: I agree with the first part of your statement that the bill will lead to a change in sentencing patterns in the summary courts. However, when one considers the overall picture, there will be no change, and so there will be no knock-on effect on the prison population as you suggest. Currently, cases for which the summary maximums are not sufficient will be taken under solemn procedure, which means that those found guilty can receive a sentence of up to nine months.

The Convener: Is it possible to provide the committee with the statistics that you have on offences against fire crews and the other categories of workers that are covered in the bill? I would be interested to see what statistics are available at the moment. In your introduction, you talked about what sparked off the desire for the bill. All members are aware of the attacks on fire crews. Can you provide us with those statistics? It would be useful to see whether one service is more vulnerable than another.

Gery McLaughlin: Statistics is probably an exaggeration of the term that should be used to describe the information that is available at the moment. Although information is available for the various services, it tends to be sporadic. In some places, it is collected consistently and in others it is not collected at all. It is difficult to make comparisons between different parts of the country let alone between different services.

The Convener: It would be helpful to have anything that would give us a picture of what led you to the conclusion that we need to legislate in this area.

Gery McLaughlin: We can certainly provide the committee with the information that we have at present.

The Convener: That would be helpful. Thank you.

Section 1(3)(d)(i) includes the category of "a prison officer, that is to say ... a person who holds a post, otherwise than as a medical officer"

and section 1(3)(d)(ii) includes the category of "prison custody officer". Who are you thinking about under the second category?

Gery McLaughlin: Alison Coull might want to expand on what I say, but in essence the two different provisions are intended to cover Scottish Prison Service employees and people who work in Kilmarnock prison in roles other than as SPS employees.

The Convener: Is that just prison officers or are you thinking more widely than that?

Gery McLaughlin: Generally, it is prison officers, but the category of workers in the privatised prison comes under different legislation.

The Convener: So would Reliance staff be covered by section 1(3)(d)(ii)? Do they come under the definition of a custody officer under part VIII of the Criminal Justice and Public Order Act 1994?

Gery McLaughlin: My understanding is that section 1(3)(d)(i) would cover Scottish Prison Service employees both in the prison and when they are on escort duty, in so far as they are responding to emergencies, and section 1(3)(d)(ii) would cover privatised prison guards whether they are working in the prison or on escort duty, so Reliance staff would be covered as well.

The Convener: I want to take this line of questioning a little further. I can easily see why fire and ambulance crews are included, but I am not sure why crews of Royal National Lifeboat Institution boats are included when other workers are not. An emergency is defined in section 1(5) as circumstances that:

(a) are causing or are likely to cause—

(i) serious injury to or the serious illness of a person;

(ii) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings); or

(iii) a worsening of any such injury, illness or harm; or

(b) are likely to cause the death of a person.

What scenario might constitute an emergency for a prison escort officer? I presume that a prisoner's escape would not be an emergency.

Gery McLaughlin: Prison officers are primarily responsible for responding to emergency situations in prisons. They perform a similar role to the police in prisons and when they are on escort duty, although the circumstances that constitute an emergency for the purposes of the bill are more likely to be encountered in a prison than during escort duty.

The Convener: That is logical. I do not think that it is necessary for section 1(3)(d)(ii) to apply outside prisons. In what circumstances do you envisage that someone other than a prison officer would need to be protected in an emergency outwith a prison?

Gery McLaughlin: A prisoner might assault another prisoner. An officer might have to intervene to prevent an assault, but such an incident would be more likely to happen inside a prison than on escort duty, as I said. In the confines of a prison, prison officers operate in a similar way to the police. They perform a similar role in mobile prisons, by which I mean the vans that are used for escorting prisoners.
The Convener: An incident might take place that was likely to cause “serious injury to another person”.

Gery McLaughlin: Such a situation seems to be most likely to trigger the protection that the bill would afford.

The Convener: I assume that a prisoner’s escape from custody would not constitute an emergency. In such circumstances, would it have to be proved that the incident could lead to “serious injury”?

Gery McLaughlin: The bill deals only with emergency circumstances, but separate provisions in prison legislation deal with matters such as escapes and assaults on officers. It would obviously be an offence under prison regulations to assist in an escape, for example.

Mr Maxwell: Section 1(3)(f) includes the definition of an emergency worker:

“a member of the crew of a vessel operated by the Royal National Lifeboat Institute or a person who musters the crew of such a vessel or attends to its launch”.

I assume that that would not apply to the crew of an inshore rescue boat, which would not necessarily be operated by the RNLI. There are also rescue boats that are operated by volunteers on various lochs.

Gery McLaughlin: I understand that the bill would not apply to such people unless they were RNLI personnel.

Mr Maxwell: Why not?

Gery McLaughlin: I am not aware that those groups were mentioned during the consultation on which groups should be included in the bill. We can certainly look into that.

Mr Maxwell: I hope that you will do so. Crews of inshore boats carry out an emergency function, so it seems to be strange that the definition would be restricted to people who do exactly the same job, but who happen to be RNLI personnel.

Gery McLaughlin: The intention was not to be restrictive. If other groups of people respond to emergencies in a similar way, we can examine whether there is a case for their inclusion. The order-making powers in section 6 would permit us to do that by way of regulation.

Mr Maxwell: Are you saying that you would currently have difficulty prosecuting a case in which somebody deliberately misdirected a paramedic or a fire emergency vehicle, but a case of misdirecting a police officer would be straightforward?

Shona Barrie: Yes. I suppose that there could be situations in which there has been an attempt to pervert the course of justice or to defeat the ends of justice but, as with situations that involve wardens would not be included. If, when you have had time to consider that matter you take another view on it, it would be helpful if you would let us know.

I welcome Shona Barrie, who is the team leader of the policy group of the Crown Office and Procurator Fiscal Service. We have the same type of questions for you that we had for our previous panel.

Mr Maxwell: I will start with a question that I asked at the start of the evidence session with the previous witnesses. Does the Crown Office believe that any new criminal offences are being created? To what extent will the bill make criminal any behaviour that is not criminal under common law?

Shona Barrie (Crown Office and Procurator Fiscal Service): I listened with interest to the distinctions that Alison Coull drew. At the moment we have the panoply of common-law offences and we are able to meet the circumstances of most of the conduct that is presented to us. Committee members will be aware that we have the flexibility in common law to deal with offences such as breach of the peace. However, it appears that there could be conduct on the margins that the bill will cover explicitly, which we might previously have required to craft into a breach of the peace offence. Is that helpful?

Mr Maxwell: Yes. The important phrase that you used there was “on the margins”. I have difficulty understanding what will be added to the current criminal law, which allows breach of the peace and assault-type offences to be pursued. Will you give us a practical example of where you think the bill will add to the current law? At what margins would it be used?

Shona Barrie: I was racking my brains during the questions that the previous witnesses were asked. An example that occurred to me relates to the provision of false information, which we might currently frame as a charge of wasting police time at common law. However, if that conduct was directed at a paramedic, we might not have the equivalent charge at common law. Examples of conduct were starting to emerge in my mind around those sorts of areas. I hope that I have provided a relevant example.
wasting police time, they tend to require to be housed in the conduct of criminal inquiries. The point that I was trying to make was that perhaps a case can be rendered criminal because a police officer is making inquiries and pursuing the course of justice. Currently, depending on the circumstances, if a paramedic makes a request of someone and that request is not fulfilled or there is a wall of silence, although that might render ineffective that emergency worker’s ability to deal with the situation, such behaviour might not, in fact, constitute a criminal offence.

Mr Maxwell: If there was a fire appliance and crew at a fire in a building and a member of the public deliberately gave false information to that crew by saying, for example, that persons were trapped in the building, which led to the crew entering premises that they would not otherwise necessarily have entered and endangering their lives, could that person not currently be prosecuted?

Shona Barrie: I want to clarify the scenario. Are you saying that people were in danger in the burning building, but that the crew was misdirected to somewhere else?

Mr Maxwell: No. If a crew turns up at a derelict building that has been set on fire, its first concern will be whether there are persons in that building—I do not mean people living there, but perhaps children who have been using the building. That is a common occurrence. If somebody deliberately said to the crew that there were people in the building, but knew full well that that was not the case, and the crew used that information and did not fight the fire from outside the building, but went into it—

Shona Barrie: And put their lives at risk?

Mr Maxwell: Yes. If that happened, surely that person could be prosecuted.

Shona Barrie: Yes. I would be content that we would be able to find a charge in those circumstances.

Mr Maxwell: I would have thought so. That is why I am having difficulty in trying to determine exactly the margins that we are talking about.

Shona Barrie: In the kind of situation that you describe in particular, the more serious the consequences, the more apparent it will be that endangerment has been caused by such actions or inactions. I think that the bill covers a lower level of conduct. Of course, it is geared at summary conduct, for want of a better phrase, where the consequences are perhaps not quite so grave, but the immediate need for co-operation, clarity, information and so on has been impeded.

Marilyn Glen: Do you foresee any difficulties in the definition of “emergency circumstances” in the bill?

Shona Barrie: The test that the bill provides is essentially that a reasonable person would have grounds for anticipating that a situation will be an emergency. I do not think that the courts would have any difficulty with that test. I understand that evidential provisions are also built in that the test can come from only one source. The prosecutor would therefore lead information or evidence from the worker who was affected that that person understood that they were responding to an emergency situation.

Margaret Mitchell: I would like to explore the kind of cases—specifically assault cases—that would not be prosecuted under solemn procedure and which would not therefore carry the same penalties. Do you have in mind the kind of cases that would be covered by the new offence?

Shona Barrie: Again, earlier questions have inspired me. I have found it easier to consider factors that might be absent—for example, if substantial injury is absent from an assault, that might be the kind of assault that would be dealt with at summary level, using such a provision.

The absence of a significant analogous record of previous convictions for the accused and the absence of any adverse consequences for the third party who was awaiting delivery of those emergency services are factors that could indicate that that would be the appropriate level and the appropriate offence.

Margaret Mitchell: Do you have an example of a third party being affected?

Shona Barrie: It is a question of balance. If an accused person was physically assaulting a paramedic while someone lay bleeding on the ground, even though the physical assault per se might not have been particularly violent—I do not like describing it in those terms—the fact that the assault was preventing the delivery of an emergency service to someone who was in acute need might sway the balance as regards our determination of where the public interest lay.

Margaret Mitchell: That is helpful.

Margaret Smith: Will you explain the main reason for focusing on emergency workers? Is it because they are particularly vulnerable or—to pick up on your last point—is it because of the consequences not only for them but for the people whom they try to help?

Shona Barrie: I understood from the bill team’s evidence that both those limbs were motivations behind the bill. I suppose that it is not really for the Crown Office and Procurator Fiscal Service to
enter the territory of policy intention. The scope of the bill is more a matter for the bill team.

**Margaret Smith:** Do you think that extending the scope of the legislation to other public service workers would create any difficulties in relation to effective prosecution of offences under the bill? Earlier, I gave the example of a social worker who goes into someone’s home to deal with a child-protection case.

**Shona Barrie:** Yes. I think that Alison Coull spoke about the mens rea aspects. If a social worker was assaulted in the circumstances that you described, the provisions of the bill as drafted would require a test of reasonableness whereby the accused appreciated the capacity in which that person was working. A regime of the kind that you propose would have to have built into it the opportunity for the person delivering the emergency service to explain who they were and what they were doing. Extension of the bill’s scope in the manner that you describe could bring evidential challenges.

**Margaret Smith:** I could pursue further the scenario that I have just cited, but I will leave things at that.

**Bill Butler:** I want to explore the Crown Office’s point of view on the bill’s application. Will you outline the types of behaviour that would be covered by the “obstructs” and “hinders” elements of the offences in the bill? Do you have any ideas about including examples of non-physical means of obstructing or hindering other than that of providing false information?

**Shona Barrie:** An example of such a scenario that struck me as I was sitting in the public gallery was one in which, rather than provide false information, someone simply failed to provide any information.

**Bill Butler:** That would be an offence of omission rather than commission.

**Shona Barrie:** Yes. That kind of wilful obstruction is perhaps an example that we could build on.

**Bill Butler:** For the committee’s information, will you also outline the types of physical behaviour that would be covered by the “obstructs” and “hinders” provisions?

**Shona Barrie:** Do you mean physical behaviours?

**Bill Butler:** Yes.

**Shona Barrie:** In the course of fulfilling my duties as a procurator fiscal, I have seen situations in which people have not allowed entry, doors have been slammed in people’s faces and attempts have been made to interfere with paramedics’ equipment—for example, by whipping off oxygen masks. That is the kind of conduct that is being referred to.

12:30

**Bill Butler:** That is helpful, thank you. I turn to a question that I posed to the first set of witnesses. In the Crown Office’s view, is there any danger that people who are involved in stressful emergency situations, for instance people who are in a disturbed state of mind because they have suffered an injury, will be unfairly criminalised because of the proposed legislation?

**Shona Barrie:** Information on the motivation for the conduct, for example information that there was a medical reason for the person’s behaviour, such as an injury that they had sustained, would weigh heavily in making a decision on whether the public interest would be served by a prosecution. Mitigatory material such as that would have to be taken into account.

**Bill Butler:** So, you see no circumstances in which someone could be unfairly criminalised because of the proposed legislation.

**Shona Barrie:** The matter will be the subject of the Lord Advocate’s guidance to prosecutors, to ensure that appropriate care is taken. It might even require instructions on police reporting of such incidents.

**Bill Butler:** That is helpful. I have another issue that I raised with the first set of witnesses. What are the Crown Office’s reasons for not including references to “resists” or “molests” in the bill? We understand that the “molests” provision has never really been used. On “resists”, the convener gave the example of an ambulance worker who is being resisted by the person whom they are trying to aid.

**Shona Barrie:** The bill team is taking that on board. The Crown Office is not behind the drafting of the particulars of the bill. If scenarios are presented, we will have to have an open mind. However, “assaults, obstructs or hinders” appears to be fairly comprehensive.

**Margaret Mitchell:** Do you foresee any difficulties in establishing a standard of proof in a situation where the emergency worker is not in uniform? How would you establish that the guilty person knew that the person was an emergency worker?

**Shona Barrie:** There are evidential concessions in the bill. It will not be necessary to corroborate the status of the emergency worker. There is also the test of whether, to a reasonable observer, it would be apparent that the person was an emergency worker delivering an emergency service. The fact that one source of evidence can be used is helpful to the prosecution. We imagine that the information would be led from the victim.
Margaret Mitchell: So the victim's testimony would be enough, even if at the time of the incident they were not wearing a uniform of any kind in the emergency situation.

Shona Barrie: I hope that I am not misrepresenting the bill team. We are dealing with sections 2(4) and 2(6). It will always be extremely helpful in terms of providing objective evidence to a court if a paramedic wears a green uniform and arrives in an ambulance with insignia emblazoned all over the side of it. If the victim was a GP, evidence could be led from him that he had arrived at the scene and was attempting to administer first aid. The sheriff in the summary prosecution could hear that the GP had presented himself and, for example, had a medical bag beside him. I am sure that there would be lots of other adminicles of evidence that we would seek to lead to support the scenario and to satisfy the test that any reasonable observer would be satisfied that that was an emergency worker delivering an emergency service.

Margaret Mitchell: So what you describe is almost corroboration by any other name in that there would be circumstantial evidence, backed up by the victim—

Shona Barrie: It is the habit of prosecutors to look to adduce any adminicle of evidence that they can find. They generally take a belt-and-braces approach. My position is that the bill was drafted in a useful fashion in that it states explicitly that we do not require corroboration.

The Convener: On that point, section 1(3) of the bill simply refers to

"a member of a fire brigade"

and

"a person acting for the Scottish Ambulance Service".

I presume that, if it were proved at the time that the person was a member of a fire brigade or the Scottish Ambulance Service, one would not have to pursue the matter. The fact that they were not in uniform might be a disciplinary offence for the service.

Shona Barrie: I agree.

The Convener: What about the person who assists in the emergency? Would they have to identify themselves in some way?

Shona Barrie: That would probably rely on the identification of the principal who was administering at the emergency. The assistant might be kneeling beside a GP with his medical bag open, loosening someone's tie or assisting in the administration of cardiopulmonary resuscitation—I suppose that one would return to the test of what the reasonable observer would make of the situation.

The Convener: Do we even need to consider that matter, as the bill refers only to “a person acting for” one of the services?

Shona Barrie: I will leave that question to the bill team, whose members are the experts in drafting the bill.

Bill Butler: I raised this question with the first set of witnesses. Paragraph 16 of the policy memorandum makes the assumption that the bill would not lead to a significant increase in the number of prosecutions for attacks on emergency workers. Is the Crown Office and Procurator Fiscal Service content with that assumption?

Shona Barrie: We are broadly content with that assumption. The bill supplements a panoply of criminal charges that are already available to us. It might be that, because the bill provides for explicit penalties, we might, if it is endorsed by Parliament, select it to charge someone with in preference to using the common law, as we would have done before.

Bill Butler: So the increase would be at the margins.

Shona Barrie: I suspect so. We do not know whether enacting the bill will increase reports of such conduct. However, as regards transferring the business that we currently administer, the provisions give us another tool—perhaps a more appropriate tool in certain circumstances—to bring a charge.

Bill Butler: That is helpful.

The Convener: I will ask about the definition of an emergency. I realise that that is a grey area and that the way in which the Executive has decided to draft the bill is not your issue. However, are you happy that the definition will cover the scope that it should when you come to prosecute?

Shona Barrie: I have no problem with the provision as it stands.

The Convener: Do you regard the scope as being too narrow or too wide?

Shona Barrie: I sound like the prosecutor that I am, but I believe that the bill is flexible enough that the individual circumstances of a case can, if appropriate, be brought home to that definition—the definition looks accurate, but flexible.

The Convener: That is a fair answer for a prosecutor. As a legislator, however, I want to be clear about what we are driving at. This seems to be a morning for scenarios. I have just thought of a scenario in which a woman in labour is not covered by the definition of illness or serious injury and an ambulance is hindered from getting to her on time. I do not think that that scenario is covered. Do you think that the bill is flexible enough to cover any stage in that scenario?
Shona Barrie: I suppose that the issue again comes down to the imminent danger in which the woman or her unborn child might be. If the situation were one of escalating danger, it might even be covered by section 1(5)(b), which covers circumstances that are "likely to cause ... death". That might sound fairly extreme, but it is not beyond the bounds of reason.

The Convener: So that is what would have to be shown if you wanted to cover that situation under the bill: you would have to prove that what had happened had resulted in serious injury for the woman or the baby.

Shona Barrie: Section 1(5)(a) uses the words "are causing or are likely to cause ... serious injury to or the serious illness of a person".

If a woman is in urgent need of assistance with labour, it is easy to envisage that the situation could result in serious illness to her or her unborn child. We might require to take further advice on that, but it appears to me that there is latitude in paragraphs (a) and (b) of section 1(5).

The Convener: I am trying to test how wide the scope of the bill is. As a legislator, I would like to know roughly what the parameters are. I accept that as a prosecutor you might want there to be flexibility.

Mr Maxwell: If an ambulance is travelling to an emergency and it is impeded, I assume that that would not be covered by the bill, irrespective of the end circumstances for the individual, whether death, injury or anything else. I assume that road traffic legislation would be used if somebody deliberately impeded the progress of an ambulance.

Shona Barrie: That would depend on our having evidence of the person’s intention. If there were evidence that somebody had no concept of what they might be impeding, it might be appropriate to deal with the matter under road traffic legislation, but if somebody deliberately obstructed an ambulance, preventing it from reaching a stricken person or an obvious emergency—

Mr Maxwell: How would they know? Even if the person refused to move to allow an ambulance to get through the traffic, how would they know that an emergency was involved?

Shona Barrie: That is what I mean about having evidence about the intention behind the actions. I do not think that I could rule out the possibility that the bill might be appropriate. That would depend on the facts, the circumstances and the evidence that were available to us about the conduct.

The Convener: As there are no more questions, I thank Shona Barrie for her helpful evidence.
Emergency Workers Bill: Stage 1 – Financial Memorandum

Thank you for your email of 12 May to Richard Scott, following our provision of evidence to the Finance Committee on the Emergency Workers Bill. You ask about the collection of data on comparable offences introduced by the Scottish Parliament and about offences under section 41 of the Police (Scotland) Act 1967.

Comparable Offences

The most closely analogous offence introduced by the Scottish Parliament is perhaps the statutory aggravation for offences related to religious hatred introduced by section 74 ("Offences aggravated by religious prejudice") of the Criminal Justice (Scotland) Act 2003 While this is not an exact parallel with the offences created by the Emergency Workers Bill (and the consultation paper Protection of Emergency Workers set out the reasons why the Executive do not view that as the best approach in this instance) it is similar in that the statutory provision facilitates the recording, collection and reporting of associated offences and will enable any trends to be accurately tracked. However, the provisions of the 2003 Act only came into force last year and there has not yet been sufficient time for their introduction to be reflected in officially reported statistics.

Police (Scotland) Act 1967

Section 41 of the Police (Scotland) Act 1967, in contrast, has been in operation for a significant period of time. While the existence of the statutory provisions means that we have information on the occurrence of offences of this kind since the Act came into force we do not have that information on the era before then.

The number of persons with a charge proved under section 41 in each year 1992-2002 is as follows:

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As was explained to the Committee, there is some degree of overlap between the provisions of the Bill and the 1967 Act but the offences in the Bill make specific provision for the inclusion of non physical means of obstruction. This is because case law on the 1967 Act indicates that there is not absolute certainty that such offences are covered in all instances. However, as indicated in the Financial Memorandum, the Executive believe that there is unlikely to be any significant increase in the overall numbers of prosecutions. The separate written evidence requested by the Finance Committee from the Scottish Court Service and the Crown Office & Procurator Fiscal Service agreed with that conclusion.

I hope this is helpful to the Committee in considering their draft report on the Bill. I am copying this to Alison Walker as it touches on some of the issues raised by the Justice 1 Committee.

Gery McLaughlin
Justice Department
Emergency Workers Bill Team
Scottish Executive

FURTHER SUBMISSION FROM THE SCOTTISH EXECUTIVE

Your e-mail of 26 May to my colleague Gery McLaughlin requested confirmation of the position relating to the establishment of an emergency worker’s status, and the state of knowledge of the accused in relation to that emergency worker status, in the Emergency Workers (Scotland) Bill.

The position is as follows:

Establishing the status of a person as an emergency worker
Sections 2(6) and 3(5) of the Bill clearly provide that evidence from a single source shall be sufficient to prove a person’s status as an emergency worker (e.g. that a person is a medical practitioner registered under the Medical Act 1983). As you note, this is an exception to the general rule of evidence in Scots criminal law that the essential elements of an offence must be established by evidence from at least two sources (the requirement of corroboration). Thus, the prosecution will only have to lead evidence from one source to prove the status of a person as an emergency worker.

**State of knowledge of the accused in relation to the emergency worker**

Although the Bill does not contain any specific provision on this point, the prosecution will also have to produce evidence to establish that the accused knew, or ought to have known, that his victim was an emergency worker – i.e. the prosecution is required to prove that the accused knew or ought to have known the “emergency worker” status of his victim. This is in line with general principles of Scots law and case law in relation to the similar element of the offence created by the Police (Scotland) Act 1967.

This aspect of the Crown’s evidence is not, therefore, exempted from the requirement of corroboration. Sections 2(6) and 3(5) do not apply to the state of knowledge of the accused as regards the “emergency worker” status of his victim. The Crown will therefore have to lead evidence from at least two independent sources to prove the accused knew, or ought to have known, that his victim was an emergency worker.

Thus the Crown will require to prove (i) the status of the emergency worker (for which one source of evidence will suffice) and (ii) that the accused knew, or ought to have known, the status of his victim as an emergency worker (for which at least two sources of evidence will be required).

**Example**

A person (A) is on trial for an offence under section 1(1) of the Bill. He has assaulted an emergency worker (B) while the worker was responding to emergency circumstances. B is a medical practitioner registered under the Medical Act 1983.

The prosecution will need to prove that B is a medical practitioner. They look to section 2(6) of the Bill, which tells them that evidence from a single source is sufficient to prove that B is a registered medical practitioner. This means that proof of that fact can be obtained simply by leading evidence from B himself (for example). In the absence of section 2(6), the prosecution would have to have led evidence from 2 independent sources to prove that B was a registered medical practitioner (e.g. B plus the keeper of the register on which B was registered as a medical practitioner). The idea behind section 2(6) is to avoid the Crown having to go to possibly significant lengths in terms of time and expense in order to prove the professional or occupational qualifications of the victim.

The prosecution will also have to prove that A knew or ought to have known that B was an emergency worker. Proof of this fact must be by corroborated evidence (i.e. from at least 2 independent sources). So, for example, the Crown might lead evidence from two independent sources that B was wearing a green uniform with “doctor” printed on the back, which was clear for all to see.

The Crown would then, of course, require to lead further evidence in relation to the other elements of the offence (e.g. that there were emergency circumstances).

I hope this information is helpful. Please do not hesitate to contact me should you wish to discuss this further.

Katie Beattie  
Emergency Workers Bill Team, Scottish Executive  
2 June 2004

**SUBMISSION FROM THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE**

**Introduction**

The submission is in response to a request from the Committee for written submission about the Emergency Workers (Scotland) Bill from the perspective of the Crown Office and Procurator Fiscal Service. It supplements the oral evidence provided to the Committee at its meeting on 21 April 2004. We have been consulted by
Scottish Executive colleagues who have developed the policy in this area and had the opportunity to comment on and contribute to the development of the legislative provisions. We treat any attack on a person providing a public service as a serious matter, which the Lord Advocate highlighted in guidance to Procurators Fiscal issued in February 2003. However, the Partnership Agreement recognises the special position of emergency workers who are not only vulnerable to attack, but crucially that the obstruction of those providing emergency responses impacts also on those people in need of their services. We support the policy aim of the Bill, and believe that the offence provisions will provide a useful additional tool for prosecutors to deal with this type of offending behaviour. The offences are relatively complex, evidentially. However, certain of the Bill’s provisions will assist the Crown in proving its offences and these are considered below.

The Bill Provisions

The Bill creates two principal offences in Sections 1 and 3.

The main challenge for the Crown in proving that an offence under section 1 (1) has been committed will be in relation establishing that the accused had the necessary mens rea (blameworthy state of mind). It is considered that the Crown will require to establish that the accused knew or ought to have known that person he assaulted, obstructed or hindered was an emergency worker within the meaning of Section 1(3). The evidence which from which this inference might be drawn will depend on the facts of the particular case, but might include, for example, evidence that the emergency worker was wearing a distinctive uniform, carrying distinctive equipment or was using a distinctive vehicle. It might also include evidence that the victim identified himself as an emergency worker. An assertion by an accused that he was unaware that his victim was an emergency worker will not necessarily result in a failed prosecution. The court will consider the whole evidence in determining whether the accused knew or ought to have known the victim's status.

The Crown will not have to prove that the accused knew that the emergency worker was responding to emergency circumstances. It need only be established firstly, that the emergency worker believed and had reasonable grounds for believing that the circumstances to which he was responding at the time of the assault, obstruction or hindrance were emergency circumstances (as defined in Section 1(5)), and secondly, that reasonable person would have grounds for believing that those circumstances were emergency circumstances. Again, this is an issue that the court will determine on the basis of the evidence as a whole. Where evidence is led from which that inference can be drawn, there is no requirement for the Crown to have to lead other, possibly expert, evidence to establish that the circumstances were in fact emergency ones within the meaning of Section 1(5).

Normally each essential element of an offence has to be proved by corroborated evidence. However the Bill assists the Crown in Section 2 (6), the provisions of which mean that that a single source of evidence will be enough to prove that the victim was an emergency worker. In effect, this means that in most cases the evidence of the victim of his or her status as, for example, a registered nurse, will be sufficient proof, thus avoiding the Crown having to lead evidence from the keeper of the register or similar.

An associated offence is created in Section 1(2) of the Bill – the offence of assaulting, obstructing or hindering someone while he or she is assisting an emergency worker responding to emergency circumstances. Section 2(5) provides that “a person is to be taken to be assisting an emergency worker only if a reasonable person would have grounds for believing that to be so.” Accordingly, in addition to the relevant evidential hurdles arising from the other elements of the offence, the Crown will need to lead evidence from which this fact can be inferred. However, no particular evidential difficulties are anticipated in this respect.

The provisions of the second principal offence in the Bill, created by Section 3 (1), are less challenging for the Crown in that, rather than having to prove that the victim was responding to emergency circumstances at the time of the assault, hindrance, or obstruction, it need only be established that the emergency worker was in a part of a hospital used for accident or emergency purposes (defined in Section 3(2)). No significant evidential difficulties are anticipated in this respect.

Impact

Procurators Fiscal will prosecute under the statutory offences created in the Bill, where prosecution is in the public interest and there is sufficient admissible evidence to prove all of the essential components of the
relevant offence. It is anticipated that few, if any, prosecutions will take place under the Bill’s provisions which
would not otherwise have been prosecuted under common law or other statutory provisions. However, there
may be some types of hindering or obstructive behaviour that would be criminalised by the Bill which would not
constitute an existing offence. This might include, for example, obstruction by non-physical means, particularly
the refusal to provide an emergency worker with requested information.

We hope this submission is helpful in highlighting the main implications of the Bill from the Crown Office and
Procurator Fiscal Service’s perspective and in supplementing the oral evidence that we presented to the
Committee. However, we would be happy to provide any additional information that the Committee would find
helpful, or answer any questions arising from this submission.

Crown Office and Procurator Fiscal Service

SUBMISSION FROM THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE

Thank you for your letter of 16 June 2004 in which you seek clarification on some aspects of the Emergency
Workers (Scotland) Bill.

You ask how charges of assaulting, obstructing or hindering an emergency worker responding to emergency
circumstances are currently prosecuted. At present there is no law that provides targeted protection to
emergency workers generally, to those assisting them, or to all persons responding to emergency
circumstances. However, the criminal law of Scotland provides protection to everyone regardless of
employment status or the task in which he or she at the relevant time is engaged. A number of existing
offences both at common law and under statute might apply in the circumstances you describe, depending on
the particular facts of the case. For example, any instance of assault would be capable of prosecution at
common law. The offence of obstructing or hindering might amount to, for example, a breach of the peace,
culpable and reckless conduct or malicious mischief. If the victim was a police officer Section 41 of the Police
(Scotland) Act would apply, or if the obstruction was of a fire-fighter then Section 30 (2) of the Fire Services Act
1947 is relevant.

The fact that the victim was an emergency worker responding to emergency circumstances, or someone
assisting the worker, would be an aggravating factor of any assault, obstruction or hindrance. This would be
taken into account by the Procurator Fiscal in deciding the appropriate forum for prosecution. As you know, the
Lord Advocate issued guidance to Procurators Fiscal in February 2003, which highlighted that it is an
aggravating of an attack if the victim was a worker providing a public service.

You request information on any difficulties experienced in prosecuting such crimes under existing provisions. I
am not aware of any specific case where difficulties were experienced. The flexibility of the common law makes
it difficult to conceive of circumstances in which the assault, hindrance or obstruction of an emergency worker
responding to emergency circumstances might not be capable of prosecution. However, I could not rule out the
possibility that the absence of an offence specifically tailored to provide protection in such circumstances might
result in difficulties in future. Prosecution under a statutory provision designed to criminalise clearly defined
behaviour in specified circumstances, such as in this Bill, does have the advantage of signalling plainly exactly
the conduct alleged to have taken place. This can be of particular use following conviction when it would be
immediately apparent from the accused’s schedule of convictions the precise nature of his previous offending.
A specifically tailored offence would also make monitoring of this particular type of crime much easier.

You ask for examples of cases dealt with under common law or existing statutory provisions but that would
come under the offences created by the Bill. Certain of the examples cited in the consultation paper “Protection
of Emergency Workers” at Section 1.5 (page 2) are relevant:

- A prosecution in Forfar Sheriff Court related to an assault on an ambulance officer attending an
  incident in a pub. In fining the accused £1000, the Sheriff said “...to assault a member of the
  ambulance service has got to be regarded as a serious matter and those employed in this service and
  others must know that they have the support of the courts when they get into difficult and fraught
  situations”.

- An accused was prosecuted on indictment in Arbroath Sheriff Court for an incident which included the
  hurling of roof slates at emergency services workers. He was sentenced to three years imprisonment.
  In responding to an appeal against this sentence by the accused, the Sheriff stated: “This particular
court is concerned to make plain that conduct of this sort will not be tolerated. In particular, it is concerned to demonstrate that criminal conduct placing the lives of public servants at risk while in the course of their duties will attract severe sentences. As the appellant's agent recognised, no sentence other than that of detention was appropriate. A deterrent sentence was, in my view, justified."

- In the Borders, another accused prosecuted on indictment was sentenced to two years' imprisonment for threatening an ambulance officer with a knife, while he was tending to a victim of an assault.

From the information we hold about these cases, it is clear that the workers concerned would fall within the definition of emergency worker in the Bill. However, further detailed information about the evidence would be required to assess whether it could be proved that the workers were responding to emergency circumstances as defined in the Bill at the time of these attacks. I should also make clear that given the gravity of the second and third of these examples, even were the provisions of the Bill in force, prosecution would still be undertaken at common law as proceedings on indictment were necessary.

Finally, the full text of the Lord Advocate’s guidance on attacks on public service workers is as follows:

“Incidents involving attacks on public service workers e.g. doctors, nurses and other staff at hospitals, ambulance drivers and paramedics, train and bus drivers, fire-fighters and others providing a service to the public should be taken seriously. The locus and the fact that the worker is providing a service to the public are both aggravating factors which should be borne in mind by prosecutors in deciding the appropriate forum for the case”

Morag McLauchlin
Head of Policy Group
Crown Office and Procurator Fiscal Service
18 June 2004

21st Meeting, 2004 (session 2), 26 May 2004, Written Evidence
SUBMISSION FROM THE SCOTTISH POLICE FEDERATION

I would be obliged if you could circulate this letter to members of the Committee. It summarises the Scottish Police Federation’s views on the Emergency Workers (Scotland) Bill, hereinafter referred to as the Bill.

In our view, any assault on any person in unacceptable, but an assault on someone performing a public service is more serious and, when that worker is dealing with an emergency, an assault on her or him is particularly reprehensible. We welcome the Scottish Executive’s interest in this matter and desire to provide some measure of protection to workers. While we have some criticisms of the Bill these are confined to what we see as practical problems.

It appears to us that in relation to assaults, the Bill does not add anything to the common law and the Lord Advocate’s guidelines as described in the Protection of Emergency Workers consultation paper. Any assault can be dealt with under common law and the guidelines appear to be working in that the courts have awarded appropriately severe sentences in some cases. I comment further on the guidelines below.

If we leave the police and fire-fighters on one side for the moment, there is currently no common law offence or statute which specifically makes it an offence to obstruct or hinder other workers described as emergency workers in the Bill. However currently, in any circumstances that we can envisage, it would be possible to charge a person who was hindering a nurse or doctor for example with a Breach of the Peace.

The current protection for fire-fighters from obstruction or interference is currently restricted to circumstances where they are engaged on fire fighting duties. If it were considered desirable an amendment to the Fire Services Act 1947 could achieve an extension to this provision to reflect the intentions of the Bill.

In relation to the police, we do not believe the Bill adds anything to existing provision. Our members are often dissatisfied with the response of the prosecution service or the courts in relation to assaults on the police. We would like it made clear that the Lord Advocate’s Guidelines apply to the police, and further, that charges such as these should not be subject to plea bargain.
One of our health and safety representatives, an experienced Sergeant from a Glasgow City centre police Division, has been studying police assaults in his area. In his Division in 2002, there were 495 assaults on police officers. In 2003, that figure rose to 518, an increase of 5.4%. These figures equate to every operational officer in that Division being assaulted twice every year.

When the assaults are broken down by type, 26.9% involved spitting and 7.4% involved biting. Therefore about one third of all assaults carried a risk of transmission of infectious disease.

On the basis of the latest available figures and remembering that the maximum penalty for assaulting the police is a £5000 fine, and or 9 months imprisonment, 161 cases of assaulting the police reported to the Glasgow Procurator Fiscal in 2001 were examined. In only 12% of cases was a custodial sentence applied. The average length of sentence was 3.7 months. In only 22% of cases was a fine applied. The average fine was £152.

When this is measured against the examples shown for other public sector workers in the Protection of Emergency Workers consultation paper, one can understand why police officers are not happy with the current protection provided by the courts.

Equally as big a problem as lenient sentences, is the practice of plea bargaining away police assault charges. One of the most frequent complaints I receive from police officers is that police assault charges are plea bargained away without reference to the victim. An accused person will often plead guilty to other charges such as Breach of the Peace on the understanding that charges of assaulting the police are dropped. Ironically, accused persons seem to take charges of assaulting the police more seriously than the Crown. While I fully understand the pressures on the Crown and the courts to get business done swiftly, there is a strong belief amongst police officers that police assaults are seen by some in the criminal justice system as an occupational hazard for the police. I invite members of the Committee to agree with me that this is a totally unacceptable view.

In conclusion, our view is that the common law is flexible, clear and simple. As an example, if a nurse were assaulted when dealing with a patient in a non-emergency situation, the police officer would report the circumstances to the court, the fact that the nurse was on duty, say taking someone’s blood pressure or temperature, when the assault happened. The court would take a particular view of that.

If a nurse were assaulted in an emergency situation, say if someone tried to prevent a nurse from treating an emergency admission at an accident and emergency unit and assaulted the nurse in the process, then these circumstances would be reported to the court. There is no doubt in our minds that the court would take a more serious view of this second example.

The complexity of these proposals, in particular the fact that the legislation only applies to workers engaged in emergency situations, would present the police with a harder task than they have presently. Put simply, the more factors which have to proved, the more witnesses there are, the more room for dispute there is, both at the time and the locus of the offence and in any subsequent court case. We are not saying these additional duties and responsibilities would be insurmountable, but it would complicate matters, take more time for the police to deal with and report to the court, and leave room for greater dispute in court. In our view it would have been far simpler to use the term ‘in the execution of their duty’ rather than ‘while responding to emergency circumstances’.

Douglas J Keil QPM
General Secretary
Scottish Police Federation
17 May 2004

SUBMISSION FROM THE ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND

The Association supports the proposal to introduce legislation to provide protection for emergency workers who all too often face serious verbal and physical abuse in the process of carrying out their duties. Members have made the following observations.
The definition of emergency workers and emergency situations is likely to be the subject of future debate and therefore any definition should remain sufficiently simple.

There should be no distinction made between identified workers within the meaning of the Act. Apart from those occupations alluded to within the paper, consideration should be given to the inclusion of Medical Teams, Blood Transfusion Service, Coastguard / RNLI crews, Mountain Rescue Teams and Utility Workers. However, the legislation should not be restricted to the identified occupations and should include those persons assisting the worker within the meaning of the act.

Emergency workers in uniform are easily identifiable but it may be less obvious to a potential assailant that a GP, for example, is an emergency worker. The legislation should be worded so that if any emergency worker identifies themselves by any means whatsoever to an assailant, then the burden of proof in any subsequent criminal court proceedings should be placed upon the accused, demonstrating beyond all reasonable doubt that they had no reason to believe the victim to have been an emergency worker ‘carrying out their duties’.

It would be appropriate to define an ‘emergency situation’ as ‘Where a person has reasonable cause to believe they are dealing with an emergency situation’.

No mention is made of police powers. Consideration should be given to providing the police with a power of arrest without warrant as a tool which could be used, where necessary, when dealing with an offence under the proposed legislation.

Section 1 creates the offence of assaulting, obstructing or hindering an emergency worker, which includes a constable and a member of a Fire and Rescue Service. This would result in direct conflict between the proposed legislation and the Police (Scotland) Act 1967 and the Fire Services Act 1947. Consequently further work is required to eliminate any ambiguity in the circumstances under which the legislation will require to be enforced.

Notwithstanding the foregoing, given the increase in violence towards emergency workers, members welcome and support any new legislation which addresses this issue. However, members stressed that the introduction of this legislation will create little or no change to the vigour of the investigation which the Police Service in Scotland currently undertake when dealing with such cases.

William Rae
Chief Constable
(Hon. Secretary)
Association of Chief Police Officers Scotland
23 April 2004

SUBMISSION BY THE ASSOCIATION OF SCOTTISH POLICE SUPERINTENDENTS

Introduction
The Association welcomes the opportunity to respond to the Consultation and hopes that our comments are of assistance in reaching an appropriate response to the needs of emergency workers and their safety and security at work.

Background
The Scottish Parliament in their Partnership Agreement states “We will protect emergency workers from assault and obstruction.”

ASPS recognises the need for all emergency workers to be protected from assault or obstruction whilst going about their duties. Police, Fire and medical personnel daily contribute to the well-being of communities and their actions should not be hampered by the activities of a mindless few.

The Association would seek to ensure that the law reflects society’s abhorrence of such offences by ensuring that where such acts have been perpetrated, the sentencing powers available to the judiciary are wide ranging and that courts recognise the seriousness of such offences in the application of the penalties available to them.
The Association’s Views

Section 1
Whilst the Association recognises that all workers are entitled to carry out their duties in safety and security, we agree that there are special circumstances in which individuals may be put at additional risk when carrying out their job and should be afforded particular protection and support.

Section 2
ASPS agree that Emergency Workers, carrying out their duties, supporting and protecting the public and community, deserve to be protected by the law and the criminal justice system. They should be able to carry out their tasks without obstruction or fear and when they are not, those who attempt to prevent them from doing so should be dealt with appropriately through the judicial system.

Section 3
In the case of ‘Emergency’ workers in hospital accident and emergency premises, we support the particular emphasis on these workers within the auspices of the proposals. We appreciate that this group of staff can be particularly vulnerable.

The Association understands that on occasion some offences against this group of staff go unreported. It is important that reporting is encouraged and that employers support staff who make a complaint.

Section 4
Current legislation, designed to ensure that those who assault officers of the law when they are undertaking their duties, does not always afford the desired protection or ensure that courts take this into account when sentencing offenders. It is still the case that plea-bargaining can remove these offences from the report before it reaches the stage of sentencing. The Association feels that these proposals will only be effective if there is a means of ensuring that they will be used by judges and that they are not part of the plea-bargaining process.

A further matter we wish to highlight is the situation where a case reaches court and there is difficulty in proving the specific aggravating factor. This may lead to victims feeling doubly aggrieved.

General Views

ASPS feel that may be over reliance on additional legislation and insufficient consideration of what is already available through the common law. Whilst we understand the request for legislation to take into account the aggravating factor of violence against emergency workers, we feel that additional legislation may not always provide the required resolution that individuals believe it can.

The Association strongly recommends that the Justiciary is encouraged to use their powers to deal appropriately with this type of offender and that plea bargaining in these types of case is severely discouraged.

We welcome the suggestion that a public awareness campaign is to be considered. We suggest that it is used to ensure that the public is made aware that unacceptable behaviour towards Emergency staff will be dealt with promptly and that employers will enforce the law at all times.

Carol Forfar
General Secretary
Association of Scottish Police Superintendents
7 May 2004
The Convener: I refer members to the summary of responses that has been prepared by the clerk. I thank the clerks for efficiently putting that information together in a neat folder—it will be useful for continual reference as we progress through the bill. We have received correspondence from the Crown Office and Procurator Fiscal Service and from the Emergency Workers (Scotland) Bill team, further to the oral evidence that it gave to the Finance Committee on 11 May.

I invite members to comment on the written evidence that was received following the committee’s call for evidence. I also refer members to the note that has been prepared by the clerk on oral evidence sessions. Earlier, we agreed who to call for oral evidence, but members might wish to give the matter further consideration: we might wish to consider whether to invite social work representatives to give evidence to the committee on 9 June, which is the only slot that is still available. Are members happy to do so?

Members indicated agreement.

The Convener: Are there any general comments on the written evidence?

Margaret Smith (Edinburgh West) (LD): There are a lot of conflicting points of view, and there are many things that we will have to tease out in our questioning. It is worth while putting on the record and exploring a point that was raised in the Scottish Executive’s response to the Finance Committee. The impression is given that the problem that the bill would address is escalating, but the figures that the Executive gave the Finance Committee suggest that although there was an upward trend in 2001 and 2002, there was a downward trend in the two years before that. In the past four years, the problem has consistently occurred less than it did in the 1990s. Has any work been done that would tell us why there appears to be a downward trend? Is there an explanation for the figures being lower than they were throughout the 1990s? Might the downward trend continue without legislation? I expected the figures to show an escalating problem, but they do not appear to do that. The figures relate to charges under section 41 of the Police (Scotland) Act 1967. Is the problem escalating for other groups of workers but not for the police? We might want to follow that question up.

The Convener: That is a fair point. Most people would have expected to see an upturn in the
figures. The best way to deal with the matter might be to put it to the Executive when it comes before us. Is that acceptable?

Margaret Smith: Perhaps we could flag up the matter to the Executive so that it can come to us with supporting evidence, perhaps on other groups of workers, so that we can see whether the problem is escalating and whether that is why the Executive thinks that it has to deal with it.

The Convener: We will flag up that point to the Executive, along with any other points that emerge, before it comes before the committee. We will do that through the usual channels.

As there are no other comments, we will move on to the oral evidence session. I welcome to the committee the witnesses from the Law Society of Scotland and the Faculty of Advocates, and I thank them for attending. Gerry Brown is convener of the criminal law committee of the Law Society of Scotland; he is known to members. Anne Keenan is deputy director of the law reform department at the Law Society of Scotland, and Morag Jack represents the Faculty of Advocates.

I thank the witnesses for their written evidence, which has been useful to the committee. As usual, we move straight to questions.

Margaret Mitchell (Central Scotland) (Con): Will you outline the extent to which you consider that behaviour that will be made criminal under the bill is already criminal, either under common law or as a statutory offence?

Gerry Brown (Law Society of Scotland): I hope that it will be helpful to the committee if I start by outlining the common law and statutory provisions as I understand them that meet some of the offences that are covered in the legislation.

The committee has heard in evidence that the most common cases of assault are covered by the common law, as everyone is protected from assault by another person. There can be aggravating circumstances; the common law of assault can be aggravated by the nature of the injury or the identity of the person who is assaulted. The common law covers situations that are covered in the bill, and the Lord Advocate’s guidance to fiscals, which was highlighted following a Scottish Parliament debate in February 2003, highlights the need for fiscals to consider the appropriate forum in which to prosecute a case when they consider that the offence is an assault or an offence against a public service worker.

Malicious mischief covers a situation in which damage is done to the property of an emergency worker, such as an ambulance, and there is a statutory offence in section 43 of the Telecommunications Act 1984 that covers nuisance or hoax callers. Section 31 of the Fire Services Act 1947 also covers hoax calls as it refers to a situation in which a person “knowingly gives or causes to be given a false alarm of fire to any fire brigade”.

Bomb hoaxes are covered by section 51 of the Criminal Law Act 1977, and other cases of false reporting are covered by breach of the peace. That is an outline of some of the existing common law offences and statutory provisions.

I think that the committee heard evidence from the bill team and the Crown Office to the effect that the situations that they see as being covered by the bill and that are not covered at common law are situations in which a person gives a false report to an emergency worker. I have given that matter some consideration and have examined some of the case law on the issue. It is the criminal law committee’s view that the category of culpable and reckless conduct might cover some of that type of behaviour.

10:15

The report on the case of Kimmins v Normand—1993 SCCR 476—concerns an individual who was stopped by the police; when asked whether he had any sharp objects on his person, he denied that he did. While the individual was being searched, a police officer was injured because the individual had a needle on his person. In that case, the court recorded that that was an example of culpable and reckless conduct. The High Court said:

“a person who positively attempts to mislead the constable who is about to exercise his statutory power, by lying about his possessing a concealed sharp and dangerous object, is clearly guilty of conduct which is culpable and reckless.”

That case went on to back up the principle that someone who disregards the welfare of the lies could be guilty of culpable and reckless conduct. You can see the analogy between that case and a situation in which an emergency worker goes to premises to seek to give emergency medical assistance to someone who is injured, but is told by someone that the person is not there. In that situation, the person who misdirected the emergency worker, knowing that the injured person was on the premises, is clearly showing
complete disregard for the welfare of the person and, in my view, could be said to be guilty of culpable and reckless conduct.

The situation that the Crown Office highlighted concerned a failure to give information to emergency workers. That is perhaps a bit more difficult to cover at common law. A relevant case is Mallin v Clark—2002 SCCR 901. It is similar to the previous case to which I referred, but in this situation the accused was under the influence of drugs and said, when asked, that there might be a sharp object about his person but that he was not sure. Again, a policeman pricked his finger on a needle while searching the accused and the individual was charged with culpable and reckless conduct. In that case, the High Court said that the individual's behaviour did not amount to culpable and reckless conduct as there was no conduct by way of denial. The High Court stated clearly that the case had been decided on its own merits and that it was not saying that there would never be a situation in which that sort of conduct could be viewed as being culpable and reckless conduct. The dictum says:

"Nor are we holding that 'conduct' in such a context has necessarily to take the form of a positive acting; it is not difficult to conceive of possible situations in which a failure to give a warning, when one is necessary in order to avoid an unexpected danger, might be regarded as culpable and reckless ... We express no view as to whether or not it would be possible in comparable circumstances to aver and establish in evidence a background giving rise to a positive duty of disclosure."

In a sense, the jury is out on that issue, but it is fair to say that there could be circumstances in which such behaviour could be seen to be culpable and reckless conduct. That is the only situation in relation to which the bill might give protection to an emergency worker in an area that is not covered at common law. However, I have one proviso. Section 2(2) of the bill says:

"A person who gives false information with the intention that an emergency worker will, while responding to emergency circumstances or instead of doing so, act upon that information is to be regarded, for the purposes of section 1(1) of this Act, as hindering the emergency worker."

I appreciate that section 2(3) states that section 2(2) does not prejudice the generality of section 2(1), but if the Executive makes specific provision on the giving of false information, one would think that it would also refer to the fact that if a person fails to give information, that would amount to hindering. Doing so would make the bill clearer, given that it has already covered the specific situation.

Margaret Mitchell: That is helpful.

Gerry Brown: May I elaborate on that erudite response by Anne? The situation has not been formally tested yet. That last point of refusal could amount to an elaborated breach of the peace at common law. There would have to be a test case on that, but it could extend to that situation.

The Convener: To be clear, in your view, could failure to give information amount to a breach of the peace?

Gerry Brown: Yes, because if refusal to give information results in actions being taken by individuals which result in other people being alarmed or distressed, or are likely to cause them alarm or distress, that could amount to a breach of the peace, which is the catch-all crime in our jurisdiction.

Mr Stewart Maxwell (West of Scotland) (SNP): I am sure that you have already clarified this but, for absolute certainty, you seem to be saying that the bill does not add one single thing to the current common law. There is no offence that would effectively be created by the bill that could not be dealt with under the current common law.

Gerry Brown: Our research shows, and our opinion is, that in common law and in statute there is already sufficient cover for such situations, without discussing—as we may do later—the question of sentencing.

The Convener: Would the Faculty of Advocates like to add anything?

Morag Jack (Faculty of Advocates): The position of the Faculty of Advocates is that the existing common law and statute provisions probably address all such situations. There is therefore concern that legislation is being introduced that might not be necessary. If the bill is passed, you might find that situations that previously would have been prosecuted at common law will be more difficult to prosecute because of the complexities of the legislation and of meeting its provisions.

The Convener: In the past, could the Crown Office take a different view of cases by putting them into different courts? In your evidence, you point out that some cases could proceed on indictment, and therefore attract higher penalties. Would that be another way of giving out an important message and dealing with the situation seriously?

Gerry Brown: There is the deterrence aspect; there are also issues of education and monitoring. As far as sentencing is concerned, the Crown can choose the forum. The forum was extended from 1 May by what is commonly known as the Bonomy bill, which some of you may have heard about—we certainly have. The Crown now has the power to refer cases to the sheriff court where the sentencing provision is for up to five years.

As you will see from our letter, there is also power to invoke section 13 of the Crime and
Punishment (Scotland) Act 1997, which would result in an increase in sentencing of up to 12 months. However, one has to remember that there is on-going consultation in connection with the McInnes report. As I understand it, the McInnes report recommendation is that in summary jurisdiction the sentencing provisions should extend to a maximum of 12 months and up to a fine of £20,000 in a case that is before a single sheriff or a stipendiary magistrate. We will respond to that, but from our initial look at it—our committee has to look at it again—we do not see any problem with that, subject to there being other safeguards.

The Convener: I will put the same question to you in a different context. The bill aims to protect a narrow scope of workers. As you may be aware, the committee has received many representations from groups of workers, such as shop workers and social workers, who feel that they should be included in that scope; we will have to consider all that evidence. You said that the common law could cover the situations at which the bill is aimed, but would that also apply to the wider group of workers?

Gerry Brown: When you say “the wider group of workers”, are you talking about workers such as shop workers and teachers?

The Convener: I am talking about shop workers who face violence at work and social workers who might be dealing with child protection, for example.

Anne Keenan: The common law of assault and breach of the peace that we have already outlined would cover such situations. In drafting the charge, the fiscal would narrate the circumstances, such as those to which you have referred, so that the fact that there were aggravated circumstances would be highlighted to the court. Perhaps one of the advantages of the common law is that only one source of evidence is needed to prove an aggravated circumstance under common law. Adminicles of evidence could come from a number of sources and the court could draw the inference that the situation was an aggravated circumstance. It is not necessary for the case to fall within the rigid parameters of a definition, because the circumstances are libelled in the charge, and it would be for the court to draw the inference from the appropriate facts and circumstances of the case.

The Convener: Does Morag Jack want to add anything to that?

Morag Jack: I do not think so. What has been said covers the matter.

Mr Maxwell: How would the court react to a case of common assault and a case of assault on somebody who responds to an emergency such as is anticipated in the bill? Would it take different views?

Gerry Brown: I cannot speak for the court, but I can speak for the advice that I would give to someone who was charged with assaulting an emergency worker and was pleading guilty. Even if the individual was a first offender, I would tell them that they could anticipate that the court would request a social inquiry report to investigate all the alternatives to custody. In my experience—I am sure that it is the same in Morag Jack’s and Anne Keenan’s experience—if a description in the libel, or the circumstances, involve a fire officer or doctor, the courts take that very seriously and have to exclude the other non-custodial options.

Anne Keenan: The evidence in the original Scottish Executive consultation document contains examples of the courts sentencing appropriately in such situations. We have seen cases in which people have been placed on indictment and received the then maximum sentence of three years’ imprisonment from the sheriff court.

Margaret Smith: You have touched on some of my questions already. Do you agree that enacting the bill would send out a clear message that attacks on emergency workers are not acceptable? There would be some publicity about the fact that a new piece of legislation had been passed by the Parliament to send that message, so do you agree that, by sending that message, the bill would help to deter such attacks?

Gerry Brown: We are sending out a message by debating the matter now, but I suggest that the real deterrent is to arrest the guilty person and find them guilty on evidence that is sufficient in law and is of a good quality. That is what deterrence should be about.

Margaret Smith: Does the Faculty of Advocates have a position on that?

Morag Jack: No.

Gerry Brown: I think that Morag Jack is just corroborating what I said.

Morag Jack: Yes.
Gerry Brown: I have not, based on my appearing almost daily in court, seen an escalation in such cases. As far as education is concerned, that is a matter for other organisations or the Executive. Such education could be done through school programmes and other methods.

On a more positive note, if the bill became law it might be much easier to monitor the situation and the convictions. I think that the Scottish Criminal Record Office should have a record of convictions and aggravations, but perhaps it should not. Certainly, if there were convictions under the bill, should it become law, the committee could examine the issue in two years and ask whether it is working. That is one positive element.

Mr Maxwell: Do you agree with the bill’s focus on emergency circumstances? Would it be reasonable for such offences to be applicable equally in non-emergency circumstances for the same workers?

Anne Keenan: I do not want to seem to be avoiding the question, but that is essentially a policy matter. It is for the Executive and the Parliament to decide to whom they are trying to give additional protection. The convener has highlighted that there will always be situations in which other groups will say that they should be afforded similar protection. It is a question of policy as to where the balance is struck.

On how the offence would be proved, I am guessing that the Executive thinks that such cases might be easier to prove in emergency circumstances than they would when such workers were operating in the ordinary course of their duties. That might be more problematic to prove. However, I surmise.

Mr Maxwell: I accept that we may be straying into Executive policy areas, so I will word my question differently. If the situation is that some health workers are covered and others are not, is it reasonable in law—I am trying not to stray into policy areas—to have a health worker working in an accident and emergency unit being protected while a nurse down the corridor is not?

Anne Keenan: We discussed that issue just before we came into the committee today. We were envisaging a situation in which a nurse who was operating outside the accident and emergency room was taking a patient into accident and emergency. Where would the line be drawn? We could get into arguments about whether someone was in the curtilage of the accident and emergency room and whether they were operating under section 1 or section 3 of the bill. That is an anomaly, although I can also see pragmatism in section 3 in that one would not have to prove that an accident and emergency room was a place where emergency treatment is given. However, I can see the difficulty—

Mr Maxwell: The difficulty is with where the line is drawn. That is fine—that is where I wanted to get to.

On a similar issue, do you agree with the definition of emergency circumstances in the bill? Clearly, there are definitions of emergency circumstances elsewhere. For example, is the definition in the Civil Contingencies Bill more appropriate than the definition in the Emergency Workers (Scotland) Bill?

Anne Keenan: I had a look at the definition in the Civil Contingencies Bill, which is obviously wider. I wondered whether the people who are listed as emergency workers would operate in all the circumstances listed in the Civil Contingencies Bill. In some situations, if the definition of emergency circumstances was extended to the definition in the Civil Contingencies Bill, the definition of emergency worker would also have to be extended to cover people working for the Scottish Environment Protection Agency and so on. The provisions might have to be extended to cover situations relating to interference with telecommunications or the provision of food and health care, for example. The definition of emergency circumstances in the Civil Contingencies Bill is extensive.

Mr Maxwell: I ask because there is that other definition of emergency circumstances. We have a lot of evidence before us from people who have submitted that they should be included as emergency workers. If we included them, should we also have a wider definition of emergency circumstances? I am concerned about the vagueness of the definition of emergency circumstances, who would be included and where the lines are drawn. Am I correct in saying that you have the same concerns?

Gerry Brown: A policy decision has been made to include a number of emergency workers. There is an issue about whether other people should be included, which would make the bill more complex. Extending the definition of emergency circumstances would make it more complex still. If that were done, we would have to have another consultation on the bill, because that would make the bill more radical. As I see it, the aim is to bring to the fore the deterrence aspect, to which Margaret Smith referred, and to give emergency workers comfort that something will happen if there is a conviction.

Mr Maxwell: I accept what you are saying. Deterrence is important, and we all treat assaults on emergency workers with a great deal of seriousness. Do you believe that if the bill is passed, whether in its present form or slightly amended, it will have a deterrent effect on those who carry out assaults on emergency workers?
Gerry Brown: No. I do not think that anyone thinks of the Emergency Workers (Scotland) Bill when they impede a police officer or fire officer who is doing their duty. As I said to Margaret Smith earlier, the deterrent comes in when someone is caught and, if the evidence is supportive, is convicted and dealt with. You will know from our responses that we have slight concerns about whether the bill makes that easier or more difficult.

Michael Matheson (Central Scotland) (SNP): I turn to the issue of how the bill, if enacted, would work in practice to deal with someone who is arrested and charged under its provisions. I refer in particular to the evidential requirements for proving that the accused person knew that the emergency worker was an emergency worker. The definition of emergency workers covers GPs, but GPs who pay house visits do not tend to wear a white coat or a badge that says, “I’m a doctor”. Someone turning out for a lifeboat would not have their equipment on; they would put it on once they had mustered in their muster room. I wonder how demonstrating that the accused person knew that the emergency worker was an emergency worker would work in practice.

Anne Keenan: I am sorry, but I am about to bore you with the issue of the subjective and objective test. We are concerned about the definition of an emergency worker and how it will apply in relation to the accused person’s knowledge.

We submit that to have committed an offence under section 1(1) of the bill, which refers to “A person who assaults, obstructs or hinders an emergency worker”, someone would have to know that the person whom they were assaulting, obstructing or hindering was an emergency worker, as has been indicated. The prosecution case is helped slightly by section 2(6), because only one source of evidence is needed to establish that. However, it is not clear from the bill whether it is necessary to demonstrate that the accused had knowledge that the person was an emergency worker or whether it is enough to show that that would be known by a reasonable man in the street. If the accused says that they did not know that a person was a doctor because he did not have a bag and was not wearing a white coat or a sticker, can he escape conviction on that basis, or are we saying that because the person had a stethoscope around his neck, was assisting a person lying on the ground and had a bag next to him, a reasonable man in the street would infer that he was a doctor?

The bill is silent about the test that must be applied to prove that the accused knew that someone was an emergency worker, so we must return to analogous case law relating to the police. To prove an offence under the Police (Scotland) Act 1967, one must show that the accused knew that the person concerned was a police officer, acting in the course of his duties. I refer to the case of Annan v Tait—1982 SLT (Sh Ct) 108—in which the accused was trying to rescue someone from custody. The sheriff held that the accused’s knowledge of the character of the victim was central to the offence. It did not matter that everyone around the accused knew that his friend was held by a police officer—because he did not know, he was able to escape liability. The case suggests that if legislation is silent we must assume that Parliament intended that the accused had to have a guilty mind in order to be convicted.

One could almost assume that the same test applies to the offence that the bill would create, but the test that must be applied under section 2(5) in the case of someone who is assisting an emergency worker is that “a person is to be taken to be assisting an emergency worker only if a reasonable person would have grounds for believing that to be so.”

That takes us away from the subjective element and back to the reasonable man test. I am concerned that, if the bill is passed as it stands, cases would be taken to the High Court to get a decision on that issue, as the same bill applies two conflicting standards to two different offences. In our submission, we suggest that if the committee wants to clarify the situation, it could amend section 2 “to establish the accused’s knowledge as to whether the person is an emergency worker.”

It would be more difficult to establish the accused’s knowledge if the victim were not wearing a uniform, but their identity could be inferred from the facts and circumstances of the case.

I will take the argument a step further. Section 2(6) makes it easier to demonstrate that a person is an emergency worker, because the Crown is required to establish that on the basis of only one source of evidence. That is a departure from the normal rule. In the case of statutory offences, the prosecution must usually prove every crucial fact by corroborated evidence. In a case under the Police (Scotland) Act 1967, it would have to establish by corroborated evidence that the victim was a police officer acting in the course of his duties. However, there is no reference in the bill to whether corroborated evidence is needed to demonstrate that a person was assisting an emergency worker under section 2(5). Would it be more difficult to prove that the accused had assaulted, obstructed or hindered someone who...
was assisting an emergency worker than it would be to prove an offence against an emergency worker?

**Gerry Brown:** Earlier we tried to think of a situation in which this problem might arise. I will be corrected by Morag Jack and Anne Keenan if I am wrong. Let us say that there is a disturbance or a problem in a third-floor tenement flat in Maryhill and someone phones for the emergency doctor. The father is in the house and he has discrete knowledge that the doctor has been phoned. The doctor arrives, but he is not robed in any particular way. The father goes downstairs to meet the doctor and an argument takes place. Those observing it do not know who the doctor is. Unless evidence was led that the father actually knew that the person he had argued with was the doctor, what happened outside could give an opportunity for a get-out on the basis of the reasonable man test, which is an objective test. We initially thought that this was a straightforward matter. However, having discussed the matter with the three of us on the panel, members can now see that it is less than straightforward.

10:45

**Anne Keenan:** Perhaps I can summarise the matter. In a case of an assault against an emergency worker, the Crown would have to prove that the accused himself or herself knew that the person was an emergency worker. The Crown would need only one source of evidence. Therefore, a subjective test and one source of evidence would be required.

To prove an offence against someone who assisted an emergency worker, the reasonable man test would be used in connection with the accused's knowledge, but that evidence would have to be corroborated. However, we are talking about establishing only that a person was an emergency worker or was assisting an emergency worker, which would have to be done before the Crown considered whether it could prove that the emergency worker was responding to an emergency.

**The Convener:** Before this gets any more complex, can I check what you just said? If a subjective test is used, you are happy that only one source of evidence is required.

**Anne Keenan:** I am not necessarily saying that we are happy, but that is what the bill says.

**Gerry Brown:** We are never happy.

**Anne Keenan:** It is a departure from the Police (Scotland) Act 1967.

**The Convener:** So a subjective test should still have two sources of evidence.

**Anne Keenan:** Under the 1967 act, the requirement is for the subjective test and two sources of evidence.

**The Convener:** You would prefer that to remain the case.

**Anne Keenan:** That is the norm for a statutory offence.

**The Convener:** Right. You went on to say that the reasonable person test requires corroborations, which means two sources of evidence.

**Anne Keenan:** It would appear that, to show that someone is a person who is assisting an emergency worker under section 2(5), the reasonable person test would be used. However, because there is no provision on there being a single source of evidence in such a case, it would appear that that evidence would need to be corroborated.

**Michael Matheson:** You are saying that, under the 1967 act, two sources of evidence are required for the subjective test, but that, under the bill, only one source of evidence is required for the subjective test. Is that correct?

**Anne Keenan:** Yes.

**Michael Matheson:** Therefore, under the 1967 act, if a police officer was resisted in a situation in which there was only one witness, action could not be taken to address that offence, but if the bill is enacted, action could be taken in such circumstances.

**Anne Keenan:** In such a situation, it might be more advantageous for the Crown to prosecute. If a police officer responding to emergency circumstances was resisted and there was only one source of evidence to show that the person was a police officer and that the accused knew that he was a police officer, it would be better, in my opinion, to prosecute under the bill’s provisions rather than under the 1967 act, not only for evidential reasons but because, in my view, there would be a higher penalty under the bill’s provisions than under the 1967 act. The bill would give the court the opportunity to sentence a first-time offender to a maximum of nine months’ imprisonment. My reading of the 1967 act—I will be corrected by others if I am wrong—is that the nine months’ custodial sentence is available only for a second or subsequent offence. Under the 1967 act, if a person has committed a second or subsequent offence and has had a similar conviction within the previous two years, the nine months’ sentence would be available; otherwise, it would be a maximum of three months.

**Gerry Brown:** So, under the bill, there would be additional protection for a police officer who was involved in an emergency.
The Convener: It would also be easier to prove an offence if only one source of evidence is required, whereas, under the 1967 act, two sources of evidence would be required.

Gerry Brown: Yes.

Michael Matheson: Not long ago, I was considering the Criminal Procedure (Amendment) (Scotland) Bill, which is a complex piece of legislation. On seeing the Emergency Workers (Scotland) Bill, which is only four pages long, I thought that it would be relatively straightforward. Sadly, you have let us down about that this morning. I am in danger of making the situation worse, but does the Faculty of Advocates have a view on the issues that I have just raised with the Law Society witnesses?

Morag Jack: I had the opportunity of speaking to Gerry Brown and Anne Keenan before we came into the committee room this morning. What Anne Keenan has said is also the faculty’s position on what the evidential problems with the bill might be.

Michael Matheson: Do the witnesses agree with the bill’s omission of “resists” and “molests” as offences? Under the Police (Scotland) Act 1967, the offences are “assaults, resists, obstructs, molests or hinders”.

Are you of the view that “resists” and “molests” should have been included?

Gerry Brown: “Molest” is a word that we do not use in daily parlance as much as we used to—perhaps you have used it more frequently in your time, Michael.

I have read some of the evidence on the matter, and “resists” normally applies when a police officer is carrying out his duty to deal with an individual. The debatable point is which emergency workers, other than constables, would carry out an activity in such a way that someone might resist them.

Anne Keenan: The convener made a point about a situation in which someone receiving treatment could themselves resist the emergency worker. Having read the evidence, I got the impression that the Executive would consider the matter, which I think is worthy of consideration.

Michael Matheson: The bill team said that they left out “resists” because they felt that the term only really applied to police officers carrying out their functions, rather than to the emergency workers whom the bill covers. They left out “molests” on the basis that the provision in the 1967 act has never really been used. However, if we consider the application of the provisions to prison officers, I would have thought that the “resists” provision could be applied to them, as it would be to police officers acting in the course of their duties.

Gerry Brown: Would that extend to people who are not prison officers but who are working in private prisons or who are carrying out other duties with prisoners, such as those who work for Reliance Secure Task Management?

Michael Matheson: Section 1(3)(d)(ii) refers to “a prisoner custody officer”. I imagine that that would cover staff who work in private prisons, although I am not entirely sure about the designation of prison escort staff who work for Reliance.

Gerry Brown: From my reading of the bill, such staff would be covered. I presume that the argument is that, because such staff have duties within a detention structure, “resists” might be a useful term to include.

The Convener: On the same question of the interaction between the bill and the 1967 act, we have discussed potential differences in evidential matters, but do you think that there are further conflicts with that act? For example, the bill covers constables, to whom the 1967 act refers, but omits “resists” and “molests”.

Anne Keenan: The only real differences between the bill and the 1967 act are the evidential aspects and the differences in penalty, which we have already highlighted.

Mr Maxwell: You mentioned that, under the 1967 act, someone cannot be sent to prison for a first offence; they can be sent to prison only if they are convicted of a subsequent offence within a specified time period.

Anne Keenan: They can be sentenced to three months’ imprisonment for a first offence—

Mr Maxwell: That is less than nine months.

Anne Keenan: Yes.

Mr Maxwell: Would it be simpler to amend the 1967 act, to bring it into line with the policy intention behind the bill?

Anne Keenan: That would be possible. It would also be possible to implement section 13 of the Crime and Punishment (Scotland) Act 1997 to extend the sentencing powers of sheriffs generally. That would afford greater sentencing powers in relation to first and subsequent offences, while retaining the flexibility of the common law.

Bill Butler (Glasgow Anniesland) (Lab): If the bill is enacted, do you expect there to be a significant increase in the number of prosecutions when emergency workers are assaulted or impeded, given that only one source of evidence and no corroboration would be needed?

Anne Keenan: In relation to the marking of cases as “no proceedings” on the basis of
insufficient evidence, I do not see a great
difference between the sufficiency of the
provisions in the bill and common-law provisions,
because under the common law only one source
of evidence is needed to prove aggravation.

Bill Butler: Do you expect the bill to result in a
significant change in sentencing in cases in which
emergency workers are assaulted or impeded?
For example, would more or longer custodial
sentences be imposed?

Gerry Brown: That would be a matter for the
judiciary.

Bill Butler: Would the bill create a tendency to
impose more or longer sentences?

Gerry Brown: There is anecdotal evidence of a
tendency towards increased sentencing if that is
available, but I understand that, under the
chairmanship of Lord MacLean, the Sentencing
Commission is considering such matters.

Bill Butler: Does the bill implicitly tend towards
such a situation?

Anne Keenan: It is difficult to answer that
question because, at present, if a procurator fiscal
thinks that a case does not merit existing
common-law powers, they have the option of
charging the accused on indictment, if the case is
sufficiently serious.

Bill Butler: Would that mean that a maximum
sentence of 12 months could be imposed?

Anne Keenan: In solemn procedure, the
maximum sentence from the sheriff court is now
five years, but that would be applied under the
common law, so it is difficult to say whether the bill
would change the sheriff’s discretion in the way
that you suggest.

Gerry Brown: At common law, if someone is
convicted for the first time, the maximum sentence
is three months’ imprisonment. For example, if
someone was convicted of a common assault and
then five years later was convicted of an assault
on an emergency worker, the maximum sentence
for the second conviction would be six months’
imprisonment. The bill would increase that to nine
months. However, if section 13 of the Crime and
Punishment (Scotland) Act 1997 was invoked,
such offences could be dealt with more
extensively.

The Convener: I am interested in examining the
bill’s scope. I am not trying to draw you into
expressing a view on the policy intention, but I
want to establish whether it is possible to
distinguish in law between different groups of
workers who require protection.

The bill’s purpose is to protect workers, whoever
they are, who put their own safety on the line to
protect other people. Can we frame legislation that
has such a narrow scope? Should there be further
legislation to deal with workers who face violence
or physical intimidation in the course of their duties
but who do not put their lives on the line for other
people? Is it important to distinguish between the
two situations?

11:00

Gerry Brown: The link that we should have is
that between the emergency worker and the
emergency. Section 6 provides for the Scottish
ministers to add other workers. Perhaps I am
missing the point, but I wonder how, for example,
a teacher in a rowdy classroom or at a rowdy
parents’ night—someone who is not an
emergency worker in an emergency situation—
would fall within the definition. Would the definition
not have to change?

The Convener: That is the concept that I
struggle with. If the bill’s central test is to identify
people—whether they are nurses, doctors or
others—who put their lives on the line and who
risk their safety to protect someone else because
that is their job, the wider the scope, the more we
must lose that central focus. If social workers or
shop workers are included, that is fine if they risk
their safety to protect someone else. I wonder
whether the central test should focus on that. That
would allow anyone to be included.

Anne Keenan: The important provision is
section 6(2), which makes it a criterion of addition
by the Scottish ministers that a person’s “functions
or activities” mean that they are
“likely, in the course of”
their duties,
“to have to deal with emergency circumstances.”

That must be an integral part of a person’s job
before they can be added to the list. If we wanted
to cover people whose jobs would not make them
routinely or in any circumstances likely to be
involved in emergencies, we would change the
nature of the bill. Changing it in that way would
indicate that we wanted the bill to cover public
service workers in the course of their duties. That
would be a much wider measure and would mean
that the central provision of the bill would have to
change.

The Convener: If the scope were widened, the
bill’s purpose would have to be widened.

Gerry Brown: Yes.

The Convener: We talked about the flexibility in
the common law and the implications of a statutory
offence. I presume that the Crown could libel the
statutory charge and the common-law charge.

Anne Keenan: Yes. The Crown could libel them
as alternative charges.
The Convener: As members have no more questions, would the witnesses like to add anything in conclusion?

Gerry Brown: I will say thank you.

The Convener: Do you mean that?

Anne Keenan: And good night.

Gerry Brown: Cheerio.

The Convener: I thank the witnesses from the Law Society and the Faculty of Advocates. As usual, the experience has been invigorating and their evidence has been helpful.

I welcome our next witness, who is from the Scottish Police Federation and is known to the committee. He is Douglas Keil, who is the federation's general secretary. I thank you for giving evidence to the committee again, and for your helpful submission.

Mr Maxwell: Good morning. Police officers are already protected to a great extent by existing common law and statute. In particular, I am thinking of section 41(1) of the Police (Scotland) Act 1967, which deals with assault. Given that there is both statutory and common-law protection, do you think that the bill, if it were enacted, would provide police officers with greater protection?

Douglas Keil (Scottish Police Federation): No, I do not think that it would. I am not a lawyer, but my reading of the way in which the bill deals with assaults on any person is that it would not add anything. The common law is sufficiently flexible to cover any assault.

As I said to the committee in my letter, “If we leave the police and fire-fighters on one side for the moment, there is currently no common law offence or statute which specifically makes it an offence to obstruct or hinder other workers”, by which I mean workers who are not police officers or firefighters. That element of the bill would be new, but we believe that in no circumstances would the bill add anything, certainly as far as the police are concerned. In relation to firefighters, the current law deals with circumstances in which they are fighting fires, whereas the bill proposes to expand the circumstances in which the offence applies. Although the bill contains something new for firefighters, we do not think that it contains anything new for police officers.

Mr Maxwell: You probably heard the Law Society of Scotland’s evidence about the fact that the bill seeks to expand the range of the sentence from three months on a first offence to nine months—I think that is what it said. Surely that provision provides extra protection for police officers. Do you agree with the Law Society’s view that we should implement section 13 of the Crime and Punishment (Scotland) Act 1997?

Douglas Keil: It is fair to say that the members of the Scottish Police Federation have a concern about the concept of legislation in and of itself providing protection, although I can understand why people might hold that view.

It is extremely difficult to nail down statistics on assaults—even assaults on police officers, on which records are kept. Margaret Smith has referred to that. In the 10 years between 1993 and 2004, there were, on average, 9,500 assaults on police officers each year. Those annual figures were constant until about 2000, when they seemed to fall back slightly for the following two years. We think that that had something to do with better training and better protective equipment for police officers. It is worrying that the figures are on the way back up again. Her Majesty’s inspectorate of constabulary for Scotland is examining how we keep statistics and how we share information on best practice, but, in general, there is a lack of robust statistics in Scotland.

As I said in my letter, we studied assaults in a Strathclyde division—a division in Glasgow city centre. The statistics for that division show that, in 2002, there were 495 assaults on police officers. In 2003, that figure rose by 5.4 per cent to 518. Again, we think that there is evidence that the number of assaults is increasing.

I will answer your question directly by citing our examination of the disposals in some of those cases. We considered 161 cases of assault on police officers in 2001. In only 12 per cent of those cases was a custodial sentence imposed; the average sentence was 3.7 months. In only 22 per cent of the cases was a fine applied; the average fine was £152. Among other things, the McInnes report, which was published recently, covered fines. It showed that the average court fine was £277. Comparison of that figure with the average fine for assaulting a police officer supports our view that the current legislation does not provide protection for the police.

I was impressed with the Scottish Executive’s consultation paper, which laid out details of how the Lord Advocate’s guidelines were being applied in practice. It provided some fairly impressive examples of sentences that had been passed on people who had assaulted ambulance drivers, train drivers and bus drivers. Our plea is that we should receive similar treatment, but we do not think that that can best be done by implementing new legislation; instead, it can best be done by treating convictions under current legislation more seriously.

Mr Maxwell: I would like to summarise. I hear what you are saying. In your view, a new act is not
required, but the current law should be properly applied in order to defend police officers who are going about their duties.

Douglas Keil: We have an issue with charges of assaulting police officers being plea bargained away and marked “no proceedings”—I did not mention that previously. Some sentences certainly seem to us to be lenient. I want to be clear. I agree with the Executive that the issue must be addressed and I was impressed by the examples in the consultation paper. The Lord Advocate’s guidelines were issued some time ago and courts were advised to take such charges seriously. The examples of sentences that have been passed down indicate the types of sentence that we would like to be applied in cases that involve assaults of police officers.

Mr Maxwell: Are you saying that things can be managed through the guidelines and that that would be the best way of tackling the situation?

Douglas Keil: In our view, that would be by far the simplest way of doing things. We think that the Executive’s aims could be achieved by that method as opposed to through a new statutory offence.

Mr Maxwell: Earlier, and in your letter, you mentioned firefighting duties. I agree with what you say in your letter that a simple amendment to the Fire Services Act 1947 could provide firefighters with full cover as opposed to cover only when they are engaged in firefighting duties. Such an amendment seems sensible.

I would like to deal with a slightly different, but related, topic. Would the bill provide other emergency workers with greater protection against assault? Obviously, protection of the police is to some extent underpinned through the Police (Scotland) Act 1967 and the common law, but would the bill give other emergency workers added protection?

Douglas Keil: Not in relation to assault. As I said, the common-law charge of assault can be applied in any circumstances. The bill would create additional offences in relation to obstruction and hindrance at work, but, as I think the previous witnesses said, it would not be impossible to charge someone who obstructs or hinders an emergency service worker with a breach of the peace. I think that that has been done, as the police service is obviously keen to deal with such incidents. It has never been brought to my attention that we have failed to bring a charge because of a lack of statutory offences.

Mr Maxwell: So you cannot think of a situation in the past in which a police officer has been in attendance when someone has impeded an emergency worker from carrying out their duties and the officer has not intervened or arrested the person because no offence was committed.

Douglas Keil: I cannot think of such a set of circumstances.

Margaret Smith: I was interested by what you said about why there seemed to have been a falling back in the number of assaults over a number of years. You put that down to better training for police and the introduction of different types of equipment, but have you done any work on why the number has picked up again?

Douglas Keil: HMIC has just carried out what it calls a thematic inspection of protective equipment. Around 1993, we changed the type of handcuffs that we used from flexible handcuffs to rigid handcuffs. Since 1993, there has been closer examination of the type of protective equipment that is issued to police officers—I am talking about longer batons and protective vests. At the same time, the training that every police officer has received in non-verbal communication and self-protection in general has definitely improved.

Like HMIC, we cannot definitely say that those factors have been the cause of the drop in the number of assaults against the police, but there seems to have been a correlation. I cannot think of any other reason for the figures falling back, although I can think of a number of reasons for the figures rising again. Although the statistics that I have given the committee can be found in HMIC reports and they are undoubtedly correct, the way in which forces record information is not satisfactory. HMIC is addressing that matter and I hope that from now on we will have a much more accurate picture of precisely what is happening.

11:15

Margaret Smith: My next question is on deterrence. Despite your reservations about the bill, do you agree with the argument that, if enacted, it would send a clear message that attacks on emergency workers and the police are not acceptable, which might help to deter some of those attacks?

Douglas Keil: I would like to think that that is a knock-on benefit of the legislative process. I do not know whether the type of person who is in the habit of assaulting emergency service workers will pay much attention to the announcement that a new law has been enacted, but the Executive properly addresses other issues in the consultation paper. As previous witnesses have said, education has a role to play. The courts also have a role to play, in ensuring that instances of assault on and hindrance of emergency service workers are dealt with appropriately. Again, one page of the consultation paper laid out some excellent examples, which should be given further attention.
Attention should also be paid to premises where emergency service workers work. I am sure that members will have seen notices at airports indicating that BAA plc takes a dim view of assault on its staff. That is the kind of thing that the public sector could learn from. I suppose that there would be a mild knock-on benefit, but I do not know—and it is a matter of policy—whether we should use the law to publicise problems.

Michael Matheson: Are you satisfied that the bill sufficiently covers emergency workers and those who are assisting them?

Douglas Keil: I agree with the Executive's recognition, in the consultation paper, that there would be a problem defining the range of workers to be covered by the legislation. I have no suggestions as to who should or should not be covered. The Scottish Police Federation's general point is that any assault on any person is unacceptable. An assault on someone who is carrying out his or her work is somehow less acceptable and an assault on an emergency service worker, particularly while dealing with an emergency, is especially reprehensible. However, I would not care to address whom precisely the bill should cover.

Michael Matheson: Does the bill sufficiently cover staff who may be working in support of the police, such as special constables and other support staff?

Douglas Keil: Special constables are defined in legislation as constables, so there would not be an issue there. Support staff would fall into the category of other workers who were not immediately identifiable, unlike workers who were wearing a uniform, for example. As members have heard this morning, there are evidential issues relating to that. However, I do not know how we can get around that problem, because it is fair that an accused person is charged only with an offence that he knows to be an offence. The issue is a bit like the one involving a police officer in civilian clothes. Before someone can be charged with a contravention of the Police (Scotland) Act 1967, it has to be clear that the officer identified himself in a satisfactory manner.

Michael Matheson: On that point, how would a police officer in plain clothes normally identify themselves in a satisfactory manner?

Douglas Keil: He or she would have to do it verbally and they would have to produce the warrant card that identifies them as a police officer. To an extent, circumstances play a factor, but identification would simply be by the person declaring that they were a police officer and showing evidence of that.

Mr Maxwell: As I asked the previous witnesses, do you agree with the focus of the bill on emergency circumstances?

Douglas Keil: The Police (Scotland) Act 1967 covers police officers when they are on duty—full stop. It does not go on to define what the police officer is doing while he or she is on duty. It would have been much simpler to draft the bill or to amend existing legislation to include other workers in the same way. If we have to consider what the emergency service worker was doing when he or she was assaulted or hindered, more evidence than is currently required in respect of the police will be necessary. We are probably talking about more witnesses and we are certainly talking about more police time spent at the locus of an offence to establish the circumstances. As we have heard this morning, that opens up the possibility of more and longer argument in court.

I understand the Executive's motivation for focusing on emergency circumstances. However, I have some difficulty in distinguishing between circumstances where, for example, a firefighter is assaulted when checking a hydrant or carrying out some other non-emergency duty and circumstances where a firefighter is assaulted while working on an emergency. Society should take both sets of circumstances extremely seriously. That view is backed up by the fact that we are having so much debate and a degree of difficulty in agreeing precisely the definition of an emergency.

Mr Maxwell: It is fairly simple to define someone who is on duty—during working hours, they carry out their normal work as a police officer or firefighter and that would be covered by the bill. However, would a firefighter or police officer be on duty technically if they were travelling to or from work and still wearing their uniform—I know that firefighters do that—when they came across a fire, road accident or some other offence in which they intervened to save somebody's life?

Douglas Keil: As far as the police service is concerned, when one decides to act as a police officer in such circumstances—even when not on duty—one has the ability, power and authority to call oneself back to duty. Provided that the officer was in uniform, that should not be much of an issue. The same would apply to a plainclothes officer. They would have to declare themselves as an officer before the existing legislation would apply. I do not know about the fire service.

Mr Maxwell: Do you know whether that would apply to other emergency service workers?

Douglas Keil: I do not know. I cannot speak for the courts, but from experience I have no doubt that the courts would take cognisance of the fact that the person was following their occupation in emergency circumstances.

Mr Maxwell: You said earlier that there are degrees of seriousness with which we treat
situations. You seemed to indicate a ratcheting-up of an offence—for example, an assault on a police officer as they happened to be walking down the street is less serious than an assault on or impediment to somebody who is carrying out their duties in an emergency situation and trying to save lives. However, in your answer a moment ago, you seemed to suggest that the offence was the same whether the person was in an emergency situation or not on duty. Will you clarify your view?

Douglas Keil: It is absolutely the case that the offence is the same regardless of what the individual is doing. From the point of view of the individual involved, what is the difference between the half-brick that is bounced off their head when they are checking a fire hydrant and the half-brick that hits them when they are dealing with a fire?

The court takes a view on the circumstances of an assault. When a police officer receives a complaint of an assault, part of what we report to the court is the circumstances. If a nurse were simply taking somebody’s blood pressure on a ward and they were assaulted, that would be reported to the court, which would take a particular view of the circumstances. If that same nurse were dealing with an emergency admission at the accident and emergency reception and was assaulted, that would also be reported to the court. I think that the court would take a dimmer view of the latter example. That is what I meant earlier.

Mr Maxwell: Do you have a view on the definition of emergency circumstances as outlined in the bill? You probably heard me asking earlier about the difference between the definition in the bill and the definition elsewhere.

Douglas Keil: The definition in the bill tries to cover emergency circumstances in a non-complicated way. It comes down to the perception of the individual. I can understand why the Executive has taken that approach, but I cannot suggest a definition that would make life easier. When I read the definition, I accepted it as the way in which the Executive wanted to take things forward. I cannot think of potential improvements to the definition.

The Convener: I suppose that the argument that you have given Stewart Maxwell is that the common law deals with the issue because it is already an offence to assault or hinder an officer in the course of his or her duty. However, if the officer was trying to save someone’s life in the course of his or her duty, could the court take account of those circumstances and sentence appropriately?

Douglas Keil: That has been my experience.

The Convener: This morning, we discussed evidential questions about how the offence that is proposed in the bill would be proved. Notwithstanding your evidence about the 1967 act, do you foresee any practical difficulties in obtaining sufficient evidence to prove, for example, that the accused person was aware that the victim was an emergency worker?

Douglas Keil: I am not sure to what extent that would be an issue for the police. We would establish whether the emergency service worker identified themselves as such at the time and that would give us sufficient material with which to proceed. The issue that you raise would be considered in court at a later point. I agree with the evidence that was given earlier by the witnesses from the Law Society of Scotland. I certainly do not feel qualified to contradict what they said.

Bill Butler: If the bill is enacted in its current form, will it significantly increase the number of incidents in which police officers charge people for attacking or impeding emergency workers?

Douglas Keil: No. Currently, the police do all in their power to deal with such incidents. Few, if any, such cases fail to proceed because of a lack of a charge to employ. I think that there will be no increase in the number of offences that are reported to the courts.

Bill Butler: So, in your view, the bill’s effect in that respect will be nil.

Douglas Keil: Yes, for the reasons that I have just given.

Bill Butler: You said that education undoubtedly has a role to play. What steps should the Executive and other bodies take in using wider measures such as education to improve the protection of police and other emergency workers?

Douglas Keil: I have not given much consideration to that. I welcomed the consultation paper’s suggestion that the Executive would address the wider issues, so I would welcome the opportunity to participate in that discussion. I agree with the Executive that it has a role, along with education authorities and others, in raising awareness of the issue.

Whenever I mention the number of assaults on police officers, people are amazed. There are around 10,000 assaults on police officers, which is an incredible figure. We have just over 15,000 police officers in Scotland, but the police officers on the street account for about one third of that number. By and large, they are the ones who are assaulted. In any year in Scotland, each police officer on duty on the street can expect to be assaulted twice. That is quite incredible. People draw their breath whenever I mention that figure, because it is quite stunning.

The Convener: Can you give the committee an idea of the range of circumstances in which police
officers have been assaulted. For example, would resisting arrest be included as an assault or is that in another category?

11:30

Douglas Keil: The offences are dealt with under the same section of the 1967 act. I believe that section 41(1)(a) deals with assault and section 41(1)(b) deals with hindering. However, I would need to check before I could say that I was 100 per cent sure about that.

Assaults range from being shot or stabbed to being spat on or bitten. The work that we did on assaults in Glasgow city centre showed that 26.9 per cent of all assaults involved spitting and 7.4 per cent involved biting. Of course, that type of assault carries the risk of the transmission of infectious diseases. That is another significant concern for us and we are addressing that worrying and dangerous situation through our petition to the Parliament, which is currently being considered. Resisting arrest is different from assault. Although they are dealt with under the same act, they are two different charges.

The Convener: I presume that, if an emergency worker was assaulted and could not get on with their duties, they would call the police to assist them, given that the police are the last line of defence.

Douglas Keil: Yes.

The Convener: But the police cannot call anybody—you are the last line of defence.

Douglas Keil: No. We are the last line of defence.

The Convener: Do you think that the police should receive special protection under the law in recognition of that difference?

Douglas Keil: I have to repeat myself to some extent. I think that the Executive is absolutely right to consider a wider category of worker. However, the police hold a special position in society, as we have to put ourselves between the public and society’s most violent individuals. We are content to do that as part of our duties but, in return, society owes us whatever protection it can give us and a large part of that protection is to be given through the courts. In that regard, we hold a special position and should be especially protected.

The Convener: It has been suggested that the police might want to have the power of arrest without warrant. Is that the view of the Scottish Police Federation?

Douglas Keil: Yes, it is.

The Convener: We have no further questions for you. Thank you very much for your evidence and your written submission, which have been very helpful.

I welcome our last panel of witnesses, who are from the Association of Chief Police Officers in Scotland and the Association of Scottish Police Superintendents. Assistant Chief Police Officers Ricky Gray is the secretary of the road policing standing committee and Chief Superintendent Clive Murray is the vice-president of the ASPS. Thank you very much for coming along to the committee this morning. We will begin our questioning.

Mr Maxwell: Good morning. I know that you have been listening to the evidence that has been given, but for the sake of completeness I will ask you the same question as I asked the two previous witnesses. Do you believe that the bill provides additional protection for police officers to that which is provided in the common law and the statutory provisions in the Police (Scotland) Act 1967?

Assistant Chief Constable Ricky Gray (Association of Chief Police Officers in Scotland): As Douglas Keil said, the Police (Scotland) Act 1967 gives police officers a considerable amount of protection in allowing them to arrest people who assault them and to place those people before the courts in the appropriate circumstances. I reiterate what he said about sentencing. The work that our officers do is often taken for granted and the penalties that are imposed by the courts do not always reflect the seriousness of the offence that has been committed when one of our officers has been assaulted.

Mr Maxwell: Would it be reasonable to suggest—as I did to the previous witness—that the use of guidance for the courts would be the most effective and simplest way of dealing with that perceived problem? Douglas Keil read out some statistics that seemed to show a lower fine level in cases involving assault of a police officer.

Assistant Chief Constable Gray: Absolutely. If the bill is enacted, there should be consistency across the board for emergency workers who are assaulted during the execution of their duties. Guidance would be welcome to ensure that consistency.

Chief Superintendent Clive Murray (Association of Scottish Police Superintendents): I have a point about the implementation of the 1967 act and plea bargaining. While the full weight of that act might be applied initially, on occasions, come the court appearances, plea bargaining has been used in significant cases that pertained to the 1967 act.

Mr Maxwell: Do you agree that the guidance that is issued to courts could in effect remove the right to plea bargain?
Chief Superintendent Murray: One would certainly hope so.

Mr Maxwell: The Law Society witnesses made the point that the existing legislation allows sentences of up to only three months on a first offence and then higher sentences on second and subsequent offences and that an amendment to the Police (Scotland) Act 1967 or the implementation of measures in the Crime and Punishment (Scotland) Act 1997 may be appropriate. Do you agree?

Assistant Chief Constable Gray: If the bill became law, there would be potential for increases in sentences that are given by the courts. However, a simple way to increase the potential sentence would be an amendment to the Police (Scotland) Act 1967.

Mr Maxwell: Would that be a better way in which to achieve the aim?

Assistant Chief Constable Gray: It would certainly give the police better protection. However, the thrust of what we are discussing is to ensure that all emergency workers receive that broad support.

Mr Maxwell: Would the bill provide emergency workers other than the police with greater protection than they have at present?

Assistant Chief Constable Gray: Absolutely. Again, I agree with what Doug Keil said on behalf of the Scottish Police Federation. Any emergency worker who comes under attack when they are going about their business should be afforded special protection. At present, protection exists under common law, but such attacks are without doubt an aggravation of the common-law offence.

Mr Maxwell: Do you agree with that, Mr Murray?

Chief Superintendent Murray: Yes. However, the issue of what constitutes the execution of duty is down to individuals’ perceptions. We heard the earlier discussions about what constitutes an emergency situation. The matter comes down to the individual's perception of the situation with which they are dealing. A situation can initially appear to be an emergency, but as it develops it can become less significant. Notwithstanding that, if an emergency service worker intervenes in the belief that they are dealing with an emergency situation, they deserve full protection. The problem is how we define an emergency situation.

Mr Maxwell: If the bill were passed, how would it provide additional protection to emergency workers other than the police that is not present in the common law or does not arise as a result of other statutory offences? We heard from the Law Society that a number of measures can be used, such as the offences of culpable and reckless conduct and breach of the peace. The Law Society does not think that the bill would add to that protection, but you seem to be saying that it would.

Assistant Chief Constable Gray: We believe that the bill would add to the protection and would give emergency workers confidence that their special position is recognised. We hope that the message that would be sent out to members of the public who wish to impede emergency workers in the execution of their duties would be that they are likely to receive significant punishment for doing so.

Mr Maxwell: There is no disagreement that we should send out a message about how seriously we view the matter, but if the issue is about public relations or simply sending out a message, is legislation the appropriate way in which to do that?

Chief Superintendent Murray: Experience shows that it is. In the past few years, additional training has been given on hate crime and racist crimes. New legislation serves to raise awareness among those who apply it and, more generally, in the community. It may seem a convoluted way of adopting a marketing strategy, but if legislation is enacted specifically to deal with an issue, what better way could there be to prioritise that element of the law and attract the attention of those who apply it in the criminal justice system?

Mr Maxwell: I hear what you are saying and I understand the aspects that you are talking about, but it seems to me that there is no added protection, as such, in the bill. We already have statutory offences and the common law is already in place. I accept absolutely that we should send out a strong message to society about how we view nurses, police officers or firefighters being assaulted or impeded in emergency circumstances, but I am trying to get to the bottom of whether you believe that any additional protection can be provided in law. Would any additional offences that we do not have at the moment be created if the bill were enacted?

Assistant Chief Constable Gray: Douglas Keil said that he is not a lawyer. Neither am I, but my understanding is that, if a first-time offender becomes engaged in an act of violence on an emergency worker, the sentence that a court can impose in summary proceedings is limited to three months. Under the proposed legislation, that sentence could be nine months. That is a significant difference. However, as with all legislation that is introduced in the hope of dissuading people from becoming involved in such behaviour, the bill does not stand on its own. It would have to be married to education and to the punishment that the courts actually hand out. The bill is not a standalone proposal; a number of things would have to be done to ensure that it was effective.
Margaret Smith: I am happy that my question has been answered. It was about deterrence and you have answered it in response to other questions.

Mr Maxwell: I was hoping that you would ask the question, because I am not sure that it has been fully answered.

Margaret Smith: Mr Murray, do you agree with the argument that enacting the bill would send out the clear message that attacks on emergency service workers are not acceptable and that that would help to deter such attacks?

Chief Superintendent Murray: I think that it would, but I suspect that we might find, some time from now, that the effect of enacting the bill has diminished over time as new legislation and new priorities come into being.

An earlier question was about protection. I think that protection will come from employers paying more attention to workers’ safety, because the matter is receiving more publicity. One of the points that we made in our response to the consultation document is that we hope that what we perceive as a level as under-reporting will move to increases in the reporting of assaults on staff and, in particular, on emergency workers. If people were encouraged to report, the police would have more information about the incidence of assaults in specific areas and we and the courts could do more to deal with the problem.

The Convener: Do you agree that the deterrent value lies in what the public see as the outcome of a case? You have outlined your concerns about assaults on the police being plea bargained, and there appears to be no guidance to the contrary. Is not it quite important to resolve that kind of issue? It is all very well having the legislation, but if fiscals are prepared to plea bargain it away, and if that is common knowledge among defence agents, it will not be a deterrent at all.

Chief Superintendent Murray: Absolutely. That is another point that we made in our written response. We are creating a public expectation, particularly among those emergency workers to whom the bill will apply if enacted. It is important that we do not sell them short and fail to meet their expectations by making the process over-convoluted and complex. This morning we heard the witnesses from the Law Society of Scotland discuss some of the complexities.

11:45

Michael Matheson: Is there a danger that, if the bill is passed, some employers will see it as an opportunity to reduce the safety precautions that they take at the moment, on the basis that staff will have legal protection? According to the evidence that we took this morning, it should be easier to prosecute under the bill, because only one witness will be needed. Might employers say that they can be more relaxed about the safety precautions that they take, because staff will have legislative back-up?

Assistant Chief Constable Gray: We will probably stray into the area of health and safety legislation. Every employer has a duty of care to their employees—the police service is no exception. The fire service sets great store on the health and safety of its staff. I do not think that employers will hide behind the legislation. Given the litigious society in which we live, employers know their full range of duties.

Chief Superintendent Murray: The bill will provide us with an opportunity to focus attention on the priorities that I discussed earlier.

Michael Matheson: Having listened to the earlier discussion, I am not convinced by your argument that the bill will deter people. It is often put to me that those who assault police officers are not thinking about the provisions of the Police (Scotland) Act 1967 when they do so. I suspect that the types of individuals who are inclined to impede or assault emergency workers will not necessarily think about the consequences of their acts, as set out in the bill. I suspect that there will be headlines on the day that the legislation is passed, but that the story will then drift away.

I accept that it is necessary for a package of measures to be built around the bill, instead of our relying on the bill itself. Based on your experience, do you think that the range of emergency workers that the bill covers is right and that a sufficient number of workers will be protected?

Assistant Chief Constable Gray: Michael Matheson’s observation about what people are thinking when they assault police officers is probably correct. People worry about the consequences of their actions later, during court proceedings. However, let us take the situation that officers from Strathclyde fire brigade faced last year in Coatbridge, when they attended a wheelie bin fire in a lane. It is clear that youths lured the fire service to the scene. If specific legislation had been in place to protect fire service personnel, with the punishments for which the bill provides, the youths might have taken a slightly different approach and might not have set about doing what they did.

Each incident must be considered on its merits. I doubt that the public or youths understand the complexities that the Law Society of Scotland and the Faculty of Advocates have highlighted, such as single-witness corroborations and the relationship between different pieces of legislation governing breach of the peace and common
assault. Those issues become very complex in the court environment. However, we have the opportunity, with one piece of legislation, to provide blanket cover to protect all emergency workers who are going about their duties in emergency situations. Obviously, a bit of work will have to be done to define what an emergency situation is and to define what a court should be happy, or not happy, to accept as corroborating evidence. However, provided that the measures in the bill are married to education and publicity—including publicity about sentencing—we have the opportunity to protect all emergency workers.

It may be possible to widen the range of emergency workers who are covered by the bill. At the Maryhill incident a couple of weeks ago, there were medical teams and people from the Scottish National Blood Transfusion Service. We should also consider coastguards. Then, if we consider—as we should do, in this day and age, when there could be acts of terrorism—the wider world of consequence management, we should consider the whole range of organisations that we might expect to turn up in an emergency.

Michael Matheson: So you would like several different organisations to be included in the bill.

Assistant Chief Constable Gray: Yes. They would include the SNBTS, the Maritime and Coastguard Agency, the Royal National Lifeboat Institution, mountain rescue teams, and utility workers on an emergency scene.

Michael Matheson: Are not some of those organisations discharging their duties on behalf of the police? For example, when mountain rescue teams are called out, they are linked to the police, they operate under the control of the police, and they have police insurance. Is it the same for coastguards?

Assistant Chief Constable Gray: No; the Maritime and Coastguard Agency is an agency in its own right. In the event of a big response to an emergency, the police co-ordinate that response. We do not command and control anybody else’s resources; we only co-ordinate so that there is a joined-up approach at the scene. Each individual agency commands and controls its own resources.

Michael Matheson: As a member of a mountain rescue team, I know that it could be argued that those teams act in support of the police.

Assistant Chief Constable Gray: Absolutely.

Michael Matheson: The teams might therefore be covered by the bill.

I want to cover another point that I raised with Douglas Keil. Are you satisfied that the bill protects police support staff sufficiently? Some of your support staff are not uniformed, but they could be working in an emergency situation. Do you have any concerns about the bill’s provisions in relation to such staff? If so, how can we overcome those concerns?

Assistant Chief Constable Gray: The bill could be extended slightly to cover anybody who works in support of any emergency agencies in an emergency situation. I think that that would be quite simple.

Chief Superintendent Murray: A good example to give is that of a scene-of-crime officer. If there has been a violent incident on a Friday or Saturday night, that officer will attend to collate evidence and will often find that some people are still around who might choose to behave differently from normal members of the public.

The Convener: Do you think that the scene-of-crime officer will be covered by the bill?

Assistant Chief Constable Gray: An amendment might be needed to include people who work in support of emergency agencies.

The Convener: I wonder about the definition of an emergency if there has been a death at the scene of a crime.

Assistant Chief Constable Gray: We have to consider the stage before that, and consider simply the definition of an emergency. Committee members will have seen our submission, in which we talk about people having reasonable cause to believe that they are dealing with an emergency situation.

The Convener: The problem is that the bill says:

“For the purposes of this Act, circumstances are ‘emergency’ circumstances if they are present or imminent and ... are causing or are likely to cause ... serious injury ... serious illness ... serious harm to the environment ... a worsening of any such injury, illness or harm”

or if they

“are likely to cause the death of a person.”

As a result, the scenario that you describe, in which a scene-of-crime officer arrives after all that has happened, would not be covered by the definition of “emergency circumstances”.

Michael Matheson: Based on the example that you gave, widening the definition of “emergency circumstances” might bring in a range of individuals who are directly and indirectly involved in an event. The question is whether it is necessary to include people such as civilian staff carrying out communication work in the control room, who might be involved indirectly.

Assistant Chief Constable Gray: We suggest that the definition should cover the scene of the incident.
Chief Superintendent Murray: The scene of the incident is where emergency workers are more likely to be exposed to violence, danger or whatever. The control room would not necessarily come into that category, unless we were talking about a mobile control room that was situated at the locus. After all, the control room worker would be remote from the incident.

Michael Matheson: So you are talking about workers who are directly involved with the incident.

Assistant Chief Constable Gray: Yes.

Mr Maxwell: You have now stipulated that the provisions should cover workers who are at the scene of the incident instead of those who are remote from it. Should they also cover fire brigade video units, which attend not just fires but other emergency situations such as road traffic accidents and collapsed buildings? They work among fire crews and video the incident scene for fire investigation, training and other evidential purposes.

Chief Superintendent Murray: That brings us back to the question whether those workers are executing their duty in an emergency situation.

Mr Maxwell: But they are non-uniformed staff.

Chief Superintendent Murray: But a detective officer is also in plain clothes. If they have identified themselves, they are given the same protection as a uniformed officer. As a result, we suggest that a member of a fire brigade video team who was subjected to violence or danger should benefit from the same protection as a uniformed colleague in an emergency situation.

Assistant Chief Constable Gray: Members of a fire brigade video team might not be dressed exactly like the firefighters, but they still wear protective clothing and would be fairly easy to identify as part of the emergency response.

Mr Maxwell: That is fair enough.

You probably answered my next question when we discussed the phrase “emergency circumstances”. Do you agree with the bill’s focus on emergencies rather than on situations that are not necessarily emergencies but which involve the same staff?

Assistant Chief Constable Gray: We have wrestled with that question. Given that our officers are protected by the provisions in the 1967 act, how do we implement the proposed legislation? We concluded that a line should be drawn between general policing duties, which would be covered by the 1967 act, and an emergency situation, in which we would have the opportunity to implement the bill’s provisions.

Mr Maxwell: What about emergency workers other than police officers? You might have heard our earlier discussion about nurses who work in or near an accident and emergency unit. Do you accept that there is vagueness about what the provisions cover in that respect? If so, would that create difficulties for officers who attend a scene when it comes to charging an individual?

Chief Superintendent Murray: That might well be the case. It would also create difficulties for the victim, who might find it hard to understand at the time which piece of legislation was being applied. Indeed, the situation might be made even more difficult if one piece of legislation covers what happens halfway down a corridor and nearer an emergency scene but not what happens at a slightly more remote location such as, for example, at the door of the premises in question.

The Convener: We have discussed at length the evidential requirements of proving that an offence has been committed. Do you have any concerns about whether, from a police point of view, the bill will make it difficult to collate evidence?

12:00

Assistant Chief Constable Gray: When it comes to cases of assault on police officers, ensuring that there is a sufficiency of evidence on which to proceed is always an issue, especially in relation to officers who do their duties in plain clothes. Doug Keil outlined eloquently the circumstances in which officers give verbal warnings of their identity and produce their warrant cards. As far as officers in uniform are concerned, that is where corroboration to the offence comes in.

If the provisions are extended to other emergency workers, proving that the attacker knew that the person was a general practitioner, for example, will always be a difficulty. Each incident would need to be considered on its own merits, taking into account the available evidence and corroboration and how that would be presented to the procurator fiscal.

The Convener: From the police point of view, requiring only one source of evidence to establish that somebody was an emergency worker would be the most helpful way forward.

Assistant Chief Constable Gray: Absolutely. Doctors who operate outwith normal hours as part of a GP response will often leave the vehicle in which they have been chauffeured to the scene and enter the high-rise block of flats on their own. In such situations, a source of corroboration will be absent in many instances.

Chief Superintendent Murray: Requiring just one source of evidence would be fundamental to the operation of the legislation. I can envisage
many an occasion on which, if corroboration were required, it would not be available. The outcome of the bill would be that a judge could apply the credibility test on either the GP or the accused person. We would support a move towards requiring one source of evidence.

**The Convener:** So if a doctor says that they are a general practitioner who is going to assist in an emergency, and if they are hindered in that act, should that be enough? Would more than that be required?

**Assistant Chief Constable Gray:** That is often all that we would have to go on, unless we traced other witnesses; that is our job, of course, and we amass what evidence we can. I can see no other way round the situation, but I have no doubt that some of the legal minds might take a different view.

**Chief Superintendent Murray:** There might be additional circumstantial evidence. The doctor might be carrying a bag, and they might be dressed differently from others in the area. Although it might seem to be a case of somebody simply having to say, “I’m a GP”—

**The Convener:** That is what I am driving at. I do not have a difficulty on this point if there is some other evidence that indicates that the person is a general practitioner. However, I would be worried if one source of evidence amounted to the person simply saying, “I am a GP”, and the witnesses having to testify whether they had thought at the time that that person was a GP. The one source of evidence requirement should perhaps be clearer with regard to what would be needed to test it.

**Bill Butler:** I will ask the same questions that I asked Mr Keil. Do you expect the bill in its current form, if enacted, to lead to an increase in the number of occasions on which charges are laid by the police against those who have assaulted, attacked or impeded emergency workers? Mr Keil thought that the effect of the bill would be nil. What is your view?

**Chief Superintendent Murray:** My view is slightly different. I expect that some increase in reporting would occur, for the reasons that we rehearsed earlier, particularly the raising of awareness in certain places of employment, especially within the health service. There would be an onus on employers to ensure that employees had the protection of the legislation.

**Bill Butler:** Would the direct consequence of an increase in reporting be an increase in the number of instances where charges are laid?

**Chief Superintendent Murray:** I am thinking back to legislation that has recently been enacted—one example is the legislation on mobile telephones. There has certainly been an increase in the reporting of those offences. As I said, the impact tends to tail off and it is up to the enforcing authorities to prioritise and push on if a piece of legislation is not being used as effectively as it might be. I anticipate that there would be an increase, for the reasons that have been given.

**Bill Butler:** Does Mr Gray concur?

**Assistant Chief Constable Gray:** I would to a degree.

I am here to speak on a national basis, but in my force area we have had to enter into agreements with the fire service and the ambulance service in relation to incidents where they feel that they are under threat. That has led to a much more focused response from us to incidents in which fire service and ambulance staff come under attack. There has been, as a result of that strategy, an increase in the number of reports. If the bill is successful in achieving its aim I hope that over time the number of incidents will drop off.

**Bill Butler:** I will turn to wider measures to protect emergency workers, such as public education, employer awareness, training and so on. What wider measures would you like the Executive and other bodies to implement to improve the protection of the police and other emergency workers?

**Assistant Chief Constable Gray:** Doug Keil mentioned in his evidence the introduction of personal protective equipment since 1993—around the time of the murder of PC Lewis Fulton—and described how the Scottish police service has progressed significantly with the provision of equipment and training.

Perhaps there is a requirement for greater awareness of what people can do in an emergency scenario through the use of open-hand or conflict communication, when they are confronted with people who wish to do them harm, to take the heat out of the situation before it develops into an assault. Perhaps there is potential for such a training opportunity to be afforded within other emergency services. I do not know what the cost implications of that would be, but like any training initiative it would have some costs. There is already significant experience of such training within the police service and we would be happy to share that with any local organisation.

**Chief Superintendent Murray:** I do not disagree with that at all. I have no doubt that issuing protective equipment—quite advanced protective equipment in comparison to what officers had previously—including CS spray, has given officers more of a menu of options to deal with individuals, keep them at arm’s length or incapacitate them. I am not suggesting that other emergency workers should be issued with CS
spray, but the point is that if employers look at the whole package in the context of health and safety that can only provide benefit.

The Convener: I ask you to elaborate on the view expressed by ACPOS in its submission. It states:

"the offence of assaulting, obstructing or hindering an emergency worker, which includes a constable and a member of a Fire and Rescue Service … would result in direct conflict between the proposed legislation and the Police (Scotland) Act 1967 and the Fire Services Act 1947."

ACPOS suggests that there could be some "ambiguity" in determining "the circumstances under which the legislation will require to be enforced."

Assistant Chief Constable Gray: I think that I touched on that earlier, in as much as there is already legislation that provides for the protection of police officers and fire officers in their day-to-day duties. The issue is, at what point is there an emergency situation in which the new legislation could be used to arrest without warrant, if the circumstances required it? When is the line crossed between day-to-day duties and an emergency situation?

The Convener: So it is not uncommon for the police to assist because an emergency worker is being obstructed or assaulted. In such cases, the charge would be libelled in relation to the assault against the police and the emergency worker, but in the case of the police it could be libelled under the 1967 act or the bill.

Assistant Chief Constable Gray: Yes. The charge might be libelled for the emergency worker under the bill, but it is not necessarily an emergency situation for the police, because it would be part of their day-to-day duties. We are looking at the large arena of the emergency situation with a multi-agency response to save life and protect property, as opposed to the day-to-day duties of a constable.

The Convener: So the police may end up having less protection in the same circumstances, because there are higher penalties in the bill for assaulting an emergency worker who is carrying out their emergency duties than there are in the 1967 act for assaulting a police officer who is performing their day-to-day duties in protecting that emergency worker.

Assistant Chief Constable Gray: That goes back to the amendment that Mr Maxwell talked about earlier.

The Convener: Thank you both for your evidence, which has been helpful and clear.
The Criminal Law Committee of the Law Society of Scotland ("the Committee") welcomes the opportunity of commenting on the Emergency Workers (Scotland) Bill.

**General Comments**

The Policy Memorandum highlights the problem of emergency workers responding to emergency situations and being subjected to acts of violence and intimidation and makes it clear that "such attacks are entirely unacceptable". The bill therefore introduces a statutory offence of assaulting, obstructing or hindering emergency workers (or any person assisting an emergency worker) in an emergency situation. The introduction of these provisions is intended to have a deterrent effect on the recurrence of such conduct and to assist in monitoring the numbers of attacks on emergency workers in future.

The Committee is supportive of the policy intention behind this measure. Emergency workers should not be subjected to this kind of behaviour. Sufficient protection should be available to ensure that emergency workers can carry out their duties without fear of attack. Consideration should, however, be given to whether the creation of a new offence is the most effective way to address this issue.

**The Common Law**

The common law provides protection from assault for everyone and allows aggravating circumstances to be taken into account, both in determining the forum for prosecution and the level of sentence on conviction.

Following a debate in the Scottish Parliament in February 2003, the Lord Advocate issued guidance to Procurators Fiscal stating that:

"Incidents involving attacks on public sector workers, e.g. doctors in hospitals, train and bus drivers should be taken seriously. The locus and the fact that the worker is providing a service to the public are both aggravating factors which should be borne in mind by prosecutors in deciding the appropriate forum for the case."

From the cases cited in the consultation document which preceded the bill, these guidelines appear to be operating well in practice. Cases involving emergency and other public service workers are being dealt with seriously and many of these prosecutions are proceeding on indictment. The gravity of these offences has been reflected in the sentences which have been passed. In two of the examples given, sheriffs imposed a sentence of three years imprisonment (the maximum sentence available in the sheriff court). In doing so, the court clearly signalled that these attacks will be severely punished.

The option of prosecution on indictment can, therefore, offer the possibility of increased penalties beyond those currently available at summary level.

**Creation of a Statutory Offence**

There is an argument that the creation of a statutory offence may detract from flexibility and impose evidential burdens on the Crown which would not apply at common law. It is therefore a fine balance as to which approach (creating a new statutory offence or resting with the common law) would provide the better deterrence.

The common law crime of assault is committed if one person deliberately attacks another. Assault can be aggravated by various factors, such as the nature of the injury sustained or the identity of the person assaulted. The circumstances of the crime will be narrated in the charge and the court left to draw the inference, in this case, that the situation involved emergency workers operating in an emergency situation.

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1 Scottish Executive Consultation, “Protection of Emergency Workers” at paragraph 1.5
Under the bill, the terms “emergency worker” and “emergency circumstances” are defined and the circumstances of the offence would therefore have to comply with the statutory template if proceedings were to be taken. To establish an offence under section 1(1) or 1(2) of the bill, the Committee believes that it would be necessary to prove

- that the victim falls within the definition of “emergency worker” or someone assisting an emergency worker;
- that the accused knew that the victim was an emergency worker;
- that the emergency worker was “responding to emergency circumstances” at the time of the alleged offence; and
- that a reasonable person would have grounds for believing that the emergency worker is or might be responding to emergency circumstances at the time.

“Emergency worker”

Sections 2(6) and 3(5) provide that evidence from a single source shall be sufficient to establish whether a person is an emergency worker for the purposes of the bill. The Committee notes that this a departure from the general rule in criminal proceedings that the essential elements of an offence must be established by evidence from at least two sources.

“Assisting an emergency worker”

Sections 2(5) and 3(4) state that a person is to be taken to be assisting an emergency worker only if a reasonable person would have grounds for believing that to be the case. The Committee would question whether such reasonable belief will have to be proved by corroborated evidence or whether evidence form one source will suffice. If the former is the case, then it will be more difficult to establish an offence under these provisions than to prove an offence against an emergency worker. Is this the policy intention?

The accused’s knowledge

Clarification would be welcomed as to the basis of the test which will apply in relation to proof that the victim is an “emergency worker” for the purposes of sections 1(1), 1(2) or 3(1).

It is unclear whether a subjective or objective test will be applied in relation to knowledge about the victim’s occupation. An aggravating element of the offence is the fact that the victim is an emergency worker. When the prosecution seek to establish an aggravation which depends on the character of the victim, it is necessary for them to show that the accused was aware of that character. There is authority for this proposition so far as common law aggravations are concerned2 and in practice, the same rule is applied in the most common of the statutory assaults. The need to prove the accused’s knowledge of the character of the victim in a charge under section 41 of the Police Act 1967 was upheld by the sheriff in the case of Annan-v-Tait 1982 SLT (Sh Ct) 108. If a subjective test is to apply under this statute, it may be helpful to amend sections 2(6) and 3(5) to reflect that evidence from a single source shall be sufficient to establish the accused’s knowledge as to whether the person is an emergency worker.

“Responding to emergency circumstances”

Section 2(4) provides that circumstances will amount to emergency circumstances where inter alia “a reasonable person would have grounds for believing that the emergency worker is or might be responding to emergency circumstances". Where there is nothing obvious to indicate that an emergency worker is responding to emergency circumstances, a person will not be guilty of an offence under section 1(1) or 1(2) of the bill. The Committee is concerned that as currently drafted this objective test may defeat the policy intention of the bill in certain situations, as it takes no account of the accused’s actual knowledge of the situation. An emergency worker may be responding to an emergency situation but there may be no obvious signs that this is in fact the case. The accused may, however, be aware of the circumstances and intervene in some way to obstruct the emergency worker. In this situation, an accused could avoid conviction under the bill as a reasonable person would have had no grounds for believing that the emergency worker was responding to the emergency

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2 Alex. And Jas. Alexander 1842 1 Broun 28
circumstances. Section 4(2)(b) could perhaps be amended to insert reference to the accused’s actual knowledge of the situation as an alternative to the objective “reasonable person” test.

It can be seen from these comments that in some circumstances, it may be more difficult to secure a conviction under the statutory offence than it would be at common law.

**Increased Sentencing Powers**

One advantage of a statutory based offence would appear to be the potential for increased penalties on summary complaint. The maximum penalty on summary conviction for an offence under the bill is 9 months imprisonment, whereas the maximum sentence available for common law assault on summary complaint is 6 months imprisonment. However, if the Crown believes that an offence would merit a longer custodial sentence, it would always be open to prosecute on indictment, with the potential of a 5 year maximum sentence in the sheriff court or life imprisonment in the High Court.

There is an argument that the provisions in section 13 of the Crime and Punishment (Scotland) Act 1997, in relation to sentencing in summary cases could be brought into effect to address this problem more readily. This would enable a court dealing with summary business to impose a maximum period of imprisonment of 12 months. Some of the cases involving emergency workers, or indeed any public service worker, could then be dealt with summarily, whilst attracting an appropriate sentence and preserving the flexibility of the common law approach.

**Monitoring**

Regardless of whether cases proceed at common law or under statute, it is essential that emergency workers feel confident that they can conduct their duties without fear of assault. Educational programmes and awareness raising events will be essential in reinforcing the message that any assault on a public service worker, especially those in the emergency services, is unacceptable and will be dealt with severely. Provision should therefore be made to monitor the level of offending in this area and assess whether the package of measures being put in place now will continue to address this issue effectively in the future.

Mrs Anne Keenan
Depute Director
Law Society of Scotland
21 May 2004

SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

Further to our evidence session today, I am writing to clarify the current penalty available under the Police (Scotland) Act 1967 in relation to a contravention of section 41 of that Act. In evidence to the Committee, I stated that it was my understanding that the penalty for a first offence under the Police (Sc) Act 1967 was 3 months imprisonment and that for a second or subsequent offence committed within a two year period the penalty was nine months. I believe I said that I would be corrected if I was wrong. Well, having checked the position in further detail, I can confirm that this was the original sentence available under the Act but the Act has been amended so that the maximum penalty is in fact nine months imprisonment for a first offence. This would therefore put the police in the same position as emergency workers in relation to sentence under the bill.

I am sorry for this error on my part and would be grateful if you could pass on this information and my apologies to the Committee.

Anne Keenan
Deputy Director
Law Society of Scotland
June 2004

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3 Section 5 of the Criminal Procedure (Scotland) Act 1995 allows a sheriff to impose a sentence of 6 months imprisonment if a person has been convicted of a second or subsequent offence inferring personal violence. Otherwise, the maximum period will be 3 months imprisonment.

4 A 12 month sentence would be available on a second or subsequent conviction for violence.
Thank you for your letter of 16 June which raises a number of issues in relation to the proof of the offence provisions contained in the Emergency Workers (Scotland) Bill. The Society’s Criminal Law Committee has had the opportunity to consider the various points raised by the Justice 1 Committee and has the following comments to offer:-

The accused’s knowledge as to the status of the victim

One of the essential elements in establishing an offence under sections 1(1), 1(2) or 3(1) of the bill is proof of the accused’s knowledge of the status of the victim, whether this is as an emergency worker or as a person assisting an emergency worker. In seeking to secure a conviction under these sections, the Crown will require to prove by corroborated evidence the accused’s knowledge of the victim’s capacity. The Criminal Law Committee has considered the evidential tests which may apply when it is alleged that the victim is

a. an emergency worker; or
b. a person assisting such a worker.

The Emergency Worker

Sections 1(1) and 3(1) of the bill create offences of assaulting, obstructing or hindering an emergency worker while the worker is responding to emergency circumstances or working in the part of a hospital designated to deal with accidents and emergencies. The sections make no specific reference to the mens rea or mental element required to prove these offences.

In discussing statutory interpretation in his book, “Criminal Law”, (third edition) Sheriff Gordon states at paragraph 8.05:

“The most important factor in determining whether or not an offence requires mens rea is the wording of the relevant enactment: if Parliament enacts that mens rea is required or that its absence is irrelevant, then the courts will act accordingly, and any question of injustice or absurdity will be disregarded. There are, however, many statutes whose terms are not explicit, and it is in relation to them that difficulties of interpretation arise.”

He goes on to state at paragraph 8.06:

“The cases show that there are two opposing ways of approaching the interpretation of a statutory offence. The first is by way of a presumption that mens rea is always required, so that a statute will not be read as abrogating this fundamental requirement in the absence of clear words excluding mens rea: the second is by way of a literal interpretation of the statute, so that, if the statute uses what have been called “words of absolute prohibition”, it will be improper for the courts to read into it words such as “knowingly” which would imply mens rea.”

He concludes later in that paragraph:

“As a matter of theory and general principle the proper approach is by way of presumption in favour of mens rea. Such an approach is in accord both with moral requirements and with the accepted method of construing penal statutes and its correctness has been clearly affirmed in two leading Scots cases on the question.”

The case of Annan-v-Tait 1982 SLT (Sh Ct) 108 debated which approach should be taken to statutory interpretation when considering proof of the mental element of the analogous offence of assaulting, obstructing, and hindering a police constable under the Police (Sc) Act 1967. The Crown in that case contended that it did not matter that the accused was unaware of the fact that the victim was a police officer at the time of alleged
commission of the offence. The defence adopted the contrary position. In considering this issue the sheriff
referred to the dictum of Lord Reid in the House of Lords case of Sweet-v-Parsley 1969 2 WLR 470:

“Our first duty is to consider the words of the Act: if they show a clear intention to create an absolute offence
that is the end of the matter. But such cases are very rare. Sometimes the words of the section, which creates
a particular offence make it clear that mens rea is required in one form or another. Such cases are quite
frequent. But in a very large number of cases there is no clear indication either way. In such cases there has
for centuries been a presumption that Parliament did not intend to make criminals of persons who were in no
way blameworthy in what they did. That means that whenever a section is silent as to mens rea there is a
presumption that, in order to give effect to the will of Parliament, we must read in words appropriate to require
mens rea.”

In acquitting the accused, the sheriff held that mens rea was an essential element of proof of the offence under
the Police (Sc) Act 1967.

Whilst it can be inferred therefore that there will be a presumption in favour of mens rea in relation to the
offences contained in sections 1(1) and 3(1) of the bill, the Criminal Law Committee in evidence sought
clarification as to the nature of the test to be applied in establishing the necessary mens rea for these offences.

In discussing the knowledge which an accused must have of the victim’s character, Sheriff Gordon states at
paragraph 29.24 of his book:

“Where the Crown seek to establish an aggravation which depends on the character of the victim, it is
necessary for them to show that the accused was aware of that character. There is authority for this proposition
so far as common law aggravations are concerned, and in practice the same rule is applied in the most
common of the statutory assaults of this kind, contraventions of the Police (Sc) Act 1967. In Myles Martin and
Ors and John Nicolson and Ors, there were charges of assaulting persons who, it was alleged, the accused
well knew or had reason to know were officers of law, which suggests that recklessness may be sufficient mens
rea but that the point was not taken in these cases, and it may be that proof that the accused had “reason to
know” will be relevant only as evidence of actual knowledge. On the other hand, it is still open to the courts
to hold that it is sufficient that the accused knew or ought to have known of the character of the victim.”

On one view, therefore, it would be open to the courts to take a subjective approach and consider the
accused’s actual knowledge of the character of the victim. Whilst, on the other, an objective approach
of considering what the accused ought to have known could be used as evidence of the accused’s
actual knowledge.

The Scottish Executive’s written evidence to the Justice 1 Committee has clarified the approach, which they
intend to be taken to the interpretation of these sections and confirmed that the prosecution will, in their view,
have to produce evidence to establish that the accused knew or ought to have known that his or her victim was
an emergency worker. The written evidence from the Crown Office supports this approach.

However, the bill makes no reference to this test. Having regard to the differing approaches referred to in the
passage from Sheriff Gordon’s book (above), the Criminal Law Committee would suggest that it would be
helpful to state clearly on the face of the bill the nature of the mens rea which the Crown will be required to
prove for an offence under sections 1(1) and 3(1).

On the basis of the test referred to by the Scottish Executive in evidence, the Criminal Law Committee has
considered what the Crown would require to prove in practice in relation to the accused’s knowledge of the
status of the emergency worker to secure a conviction under the bill.

If the test referred to by the Scottish Executive is adopted by the courts, then the Crown would have to establish
from two sources of evidence that the accused knew or ought to have known that the victim was an emergency
worker. This knowledge could be inferred from the facts and circumstances of the case. Proof of knowledge on
the part of the accused person may not be problematic in cases where there is a recognisable uniform worn by
the emergency worker. However, in cases where a doctor or nurse, for example, is acting in the community,
this may be more problematic. Much will depend upon the inferences, which can be drawn from the evidence led in the case. Did the doctor or nurse carry any identifiable medical equipment, such as a medical bag or a stethoscope? Did any witnesses overhear the doctor or nurse identifying him- or herself to the accused? From evidence such as this, the Crown could lead prima facie evidence from which the inference of the accused’s knowledge about the status of the victim could be drawn.

However, if there was evidence to suggest that the accused was unaware that the victim was an emergency worker and if this evidence was believed, then the accused would be entitled to be acquitted. The case of Annan-v-Tait (referred to above) is authority for the concept of an honest mistake in fact in relation to the analogous offence under section 41 of the Police (Sc) Act 1967.

In that case, the accused had been charged with a contravention of section 41(2)(a) of the Police (Sc) Act 1967 (assisting the escape of a person in lawful custody). The evidence before the court disclosed that two plain clothes police officers had interrupted a street fight and taken one of the perpetrators into custody. The accused, Mr Tait, had attempted to rescue his friend. During the course of events, one of the constables had shouted that he was a police officer whilst his colleague had produced her warrant card to members of the crowd gathered there. The constable stated in evidence that the accused had not stopped struggling until eventually “it had got through to him that I was a police officer”. A defence witness had also stated that he had told Mr. Tait that the person with whom he was struggling was a police officer, at which point he had stopped struggling. In determining whether the accused had the necessary mens rea to commit the offence, the court had to consider whether Mr. Tait held an honest and reasonable belief in his ignorance of the constable’s capacity.

If this approach is adopted in construing the Emergency Workers (Sc) Bill, it can be seen that other people at the scene of the crime may believe that it is clear that the person is an emergency worker but if the evidence suggests that the accused made an honest mistake in fact as to the status of the worker, then the necessary element of mens rea will not have been proved beyond reasonable doubt by the Crown. The court will require to consider all the facts and circumstances of the case as a whole in reaching a determination as to whether the Crown has proved the accused’s knowledge of the victim’s status.

Assisting an emergency worker

Sections 1(2) and 3(1) of the bill create offences of assaulting, obstructing or hindering a person assisting an emergency worker while that worker is responding to emergency circumstances or working in the part of a hospital designated to deal with accidents and emergencies. The sections make no reference to the mens rea or mental element required to prove these offences.

On the basis of the principles and case law referred to above when considering the position of emergency workers, the Criminal Law Committee would suggest that there will be a presumption in favour of mens rea in relation to these sections of the bill. However, clarification would again be welcomed as to the nature of the test to be applied in establishing the necessary mens rea.

In the Committee’s view, much will depend on the interpretation of sections 2(5) and 3(4) of the bill. These subsections state that “a person is to be taken to be assisting an emergency worker only if a reasonable person would have grounds for believing that to be so”. If these subsections are to be regarded as providing the relevant test which is to be applied in proving the mens rea element of the offences, then the Crown would require to show from evidence of two sources that a reasonable person would have grounds for believing that the victim is a person assisting an emergency worker. It would not be a defence in these circumstances for the accused to state that he or she did not know that the person was assisting the emergency worker. If evidence is led from which an inference can be drawn that a reasonable person would have grounds for believing that the person was so acting, then the mental element of the crime in regard to the victim’s status would be established.

However, if the purpose of these subsections is not related to the mens rea of the offence but rather to clarify the evidence necessary to establish the fact that a person is assisting an emergency worker, then the Crown would have to lead corroborated evidence from which that inference could be drawn and then lead evidence of the accused’s knowledge of the victim’s status.
In these circumstances, the Criminal Law Committee would again refer to the passage in Sheriff Gordon’s, “Criminal Law” at paragraph 29.21 (referred to above) concerning the accused’s knowledge of the victim’s character and the consideration thereafter as to the nature of the mens rea which requires to be proved.

If the same test, as that suggested by the Scottish Executive in relation to emergency workers, is applied, then the Crown would have to lead corroborated evidence to the effect that the accused knew or ought to have known that the victim was a person assisting an emergency worker. On this interpretation, the Committee also believes that the court would be entitled to consider evidence which suggested that the accused had made an honest error in fact as to the victim’s status and if accepted, acquit the accused on the basis of lack of mens rea.

Clarification of the position in this regard would be welcomed.

“Responding to emergency circumstances”

Having established knowledge as to the status of the victim, the Crown will require to prove in relation to offences under section 1 that the emergency worker was responding to emergency circumstances. Section 2(4) provides that circumstances will amount to emergency circumstances where inter alia “a reasonable person would have grounds for believing that the emergency worker is or might be responding to emergency circumstances”. Where there is nothing obvious to indicate that an emergency worker is responding to emergency circumstances, a person will not be guilty of an offence under section 1.

The Criminal Law Committee is concerned that as currently drafted this objective test may defeat the policy intention of the bill in certain situations, as it takes no account of the accused’s actual knowledge of the situation. An emergency worker may be responding to an emergency situation but there may be no obvious signs that this is in fact the case. The accused may, however, be aware of the circumstances and intervene in some way to obstruct the emergency worker. In this situation, an accused could avoid conviction under the bill as a reasonable person would have had no grounds for believing that the emergency worker was responding to the emergency circumstances. Section 4(2)(b) could perhaps be amended to insert reference to the accused’s actual knowledge of the situation as an alternative to the objective “reasonable person” test.

Emergency Workers not at the scene of the emergency

In considering the position of those who are not at the scene of the emergency but who are responding to emergency circumstances, it must first be established whether the person is an emergency worker or a person assisting an emergency worker.

Your letter refers to an example in which it is envisaged that a person is carrying a bag of blood along a corridor in a hospital to an emergency being dealt with elsewhere on the premises. Depending on the circumstances of the case, such a person could either be an emergency worker or a person assisting an emergency worker. The Criminal Law Committee makes this distinction because evidence from a single source shall be sufficient to establish whether a person is an emergency worker but it would appear that corroborated evidence would be required to prove that a person is assisting an emergency worker.

In proving the accused’s knowledge as to the victim’s status as an emergency worker who is responding to an emergency but who is not at the scene of the emergency, consideration must be given to the inferences which can be drawn from the facts and circumstances of the case. If the test referred to by the Scottish Executive is applied, then the court must consider whether the accused knew or ought to have known that the victim was an emergency worker on the basis of all the evidence.

If the victim is assisting an emergency worker but is not at the scene of the emergency, then depending on the interpretation of sections 2(5) and 3(4) consideration should be given to whether a reasonable person would have grounds for believing that the person was acting in this capacity or alternatively to whether the accused knew or ought to have known that the person was so acting.

If there are no definitive circumstances to which either inference can be attributed then there may be difficulties in establishing the necessary mens rea under the bill and it may be better to prosecute the accused at common

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6 Section 2(6) of the bill.
law for an offence of aggravated assault. Proof of the aggravation would under the common law only require one source of evidence.

To prove an offence under section 1, evidence would also require to be led to establish that the circumstances to which the emergency worker was responding were emergency circumstances. Section 2(4) of the bill would apply in this regard.

In the example given, therefore, evidence would have to be led from which an inference could be drawn that a reasonable person would have had grounds for believing that the person carrying the bag of blood along the corridor was or might have been responding to emergency circumstances. This again will depend on the facts of the case and the interpretation placed on the evidence by the court. If it is anticipated that there may be difficulties in establishing this inference, consideration could be given to proceeding under the common law.

Obstruction and hindrance.

Sections 2(1) and 3(3) provide some guidance as to what will constitute obstruction or hindrance for the purposes of the bill and make it clear that no physical element will be required in proof of these offences. Section 2(2) provides an example of non-physical conduct which will be regarded as “hindering”: the provision of false information to an emergency worker. This differs from the position in relation to section 41(1) of the Police (Sc) Act 1967 where it would appear that some physical element is required for a conviction of obstructing or hindering a police constable in the execution of his or her duty.

As with contraventions of section 41(1) of the Police (Sc) Act 1967, however, proof of the offence of obstruction or hindering will depend on the facts and circumstances of the cases brought under the bill and the court will determine whether the conduct is sufficient to infer that there has been obstruction or hindrance. The jurisprudence in relation to section 41(1) is helpful in that it demonstrates the range of conduct covered by this offence.

In Walsh-v-McFadyen, the accused had been detained under section 14 of the Criminal Procedure (Sc) Act 1995. He was sitting on a couch at home when the police asked him to put on his shoes and go with them to the police station. He refused to do so and refused to stand up. The officers had to lift him physically from the house and he was convicted of hindering the police in the execution of their duty.

It was observed in that case that in certain circumstances, passivity amounted to hindrance and it might well be a matter of degree whether or not failure to co-operate with the police will amount to obstruction or hindrance. The Committee would suggest that the same will be true of such offences under the Emergency Workers (Sc) Bill.

The italicised section in the opinion of the High Court in Skeen-v-Shaw (referred to above) may also be of assistance in highlighting the essence of such an offence:

“Now we do not propose to consider…whether the word “hinders” in the context in which it appears also requires a physical aspect or requires a physical element but that word, by its very introduction, demonstrates how small a degree any physical element must be in the act of persons who place a difficulty in the way of the police in the execution of a purpose in the course of their duty.”

The court may ask, “Has the action of the accused person placed a difficulty in the way of the emergency worker responding to the emergency circumstances?” If so, then it may be held that the person has hindered or obstructed the emergency worker. As with the Police (Sc) Act 1967, the Criminal Law Committee would anticipate that a body of case law will develop to test the extent of the offence provisions under the bill.

I hope these comments are of some assistance and if I can provide any further information, please do not hesitate to contact me.

Anne G. Keenan
Deputy Director

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7 Davidson 1841 2 Swin 630; Yates-v-HMA 1977 SLT (Notes) 42
8 It has, however, also been stated that the incorporation of “hinders” in the offence demonstrates that very little is required to satisfy this physical element
I am writing on behalf of the Chief and Assistant Chief Fire Officers Association (CACFOA) (Scotland) in response to the Justice 1 Committee’s invitation to comment upon the Emergency Workers (Scotland) Bill.

CACFOA (S) welcomes the Bill that clearly seeks to address one key aspect of a wider Anti Social Behaviour programme. From a Fire Service perspective we are particularly concerned with the increasing trend of attacks on fire service personnel and we consider the Bill to be both opportune and apposite.

Scottish Fire Brigades have been collecting data for some time on these issues but even now we believe such events are under reported across the Scottish Fire Service, in particular where such attacks do not result in direct damage or injury.

I have attached a summary of recorded incidents across each Brigade in Scotland (See Annex A). Attacks on fire crews and fire service personnel often have serious consequences which range from personal injury and damage to equipment, to non-availability of fire cover and potentially the development of ‘no go’ areas in some communities. The consequences of these outcomes being reduced or delayed attendance to legitimate emergency incidents and the temporary or sometimes permanent loss of highly skilled and valued staff.

More specifically, we would wish to offer the following comments in relation to the Draft Bill.

Section 1

1.1 We consider the wording ‘responding to emergency circumstances’ should be replaced with ‘on duty activities’. This change would ensure that support staff who contribute to the safe and effective management of an emergency situation, are covered within the Act.

It would also include emergency workers who may be engaged in routine (non emergency) work, for example fire crews engaged in hydrant maintenance and testing. Indeed, there have been occasions where fire crews have come under attack whilst carrying out such work.

1.3 (b) We assume that this definition includes all fire service staff given that acts of assault, obstruction and hindrance impact upon fire service personnel beyond immediate emergency response events. For example, Fire Control staff are on occasions threatened verbally in the pursuit of their duties.

1.4 We consider the wording ‘responding to emergency circumstances’ should be replaced with ‘on duty’.

Section 2

In collating the current evidence from Scottish Fire Brigades we have identified a worrying trend for attacks on fire crews or fire service staff to be premeditated. In simple terms a fire call or small fire is deliberately made to attract a response and on arrival crews are subject to a coordinated and sometimes sustained attack.

Whilst, such deliberate acts may lead to action being taken under different criminal legislation, we felt it was opportune to bring this area of concern to Ministers’ attention.
Section 4

Following on from comments made under Section 2 above, when attacks are premeditated we believe more stringent sanctions or penalties may be warranted.

Finally, your letter invites respondents to describe what the Bill will do for their organisation. From a Fire Service perspective we consider the Bill will provide the following benefits or enhancements.

1. The Bill will provide a clear message that society will not support attacks on emergency workers.

2. The Bill will also give recognition to and draw attention to the worrying decline in societal values where emergency workers are perceived to be legitimate targets for anti-social behaviour activities.

3. The Bill will provide greater reassurances for our staff, who risk their own lives to deal with emergency situations. Furthermore, given the escalating trend of such attacks the Bill is welcomed now.

Thank you for providing CACFOA (S) with this opportunity to comment upon what we consider to be an important measure in the wider programme of dealing with Anti Social Behaviour. We trust our comments are self explanatory, but would be please to expand further as required.

Mr David Wynne
Community Safety Portfolio Officer
CACFOA (S)
30 April 2004
Total attacks on Ops Personnel across all 8 Brigades

- Verbal
- Physical (armed)
- Physical (unarmed)
- Missile
- Other

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Total attacks on Non-Ops Personnel across all 8 Brigades

Types of attack:
- Verbal
- Physical (armed)
- Physical (unarmed)
- Missile
- Other

173 total attacks.
ANNEX A

Attacks on Firefighters - Scottish Brigades
01 April 2002 - 31 March 2003

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| **Non-operational Personnel:** |        |                  |                    |         |       |       |
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| FIFE                 | 0      | 0                | 0                  | 0       | 0     | 0     |
| HIGHLANDS & ISLANDS  | 0      | 0                | 0                  | 0       | 0     | 0     |
| STRATHCLYDE          | 1      | 0                | 0                  | 1       | 0     | 2     |
| DUMFRIES & GALLOWAY  | 0      | 0                | 0                  | 0       | 0     | 0     |
| GRAMPIAN             | 0      | 0                | 0                  | 0       | 0     | 0     |
| LOTHIAN & BORDERS    | 0      | 0                | 0                  | 0       | 0     | 0     |
| TAYSIDE              | 0      | 0                | 0                  | 0       | 0     | 0     |
| **Total (Non-ops)**  | 1      | 0                | 0                  | 1       | 0     | 2     |
SUBMISSION FROM THE ROYAL COLLEGE OF NURSING SCOTLAND

The Royal College of Nursing (RCN) is the UK’s largest professional association and union for nurses, with over 360,000 members (35,500 in Scotland). Most RCN members work in the NHS, with around a quarter working in the independent sector. The RCN works locally, nationally, and internationally to promote standards of care and the interests of patients and nurses, and of nursing as a profession. The RCN is a major contributor to the development of nursing practice, standards of care and health policy.

Introduction

RCN Scotland welcomed the publication of the Emergency Workers (Scotland) Bill and the Scottish Executive’s commitment to improving protection for emergency workers and as the voice of nursing in Scotland we appreciate the fact that nurses and midwives are explicitly covered in the Bill. However, at the pre-legislative consultation stage RCN Scotland argued strongly, along with other health-related professional organisations and trade unions, that all public service workers should be covered by the legislation and believes that it will be a missed opportunity not to include all healthcare staff in the Bill.

In addition to other major unions and professional organisations in Scotland supporting this view, the Scottish Partnership Forum (SPF) has also recently expressed its support for extending the scope of the proposals and we hope that the Committee will give full consideration to this view as it considers the Bill at Stage One.

Background

The Executive’s Partnership Agreement pledged to protect emergency workers from assault and obstruction. This is clearly a matter of great concern to both the public and those workers who are engaged in emergency situations. However, the RCN believes that legal protection against violence for different groups of public service workers should not be considered in isolation.

We recognise that violence is a multi-faceted problem that requires a comprehensive approach to tackle. The RCN has campaigned on the issue of violence for many years and has published several pieces of guidance for both nurses and managers. RCN safety representatives are also active at a local level, encouraging and supporting measures to make working environments safer.

In Scotland we have also been working with the National Control and Restraint General Services Association to promote good practice for healthcare staff in dealing with violence and aggression. We also welcome the Mental Welfare Commission’s consideration of this issue.

All available indicators show a clear trend of increasing violence against public service workers in Scotland and across the UK. Recent high profile incidents involving healthcare staff in Scotland have demonstrated practical shortcomings in staff safety and security procedures that currently exist in some local areas, including failure to comply with Health and Safety Executive recommendations.

The RCN has emphasised the need for increased local activity to protect the security of staff and improve support for those staff that are assaulted, both in reporting incidents and dealing with the physical and emotional consequences of being attacked. It is essential that public sector employers take their responsibilities for the health and safety of their staff seriously and ensure that they work with union safety representatives to minimise the risks of violence at work.

Which workers should be protected?

RCN Scotland believes that there is an important principle that attacks on any staff delivering public services should be treated in the same way by the law. While the Bill extends the scope of staff set to be covered by the new legislation, compared with the pre-legislative consultative proposals, RCN Scotland still fears the creation of two levels of protection. One level for those staff covered by the Bill and another, lesser one for those who are not covered, but who may be working alongside those in the first group.
By extending additional legal protection only to some healthcare workers it could be interpreted by members of the public that attacks on other staff, not included under the new legislation, will not be treated as seriously. Equally we know that that there are high levels of under reporting of incidents at present and a decision to exclude some staff from this new protection might further discourage them from reporting incidents.

RCN Scotland believes that the Bill must be widened to provide the same level of protection to all healthcare workers. Most healthcare workers are never far from a potential emergency situation and if they are not one of the workers covered by the Bill already, or assisting one, they will obviously not be covered by the legislation. We believe that this would potentially leave a serious loophole in the implementation of the new protection.

**Defining emergency situations**

This was also a key consideration in the RCN Scotland evidence at the pre-legislative stage. The definition contained within the Bill at present would exclude many staff working in hospitals or in the community during the course of their normal duties which would not be covered by the defined ‘emergency’ situations. While it may be considered to be outwith the scope of this legislation it is nevertheless important to note that the majority of assaults against nurses and other healthcare staff do not happen in ‘emergency’ situations as defined in the Bill but during the course of their normal duties.

**Financial Memorandum**

RCN Scotland also has a comment to make about point 27 – costs on other bodies, individuals and businesses. We are concerned that the memorandum states that ‘there are no costs for other bodies’ as we believe that NHS Boards and other bodies employing people covered by the Bill should be expected to invest in promoting the new protection to both the public and their employees in order to assist with the deterrence impact of the legislation.

**Other measures**

We would also like to take this opportunity to commend the Scottish Executive’s zero tolerance campaign for violence and aggression in NHS Scotland. We also support the wider package of measures to educate the public and re-inforce the message that attacks on public service workers are not acceptable being developed in conjunction with the STUC and professional organisations.

This wider action is vital if the trend towards violence and aggression in healthcare and other public environments is to be halted and reversed. RCN Scotland also wants extra resources to be made available to implement the Partnership Information Network (PIN) guideline on protecting staff against violence and aggression at work.

**Summary**

The RCN believes that nurses and other healthcare staff have a right to be safe at work irrespective of whether they are based in hospitals, other healthcare premises or in the community.

The RCN also believes that additional legal protection against violence for different groups of public service workers should not be considered in isolation.

We agree with the need for emergency workers to have additional protection but believe that any new legal protection should be extended to other public service workers, including healthcare workers, based on the duties being performed by staff rather then their specific role.

RCN Scotland believes that if the current scope of the Bill is not widened it will be a missed opportunity to provide adequate legal protection for all healthcare workers and that the proposals will in fact risk creating two ‘classes’ of staff.

Pat Dawson
Introduction
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.

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.

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.

Violence in the workplace
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.

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.

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.

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.

Accident and Emergency Departments
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.

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.

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1 Scottish Executive Health Department ISD workforce statistics; Edinburgh 2003
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.

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.

**Omissions from the Bill**

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.

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.

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.

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.

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).

**Penalties**

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.

**Consultation**

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 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.

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situations. However we are disappointed that the legislation has not been extended to cover doctors in all circumstances.

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.

**Conclusion**
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.

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.

Gail Grant
Senior Public Affairs Officer (Scotland)
British Medical Association
7 May 2004

SUBMISSION BY THE ROYAL COLLEGE OF PHYSICIANS OF EDINBURGH

The Royal College of Physicians of Edinburgh is pleased to respond to the Scottish Parliament on the *Emergency Workers (Scotland) Bill - Call for Evidence.*

The College has expressed its support previously for this Bill, and these additional comments reflect those earlier views.

The College considers that an important benefit of the legislation will be the deterrent effect, reducing the actual attacks on emergency workers but, perhaps equally importantly, the fear or threat of such attacks.

In general, the provisions of the Bill are acceptable, although the College has some concerns about the limitations of the provisions in section 3 that imply continual protection to staff working in defined accident and emergency departments only. The Committee may wish to note that the medical specialty of accident and emergency medicine is considering a change of name to emergency medicine. This is more than a semantic change and reflects the role of these clinicians in situations beyond the defined accident and emergency department. There are many other areas in hospitals where the nature of most interventions could be classified as emergency [according to the definition in section 1(5)] and where an attack on staff would be harmful to patients and staff eg Medical Admissions and Assessment Units, Intensive, High Dependency and Coronary Care Units and some acute care in-patient wards. The nature of the offence and the level of protection offered under the Bill should not be defined by the precise physical boundaries of a named department.

The College is pleased to note that the definition of assault or impeding an emergency worker now extends to include non-physical means. Verbal abuse also impedes the process of care and can influence recruitment and retention of skilled staff.

All College responses are published on the College website www.rcpe.ac.uk.

Lesley Lockhart
Team Leader, Fellowship Support Unit
Royal College of Physicians of Edinburgh
7 May 2004
Introduction
T&G Scotland welcomes the opportunity to respond to the Justice 1 Committee’s request for written evidence on the general principles of the Emergency Workers (Scotland) Bill.

Our union has on previous occasions, and particularly over the course of the consultation on this Bill, presented evidence to the Scottish Executive on the growing problem of workers, in a number of different occupations, including the emergency services, being attacked, assaulted and abused whilst at work.

As a union that represents around 80,000 members in Scotland across all industrial sectors, including the public sector. We are becoming increasingly concerned by the growing number of incidences of our members suffering attacks, assaults and violent behaviour during the course of their working day.

Our union is of the firm view that violence, and the threat of violence, at work is entirely unacceptable and we welcome the commitment of Scottish Ministers to take action in this area by introducing both legislative and non-legislative measures to protect workers.

T&G Scotland is therefore broadly supportive of the actions of the Scottish Executive in bringing forward specific statutory protection for these essential groups of workers and those assisting them and bringing forward a wider package of measures that will be taken forward to help address the problem of attacks on public service workers. We would however, like to take this opportunity to raise a number of concerns in relation to the scope of the Bill.

Views on the General Principles of the Emergency Workers (Scotland) Bill
It is apparent from the Bill as proposed, that following the consultation process the Scottish Executive have taken the view that for the new aggravated offences to be effective it is necessary to define the workers covered within the Bill. The Bill as introduced defines “emergency workers” as police constables (excluding British Transport Police) fire-fighters, ambulance personnel, prison officers, coastguards, lifeboat crews, doctors, nurses and midwives.

T&G Scotland believes that no one should have to work in fear of violence and that violence against those providing a service to the public cannot be tolerated. We do, however, welcome the Scottish Executive’s commitment to tackle the issue of violence against emergency workers and those assisting them, through the provisions of this bill.

In light of our belief that all workers providing a service to the public should benefit from the same protection, we would have favoured a wider definition in the legislation. We would also suggest that other groups of workers should be covered by the legislation including community nurses, community midwives and any public service workers requires to undertake home and community visits in the course of their duties, e.g. social workers and home care workers.

T&G Scotland also believes that the definition of “emergency workers” should be extended to cover all hospital support staff, for example porters and reception staff, and include all health staff, including nurses and ambulance personnel, attacked or abused in any hospital areas or in the community, not just in Accident & Emergency areas.

The Bill also provides for an extension of the aggravated offence to those who assist an emergency worker responding to emergency situations, which is welcome, as is the provision within the Bill to add further groups of workers where it is deemed that their duties are likely to involve responding to an emergency circumstances.

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, it is important to note that “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 stress the point that acts of violence or obstruction against public service workers can in themselves create an emergency situation which endangers the public. Workers engaged in the provision of public services, such as in health service and public transport, encounter threats, abuse and violence on a daily basis. Our members in the NHS, ambulance service, transport sector and local government are particularly affected by violence in the workplace and the Bill will offer added protection to those defined as “emergency workers”. We do, however, believe that further action is urgently required to protect other workers providing a service to the public, not covered by this legislation, in the face of increased threat and experience of violence.

In June 2003, an NFO System 3 Poll indicated that 99% of those surveyed thought that all attacks on public service workers should be treated as serious assaults. This is a view that our union shares and although we welcome the Bill we remain of the view that specific action is still needed to strengthen legislation to protect all workers providing a public service. By the Executive’s own admission, the sentences through the common law route are varied and flexible, and this reduces the potential “deterrent” effect if tougher penalties were associated with the crimes.

**Wider Measures**

We are aware that in addition to introducing the Bill the Scottish Executive is committed to introducing the package of non legislative measures to address the problem of violence against public service workers.

Our union believes that this area of work, in addition to the Bill is integral to combating the problem of violence in the workplace. T&G Scotland is of the firm view that there is a clear need to tackle the underlying causes of attacks and a zero tolerance approach to violence at work in Scotland is long overdue. It is our belief that further measures are required to reinforce the message in our society that attacks on public service and other workers are unacceptable.

Tougher sentencing penalties will hopefully provide a disincentive for perpetrators of these crimes, but more proactive measures to reduce risk and prevent harm are equally important in maximising protection for workers.

T&G Scotland, therefore, strongly welcomes the fact that the Scottish Executive have been developing and taking forward this package of wider measures in partnership with trade unions, representative bodies and relevant agencies.

**Summary**

T&G Scotland welcome’s the Scottish Executive’s commitment to tackling the growing problem of workers being attacked and assaulted during the course of their working day.

In light of the increasing number of attacks on emergency workers we welcome the Scottish Executive’s commitment to increase penalties for those convicted of violence against workers in the course of undertaking their duties to protect and preserve life. The extension of the protection afforded to police officers to cover fire fighters, ambulance personnel, nurses and midwives and other emergency workers, as well as those that assist them in their duties, will ensure that those who attack emergency workers face a new aggravated offence carrying greater penalties.

Our union is supportive of the Emergency Workers’ (Scotland) Bill. However, it is also our view that the definition of “emergency workers” should be extended to cover hospital support staff and include all health staff attacked or abused in any hospital area or in the community.

We also believe that legislation should cover more workers and situations than those outlined in the Bill and that further consideration is given to the fact that “risk to life” emergency situations can be wide and varied involving other groups of workers in addition to the “emergency services”. T&G Scotland does, however welcome the provisions in the Bill for an extension of the aggravated offence to those who assist an emergency worker responding to emergency situations and to add further groups of workers where it is deemed that their duties are likely to involve responding to an emergency situation.
In light of the commitments given in the Scottish Executive’s “Partnership for a Better Scotland” Agreement, relating to delivering excellent public services, supporting stronger, safer communities and strengthen anti-social behaviour legislation. We believe that it is incumbent on the Scottish Executive to take urgent action to ensure that workplace violence is prevented and that those who attack workers face the toughest penalties the courts can sanction.

As previously stated, a zero tolerance approach to violence at work in Scotland is long overdue and employers, the Scottish Parliament and the Scottish Justice system must get behind this campaign. Workers throughout Scotland, protecting the public and providing vital services to the people of our country, deserve to be able to do their jobs without the daily fear of being attacked, abused or assaulted and we hope that the introduction of legislation and further measures to combat this growing problem can progress quickly.

Nicola Fotheringham
Research Assistant
T&G Scotland
7 May 2004
Emergency Workers (Scotland) Bill: Stage 1

The Convener (Pauline McNeill): Good morning, everyone. I welcome you to the 22nd meeting in 2004 of the Justice 1 Committee. I ask members to do the usual and switch off their mobile phones and so on if they have not already done so. Apologies have been received from Margaret Smith, and Stewart Maxwell will join us later.

Item 1 is consideration of the Emergency Workers (Scotland) Bill. I refer members to the written submission that has just been received from one of the organisations that will give evidence to the committee today. All the other written submissions were circulated prior to the meeting. I also refer members to committee paper J1/S2/04/22/3, which is supplementary evidence from the Chief and Assistant Chief Fire Officers Association in conjunction with the Strathclyde fire brigade. It gives details of attacks that have taken place on fire crews in Strathclyde.

I welcome the panel from CACFOA and the Fire Brigades Union Scotland. Thank you for coming along. David Wynne is the firemaster and the community safety portfolio officer of Dumfries and Galloway fire brigade; John Ironside is from Lothian and Borders fire brigade; and Ken Ross is the regional secretary of the Fire Brigades Union Scotland. We will go straight to questions.

Margaret Mitchell (Central Scotland) (Con): Good morning, gentlemen. Given the fact that firefighters are already protected in both common and statute law from being impeded in carrying out their duties, will the bill give you greater protection?

Ken Ross (Fire Brigades Union Scotland): I think that the bill will give us better protection. It has, under the common law, been difficult to get convictions for the attacks that we have suffered over the past few years. The bill is a specific measure under which emergency workers will receive more protection.

David Wynne (Chief and Assistant Chief Fire Officers Association): I believe that the bill will give our staff greater confidence that action will be taken against people who perpetrate attacks on fire crews or fire service personnel. It will also give greater prominence in society to the fact that such events are unacceptable to society at large.

Margaret Mitchell: So, the bill will be a deterrent.

David Wynne: Yes.

Margaret Mitchell: Is there a need for legislation primarily because of the problem of assaults on fire workers or because they are being impeded in their duties? Is it because of a mixture of both? If so, what is the percentage of each?

David Wynne: The evidence that CACFOA has is that attacks are not just physical assaults but can be verbal attacks. For example, our fire control staff who answer emergency calls are, on occasion, threatened in the line of their duties. There are not just physical attacks; there is a range of actions that include verbal assaults, intimidation and threats.

Ken Ross: Over the years, attacks have been on the increase for a wide range of reasons. In our submission, we say that it is outwith the powers of the fire service to address the problems that we currently face. It is helpful—following the attacks that we have suffered in recent years—that the message is being sent out that such attacks are unacceptable. However, we are concerned that the range of emergency workers that is specified in the bill may well exclude other workers who see themselves as emergency workers. I do not know whether the bill will send out a different message to them.

Margaret Mitchell: That takes us to a matter that we will explore more thoroughly later. Can you give me an idea of the percentages? Is there a 50:50 split between assaults and impeding and verbal abuse? Can you give us a flavour of what you think the most prominent problems are?

John Ironside (Chief and Assistant Chief Fire Officers Association): The figures that we submitted show that in Scotland there were 48 verbal attacks on firefighters, two physical assaults with weapons, 10 physical assaults by unarmed assailants and 120 incidents in which missiles, such as stones, were thrown at crews and appliances. Crews have been hit by missiles and appliances have been severely damaged. The highest incidence is of missile attacks, which outweigh verbal abuse attacks by at least two to one.

Margaret Mitchell: Is there under-reporting of attacks? Do your figures reflect only incidents that were reported or are such incidents always reported? Are you happy that your figures are an accurate reflection of what happens?
John Ironside: I suggest that there is under-reporting. Brigades are trying to address that situation by encouraging firefighters to report instances of near misses as well. Many firefighters tend not to report verbal abuse or throwing of missiles that do not hit appliances or individuals. We have evidence that such incidents are not reported, so we are trying to encourage people to report all incidents that involve attacks on fire crews.

Margaret Mitchell: You have said that it would be easier to get a conviction through legislation and that a strong deterrent message would be sent out by that. Would anything else, such as sentencing powers, add to the deterrence aspect? Would legislation make it easier to monitor assaults or other incidents? Are there any other reasons why you think the bill would be good legislation and would be helpful to you?

Ken Ross: It is interesting to compare the consultation paper with the bill because the paper discussed a wider range of issues and measures that should be implemented. We should think not just in terms of deterrence or considering events after the fact, whether that is looking at closed-circuit television or using other measures to deal with an incident after it has happened; we must be more proactive. Certainly, fire services try to do that through community fire service initiatives such as education programmes in schools and in community groups.

I know that the bill is concerned specifically with how to penalise people who attack emergency workers, but it is a bit disappointing that the bill does not refer to wider measures that would try to avoid incidents taking place in the first place. I do not know whether such measures could be included in the bill.

David Wynne: The bill certainly gives prominence to attacks on emergency workers. I am not sure whether I can answer the specific question on sentencing powers, but a proactive approach is part of a range of interventions to address such issues. We would support an approach that builds attacks on the fire service into a wider concept of antisocial behaviour. The bill is only an aspect of such an approach; it is only one among a series of processes in the toolbox.

Margaret Mitchell: So the bill will help to raise awareness, create a deterrent and clarify the law a little. Do you think that that is all positive and helpful?

David Wynne: Yes.

The Convener: Before the next question, I should welcome Roddy Robertson. I am sorry, but Roddy was not on my list. You are, of course, very welcome to the Justice 1 Committee. Feel free to speak when you want to. I know that you are anxious to deal with the question of who the bill should cover, so we will explore that question next. I know from your written submission that you feel that the bill should cover a wider range of workers. Therefore, I ask you first: who should the bill cover?

Roddy Robertson (Fire Brigades Union Scotland): The first aspect of the bill that we are concerned about is the question of people who assist emergency crews in the execution of their duties, whether they be electricity or gas workers, the people who shut off the mains in a building that is on fire, or JCB operators. We saw recently the ways in which many people who were not fire service personnel assisted in the incident in Maryhill. We use people with specialist skills from other agencies and, in an emergency situation such as the Maryhill incident, they could find themselves under the same form of attack as ourselves. Therefore, we are concerned about who the bill should cover.

Another group that we notice is missing from the bill is mountain rescue people. The bill mentions the Royal National Lifeboat Institution and HM Coastguard, but there is no mention of mountain rescue people. We regard them as coming under the definition of emergency services. However, the issue is not so much about defining other groups as being an emergency service; we believe that the bill should cover people who are acting with emergency services.

The Convener: Should the bill aim to identify any worker who is saving a life or protecting someone’s safety in emergency circumstances? Should they be within the scope of the bill? Should that aim be at the heart of the bill?

Roddy Robertson: Absolutely. We thought that the bill’s intention was to protect people who are carrying out emergency duties. It is easy to sit down and say that we have 999 services but, as we have said, there is a list of at least nine types of worker that have been defined. We see the definition as going a bit further than the bill does. A nurse in a hospital accident and emergency department would be covered, but if that nurse was to move into a ward that was not an accident and emergency ward, would the nurse still be covered under the legislation? The problem relates to the definition of what a person is doing, rather than what they are.

The Convener: Is it important to identify services or circumstances in which workers are more likely to be in line for attack? The question is, if the definition of who is to be covered is so wide, what deterrent effect would the proposed legislation have? Where should a line be drawn? Why would it be drawn simply at public services, for example? Perhaps any person who is carrying out duties in the line of their employment should
be protected, but I wonder whether that would dilute the effect of what the bill is trying to do.

**Ken Ross:** I appreciate the Minister for Justice’s concern about not wanting to dilute the core issues in the bill, but it is appropriate to define what an emergency circumstance is for the purposes of individuals who are assisting emergency workers. However, there is a contradiction that relates to emergency workers. Roddy Robertson has suggested that, under the proposed legislation, an emergency worker will be an emergency worker if they are carrying out an emergency task, but will no longer be an emergency worker if they are doing a different task. That is cause for concern.

Workers in the fire services are always on duty and on call. Even if an officer is carrying out fire safety work, for example, and is not at an emergency incident, they can be called on at any time. Someone might injure an officer at such a time, which might mean that an appliance was put off the run, or was no longer available. Five minutes later, there could be an emergency call to a house fire, which that vehicle would be unable to attend. There would then be a delay in the response, which could, of course, be the difference between a person’s living and dying. I am trying to encapsulate the fact that if a person is on duty, they should be covered by the legislation as an emergency worker.

**The Convener:** We will explore emergency circumstances later. David Wynne might want to add to what has been said.

**David Wynne:** There are two aspects to the issue. First, the bill should cover all fire service staff. Those staff might not be sitting on fire engines or attending emergency incidents, but they can nonetheless be subject to verbal or physical attack in their line of duty.

In the wider context, fire service and emergency responders rely on a range of other agencies to support them in dealing with emergency incidents. I do not have a direct example to give members of somebody being physically or verbally attacked at an incident, but we believe that the bill should cover individuals who are engaged in emergency work.

**The Convener:** Whom do you mean by that?

**David Wynne:** I mean a range of people; emergency planning officers or people who support emergency workers in dealing with emergency incidents could be covered.

**The Convener:** You mean people in the field.

**David Wynne:** That is right. People from Network Rail or other agencies who happen to be providing expert guidance and support to the fire service and other emergency services could be covered.

**The Convener:** Would not they be covered by the definition of a person assisting the emergency services?

**David Wynne:** I read in the guidance that it is intended that people be covered under those circumstances, but I am not sure how far that takes things. I thought that you asked about who the bill should embrace. I am trying to suggest that, rather than be specific, a generic term could embrace anybody who supports the emergency services under emergency circumstances.

**The Convener:** I would like to be clear about who you think should be covered. Earlier, I asked whether the bill should cover workers who, in the line of duty, are protecting people’s safety or lives. If that was the criterion, I can see why a planning officer, an engineer or an electrical worker would be covered, because they would be assisting. However, should anyone else be covered? Are we talking about staff sitting at desks or answering phones?

10:30

**David Wynne:** I will give the example of fire control officers, to whom I referred earlier. On occasion, those officers are physically threatened. Their role is to take the emergency call and then support an incident as it unfolds. They are in direct contact with the emergency crews. It is not usual, but it is not unusual, for those staff to be threatened on the phone because they are asking someone to do something that that person finds unacceptable. We suggest that the bill should cover people who are employed in the fire service while they are on duty. That would include fire control staff and our support staff.

**The Convener:** So you want to widen the scope of the bill to cover all fire staff.

**David Wynne:** Yes, we do. We argue that those staff members support emergency workers at incidents. You could argue that they are technically already covered by the bill. However, when we discussed the bill, we felt that it should be widened to include all staff on duty.

**The Convener:** In that case, putting one’s own life at risk to save others would not be the applicable test. Are you saying that someone who is assisting, albeit from an office, is putting their life or safety at risk? I am trying to draw a distinction. I acknowledge totally what you say about the unacceptability of staff receiving verbal or physical threats. However, if we create a new offence, should we distinguish between people who offend against those who are putting their safety at risk to save others, and other people
who—although committing an offence—should be dealt with differently?

David Wynne: I understand that argument, but I am trying to say merely that staff who provide support during emergency incidents can be under stress, even though they might not face a direct threat of physical violence. There is a cost to the organisation if those people are not available to carry out their normal duties. In severe cases, such stress can cause people to retire on the ground of ill health. They might not be under threat from a missile being thrown or some other physical act, but they should be included in the bill in order to cover all circumstances.

Michael Matheson (Central Scotland) (SNP): I want to concentrate on the definition of those who are covered by the bill in section 1. In trying to list all the people who should be covered, it is inevitable that some will be left out. I wonder whether we have to consider the matter differently.

In response to the convener, you spoke about call staff and support staff. There are two categories of staff who deal with emergencies—operational staff and support staff. I wonder whether the definition for the fire services should be wider than that which is in the Fire Services Act 1947 and whether it should cover people who are called out by a fire brigade to assist it in discharging its duties.

You mentioned mountain rescue. I am a member of a mountain rescue team and I must admit that the only abuse that I have ever taken has been from my colleagues on the team. Mountain rescue teams are called on by the police but are not covered by the bill. I suggest that, when one of the 999 agencies calls on another party to provide operational assistance, that party should be covered by the bill, no matter who it is. A slightly different argument holds for support workers, but I wonder whether what I suggest would be a better way to deal with the issue, rather than trying to compile a list of who should and who should not be covered.

David Wynne: I would support such a proposal. I suspect that the issue would be tested in a court of law when an offence had been presented to the procurator fiscal.

Ken Ross: As much as we welcome the bill, we are concerned about it; we do not want to see firefighters being viewed as a special case. As far as we are concerned, we are not a special case. It is appropriate to say—indeed, it is absolutely correct to say—that we should not be hindered in carrying out emergency work. If there are to be prescriptive lists, I agree that people will be left out; such a list will look exclusive and we are concerned about that aspect of the bill.

I will move on to the question of people who assist firefighters. Certain workers or support staff have a direct impact on the operational capability of the fire service. One example that comes quickly to mind is hydrant operatives—the individuals who go out and maintain and service hydrants. If there were to be an incident in a street in which the hydrant was not working because our hydrant operative was hindered in doing their work, that would have a direct effect on the capability of firefighters to deal with an incident.

We could get very technical and very complicated and come up with 100 examples, but that is the sort of area that David Wynne was talking about. I agree that the more we broaden the list, the greater is the risk of dilution.

As I said, I am concerned that firefighters not be made a special case. On the other hand, however, if we are to go down the road of specifying who is to be covered, we would have to consider the people who make specific contributions to the service’s operational capabilities. That comment is not exclusively about firefighters; it opens up the situations of other support workers.

Michael Matheson: I understand what you are saying. The fire hydrant operative is a good example, particularly in the school holidays when there can be difficulties in that respect. I wonder, however, whether there is a need to take a different approach.

A fire brigade will call upon certain people for assistance. I am thinking of the International Rescue Corps, which gives assistance in particular situations. Technically, its members would not be covered by the bill, but if they were called out by the fire brigade they would be included automatically under the provisions of the bill.

Another example would be the sort of incident in which a fire brigade might call upon Transco to seal off a gas leak, for example. If that were to happen, it could be argued that such Transco workers should be covered by the bill. That might be a better way to address the matter.

David Wynne: I support that suggestion.

The Convener: Section 1(3)(b) mentions:

“a member of a fire brigade maintained in pursuance of the Fire Services Act 1947 (c.41) or a person who, not being a member of such a fire brigade, is paid by a fire authority under section 3(1)(b) of that Act for rendering services and is doing so”.

Do those provisions cover any member of a fire brigade?

Roddy Robertson: Part of our problem with that paragraph is that the fire services legislation is about to be rewritten; we should see a new fire services act before the end of the year. I am not
sure how the provisions of section 1(3)(b) will fit in with those of the new act: I do not know what the new act will say.

**The Convener:** Sure—we are aware of the forthcoming legislation. Would the provisions of section 1(3)(b) deal with the point that you made earlier?

**Roddy Robertson:** No, because that section relates only to people who have been paid.

**David Wynne:** I do not believe that section 1(3)(b) covers the individuals who we have just described who support the fire services in certain situations. They are certainly not paid by the fire service or the fire authority.

**The Convener:** I was thinking about the personnel about whom you spoke earlier—those who assist your work.

**David Wynne:** I am sorry.

**Ken Ross:** I read that part of the bill in conjunction with the definition of an emergency situation. The individuals who are detailed in section 3(1)(b) will come under one of those emergency situations. David Wynne and I suggested that although people such as hydrant operatives are not working necessarily in emergency situations, their work has a direct impact on the operational capability of firefighters in emergencies.

If we consider section 1(3)(b) in isolation, it could be said that a hydrant operative would be covered. However, if we look at it in relation to an emergency situation, I think that those operatives would not be covered. I may be reading it wrongly, but that is my understanding of the provision.

**The Convener:** We will come to that—Bill Butler will ask about emergency circumstances, so we can come back to section 1(3)(b). However, you are saying that such operatives should be covered later in the bill under emergency circumstances.

**Ken Ross:** Yes.

**Bill Butler (Glasgow Anniesland) (Lab):** I will pick up on the point that Ken Ross made about hydrant operatives and the fact that, in your view, section 1(3)(b) would not cover that type of support worker because under section 1(5), the circumstances would not be emergency circumstances because they are not “present or imminent”. Is that what you are saying?

**Ken Ross:** Yes.

**Bill Butler:** Do you see that as being a failing in the definition of emergency circumstances? Would you like to see that definition amended or extended and, if so, how?

**Ken Ross:** The definition under section 1(5) is tight and prescriptive. For the reasons that we have just discussed, we can see that the group of workers that we have been using as an example would not be covered. I keep harking back to the phrase, but this is about the operational capability of the service. There are individuals who are not in the front line, but who have a direct impact on the front line’s capability. I suggest that the definition of emergency situation in section 1(5) must be expanded to cover that group of workers, who have a direct impact on our capability.

**Bill Butler:** It is about operational capability and the support staff that allow that operational capability to operate at as near 100 per cent as possible. You believe that there is a deficiency in the bill in that respect.

**Ken Ross:** There is definitely a deficiency. I know that I have used the phrase “operational capability” a lot—it is common within the fire service—but it would be helpful if it were in the bill because it is a phrase that will be used by all the emergency services. Our support workers have a direct impact on our capability to attend and assist those whom we seek to assist, and we are affected if they are impeded.

**Bill Butler:** Do any other of the witnesses have anything to say about that particular point?

**David Wynne:** I agree with Ken Ross. Our written submission highlights that we believe that the phrase “responding to emergency circumstances” in section 1(4) should be replaced with the phrase “on duty”. That comes back to the same point that was made earlier and is supported by the arguments that Mr Ross has just presented about section 1(5).

**Bill Butler:** Mr Robertson, you made a point about nurses who move from an accident and emergency ward to another part of a hospital and are no longer working in an emergency situation. Did you mean that you would like the bill to be extended to cover all emergency workers who are carrying out non-emergency duties? If so, why?

**Roddy Robertson:** To be honest, I did not want the bill in the first place. For several years we tried to stop publicity in the newspapers and television about attacks on firefighters. To a certain extent, we tried to deal with the problem in our own way.

**Bill Butler:** In their evidence, the officers who spoke earlier said that even if the incident is a verbal assault or someone throwing a missile that misses, it should be reported. Do you think that you were wrong to try to deal with the problem in your own way?

**Roddy Robertson:** No. We never discouraged people from reporting incidents—that was never the intention. We discouraged reporting of such incidents to the press and other media. I do not know whether the gentleman from CACFOA can
back me up, but it is only in the past four or five years that attacks on firefighters have become tabloid news. As those attacks were reported, it was not just the instances that we recorded that increased; there were copycat attacks. On one day, an area in Glasgow might get a headline on the front page of the Evening Times because of an attack on a fire engine and two days later, exactly the same thing will be done in an area in Paisley to attract the same headline. That has happened. Such reporting has caused a snowballing of attacks.

Bill Butler: That is a serious enough circumstance, but is it like the not-so-serious circumstance that I was reading about, in respect of which you ask newspapers that, if they describe fire hydrants being set off maliciously, they do not show kids playing there because that attracts copycat incidents?

10:45

Roddy Robertson: Absolutely. I honestly think that media coverage has increased attacks and has given people the idea of behaving in that way. As Mr Ross pointed out, the bill represents the final stage in the process of getting to where we should be in terms of dishing out punishments for offences, but we would have much preferred the committee to discuss educating the community about the fire service. The proposed fire services legislation will cover such areas, which we regard as more important than setting out punishments.

Bill Butler: I understand that. I will move on to ask a question that I had intended to ask later. The submission from Strathclyde fire brigade mentions wider measures such as "community safety initiatives to tackle the problem at source through education", CCTV and other non-legislative measures. Do you regard such measures as equally important to or more important than the proposals in the bill, or would such measures work in tandem with the bill?

David Wynne: Your question raises a number of issues. We started to talk about the role of the media and the risk that the prominent coverage of attacks by the media encourages further attacks. That is certainly a factor, but we should put it into context. The proposed new laws would assist us in dealing with antisocial behaviour in the form of attacks on fire crews and emergency workers.

Bill Butler: You described the bill as being one tool in a toolbox. Do you see educative measures and sanctions as complementary, rather than mutually exclusive?

David Wynne: Yes. I agree with the witness from the Fire Brigades Union that we should seek to prevent attacks from occurring in the first place, through work with communities and through a range of other work to integrate the fire service into communities so that it is accepted by them. Nevertheless, we should be able to use legal sanctions against individuals who perpetrate attacks. The deterrent effect that was mentioned is an important aspect of the bill.

Bill Butler: Mr Ross, do you agree that there should be sanctions as well as the proactive initiatives in education to which Mr Robertson referred?

Ken Ross: I do. There is more than one reason why attacks take place, so we need more than one approach to solving the problem. That combination of elements is a must if we are to address all the aspects to the problem. It is right to say that we must be proactive in educating people and trying to prevent attacks from happening in the first place, but adequate measures must also be in place to punish people who carry out such attacks and to act as a deterrent. We place the greatest emphasis on the proactive, preventive approach.

Bill Butler: Do the other witnesses agree that there should be sanctions as well as proactive initiatives to educate people about how to behave properly?

John Ironside: I agree with David Wynne and Kenny Ross. Strathclyde fire brigade has introduced a number of community education initiatives and has recently fitted CCTV to six fire appliances for a trial period. We have had quite a lot of success in detecting people who have attacked crews in hot spots and those people have subsequently been identified and reported to the procurator fiscal.

Bill Butler: How successful have educational initiatives such as the juvenile fire-setter scheme been?

David Wynne: It is difficult to answer that. There is empirical evidence that the juvenile fire-setter scheme has a beneficial impact on reoffending and a range of other issues in the wider context of antisocial behaviour, but it would be difficult to say that the scheme has had an impact on attacks on firefighters because I do not think that fire setting and attacks on crews are necessarily correlated. Nevertheless we should consider that area with a view to providing evidence in the future.

Bill Butler: What is the FBU's view on that?

Roddy Robertson: We believe that the initiatives have been working and have had some effect. I cannot get my head round the idea that we are a special case and different from other workers. We are protected by the present law. The bill aims to give us a bit more protection by introducing an aggravated assault but, to be
honest, I am uncomfortable with the fact that we are being singled out as different from other workers. The way forward is not through CCTV, which is another detection method rather than a prevention method. I firmly believe that energy should be put into schemes such as the junior fire-setter schemes and the phoenix projects.

Margaret Mitchell: I want to explore the circumstances in which hydrant workers work. There is no present or imminent danger, but there may be a causal link to an emergency circumstance. We are trying to protect key workers while covering circumstances that others might find themselves in, without diluting the bill. If at some point an incident took place and a hydrant did not work because it had been tampered with, would that be covered by a causal link? Could we say that the reason why it was not working and the cause of the imminent danger was the previous incident and then apply the legislation at that point?

Ken Ross: It would be possible to retrace our steps. If a hydrant did not work, we could ask the hydrant worker in that area why that was the case. If he had been attacked in the street when he was there to repair or maintain the hydrant, that would give a causal link to the incident. That is a fairly easy process to carry out. However, we are entering into the danger area of including absolutely everybody. I know that you are concerned about the dilution of the bill, but I return to the issue of operational capability. The front-line emergency workers are not the only people who carry out the work of the fire services. The front-line staff rely on support staff to ensure that they are operationally capable of carrying out their tasks. If we are to protect emergency workers, the support staff must be included in that because they are part of the package.

Margaret Mitchell: I understand that, but the circumstances that I outlined ensure that their work is covered without going down the route of a blanket cover. That is another issue to consider.

The Convener: Something occurred to me when Margaret Mitchell was asking that question. I understand why Ken Ross wants it to be clear in the bill that someone who assists front-line staff when they are in the throes of saving lives is covered. I do not see why they would not be covered, as long as there is an emergency circumstance. The support staff would be covered either because they are assisting the emergency workers or because they are employed by the fire service. Michael Matheson has been having a look at the bill while we have been talking. We are clear that section 1(3)(b) covers all members of the fire service. I accept that you would like to widen the definition of emergency circumstances, but hydrant operatives or planning officers would clearly be covered in the same way that a fire service officer would be covered.

Ken Ross: We should read section 1(3)(b) in conjunction with the definition of an emergency situation. Section 1 defines an emergency worker and then goes on to talk about the circumstances in which workers would be covered.

The Convener: Nobody will be covered by the bill unless they can show that there are emergency circumstances that are likely to cause serious injury or harm and so on. I hear what you say about widening the definition of emergency circumstances, but at present the people whom you are talking about seem to be covered. Even if you widen the scope of what you mean by emergency circumstances, they will still be covered.

Mr Stewart Maxwell (West of Scotland) (SNP): I should declare an interest, in that I know three of the panel members from my previous employment: John Ironside, Roddy Robertson and Ken Ross. I do not know David Wynne.

I am interested in what you said about the inclusion of other workers and fire brigade support staff. From your comments, I am not sure where you intend to draw the line. Would you include hydrant operatives, support staff who work in the station, or the staff of the laundry service that cleans the kit?

Ken Ross: The question goes back to Michael Matheson’s comments on prescriptive lists and it is difficult to answer. I am not looking to draw the line anywhere, as—I will be quite frank about it—we are trying to encompass as many people as possible. I think that that is appropriate, because the fire service comprises not just the operational staff but a wide body of people who work towards the operational capability to provide the service. It is difficult to say where I would draw the line. We started to use the hydrant operatives example continuously, but I just threw it in as an example. We could go down a ridiculous road and talk about people who are employed by the fire service in minor roles that are detached from the operational side, but I do not suggest that we should encompass absolutely everybody in that sense.

I know that there are difficulties with prescriptive lists and I do not think that I would like to see that either—I agree with Michael Matheson about that. I would like to include anyone who has a direct impact on operational capability. You mentioned kit cleaning, but I do not know whether that is a good example. In most brigades, and certainly in Strathclyde, there is plenty of spare gear, so that should not be an issue. It is not the case that we cannot go on incidents because the cleaners are late bringing back the gear—I know that that has happened, but I think that we have moved beyond
that. I know that I am not answering the question very well. I do not like prescriptive lists, but if an individual can show that they have a direct impact on the operational capability of the service, that would be enough for them to prove that they are covered.

Mr Maxwell: I accept what you say, but I am concerned that if somebody impedes a non-uniformed member of staff—such as a hydrant operative, which is an obvious example—it is perfectly possible that they would be unaware that the staff member was carrying out work for the fire service. I do not know how one would prove that they were aware of that. If an incident occurred at some future date and there was a problem, I do not know how the offence of which the person was accused could in law be aggravated by something that happened in the future. Are you suggesting that we could trace back and say, “Because of something that happened afterwards, you should suffer an increased penalty”?

Ken Ross: I take your point. If someone who is not obviously a fire service worker is attacked, the individual who perpetrated the attack could be prosecuted under the bill even though they did not know that the individual whom they attacked worked for the fire service. However, I think that that is unlikely. To be honest, I think that it is quite clear that such staff are fire service workers, even in the case of hydrant operatives. I return to my original response. It is difficult to have prescriptive lists, but—I keep harping on about it—if someone has a direct impact on the operational capability of the front-line service, they should be covered by the bill.

Mr Maxwell: Roddy Robertson seemed uncomfortable about the bill. John Ironside talked about using CCTV and other methods to catch those who attack firefighters while they are carrying out their duties. Given your discomfort and comments about using the common law and current statute law, do you think that the bill will provide protection over and above what is available under the common law and statute?

11:00

Roddy Robertson: I do not think so. As I said, perhaps the bill highlights what might be termed a form of aggravated assault. The other workers whom we are talking about might be dealt with under the forthcoming fire services legislation. That could be similar to the situation under the Police (Scotland) Act 1967, to which paragraph 1.9 of the consultation paper refers. That act covers any person who

“assaults ... obstructs, molests or hinders a constable in the execution of his duty”.

I imagine that the forthcoming fire services legislation will have a similar provision to deal with such behaviour towards somebody who is acting in pursuance of their fire service duties. That would probably take into account the wider scope of people whom we are talking about. I understand why the bill has been introduced, because the subject has become very public, but I do not think that it will make a bit of difference to the number of attacks on fire crews.

John Ironside: I disagree with part of what Roddy Robertson said. The bill will provide some benefit and enhancement. I am not sure whether the number of attacks on fire crews will reduce initially. The bill is part of the bigger toolbox to which we have referred, which includes community safety and education initiatives. However, the bill will give our staff, firefighters and other emergency workers great assurance. It identifies a problem in society and highlights the fact that such behaviour is unacceptable.

Mr Maxwell: Is that a good use of legislation? Should we codify the common law just for comfort or for publicity and press-release reasons? I accept that it is reprehensible that people are attacked. Attackers should feel the full force of the law. However, I agree with Roddy Robertson that the bill does not seem to provide more protection than is currently available. Is it acceptable to pass law for promotional reasons?

John Ironside: No. The bill is not just for promotional purposes. In my opinion, the law courts have not dealt with some attacks on emergency workers and on firefighters to whom I have talked. I was assaulted quite severely and that case was dealt with. We are attacked day in, day out. The existing legislation does not deal effectively with attacks on emergency workers.

Mr Maxwell: Do you accept that that is a problem with enforcement of the law rather than with the law itself?

John Ironside: That may be the case.

Roddy Robertson: A serious house fire occurred in Paisley last Friday night. Four people turned up in a car, then disappeared. When they returned two minutes later, they had full-length swords. They proceeded to enter a close with swords to sort out whatever was going on. None of our firefighters was assaulted and that would not have been recorded as a near miss, because nobody in the fire service was threatened. At another fire later that night, people turned up and walked down a close with two revolvers. How will the bill stop that happening? I do not see how the bill will make a bit of difference to such incidents.

Mr Maxwell: You do not think that the bill will add anything to current statute or common law, but you touched on the forthcoming fire services legislation changing the level of protection for fire service staff. I understand that the Fire Services
Act 1947 covers only firefighters who are performing firefighting duties. Would it not be simpler to amend that act or to put a section in new fire services legislation to widen the scope from firefighting duties to all duties? That would provide the same protection as is available to police officers under the Police (Scotland) Act 1967. Would that be more appropriate?

Roddy Robertson: Taking that path rather than passing the bill would be more beneficial for my union's membership. I cannot emphasise enough the fact that I do not see how the bill—apart from the publicity that it will attract—will make a difference to people in Ferguslie Park, Wester Hailes or wherever attacks are committed. The only thing that the bill will do is punish the people in society who could least afford it and bring the full weight of the law to bear on them. We should invest in the education of those people at the very start of their lives rather than invest in the measures that are proposed in the bill.

David Wynne: I have already acknowledged that a range of different measures could contribute to reducing the number of attacks on emergency workers. By giving the issue prominence and by providing a demonstrable conviction or offence, the bill could assist in reducing such attacks, including attacks against fire officers.

Mr Maxwell: Will you explain why you believe that the bill will reduce attacks on firefighters?

David Wynne: I accept that such a provision for firefighters could be built into the proposed Scottish fire services bill, but my argument is that the bill before us covers all emergency workers. My position is that firefighters should be included within the generic definition of emergency workers. I accept that there is an argument that protection is provided by the common law, but I believe that the bill would contribute to the overall ability to deal with people who perpetrate attacks.

Mr Maxwell: That is the question that I am trying to get at. What additional aspect would be contributed by the bill?

David Wynne: It will contribute by providing a specific identifiable offence.

Mr Maxwell: Are such attacks not already covered by the common law?

David Wynne: I do not have wide experience in the matter, but I am not sure how many convictions were secured for the, I think, 202 attacks on fire crews that took place between April 2002 and March 2003.

The Convener: Roddy Robertson mentioned that he was a bit uncomfortable about the law singling out the fire service. Would he be more comfortable if we legislated more generally against violence at work? In addition to having measures that protect fire service workers, should we strengthen the legal penalties so that all those who face physical assault or verbal abuse at work are protected?

Roddy Robertson: I understand where the bill is coming from and what it is trying to achieve. Initially, we perhaps did not grasp the fact that the bill identifies not only situations that are liable to lead to death but those that could result in serious injury. We are often attacked at fires where there is no imminent danger to life. When I read the bill initially, I thought that it would provide protection only in cases where lives are put at risk to save the lives of others. However, I think that the bill covers the wider issues as well as damage to the environment.

I believe that a worker is a worker. Workers should be entitled to go to their work and carry it out without fear of attack or assault. We are no different from anybody else in such circumstances. We expect to be able to go to work and come home from work without being attacked.

The Convener: The committee acknowledges that, in theory, we should not seek to give more protection to one group than to another. For instance, shop workers face violence at work. However, I would have thought that, no matter who they are, workers who put their own safety at risk in providing any service should be given added protection under the law. Whether or not you believe that such protection acts as a deterrent, surely the legal position should be clear to everyone. When someone puts their life at risk in the line of duty in order to save someone else, they should be able to do so in the knowledge that those who attack them will incur heavy penalties.

Roddy Robertson: I have no problem in accepting that.

Ken Ross: I hope that we have not misled the committee slightly, but part of our concern about not wanting to be a special case comes from the fact that, for many years, the fire service has enjoyed neutrality. We are not viewed like the police, who attract a certain type of attention. Firefighters and ambulance workers have always enjoyed that neutrality, although there have been more attacks on ambulance and fire crews in recent years. We are quite precious about that neutrality, so that is why we are concerned when we see ourselves being put on a prescriptive list of special cases. We want to move away from that. That is the core of our concern.

Roddy Robertson: Our biggest objection to CCTV is that it would mean that, in the not-so-good areas into which we have to go, we would be seen as collecting evidence for and being part of law enforcement. That is a big concern of ours and it is why the FBU has objected to CCTV for a number of years.
David Wynne: I agree entirely with the convener’s analysis, because fires or other emergencies place special circumstances on emergency work. The basic tenet of the normal workplace does not demand that employees go beyond delivering their service or work, but the fire service’s work often requires firefighters to go beyond what is safe to do under normal working conditions. I could illustrate that by discussing how health and safety legislation applies.

Michael Matheson: We have focused on a number of specific aspects of the bill. Are there any other parts of the bill to which you would like changes to be made to assist in its implementation?

Roddy Robertson: The only point that I will make is the one that I made earlier on the proposed fire services bill and the references to the old Fire Services Act 1947, which will become redundant once the proposed bill is enacted. I do not know how the Emergency Workers (Scotland) Bill will take into account the proposed fire services bill and how the two of them will come together.

Michael Matheson: Do you mean the specific mentions of the 1947 act?

Roddy Robertson: Yes. I imagine that it would be possible for the bill to refer to “the fire services legislation regarding offences”, and that it would similarly be possible for the fire services bill to refer to the Emergency Workers (Scotland) Bill but, at the moment, this bill refers to the 1947 act. It has missed out the Fire Services Act 1951, which amended the 1947 act.

Michael Matheson: I imagine that any proposed fire services bill will cross-refer to the Emergency Workers (Scotland) Bill, which will apply to any successor legislation to the 1947 act. That is primarily a technical issue.

David Wynne: I suspect that this will get me back into the discussion that I had with Mr Maxwell, but we submitted evidence that there is a worrying increase of premeditated acts in which malicious calls are made for fire crews to attend an incident at which traps have been set to worsen the effects of the attacks. I am not sure whether it is easy to address that in the bill or whether it is better to address it elsewhere, but the sanctions in the bill seem to be quite lenient on premeditated attacks.

Michael Matheson: That is a fair point, but I would think that it would be a matter for the Crown Office and Procurator Fiscal Service when it took a few minutes ago on the financial impact of the bill. In the financial memorandum and the Executive bill team’s evidence to the committee, the Executive stated that it envisages that there will be no additional prosecutions, or a very limited number of such prosecutions, because of the bill. It also does not believe that there will be any expense for the Crown Office and Procurator Fiscal Service and it expects the bill to have no impact on the prison service. I wonder whether the witnesses will comment on that view, particularly in light of David Wynne’s earlier comment that the bill will give added protection to the fire service.

11:15

David Wynne: I will say only that attacks are increasing and are under-reported. Although I would not argue with another profession, I wonder whether historical evidence has been used in the financial memorandum. We are trying to highlight an increasing trend and make forecasts.

Mr Maxwell: But this is the Executive’s forecast of what will happen if the bill is passed.

David Wynne: I suspect that it is based on historical evidence. However, I am not in a position to defend that comment.

Ken Ross: We could look at the issue in two ways. On the one hand, if the bill does not lead to an increase in prosecutions and so on, people might wonder what the point of it is and whether it is a waste of time. On the other, it could have been designed as a preventive measure to stop people making these attacks in the first place. However, as far as preventive measures are concerned, the committee knows that we feel it more appropriate to take an approach that combines education, partnership and evidence sharing instead of simply scaring people out of carrying out such attacks.

Margaret Mitchell: You expressed some concern about being singled out as a special case.
However, although we accept that no one in any line of work should be assaulted or impeded in carrying out their duty, do you accept the convener’s point that you are a special case because you put your own lives in danger and that assaulting or obstructing you puts other people’s lives in danger? That is not the case for the vast majority of public sector workers. The bill seeks to give you more protection on that basis alone, although whether it fulfils that intention is another matter.

**Roddy Robertson:** We might accept that, but what about the train driver who is struck by a brick flung off a bridge while driving 200 passengers or the bus driver who is assaulted on his bus while carrying 40 passengers? After all, they are responsible for those lives.

**Margaret Mitchell:** I think that you are put in such a situation every time you are called out.

**Roddy Robertson:** I fully accept the convener’s point that at times we put our skills on the line to save other people. In those circumstances, I can understand where the bill is coming from. However, our ability to stay neutral has been very precious to us over the years and has kept us out of a lot of trouble. For example, because of the neutral role that the service in Northern Ireland managed to maintain throughout the troubles, no firefighter was ever murdered in a terrorist attack. We have played the same role on the UK mainland and want to get back to that position. We do not want to be seen as a target. Instead, we pride ourselves on our neutrality and will help everyone, regardless of their circumstances or who they are. I do not think that the bill will provide our people with much more than a feeling of comfort.

**The Convener:** It is helpful to know your position when you make such a statement. However, as far as your example of the train driver is concerned, we would expect the full force of the law to be brought to bear on such a matter. Under the bill, you would have the same protection. The Crown Office has pointed out that the procurator fiscal will decide on the appropriate court to deal with such matters. The higher the court that deals with the offence, the stiffer the penalty will be. We had some success in discussions with the police, the procurator fiscal and the courts in ensuring that the matter is taken seriously under existing legislation. However, I realise that that is not the case everywhere and the bill might provide some uniformity.

**Paul Hopson:** From our point of view, it is a mixture of both. Malcolm Chisholm said last week that there had been an increase of 14.9 per cent in assaults on front-line staff. Nurses give 80 per cent of care to patients and the public and they are the most vulnerable to assault.

**Dr Terry:** I tend to agree. The assault issue gets most attention and the impeding of staff at a local level is also a problem. However, we have to see the health service as a system; if any part of that system is impeded in any way, the whole system is affected.

**Dr Morrison:** Physical violence, despite the fact that it happens on the front line, is still not terribly common. It is upsetting when it happens, but there is far more obstruction and verbal assault. The bill represents an attempt to provide uniformity. I note the Lord Advocate’s previous attempts to tackle the problem. In the locality where I work, we have had some success in discussions with the police, the procurator fiscal and the courts in ensuring that the matter is taken seriously under existing legislation. However, I realise that that is not the case everywhere and the bill might provide some uniformity.
Paul Hopson: It is not just front-line nurses who are affected; it is all health care professionals, whether they work in accident and emergency or in any ward area that receives emergency admissions—porters, domestics and nursing care assistants right across the field.

Margaret Mitchell: As I say, we will explore that issue more thoroughly later—I know that you are anxious to talk about it. However, before we do that, can you tell us why you think that the bill will give you more protection? You have mentioned uniformity. Are there other reasons why the introduction of the statutory offence will give you more protection? For example, will it be a deterrent if it is publicised?

Dr Terry: Yes. I think that it will be a deterrent—I hope so, otherwise why do we have courts and sentences? Society—which it is your job to reflect—has seen such attacks, whether physical or verbal, as something different. They are attacks on people who are trying to help society as a whole and society would like the people who are trying to help to be protected. I hope that the bill will be a deterrent. It is just one measure—there are others that I am sure you have heard about or will be a deterrent. It is just one measure. The bill sends out a message and will, I hope, be a deterrent.

Paul Hopson: I back up that statement. There have been problems and the bill will send out the clear message that violence and aggression against public health workers—whether medical or paramedic—in any emergency situation will not be tolerated. The bill will send out that clear message in Scotland and highlight to the whole United Kingdom that such attacks will not be tolerated in Scotland.

Margaret Mitchell: The RCN has reported that there is a degree of under-reporting of incidents. Will the bill help in that respect?

Dr Hopson: It will be very important, because the message will be going out from the Scottish Executive and the justice system to nursing staff that violence and aggression towards staff will just not be tolerated.

Margaret Mitchell: That is helpful. Would anyone else like to add anything?

Dr Morrison: Yes, I have a couple of points to make. We have undertaken a fair bit of inquiring and have found that there is under-reporting for several reasons. There is under-reporting locally not so much because staff feel that they will not be taken seriously, but because there is a significant concern among them—both medical and nursing staff—about taking things further due to their reluctance to go through the judicial system. People do not like, or they fear, appearing in court for two reasons. First, it puts them in the awkward position of having to stand and give evidence. That is unavoidable, but it is a concern that has been voiced to me. Secondly, time off is valuable and people have frequently had to go to court on their valuable days off. That concern might seem a minor one, but it has been raised with me by a lot of staff.

Margaret Mitchell: Do you think that the introduction of a statutory offence will mean that there will not be the same reluctance? Do you think that it will be easier to prosecute? Will the process be easier so that people will use it more?

Dr Morrison: I do not know, but I cannot see how an increased likelihood that a case will go to court will help. I realise that there is no way out of that and that people have to stand up and be counted; the problem is that people do not particularly want to do that.

Margaret Mitchell: That is useful information. Thank you.

Mr Maxwell: Good morning. I am interested to hear that you think that the bill will be effective in sending out a message to the general public. It may well send out a message, but do you think that it is appropriate to use legislation to send out messages? Are there additional measures in the bill that will give protection to health service workers in a way that do not happen under current statute and common law?

Dr Terry: I see where you are coming from, but the legislation has to reflect the view of society about various criminal activities. If it sends out an appropriate message at the same time, that is all well and good, but I do not think that that is the primary purpose of legislation. The purpose of legislation is to protect society in different circumstances. Perhaps previous legislation has been inadequate for health care workers. The bill moves some way towards reflecting what society as a whole thinks about such activities.

11:30

Paul Hopson: I agree. The nursing profession has in no way felt that it has been protected by legislation and appropriate punishments for perpetrators of violence and aggression. However, extending additional legal protection to only some health care workers could be interpreted by members of the public in such a way that attacks on other members of staff who are not included in the new legislation will not be treated so seriously.

Mr Maxwell: I hear what you say about messages that we send out and reflecting society’s desire to show how reprehensible we find such attacks, but I am curious as to whether you believe that there is additional protection that is not currently available under common law and existing statute. Is it the case that the existing
common law and statute are okay but are not being properly used?

Dr Morrison: As I said, we have tried to address matters locally and we have had some success in doing so. As a result of discussions with the police, we have adopted what would be called a zero-tolerance approach—the local courts have done so, too. There is legislation that can be used, but I think that the bill will provide uniformity and, as I have said, perhaps the matter will be taken more seriously in other areas. There is a message in the bill not only to the general public, but to health service staff that they are being considered and taken seriously.

Dr Terry: Mr Maxwell has presented the situation as an either/or one, but I do not think that it is. There is probably some evidence that existing legislation has not necessarily been used to its best advantage and there might be potential for improvement in that respect, but I cannot see any reason why there should not be an additional layer of protection for a certain group of workers in certain circumstances. As far as I can see, that is all that we are trying to do.

Mr Maxwell: That is a perfectly valid point. On what you said about the deterrent effect of legislation, do you believe that legislation of any sort—including the Emergency Workers (Scotland) Bill—deters people from carrying out such attacks?

Dr Terry: Society has used legislation for a long time to try to deter aberrant behaviour.

Mr Maxwell: I wonder whether such people might think about the bill when they attack health service workers.

Dr Terry: I listened to the previous evidence; there is an issue to do with educating society. Of course, there must be such education, but in general I think that, while society believes that punishment of aberrant behaviour provides some kind of deterrent, it is appropriate for that kind of deterrent to be gauged according to what the behaviour has been.

Mr Maxwell: Section 3 of the bill deals with hospital accident and emergency premises and health workers. I wonder whether the additional offences that are set out in section 3, in conjunction with the protection of all emergency workers under section 1, provide sufficient legal protection for health care workers in dealing with emergencies in hospital premises. Should the bill go even further than it does?

Dr Morrison: We all seem to be saying that we do not want to be a special case—the committee heard that from one gentleman earlier this morning. I will add to that by saying that I am not sure why accident and emergency premises—the bill says “premises” rather than departments—should be a special case. They are by no means the only area of hospitals where emergency work is carried out. I am not sure if it is possible to say that there are any clinical areas of a hospital where emergency work is not carried out. I think that the definition should be extended. It is very nice to be thought of separately from everybody else—which tends to happen anyway in accident and emergency—but I would contend that the issue is about more than just the physical environs of what is known as the accident and emergency department or premises.

Paul Hopson: Speaking from RCN Scotland’s point of view, I totally agree with what has been said. You have singled out hospital accident and emergency premises, but a lot of emergency work is carried out outside accident and emergency, even when patients are being transferred from the accident and emergency section. Emergency work might be carried out in any specialty area in the hospital—in wards dealing with care of the elderly, for example. The patient could be going to the mental health care section of a hospital, to an accident and orthopaedic ward or to a medical and surgical ward. The definition should not depend on accident and emergency, because emergency situations arise in all areas within the health service and within any acute hospital—and even in the primary care setting.

Dr Terry: I agree with my two colleagues. The bill will run into some difficulty if its scope moves away from the emergency worker towards the emergency worker working in specific situations. If the bill is not amended, I foresee that the definition could be a difficulty. I agree that the bill’s scope should be extended outwith the accident and emergency department. As has been said, emergencies occur throughout the health care system. They occur in the community, in general practitioners’ surgeries and in patients’ homes.

Mr Maxwell: There is a clear unanimity of approach: all hospital premises should be covered, rather than just accident and emergency.

Dr Terry: I also mentioned the community.

Mr Maxwell: I will come on to the community—I will ask a separate question about that later. Effectively, you are saying that not just accident and emergency departments should be covered, but all hospital premises.

Paul Hopson: Yes.

Mr Maxwell: Should the provisions be extended to all types of workers or to any additional workers who are involved in hospital premises? Obviously, not just nurses and doctors are involved, but a whole range of staff.
Paul Hopson: RCN Scotland would be looking for the provisions to be extended right across the work force of the national health service. They should cover health service workers who work in general practices, in dentists’ practices and in the community. There are nurses who do not always work in uniforms; they will sometimes go out to do work in the community in ordinary day clothes and they, too, are subject to violence and aggression. The provisions should apply right across the NHS.

Dr Terry: We agree. We work in teams—a porter who transports a patient or who transports specimens from one place to another is just as much a member of the team as others are. Attacking them and stopping them getting a blood sample to a laboratory, for example, might be just as important an incident as one involving someone else.

Paul Hopson: On the point about those who work out in the community, a lot of people, including health visitors and district nurses, go out alone and can be susceptible to assault. Admittedly, such cases are not as common as they might be in the acute hospital setting or even sometimes in the primary care setting, especially in the learning difficulties and mental health care parts, but every health care worker should be able to deliver a service to the community without being assaulted.

Mr Maxwell: I am sure that the witnesses have been clear on this, but I would like to confirm that you are calling for the bill to cover all health care premises and all health care staff—or all NHS staff.

Paul Hopson: Yes.

Mr Maxwell: I presume that that includes staff who are working in private medical facilities.

Paul Hopson: Yes, because they, too, provide a service to the public. Even staff who work in nursing homes should be included.

The Convener: On the basis of that principle, I presume that you would not draw the line at health workers.

Paul Hopson: I would extend the protection to all health care workers. I am not talking about just—

The Convener: I understand that. I am asking whether you would extend it to all workers or just to workers who work in health.

Paul Hopson: It should be extended right across the public sector to anybody who works within the public sector.

The Convener: Why stop at the public sector? Why not include the private sector?

Paul Hopson: Even within the private sector—

The Convener: You see where this is going. The issue that the committee is wrestling with is that there is justification to include everybody. We start from the assumption that the law should protect all workers from violence, assault and being prevented from carrying out their duties. One could perhaps put that to one side and say, “Perhaps the law is inadequate and we should look to strengthen it.” Do you see no difference in any setting at all between those who are more vulnerable and those who might be less vulnerable?

Paul Hopson: We are concerned with health care professionals who work in the NHS and the private sector and we hope that the Emergency Workers (Scotland) Bill will eventually bear out—

The Convener: I understand your position. I am just trying to tease out whether you think that your own statistics, for example, bear out the fact that some workers are, in reality, more vulnerable than others. Some of the statistics in “Violence at work: the experience of UK doctors”, for example, bear out the evidence from elsewhere that those who work in the psychiatric sector report more incidents of assault than those who work elsewhere. Are you saying that there is no difference across the various sectors in which you work? Are you all equally prone to assaults and violence?

Paul Hopson: Of course we are. Everybody is prone to that.

The Convener: Equally?

Paul Hopson: Yes.

Dr Terry: We may not agree on this point. I see the difficulty with which the committee is tussling and I do not envy you your job. I suspect that we will come down on the side of health care workers—people who provide health care directly or who assist in the direct provision of health care.

I listened to the earlier discussion. It is perhaps difficult to make a case for including, for example, the people in the laundry who clean the bed linen, as they are not directly providing health care or assisting people who are directly providing health care. I suspect that you will have to make a distinction and craft the bill accordingly, assuming that you wish to change it.

Dr Morrison: That is correct. It is clear from the statistics that some areas are more vulnerable and prone to attack than others. However, within those areas, one of our most abused groups of employees is receptionists, who are the first contact for people who attend our department.

The Convener: Do you mean verbal or physical abuse?
Dr Morrison: Both, although mainly verbal. They are in the front line and are particularly prone to being verbally assaulted.

The Convener: I will put to you the same question as I put to the fire service organisations. The receptionist should have the full force of the law behind them if they face violence or physical abuse. We are exploring the bill; we are not trying to comment on the rights or wrongs of it at this stage. If, rather than making a special case for anyone, the bill is really trying to protect the public—in the sense that your members are putting their lives at risk in order to safeguard someone else’s safety or their life—surely the law should impose a higher penalty against people who assault those who are putting their lives on the line. No matter whether we are talking about accident and emergency services or care for the elderly, should the law not make a distinction if someone is putting their life on the line in emergency circumstances?

11:45

Dr Morrison: That is a little melodramatic. We do not spend every waking hour at work putting our lives at risk. Most of the time, our job is a lot more mundane than that. If the proposals are restricted to situations in which we put our lives at risk, we should simply forget about them right now. Most of the situations in question will involve dispatching or providing emergency care—or simply providing care. I thought that the thrust of the bill was to provide us with some protection as we went about our daily duties. I am not comfortable with the small-print reference to putting our lives at risk.

Bill Butler: I realise that the problem is where to draw the line. Let us think about this for a moment. I wonder whether all the witnesses will comment on the definition of emergency circumstances in section 1(5). Dr Morrison has said that his job is more mundane than the situations covered in the bill and that he does not put his life at risk every minute of the day. However, the bill is intended to cover emergency circumstances in which people are hindered from tending a person’s serious injuries or illness or dealing with “a worsening of such injury, illness or harm” to the point that life is endangered. Do you agree with the bill’s definition of emergency circumstances?

Dr Morrison: I do not disagree with the three categories of emergency circumstance outlined in section 1(5). However, as we have all said, the provisions need to be extended beyond that definition.

Bill Butler: How would you extend the definition?

Dr Morrison: As we have said, the definition of the personnel involved in emergency circumstances should include health care workers who are discharging their duties. I know that that is very general.

Bill Butler: I understand that, but that is probably part of the problem that we are wrestling with. For example, Mr Hopson said that the provisions should cover all health care workers in hospitals or out in the community and then said that it should cover all public sector workers. Indeed, why not include all private sector workers as well? The definition grows and grows. Should the bill’s provisions cover a private sector worker who works in a hospital’s newsagent or florist outlet? That is what Mr Hopson seems to be suggesting. Do you not agree that we really have to draw the line somewhere?

Paul Hopson: Yes, you probably do. Then again, someone working on hospital premises would automatically be covered by health and safety legislation and would become an associate employee of the hospital. There are different definitions—

Bill Butler: So other legislation or common law would cover that situation. However, we are trying to give extra protection to workers in emergency circumstances. Dr Terry, what is your view of the bill’s definition of emergency circumstances?

Dr Terry: It poses enormous difficulties. The bill seeks to cover emergency workers and then tries to define emergency circumstances. In many cases, you are trying to deduce the emergency worker from the emergency circumstance, which leads to some difficulty. The example that you gave of the florist at the front door of the hospital—

Bill Butler: Or the receptionist, as you mentioned.

Dr Terry: The receptionist is a health care worker, but I do not think that the florist at the front door of the hospital is a health care worker. As I have said, the committee will have to draw that line and I do not envy you that task. I think that there is a specific difference between those two workers.

The bill’s definition should relate more to emergency workers—in other words, to people who in some part of their work provide emergency care. Even accident and emergency consultants do not always provide emergency care; they sometimes do all sorts of other things that do not involve emergencies. If the bill were both to define those individuals as emergency workers and to define a group of people who were necessary to assist them in their emergency work, the whole issue would become much clearer. That would avoid people having to worry about whether something happened in the accident and
emergency department rather than in the corridor outside the accident and emergency department, for example.

Bill Butler: So the definition should focus on the worker who carries out emergency work.

Dr Terry: No, it should focus on a worker who at some stage is required to carry out emergency work for the benefit of the public. The definition should include those people who have to assist the emergency worker in carrying out their work. That would mean that porters, for example, who are required to transport specimens, patients and so on would be included.

Bill Butler: That goes back to what we heard from the first set of witnesses about operational capability. We should be considering anything that would impair the operational capability of people who were on duty. In other words, we are talking about a whole-team approach. Is that what you are saying?

Dr Terry: That is what I would say.

Paul Hopson: I certainly agree with Dr Terry. That is the first issue that should be considered in the bill. I know that I am giving the impression that I am looking right across the board, but obviously we are considering health care settings.

Bill Butler: Your submission indicates that you are worried that there would be two levels of protection for workers.

Paul Hopson: Very much so. The message that we are getting from talking to the work force—the people who work in accident and emergency sections throughout Scotland—is that they are worried that the bill will result in a two-tier system, whereby it will be okay if a member of staff is assaulted outside an emergency work situation.

Bill Butler: Of course—I take your point on that.

Mr Maxwell: I want to return to the discussion that we had earlier about emergencies that involve staff who are working outwith hospitals. Such staff are obviously still health care staff. Do you think that the offences as set out in the bill will provide sufficient legal protection for health care workers in those situations?

Paul Hopson: The present wording of the bill means that that message is not conveyed clearly.

Mr Maxwell: Perhaps there is a difference between the message coming out and whether the offences provide sufficient protection. Do you think that the bill will protect workers who work outwith hospitals? If you think that it does not, is that just an impression? Might it be the case that the bill does protect those workers?

Paul Hopson: If I was examining how the bill is worded, I would conclude that the way in which it reads does not give the work force the impression that workers who are involved in dealing with emergencies outside hospitals are covered.

Dr Terry: I tend to agree with that. The bill is strongly oriented towards hospitals—if not accident and emergency department—staff. An awful lot of assaults on health care workers occur in the community and in general practice surgeries. The only murder of a health care worker that has occurred in Scotland relatively recently took place in a general practice surgery; that was about eight years ago.

Mr Maxwell: Do you not think that medical practitioners and registered nurses are covered by the definitions in section 1(3) and by section 1(2)? Section 1(2) says:

“A person who assaults, obstructs or hinders another while the worker is responding to emergency circumstances commits an offence.”

Even section 1(1) refers to an emergency worker. Would not medical practitioners and registered nurses be covered irrespective of where they are?

Dr Morrison: It would be difficult to say that general practitioners, community midwives and community psychiatric nurses respond to emergencies in the vast majority of their work. They deal with more routine work, which tends to be when the most serious assaults occur, rather than in fraught circumstances in which somebody is dying before their eyes. In my experience, assaults tend to happen late on a Friday or Saturday night when somebody has had to wait too long to be seen—they might have a fairly minor problem, but they attach great importance to it and alcohol and drugs might be thrown in. That is where most of the problems that you are trying to get at come from.

Mr Maxwell: So does your problem with the bill lie in the second half of section 1(1), which refers to a situation “while the worker is responding to emergency circumstances”?

Dr Morrison: Yes. The definition of an emergency worker that Dr Terry suggested would be fine. Those people do not always work in emergencies. If we could find a wording that suggested that and could get away from stating that the worker has to be dealing with an emergency, we would be heading in the right direction.

Paul Hopson: From our point of view, it would send a clear message if the wording were adjusted.

Bill Butler: Following on from what Dr Morrison said, would the words “on duty” suffice?
Dr Morrison: I am not sure. Perhaps we should speak to the BMA representative. Frequently, I work when I am not on duty, as many of us do.

Dr Terry: I suppose that that might lead to some problems. However, you have the idea of where we are trying to head. Perhaps wording such as “in the course of their employment” would work. I am repeating myself, but it is the reference to emergency circumstances that creates the difficulty.

Margaret Mitchell: I understand that anyone can find themselves in emergency circumstances—they might find themselves outside the accident and emergency department and be subject to an assault. However, does not the balance of probabilities suggest, as I think Dr Morrison said, that attacks are more likely to occur in accident and emergency because of the nature of the work that is carried out there and the Friday and Saturday night syndrome, when more people come in and workers are more vulnerable? The bill recognises that assault is probably more common in those circumstances than it is when emergency workers are elsewhere, although I fully accept that they could find themselves in the same situation.

Dr Morrison: I do not dispute that we probably see more verbal and physical attacks than people in other areas. That is because we are at the front door and situations spill over from the streets into our department. However, there are other acute areas in the hospital and, in particular, there is an increasing number of acute medical wards. When I spoke to our staff in an acute admissions ward recently, I was surprised by how many attacks and unpleasant situations they have. I do not dispute that most assaults take place in accident and emergency, but I am not convinced that the rest of the hospital would be served too well by making us a particular case.

The Convener: Does anyone dissent from the view that, statistically, accident and emergency is one of the places where one finds prevalence of physical assault or verbal abuse?

Dr Terry: There is a difference between incidence and prevalence. Something like 90 per cent of patient contact episodes occur in the community in general practice surgeries. Although the incidence of attacks in general practice surgeries is relatively low, the number of attacks is quite high because of the volume of work and patient contact episodes that take place. On the other hand, accident and emergency has a higher incidence of attacks, although its throughput is not as high as in general practice.

Michael Matheson: I suspect that if we dropped the word “Emergency” from the title of the bill, we might start to make progress in finding a way through some of the difficulties that have been mentioned.

From what you have said, one problem is that there might be a greater incidence of assaults in emergency departments, but I would argue that staff working in the community are probably more vulnerable, which is a distinctly different issue. Given the way in which the bill is currently drafted, should we have an emergency workers bill, or should there be a workers protection bill? Should we drop the idea of having an emergency workers bill and have a bill that focuses on workers carrying out some type of duty, whether they are in the health sector or any other sector?

Dr Morrison: Whether there should be a workers bill is possibly up to members to decide. I still support the Emergency Workers (Scotland) Bill, but I think that all of us have said that the provisions should not apply only when emergencies are being dealt with. The thrust of the issue relates to people who deal with emergencies, but who may be discharging their duties in a non-emergency way. I am not sure whether I have made that point clear. I do not have any difficulty with the fact that the bill is an emergency workers bill, but the definition of exactly what it should cover needs to be changed.

I certainly agree that people in the community are more at risk. The point has been made that we have geared ourselves up for such incidents because we see more of them, as you are gearing us up in making us a special case. We have closed-circuit television, there is rapid response from the police and various measures are in place because we expect things to happen. The same does not apply in the community.

Paul Hopson: I agree with Michael Matheson that people who work out in the community are at as high a risk as people in accident and emergency, but we recognise that perhaps a greater number of people in accident and emergency will be involved because they are obviously at the front line in receiving patients into hospitals.

That is how society currently is. The statistics on violence against health care staff are particularly worrying. The recent NHS Scotland information and statistics division report on occupational health and safety showed that one in 10 national health service staff was subject to physical abuse last year, which translates to two members of staff being assaulted every hour of every day. Apart from security and protective service staff, nurses are the occupational group with the highest risk of suffering violent assaults while working.

From the RCN’s 2002 working well initiative, we know that one in three nurses and midwives will
suffer a violent assault during the course of their careers. Health and Safety Executive figures also show that 46 per cent of nurses have reported being worried about violence at work.

Dr Terry: The definition of an emergency worker in section 1(3) of the bill is quite good. If the people who are included in section 1(2) were brought into section 1(3) and included as emergency workers, that would pretty much cover things. They could be called emergency workers or people who at some stage during their working life will have to undertake emergency work or assist somebody who is undertaking emergency work, although the latter title is perhaps a little long. As long as emergency workers are defined adequately, we will be moving in the right direction.

Michael Matheson: There are two issues. The first is the definition of emergency workers and the inclusion in that of support staff who may assist. The second is the fact that the bill kicks in only when the workers are responding to an emergency situation.

Dr Terry: That is a problem.

Michael Matheson: You are saying that you would like the provisions of the bill to apply whether or not the individuals are responding to an emergency situation on the basis that they may, at some point, have to respond to an emergency situation.

Paul Hopson: Yes.

Michael Matheson: Is that what you are saying?

Dr Terry: Yes. That is what I am saying.

Michael Matheson: That would fundamentally change the bill from being an emergency workers bill.

Dr Terry: I am aware of that.

Michael Matheson: That takes us back to my initial point. I wonder whether there is a need to have an emergency workers bill. You are saying that you need a bill to protect workers in carrying out their duties irrespective of whether they are responding to an emergency.

Dr Morrison: I do not think that it would change the bill fundamentally. We are talking about emergency workers, but they are not always responding to an emergency. As I have said, I may be responding to a dire emergency or I may be treating somebody with a sprained ankle but I may have to deal with an emergency shortly afterwards. I am not sure that the hospital florist ever deals with an emergency. I think that there is a distinction to be made.

Michael Matheson: I say that it would change the bill significantly because the bill defines “emergency circumstances”. I take on board what you are saying, but the bill defines “emergency worker” and then defines “emergency circumstances”. If we decide to take away the definition of “emergency circumstances”, those covered comes down to a range of individuals who may respond to some type of emergency.

Dr Terry: That is what we are asking for. That is what we would like. As I said earlier, it is section 1(5) that we have difficulty with and the qualification that there have to be “emergency circumstances”. Such circumstances are very difficult to define. Emergency circumstances can occur on medical or psychiatric wards. In an emergency, a porter might be required to transport a specimen from the labour ward to the blood transfusion unit, or vice versa. I think that you will have a lot of difficulty in defining emergency circumstances. The easiest thing would be to drop that definition and define the workers more carefully.

The Convener: We have pressed the Law Society of Scotland on the technical matter of whether, if we wanted to widen the scope of who we want to protect, we could keep the narrow definition of an emergency situation—perhaps not. I understand where you are coming from. What concerns me about your position is the fact that I do not think that we could draw the line. If we removed the emergency aspect of the bill, I would not see the logic of having a higher penalty in law. The bill could cover any worker who might be involved in an emergency situation, which is fine. I would have difficulty in drawing the line at health care workers. Somebody used the phrase “in the course of their employment”. I do not see why the law should attach any lesser penalty in a case in which someone else is attacked or physically abused in the course of their employment.

Dr Terry: All that I can say in defence of that is what I said earlier. Society as a whole regards attacks on health care workers and other workers—you heard from the fire brigade representatives earlier—in hospital or in the community as something different from general assault. As far as I can see, that is why the bill has been devised.

Paul Hopson: I agree with what Dr Terry says. The bill gives the wrong message, to a certain degree. I do not envy your job in drafting it. Nevertheless, the ideas are right and, with some adjustment, the bill could put the right message across.

You must define the people who are concerned, which is difficult. We are talking about medical practitioners as defined under the Medical Act 1983, as well as nurses, midwives and health visitors. When we get down to the definition of “emergency circumstances”, the wording might require to be adjusted.
Margaret Mitchell: Instead of focusing on the idea—which I fully accept—that any health care workers can find themselves in emergency circumstances, and thereby be emergency workers who should be covered by the bill, I would say that the reason for singling out accident and emergency workers is that, because of the very nature of their work, the consequence of impeding or assaulting them might be a loss of life. That is more likely regularly to be the case in an accident and emergency department than it is elsewhere. It might happen elsewhere but, given the nature of accident and emergency departments, loss of life there is relatively high. That is the reason why staff who work in accident and emergency departments have been included and, if you like, singled out. That is not to create a two-tier situation; it recognises the practicalities of their job. Because they are dealing with emergencies—the recent factory explosion, for example—loss of life is more likely to be something that accident and emergency staff have to contend with, and so the prevention of loss of life is more likely to be hampered in their circumstances. That is why the bill singles them out.

Dr Morrison: If that is the thrust behind the bill, you are legislating for nothing. In 12 years as a consultant, and a lot more time as a trainee, I cannot think of any incident of being verbally abused or physically assaulted in which life was at risk. That has not happened to me under such circumstances.

The Convener: You will appreciate that I am playing devil’s advocate in asking you this. What, in law, makes you as a doctor different from a shop worker?

Dr Morrison: You had better ask the general public about that. I have never tried to make a case for my being anything different. As Dr Terry said, there is a general perception among the public that assault on hospital staff when they are going about their duty is in some way different, or is a greater crime than would be the case if other workers were concerned. I do not know whether your perception is different, but that is certainly mine. It would appear to be Dr Terry’s perception, too. I have not made a case for my being considered differently.

The Convener: You will appreciate the difficulty of the job that we have to do here. We are trying to examine what the differences would be if the legislation were to be framed in different ways.

Mr Maxwell: You might have just answered this in your last comments, but is it not the case that any member of the public might respond to an emergency situation? I am referring to people who, while walking along the street, come across a fire, road accident or any other emergency situation. If that is the case—I am sure that you accept that it is—what is the difference between an emergency worker, such as a firefighter, a nurse or a doctor, responding to that incident and an ordinary member of the public responding to that incident? Would they not be in exactly the same situation? If they are assaulted or impeded when responding to an incident, should they be offered less protection in law because they do not happen to be a member of the health profession or a firefighter?

Dr Terry: I think that I mentioned earlier a possible phrase along the lines of “in the course of their employment”. As a doctor responding to an emergency as a member of the public, when I am off duty and not working, I would expect to be treated as a member of the public and to have the same protection as any other member of the public. When I am working in the hospital in the course of my duty, that is when the differentiating factor comes in.

To respond to Margaret Mitchell's comment on the possibility of an assault on an accident and emergency worker resulting in consequences for the patients there, I would suggest—despite having no evidence for this—that an assault or impeding someone working in the community is, in many ways, far more severe. A general practitioner working in an isolated area might have several ill patients to see or visit in one morning. Impeding them in the course of that work might have more severe consequences than impeding a consultant in an accident and emergency department. After all, those departments are situated in hospitals where many other health care workers are able to cover for a consultant who is assaulted during an emergency.

Bill Butler: I want to ask about wider measures. Dr Morrison mentioned CCTV and rapid response from the police. Could the Executive and other bodies introduce other education or training initiatives or greater security measures in hospitals or out in the community to improve the protection of health care and other workers?

Dr Morrison: I am probably going to be particularly unhelpful by saying that I do not know the answer to that question. The bill is a brave attempt to address the problem, although I do not know whether it will act as a deterrent or not. I certainly do not think that someone who is trying to remove my head at 3 o'clock in the morning will have the legislation uppermost in his mind.

Most forms of physical assault have an undercurrent of drink and drugs. CCTV is helpful, mainly for providing evidence after an event has taken place; I do not think that it acts as a deterrent.
Bill Butler: So the problem is societal.

Dr Morrison: Yes, and it spills over into hospitals.

Bill Butler: Obviously, the use of CCTV and rapid response teams might mitigate the situation. Would it be possible to introduce any other training measures?

Dr Morrison: It would be good if we could train the general public not to assault staff. In association with the police, we have held courses for all staff on de-escalation techniques and basic self-defence.

I probably take a slightly different view on an issue that was raised earlier. I am not a great fan of the proposal that security guards or the police should be a permanent presence in hospitals or accident and emergency departments. That can be as provocative as it can be preventive.

Dr Terry: I will not pretend that the bill will provide the solution to the problem. Indeed, far from it—it is simply one aspect of an approach that we welcome. You have already mentioned most of the steps that we might have suggested. For example, we would propose the introduction of security measures such as CCTV and panic buttons and better communication for those in the community who are running into difficulties. Indeed, under out-of-hours arrangements, GPs are now escorted on their visits, usually by a retired policeman.

The fundamental point is that society must be educated. There is perhaps a slight deficit in staff training, but we also need training in other aspects of our work, not just this one.

Paul Hopson: Many trade unions and professional organisations have carried out very detailed work on violence and aggression and there have been many publications on the subject. I should mention that the Scottish Executive Health Department has also undertaken a lot of work on this issue. For example, in 1999, it produced the document “Towards a Safer Healthier Workplace”, which sought a 25 per cent reduction by 2006 in the injuries, accidents and incidents that result from violence and aggression. Moreover, in January 2003, the Executive issued the final “Managing Health at Work” partnership information network guideline, which contains a section on violence and aggression at work and recommends safer practices and violence and aggression policies.

Bill Butler: Are such strategies having a positive impact?

Paul Hopson: I was just about to say that the Scottish Executive Health Department set up 10 projects on violence and aggression. Indeed, last week, Malcolm Chisholm announced that the final reports on those commendable projects are now in the public domain. A lot of work can be done on all the training aspects of those 10 projects; however, a lot of work still needs to be done on staff education and on the working environment and accident and emergency departments. For example, we need to consider electronic lock-down processes, how to deal with non-public areas, how to implement and evaluate the guardian angel lone worker system and so on. The list is endless. I hope that the amount of good work that is being carried out will help the situation when it is rolled out across the whole of NHS Scotland.

The Convener: We will have to leave the questioning there. I thank the witnesses very much for their interesting contribution, which the committee will find useful in its deliberations on the bill.

Dr Morrison: It might save the committee time later if I point out that the specialty of accident and emergency medicine is having its name changed to emergency medicine. Please do not ask me why that is happening, but it might alter some of the evidence that you have received.

The Convener: You heard it here first. Thank you for that information.

I imagine that committee members would appreciate a two-minute comfort break. We will take our third panel of witnesses after that.

12:21

Meeting suspended.

12:28

On resuming—

The Convener: I welcome our last—but not our least—panel of witnesses, which consists of trade union representatives. Peter Hunter is the legal officer of Unison Scotland, Martin Gaughan is regional organiser of T&G Scotland, Alex McLuckie is senior organiser of GMB Scotland and Ian Tasker is the Scottish Trades Union Congress’s health and safety officer.

Before we begin, I declare my interest as a GMB member. Do any other members require to declare interests?

Bill Butler: I declare my interest as a member of the GMB.

Margaret Mitchell: I am a member of the Educational Institute of Scotland.

Bill Butler: I am an EIS member, too.

The Convener: I know all the panel members, but I am sure that they know all of us.
We will move straight to questions. We have just short of an hour. I hope that you have had the opportunity to hear some of the previous evidence; if you have not, we can recount it for you. We will start with Margaret Mitchell.

12:30

Margaret Mitchell: I will ask you what has become a monumental question, now that we have heard the evidence of the previous two panels. Do you consider that the bill will provide greater protection for emergency workers, as they are defined in the bill, given that they are already protected by common law and, in some cases, under statute?

Ian Tasker (Scottish Trades Union Congress): The STUC’s feeling is that, although we welcome the bill, there are issues in relation to some of the definitions in the bill that might confuse matters and result in a greater use of plea bargaining, for example. We have some concerns that, as it stands, the bill might not be as effective as we had originally thought that it would be.

Peter Hunter (Unison Scotland): Unison’s perspective is that we recognise that many of the incidents that the bill is designed to address are already dealt with by the criminal justice system as common-law assault, breach of the peace or other charges.

There are two key issues for us. The adoption of the bill as part of a package of wider measures would represent the greatest concerted effort to tackle the problem that there has been in Scotland. That could have an impact on any previous under-reporting of crime. We hope that the result of that would be that greater protection would be offered.

The identification of some types of assault of this nature—in our view, the definition should go wider than just emergency workers, but we will come on to discuss that—would have a deterrent effect. There would be publicity around the creation of a new offence. Employers would, for example, display material of the kind that can be seen in railway stations, which says that railway staff are entitled to work free from fear. The bill would provide the opportunity to create, in public sector services in which there is contact with the public, a culture whereby those types of assault were not acceptable. Such behaviour never has been acceptable, but the creation of such a culture would make it especially unacceptable. The bill and other measures will show that there is a resolution within the criminal justice system and among employers to do something about the problem. My answer to your question is that the bill will provide greater protection.

Margaret Mitchell: In your view, does the need for that protection relate primarily to the assaults faced by emergency workers—as defined in the bill—or does it relate to their being impeded in their duty or to some other reason?

Peter Hunter: My view on that is that there needs to be greater clarity on those two functions of the bill. Are we concerned that the emergency service that is received by people whose lives are at risk is being impaired in some way by people who are assaulting, impeding or otherwise obstructing emergency workers, are we concerned about the workers who are being attacked or are we considering both issues?

I submit that the occasions on which the life of a patient or a recipient of a service is put in danger because of an attack on a public service worker are far less frequent than those on which public service workers or emergency workers—however one cares to define them—are simply attacked. If we look after public service workers generally, we will by definition look after the patients. If we do things the other way round—if we try to prevent the impairment of service delivery to people whose lives are at risk—we might protect the patients but we will not necessarily protect the staff. If we protect the staff, both patients and staff will be protected. A tweaking or refinement of the bill in that regard would be productive. It would retain the current objectives and would offer greater protection to the workers.

Margaret Mitchell: That is extremely helpful. We have been trying to tease out the balance this morning—to find out whether we are legislating for the consequences of such acts or the acts themselves.

You mentioned that you thought that the bill would result in better reporting, would have a deterrent effect and would produce greater awareness. Can you think of any other reasons for the bill? Will it clarify the law?

Peter Hunter: To be honest, I do not know whether it will, because at the moment, the common law has the potential to be quite powerful. Since the Lord Advocate’s direction in February, there have been one or two isolated examples of better use of the criminal justice system. There is an argument that the law is clear at the moment, but there is a difference between clarity and efficacy. In trying to make the law more effective, we are making it less clear. The earlier evidence makes it clear that the jury is still out on clarity—if I may use a legal expression—and you will know whether the law is clearer, as well as more effective, only once you have finished your deliberations.

Margaret Mitchell: Are you arguing that the law is fine as it is, but is not being enforced properly? Are we just not taking advantage of what is available in common law?
Peter Hunter: That is not quite correct. The law has shown a marked improvement in the past four or five months because the system has given greater priority to attacks on emergency workers, but there is still scope for naming the assault of emergency workers as an offence as part of a wider strategy to protect employees and patients. If we want consistent, sustained, publicly identifiable improvement across the board and if we are to say that attacks on employees and patients are wrong, we need to go beyond the existing measures, welcome though they are.

Margaret Mitchell: You are kicking up the awareness aspect again.

Peter Hunter: It is very important.

Alex McCluckie (GMB Scotland): I concur with what Peter Hunter said. We need to bring to the attention of the wider public the fact that it is not acceptable to attack those who are delivering a service in an emergency. To go back to your previous question, it is not only a case of having legislation that gives a clear message that such attacks are not acceptable, because such legislation must go hand in hand with educating the wider public that it is not acceptable to attack those who are delivering a service in an emergency. To go back to your previous question, it is not only a case of having legislation that gives a clear message that such attacks are not acceptable, because such legislation must go hand in hand with educating the wider public that we do not want people to be hindered by unacceptable behaviour when they are doing their jobs in emergencies.

Margaret Mitchell: Thank you. That is very helpful.

Michael Matheson: Should the bill be limited to emergency workers and those who assist them?

Ian Tasker: The STUC’s view is that the bill is not wide enough; it should cover more than only emergency workers. In our response to the consultation, we suggested that the definition should cover public service workers as opposed to public sector workers, because that would broaden it out as widely as possible.

Michael Matheson: Which other workers not covered by the bill would you like it to cover?

Ian Tasker: The problem that the trade union movement has is that attacks on workers are widespread throughout the public and private sectors. We have strong arguments for including retail and transport workers, but, as we heard in this morning’s evidence, the question is where or whether we should draw the line. The STUC’s view is that we should not draw a line at all.

Michael Matheson: I concur with Alex McCluckie. You are right. As Ian Tasker and Martin Gaughan said, we would have liked the bill’s scope to be wider, to cover the workers that we represent. The Scottish Trades Union Congress said that the bill’s scope should be extended to cover: “any situation where obstruction or assault of a worker or workers would cause consequent and immediate impact on the safety of another person or persons.”

It was helpful to listen to earlier witnesses’ contributions. There seemed to be a debate about whether we should go ahead with this bill or replace it with a different bill. I would like the bill to be replaced by another bill that would cover more workers.

Ian Tasker correctly made a point about people who provide a public service, as opposed to public sector workers, but the people who are defined as emergency workers in section 1(3) tend to be public sector employees. However, there is an omission, because there is no reference in the bill to local government workers, although some local government workers get involved in emergency situations, as Martin Gaughan said. The bill would apply to a doctor who is attacked after going alone into a housing scheme to carry out their duties and it should apply equally to a home help who is attacked after going into the scheme as a member of an emergency response team. Perhaps this is about how we define “emergency”. During the winter months drivers are out gritting the roads. That is an emergency at that time of year, but such drivers would not be covered by the bill if they were impeded as they carried out their duties. Even within the bill’s narrow scope, people who might be involved in an emergency situation have been omitted. At the very least, the definition of “emergency worker” should be amended to cover local government employees.
The Convener: Will you rewind a little to the test that you mentioned? You said something about the safety of another person.

Alex McLuckie: We put forward a suggestion during the consultation that the bill should apply to “any situation where obstruction or assault of a worker or workers would cause consequent and immediate impact on the safety of another person or persons.”

Michael Matheson: Would you like that definition to be in the bill?

Alex McLuckie: Yes.

Michael Matheson: Will Peter Hunter give us Unison’s view? When I was in social work, I had to undertake emergency duties and respond to emergencies. Sometimes we had to call in home care services to assist in a situation. We were potentially very vulnerable. The bill is silent on that group of workers; it applies largely to the 999 services and health care professionals.

12:45

Peter Hunter: I am grateful that you asked the question. We made our position clear in our submission to the committee. We have carried out a lot of research with our members about the attacks that they have experienced. I will not go into detail, but I have brought copies of the report of that research with me.

There are many people, from social workers and home-care staff to concierges at the bottom of tower blocks on housing estates, who are in very vulnerable situations. Such people are often in the front line in the battle—if that is the right word to use—against antisocial behaviour in terms of the softer measures that the community often uses to regulate the behaviour of people who might make life difficult, unpleasant or threatening for others. Those concierges, security guards and traffic wardens work in twos or on their own and they are very vulnerable; they perhaps do not have the measures or the back-up that the police, for example, might have to deal with threatening situations. We are keen that that particular set of circumstances should be addressed in some way, preferably through the bill.

Having heard the earlier contributions, we have the benefit of knowing the territory that the committee is operating on and the difficulty about where to draw the line. While I do not want to dissent completely from what Ian Tasker said for the STUC, it is inevitable that a line will be drawn in some respect. I suggest that that task should be approached with a set of objectives. Those objectives should go beyond protecting staff in the course of helping someone who is gravely ill. There has to be a measure that is simply about protecting the staff. That protection should go beyond emergency workers because, if the committee is saying—as has been said in the wider discussion around the bill—that the bill is part of the Executive’s efforts to tackle antisocial behaviour, then all those people who make themselves vulnerable in tackling antisocial behaviour deserve some kind of recognition or protection. From the committee’s discussion with previous witnesses it is clear to me that the committee is sympathetic to the kind of people who we are talking about, but there is a balance to strike—this other concern about where to draw the line and still make the legislation effective.

On that line and where to draw it, public service workers can be distinguished from other workers, if that is what you choose to do. There is something about the duty to serve, and to continue to serve in one way or another, even in a threatening situation, which is characteristic of the public sector or public services but is not typical of private sector services. For example, compare a bus operator with a taxi driver. Taxi drivers can, as they regularly do, put their light out and drive past a situation that they perceive to be threatening. A bus driver does not necessarily have that discretion. People in the public sector do not necessarily have to continue to work with people who are known to be a threat; there are resources that they can call upon. However, the nature of performing a service in the public sector means that people have a duty to continue to be in contact with some difficult customers, clients and service users. That is the distinction.

We then ask, “Well, what is the practical application of that?” The bill will not make it compulsory for a judge or a sheriff to pass a higher sentence or to levy a higher fine on people, simply because they have attacked an employee. The bill gives them the option of doing that. Judges and sheriffs will continue to exercise considerable discretion in how such cases are dealt with. It would be for the courts to consider a situation and to decide whether someone was vulnerable, because they were working on their own—as Mr Matheson described—because of the nature of the duty that they were performing, or because they had a duty to continue to perform a service, rather than to pull the shutters down, as someone might do if they were running a shop or a club in which there was threatening or violent behaviour. Those are the kinds of factors that the courts would be able to use, with your guidance, to draw the line between people who are performing a public duty or service, and people who are simply at their work in a more conventional way.

It took me longer than I thought it would to make that point, but that is how I would draw the line.

Michael Matheson: I want to be clear on one thing. You referred to public sector workers and to
people performing a public service duty. If they were performing a public service duty, would you include people who might be working for a private company?

**Peter Hunter:** We could offer you two approaches to that issue. You could take all the public services back into the public sector, and define them that way—an unlikely event, I admit—

**Michael Matheson:** I am all for that, but I want to clarify your point. For example, let me ask you about home care. Some councils now use private home care agencies. Whether the workers are people from a private home care agency or from the public sector, I would like to think that they would have the same protection if they found themselves in a vulnerable situation.

**Peter Hunter:** I agree. Reliance, for example, is easily identifiable as a performer of a public service—irrespective of its position in the public or the private sector.

**Mr Maxwell:** You have made it clear that you would like the bill to be replaced by another bill or extended to include non-emergency workers and public service workers, as opposed to simply public sector workers. Would you also extend the bill to non-emergency situations, or do you accept that the focus should be on emergency situations?

**Martin Gaughan:** T&G Scotland welcomes the legislation but would like it to be extended to cover the wider range of people who provide a service to the public. We spoke earlier about people who could be at risk and I would include transport operatives in that scenario. Alex McLuckie referred to people who work in roads departments. Everybody who provides a public service—people such as home carers, community nurses and community midwives—should be covered. We should not be considering only services in hospitals, because some services extend out into the community.

**Mr Maxwell:** Is your definition of public service not so wide that it encompasses almost everybody?

**Martin Gaughan:** Far be it from me to say, but I think that every worker should have the right to go to work without the fear of violence. We represent people who work in the transport industry. Almost 60 per cent of them go to work with the threat of violence hanging over them. No worker should be put under that type of stress or strain.

**Mr Maxwell:** I agree absolutely; that was the point that I was trying to get to.

I wonder whether Alex McLuckie could clarify whether his definition would include shop workers. Would they be protected? It did not sound as if they would.

**Alex McLuckie:** In our definition, we considered the type of workers who would be delivering a service that would impact on the health, safety and well-being of others. If such workers were impaired in their duties, we wanted them to be covered by the legislation. We would widen the existing definition, but not so far that we would cover everybody—so the answer to your question about shop workers would probably be no. However, I agree with Martin Gaughan’s point. From a purist’s point of view, we would like to think that everybody in work could be free from any threat of violence and could carry out their duties for their employer, whoever that employer might be.

We are discussing the emergency services today. When people respond to an emergency, they could be confronted with violent conduct or other behaviour that impairs their performance of their functions. Other people could encounter violence when performing their normal duties—that is a particular worry.

The GMB surveyed Glasgow City Council home helps. When they were asked what their problems were, the first problem that they raised was manual handling, but the second problem for a range of the home helps who were interviewed was violence in a client’s home. When home helps undertake their duties—and home care duties have changed to deal with personal needs and other matters—they look after the well-being of vulnerable people in our society. If home helps are confronted with violent behaviour that impedes them in undertaking their duties, the bill should cover them, too.

**Ian Tasker:** The STUC came up with its definition after consulting legal advisers and others and it was felt that that definition would encompass shop workers. The perception is that if a shop worker is staring at a knife, that is an emergency to them. The fact that we are dealing with emergency workers in emergencies confused the issue for trade unions. We say that the protection that is being offered should cover non-emergency situations.

**Peter Hunter:** Unison takes a slightly different position. If people who perform public service work that—as I said—has a dimension of duty to it that distinguishes it from other jobs are assaulted in the course of their work, then the assailant must take the victim as they find them. If somebody assaults somebody else who subsequently dies, the fact that the assailant did not kill that person immediately or was not aware that the assaulted person would die is no defence. People must take responsibility for their actions. It is our submission that if, in addition to having assaulted a public sector worker, it can be proved that the assailant knew that that person was a public sector worker
who was doing their duty at the time, that would make the situation still more serious and we would expect the sanction to reflect that.

Mr Maxwell: I am interested in that point, which you also made earlier. You said that the bill would add to current law by giving the courts the option of imposing a longer sentence. I did not quite understand that. Surely the courts already have the option of varying sentences according to the severity of an offence and the circumstances, such as whether the person who was assaulted was a doctor on call, a firefighter who was trying to save somebody’s life or a bus driver whose bus crashed after he was assaulted.

Peter Hunter: The courts already have that option, but I understand that the bill has been introduced because we want, through the Parliament, to label a set of crimes and to make them a priority for the prosecution and for sentencing. The will of the Parliament and of the people through the Parliament is that a higher level of seriousness should be attached to this area.

Mr Maxwell: Could that not be achieved by the Lord Advocate giving a direction? You have mentioned that.

Peter Hunter: That would be helpful, but it would not be sufficient. The picture in my mind’s eye is of a message on posters in accident and emergency, a housing office’s waiting area or other contact points between the public and public service workers, and possibly on council tax bills that go through letterboxes, that says that the public body takes the view that its staff have the right to work free from fear and that if its staff are assaulted, the new criminal charge might be levied. The message would say that the body encourages and supports its staff to report such crimes and works with the police to ensure that such crimes are prosecuted. That sends a very clear message to the community about types of behaviour that will not be tolerated.

13:00

Mr Maxwell: Surely we could do exactly what you suggest without new legislation. Reference was made earlier to the very obvious posters on trains that say how seriously assaults on ScotRail staff, for example, will be treated. Surely legislation is not required to provide posters and leaflets of that nature.

Peter Hunter: I think that legislation is required. At the moment, there exists the charge of breach of the peace, which is inadequate. In England, if a group of people systematically harass a lone worker who is vulnerable and who becomes greatly distressed, that group’s behaviour constitutes a criminal offence of harassment, which does not exist in Scotland. If no assault were involved, the case would be prosecuted as a breach of the peace. To my mind, such an approach does not convey—in the charge, in the conviction or in the message that is sent to the wider community that reads about the case in the press—the concern and disgust that we feel when people behave that way. Through legislation, we can raise the bar to create a crime to which, in our view, greater stigma would be attached because of the identity of the people who have been attacked.

Mr Maxwell: From those comments, I take it that you believe that passing the bill, or something closely akin to it, would act as a deterrent. You used the word stigma. Do you believe fundamentally that people who assault workers of any sort pay the slightest heed to legislation that is passed?

Peter Hunter: There is an argument that people who commit a crime of any sort do not pay much attention to—

Mr Maxwell: Perhaps I did not phrase the question correctly. The point that I was trying to make is that deterrence is not necessarily achieved by Parliament passing a bill. Deterrence is more likely to be linked to prosecution rates and the levels of fines and imprisonment that are imposed.

Peter Hunter: Deterrence depends on a package of measures. If a person is convicted for breach of the peace and, on comparing notes with their fellow criminals, discovers that they have all been charged with breach of the peace, that does not constitute a deterrent. If people are convicted for assault, or on a hindrance or obstruction charge that has been the subject of publicity accompanying the passage of the bill, there will be a greater deterrent effect.

Mr Maxwell: I have a final question for the panel. Is it reasonable to pass legislation that states, in effect, that certain workers in certain circumstances should have added protection that others will not have? It is still a matter of debate whether the bill will provide such protection. Should all workers in all circumstances have the right to go about their work and normal duties without fear of verbal or physical assault? Should they all be given equal protection under the law?

Ian Tasker: We have touched on this matter already. We believe that it is a basic human right that people should be able to go about their duties without fear of intimidation, violence or injury. We appreciate that emergency workers are being impeded when they try to save lives and we support their position, but we may have difficulties with narrow legislation that does not offer protection to all workers.
Alex McLuckie: I agree with Ian Tasker. It is well documented that trade unions believe that all workers should be able to carry out their duties in a safe environment, free of violence. We do not dispute that. Given the choice, and a blank piece of paper, we would probably come up with a bill that provided such protection. Although the legislation that is before us is limited, I am concerned that we should not lose it. At least if the legislation exists, we can build on it.

I am concerned that you ask us to choose whether or not we should have the bill. One of the previous witnesses was asked why we should have the bill. We want it because there is nothing else. The bill will establish for the first time that emergency workers who are carrying out their duties will receive greater protection, which we welcome. The answer to the question is that we would prefer that everybody be covered, but in the absence of that, we want to build on the bill. I mentioned omissions from the bill earlier.

The committee has spent a bit of time with people who were dubbed witnesses from the health service, but the GMB, Unison and the T&G also have members who are employed in the health service. I have concerns about inclusion in the bill of people who assist emergency workers because legal arguments could arise about when a person is assisting or not assisting.

The Convener: Whatever we do, there will always be legal arguments about who is covered. We are clear that when we legislate we cannot always shut down that possibility. I ask the panel to summarize what they are saying. If you were legislating, what would you want in the bill? You want to widen the scope of the bill to cover public service workers, although the STUC would go further to include other workers.

Ian Tasker: Our policy is that the bill should be all-embracing.

The Convener: You also said that the bill should cover assaults that obstruct or hinder a worker in their duty—you are saying that there should still be a test. Are you saying that it is not enough for there to be a common assault and that it must be common assault that hinders or obstructs the worker?

Ian Tasker: Yes.

The Convener: Peter Hunter talked about clarifying the bill’s objectives. Unison wants the bill to cover attacks on people who deliver a service but who are impeded in doing so.

Peter Hunter: For us, the notion of duty or service is the answer to Mr Maxwell’s question about how to justify treating one group differently from another.

The Convener: If we were to legislate for that, should there be additional legislation to deal with workers who put their lives at risk to save the lives of others, or should that not come into the equation?

Martin Gaughan: The T&G’s written submission states:

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

The type of people whom we want to be covered are

“Workers engaged in the provision of public services, such as in the health service and public transport”,

who encounter threats daily.

The Convener: I am clear about how you would widen the bill and that you want it to cover attacks that obstruct or hinder. However, if we legislated in that way, we could still legislate for another group of workers so that the law would address another set of circumstances; namely, the circumstances that are currently covered in the bill. Should we legislate for both groups of people?

Peter Hunter: Our submission argues that the connection between emergency workers and their saving other people’s lives is not necessary. Recently, an assault in Perth royal infirmary resulted in a life sentence for the assailant. The victim was a nurse, but in no way could she be said to be performing life-saving duties at the time of the assault, although her own life was in danger.

The Convener: However, in certain circumstances, fire service workers put their own safety at risk to save others and we know that fire service workers have been attacked while doing that. Do you think that legislation already covers that adequately?

Peter Hunter: If, say, a concierge had been systematically obstructed and harassed by people, no judge would administer the same sentence for that as for an attack on a group of firefighters who had been trying to save lives. The issue is for the courts. In that sense, the bill is too prescriptive. The evidence from the Law Society of Scotland and the procurators fiscal suggests that legislation that is too prescriptive makes it more difficult to secure prosecutions.

The Convener: Do you think that firefighters are adequately covered by the common law?

Peter Hunter: I do not know. I assume that firefighters will be covered by the bill. At the end of the day, regardless of whether the charge that has brought the assailants to court is assault, attempted murder or whatever, provided that the charge is properly pursued on indictment in the High Court, the appropriate measures will—I
Alex McLuckie: Given that the common law can change through time, I would prefer there to be a statutory aggravation such as already exists, I believe, under current police and fire services legislation. We need such offences to be labelled as statutory aggravations. Arguably, the general definition of that might be left for the courts, which could also decide the severity of the offence and the punishment that goes with it. However, I would prefer that the basis be statutory rather than in common law.

Bill Butler: Mr Tasker said that the STUC’s view is that non-emergency workers should be included in the bill, but I think that Mr Hunter’s response to Margaret Mitchell took a different line when he said that the common law is quite a powerful device. Is legal protection of non-emergency workers best left to existing common law offences? Do you have a view on that, Mr Tasker, or will you just repeat the STUC line?

Ian Tasker: There is protection within existing law: we welcomed the guidance that the Lord Advocate issued on that. We also welcomed the examples that were provided, which gave us some confidence that the guidance will be followed. I think that we could be placated if it was ensured that the guidance would be permanently adhered to, but the problem with some guidance is that it can get diluted over time. We then return to the situation in which courts hand out sentences that perhaps do not reflect the seriousness of the crime.

Bill Butler: Can I take it that Unison does not quite agree with that view? Does Mr Hunter agree with Mr Tasker’s concept of diluted guidance?

Peter Hunter: It is possible that guidance becomes diluted over time, given that the Procurator Fiscal Service is under incredible pressure. The bill is welcome because it is, as I perceive it, part of a package of legislative and non-legislative measures that are designed to achieve a particular end.

13:15

Bill Butler: It is one tool in the toolbox.

Peter Hunter: That is how I perceive it.

If guidance is given to the fiscals to ensure that the undoubted power of existing common law is used to protect people who are not covered by the bill, that will be good. It is not quite what we want but it would be, if you like, our fall-back position. The position that we would not like to be in is the position pre-February 2004.

Bill Butler: As far as I can make out, you all want the scope of the legislation to be extended, so I will act as the devil’s advocate. What are your views on the reasons that have been advanced by the Executive for limiting the scope of the bill to emergency workers and those who assist them? Reasons that have been given include the fact that those workers are particularly vulnerable and that the possible consequences of assaulting orimpeding such people are particularly serious. Are the Executive’s arguments weak?

Peter Hunter: My view is that the Executive did not want to have a statutory offence in the first place. I might be wrong, but I understand that the Executive’s preferred position was initially to use the common law as reinforced or directed by the Lord Advocate’s guidance in February. That position developed into the current position—the one that we have just discussed—which is that existing common law, with the guidance, exists for everybody and there will also be specific and narrow additional protection for emergency workers in emergency situations.

The Executive appears to have drafted a bill that is very narrow in its effect, so the residual position for everybody else and for the vast majority of offences is the common law.

Bill Butler: Is the Executive right to draw the provision so narrowly?

Peter Hunter: It has to be drawn in a way that works. I am interested in the alliance of organisations that have come from different positions but seem to have arrived at a similar conclusion: the Royal College of Physicians; the British Medical Association; the Royal College of Nursing; trade unions; the Law Society of Scotland; and, as I understand it, the Scottish Police Federation. Those organisations are saying that the bill as drafted—particularly the fact that emergency circumstances and emergency workers are combined—will perhaps make it more difficult to secure prosecutions because the locus will have to be proved, and there are also the issues of the identity of the worker and knowledge of the identity of the worker.

It may be that in trying to avoid the perceived problem of drafting the bill too widely, we have ended up with something that will be less effective than it might otherwise have been. I am not suggesting any ill motive: the motive is pragmatic and cautious, but I am concerned about the result, which may be weak.

Bill Butler: That is interesting. You are saying that the definition of emergency circumstances needs to be improved. How would you improve it?

Peter Hunter: I will go back to the point that I made earlier about duty. The people concerned are doing jobs that are distinguishable from others because of their public service quality and the nature of their duties—they have an obligation to
continue to serve difficult people or to continue to serve in difficult circumstances because they perform a public service. I would broaden the definition out as far as that. I am aware that that would be significantly broader than what is in the bill.

**Bill Butler:** Does anyone else have any comments on the matter? Previous groups of witness have said that the use of phrases such as “in the course of your employment” or “on duty” or “something affecting operational duty” might be appropriate. Does that seem reasonable?

**Ian Tasker:** We stated in our submission that the provision should cover a person from when they go on duty until their shift is finished. We would be happy with that sort of definition. I agree with Peter Hunter that the legislation should cover the period when someone is on duty rather than define an emergency situation.

**The Convener:** That, however, is not the GMB’s position. You talked earlier about there being a test. It is not just about the person being on duty; they have to be hindered in their delivery of the service.

**Alex McLuckie:** That is right. In the definition that we proposed, the person would be impaired in carrying out their duties. We were looking for a definition of “emergency” and “emergency worker” that would cover people who were attacked or assaulted while carrying out duties that impact on other people’s safety and well-being.

**Bill Butler:** Let us turn to wider issues. What steps would you like the Executive or other bodies to take to improve the safety and protection of emergency and other workers? I am thinking of education, training and the use of closed-circuit television. Do you have any comments on wider measures that could be taken?

**Ian Tasker:** We have been involved with the Executive in considering a wider package of measures. We see education—in whatever form—as being part of that. That is not to say that the problem relates purely to younger people; we must target education to ensure that people of all ages are made aware that attacks on workers are unacceptable. That view is shared by the Scottish Retail Consortium and the Scottish Business Crime Centre.

We welcome the Scottish Executive’s commitment to introduce a package of measures to address training needs and the need to manage aggressive clients. However, resources must be made available to ensure that that work is successful. We see the non-legislative measures as being key to reducing the number of violent attacks. It would be good to see in five years that the bill had had a deterrent effect and that the non-legislative measures had reduced the number of violent attacks against workers.

**Bill Butler:** Do the other witnesses agree with what Mr Tasker has just outlined?

**Martin Gaughan:** In our written submission, we acknowledge that the Scottish Executive is committed to the partnership for a better Scotland. T&G Scotland certainly supports that. The question is, how can that be delivered and how can the message be put across to the wider community? It is important that that be done. It is incumbent on employers, the Scottish Executive and the judiciary to do whatever they can to prevent acts of violence from being committed against workers who are carrying out their daily duties.

**Peter Hunter:** This might sound like a bit of a sop for the Executive, but I think that the Executive would be within its rights to say to public bodies in Scotland that they have a duty as employers to protect their staff. There is evidence that observance of that duty is patchy; it is good in some places but poor in others. The employers themselves might take advantage of the bill—in whatever form it eventually takes—to take additional steps, if reasonably practicable, to protect the health and safety of their staff. The bill would be a new measure at their disposal and the Executive would be entitled to say to employers that it expects them to take on certain tasks.

**Alex McLuckie:** I agree with what my colleagues have said. We have talked about training and how to deal with violent situations. There should be a public awareness campaign that says that society does not accept people being subjected to assaults and violent behaviour when they are carrying out their duties. There have been a couple of good pilot schemes. In Fife, the number of incidents involving the fire service was reduced when it took part in a pilot scheme to visit schools and talk to school kids. Drink-driving is now no longer accepted by society. We must get to a similar position for our public services and make it clear that it is not acceptable that people are attacked or hindered in carrying out their duties.

**The Convener:** On that high note, we must draw the meeting to a close. I thank the STUC, the GMB, T&G Scotland and Unison. It has been a helpful and informative meeting and I thank you for your written submissions and oral evidence.

We are closing just in time. We must be out of here by half past 1, because Parliament is having an important visit from the Dalai Lama. I ask committee members for their agreement to defer the two remaining items on the agenda until next week, as we do not have time to deal with them today. Is that agreed?

**Members indicated agreement.**

Meeting closed at 13:26.
In February, ADSW submitted a response to the Scottish Executive’s Consultation on Protection of Emergency Workers urging the Executive to include social workers and social care workers in the definition of ‘emergency worker’ in any legislative proposals. We were therefore extremely disappointed to note that this has not been done and appeal to the Committee and the Parliament to correct this.

Section 1: Providers of emergency services

ADSW agree that it is crucial to protect public service workers who may be subject to assault or injury while performing their duties. Frontline social workers and social care staff (e.g., staff of residential units, supervisors of offenders in the community and domiciliary care workers) are among those most at risk of aggression and violence whilst carrying out their duties. They can regularly be subjected to obstruction, abuse and physical attack at work yet we note that these are not included on the list of emergency workers in s.1(3) of the Bill.

Social workers and social care staff assist police, ambulance persons and health workers in a variety of settings. For example, where a homeless person is the victim of an assault, they can play a very active role alongside the other professionals in dealing with the emergency and determining the person’s circumstances and needs.

It would be unsound if, in the example of the homeless person given above, the police constable, ambulance person and nurse were afforded enhanced protection but the social worker or social care worker working alongside them was not. This is of particular significance with the Joint Future agenda, where staff from social work and health work together to provide integrated services. Good joint working requires parity of status and protection in the eyes of the law.

Additionally, social workers provide emergency services. This could be a child protection worker carrying out an urgent referral of a child at serious risk of harm or a Mental Health Officer carrying out an emergency referral under the Mental Health Act. In both of these situations the social worker is ‘responding to an emergency’ using statutory powers. These situations can be fraught and social workers can be easy targets. Recognising the difficulties and dangers that social workers face in carrying out these duties and ensuring they are offered the same protection as the other named professionals sends a clear message that abusive and violent behaviour towards social workers will not be tolerated.

Section 3: Assaulting or impeding health workers in hospital accident and emergency premises

Section 3 provides that when health workers are working in hospital accident and emergency premises, all their activities where will be regarded as emergency work. Social workers and social care staff carry out a number of duties in A&E departments. These can include duties under the Mental Health Act, child protection work and community care services. We would urge that this provision be extended to include social workers and social care staff and their activities.

Shona Main
Policy and Parliamentary Officers
Association of Directors of Social Work
7 May 2004

SUBMISSION FROM THE BRITISH ASSOCIATION OF SOCIAL WORKERS

BASW welcomes the opportunity to respond to the Justice 1 Committee consultation on the Emergency Workers (Scotland) Bill. The Association represents over 1000 social workers working in Scotland both in the statutory and voluntary sector.
Violence to staff is still a very critical issue within social care and one which still leads to the most lost days through subsequent sickness and recovery time. It is the one single issue this year that has elicited a great many responses from individual members – many of whom have faced violent situations at work.

Three particular tasks have been highlighted by the responses from members

- Carrying out Mental Health Officer Duties such as emergency detentions under the Mental Health Act.
- Social Workers are also key personnel in civil emergencies

However it has also been noted that because of the nature of the work we do and the people with whom we work violence can happen at any time, exacerbated sometimes by substance misuse. On most occasions, attacks are not precipitated by the words or actions of individual social workers. Rather, it is the role and duties which they are carrying out on behalf of society. In addition, the tasks they carry out are performed in situations of heightened emotional arousal. The issue of increased isolated work situations, in both rural and urban environments places particular stress on workers. It is not only qualified social work staff but home care staff working out of hours and overnight in some difficult circumstances.

It was the view of members that some recognition of this aspect of the work would be welcomed, but they were not clear what ‘added value’ would come from this type of legislation. In the past we have seen service users charged appropriately with assault, but when it gets to Court the charge is changed or dropped and this can be very disheartening for staff – they feel devalued. What is needed is safer working practices like the Guardian scheme we offer to isolated members which activates help through a mobile phone and greater awareness from employers, politicians and society at large that sometimes working in the social care workforce can mean facing difficult and violent situations.

Ruth Stark
Professional Officer
BASW
5 May 2004

SUBMISSION FROM THE MINISTER FOR FINANCE AND PUBLIC SERVICES

Thank you for your letter of 24 June about the Emergency Workers (Scotland) Bill, asking about the provisions made by the Bill for the various categories of workers it specifies.

The rebirth of the Scottish Parliament after an absence of over 200 years has given Scotland the legislature it lacked over the past centuries, during which time comparable countries have increasingly enshrined their criminal law in statute. It is only right that the new Scottish Legislature should use its democratic powers set out clearly in statute specific crimes and appropriate penalties which reflect the values of our modern society. I firmly believe that it is right that the Parliament should take this opportunity to spell out the values we believe in by supporting the Bill’s provisions and provide statutory penalties for the assault, obstruction and hindrance of emergency workers responding to emergencies.

While the common law applies to all emergency services listed in the Bill, only Police and the Fire Services at present enjoy the benefit of specific statutory protection from assault or obstruction. The Executive believes that is not sufficient and that all emergency workers should have similar protection for the first time to other emergency workers responding to an emergency – including nurses, doctors, the ambulance service, coastguards and others. This will give these emergency workers, and those assisting them in responding to emergencies, similar statutory protection to the police. The Bill will also increase the statutory protection of the fire fighters and make marginal improvements to the statutory protection of the police when responding to emergencies, as described in Annex B of my letter of 22 June.
I cannot wholeheartedly agree with the Law Society's view on the applicability of 'culpable and reckless behaviour' as it is not clear that, in the absence of any duty to provide information to an emergency worker, there would be criminal liability for failing to provide such information. More generally, obstruction or hindrance of an emergency worker might be chargeable as 'culpable or reckless behaviour' or perhaps 'breach of the peace'. However, in both cases the operative word is 'might' as there is no certainty. In contrast, the Bill makes it clear that obstruction or hindrance is an offence and section 2 (2) explicitly states that a person who gives false information with the intention that the emergency worker acts upon that information is to be regarded as hindering an emergency worker.

You also ask about the case law in section 41 of the Police (Scotland) Act 1967. In the case of Curlett v McKechnie the giving of false information to police officers was considered insufficient for protection under section 12 of the Prevention of Crimes Act 1871. Section 12 was a predecessor to the offence under section 41 of the Police (Scotland) Act and applied to 'assaulting, resisting or wilfully obstructing a constable in the execution of his duty'. The court held that in the context of that provision 'obstruction' involved an element of physical obstruction since the juxtaposition of 'obstruction' and 'assault' required such an interpretation. In MacNeil v Thomson it was held that repeated actions by the accused did not amount to 'hindering' under the Police (Scotland) Act since there was no physical harm element.

Other such cases as Skeen v Shaw and Anr and Walsh v McFadyen (decided under the Police (Scotland Act) suggest that while the requirement of some physical action might be easily satisfied, a physical element, however small, would still be required before the offence of obstructing or hindering could be made out. Sections 2 (1) (a) and 3 (3) (a) of the Bill expressly provide that the offence of obstruction or hindering can be made out even when there is no physical element to that conduct.

Andy Kerr
Minister for Finance and Public Services
Scottish Executive
29 June 2004
Emergency Workers (Scotland) Bill: Stage 1

The Convener (Pauline McNeill): Good morning and welcome to the 23rd meeting in 2004 of the Justice 1 Committee. As usual, members should check that they have switched off their mobile phones. That would be helpful.

Agenda item 1 is stage 1 consideration of the Emergency Workers (Scotland) Bill. I refer members to the written submissions that have been received from the organisations that will give evidence to the committee today. Hard copies of the submissions have been provided to members.

I welcome our first panel. James Pinkerton is a member of the Association of Directors of Social Work and manager of the emergency social work service at the City of Edinburgh Council; Colin Mackenzie is vice-president of the Association of Directors of Social Work and director of housing and social work at Aberdeenshire Council; and Ruth Stark is a professional officer for the British Association of Social Workers. I thank all the witnesses for coming to the meeting. We will proceed straight to questions.

Michael Matheson (Central Scotland) (SNP): I have had a look at the written evidence that has been provided to the committee and it would be fair to say that you are somewhat disappointed that social workers and social care staff have not been included in the definition of emergency workers in the bill. For the committee’s benefit, will you outline the type of risks and problems that social workers and social care staff encounter in carrying out their duties that would provide reasons for their being classed as emergency workers?

Colin Mackenzie (Association of Directors of Social Work): I thank the committee for giving us the opportunity to present evidence.

We recognise that there is a much wider argument relating to the whole social work and social care work force, but today, we will talk—as our submission does—about those people who respond to emergency situations and, in particular, staff who deal with mental health, child protection and a range of what we might call community care responses, all of which are characterised by crisis and are emergency situations for the individuals concerned.

We recognise that, in its current form, the bill will obviously give protection to people working in civil situations because we would be working alongside people in organisations that are already named in the bill. However, staff who are involved in child protection situations, for example, are often in highly volatile positions in which there is no control over their environment. Therefore, they are exposed to considerable risk of assault and injury. If we consider staff who work in mental health situations in which they take compulsory care and treatment measures, it will be clear that they are one of the sets of staff who are most at risk. In tragic but well-recorded cases, members of staff have been killed in such situations and we therefore have particular and well-demonstrated concerns about them. In community care situations, our staff deal with substance misuse crises. People may be fuelled by alcohol or drugs and their reasoning is therefore not terribly clear. Our staff are subject to severe risks in such situations.

That is the general picture. My colleagues may wish to add to what I have said.

10:15

Ruth Stark (British Association of Social Workers): I would like to add something, if I may. Perhaps I could give a couple of examples of child protection work in which social workers have been assaulted when taking children into care.

Some of you may remember that when Irene McGugan was an MSP she spoke in one of the Parliament’s first debates about violence towards social workers. She gave an example of how she had been out on a child protection case and had faced somebody who had a shotgun. A number of your colleagues were very disturbed by that. I have had a similar experience, in which I was held at knifepoint for a couple of hours until the police were able to rescue me. In that case, alcohol was at the root of the difficulties.

Such situations can happen in people’s homes; they can happen when we are working in isolated situations; they can happen in a rural or an urban environment; and they can happen at any time, to any of our colleagues. An article about the issue appeared in the Sunday Herald this week, and two colleagues phoned up yesterday to say that it was good to see the issue exposed as one that we have to face. They said that they too had been held at knifepoint. We sometimes find ourselves in very real danger. Such situations can happen
I could produce information from the City of Edinburgh Council, although not today. We have recorded information on violent incidents against staff for a number of years, so we could produce a statistical report for the committee if that would be helpful.

Michael Matheson: I think that members would find that helpful, as it would provide them with some background details.

In the witnesses’ experience, are violent incidents against social work staff more likely to occur in community settings than in departments? Are such incidents more likely when someone is on a home visit than when they are dealing with an appointment in their office? The risk factor is an important issue. In my view, an individual worker who goes into someone’s home on a duty visit is at greater risk than someone who is working in the main office. Do such problems occur in greater numbers in community settings?

Ruth Stark: I do not think so; I do not think that we can predict where they will come up. I have been at children’s hearings at which parents have become extremely violent and tried to attack me or other social workers. Last week, I heard about a case conference that was held in an area team’s office in a social work department, at which the senior social worker was thumped by a parent who was unhappy about the outcome of the meeting. It would not be fair to say that such incidents are more common in the community, in offices or elsewhere—they can happen anywhere.

Michael Matheson: I am conscious that they can happen anywhere, and I am not trying to predict where they will occur. I asked whether, from your experience, they are more likely to occur in the community than in an office setting.

Colin Mackenzie: Assaults occur most frequently in establishments, usually in day services, but sometimes in residential care situations. They occur particularly in children’s homes, but also in places where we care for people with varying degrees of mental illness and mental ill-health. The Association of Directors of Social Work wishes to make a distinction between things that we take major steps to try to prevent and reduce and the more unpredictable things that can arise when our staff go out to situations. In the case of the latter, staff might not know what situation they are going into; such situations might be in the evening or at night, but they might be during the day. Our staff go into situations in which the risk assessment procedures that we put in place are variable. For example, in rural situations staff are a long way from any form of help, and the same difficulties can occur in urban areas. It is those staff about whom we are most concerned, and we would like them to have the added protection that the bill affords.

The Convener: You opened by saying that you have members who respond to emergency situations, but you went on to talk about staff who
have been in vulnerable situations in the community and who have been assaulted. The bill covers staff who respond to emergency circumstances. Do you accept that there are two distinct issues?

Colin Mackenzie: Yes.

The Convener: You want to include social workers who you believe to be similar to people who are described in the bill and who respond to emergency circumstances.

Colin Mackenzie: Indeed—that is exactly the addition that we seek. We would not limit the addition to social workers, because our outreach staff and social care staff sometimes go into the situations that I mentioned. The definition of social workers that is given by the Scottish Social Services Council might not cover all the staff who might be in vulnerable situations. Social workers are liable for registration by 2005, but we suggest the inclusion of staff who are liable for registration in the future, such as outreach workers—perhaps more work is needed to identify those workers. It is not just social workers for whom we seek added protection.

Mr Stewart Maxwell (West of Scotland) (SNP): I want to go over a couple of points that Mr Mackenzie made. A moment ago, you said that you wanted the added protection that the bill will provide for the people to whom you referred. However, earlier you said that the reasoning of people involved in assaults and attacks on social workers and social care staff is not clear, and you mentioned drugs, alcohol and emotional disturbance. Do you think that the bill would deter such people from assaulting and attacking staff?

Colin Mackenzie: A degree of caution is required when discussing assaults by people who may be suffering from impairment to their mental health or other faculties. Sometimes staff are attacked not by those people, but by people associated with them, such as family members, relatives and friends. We would not want people whose judgment is impaired to be dealt with unfairly by the legislation. However, if the main policy driver behind the bill is one of deterrence and changing public attitudes and if the bill is coupled with other forms of deterrent, such as public awareness campaigns and education of children in schools, we will support it. That is why we think the bill is important. In many ways, it would be inequitable for our staff not to have protection similar to that enjoyed by others alongside whom they work.

Mr Maxwell: Do you believe that if the bill were passed and covered social workers, the people whom we are discussing—even those who are not involved with drugs or alcohol or who do not have a mental disability or impairment—would be deterred from attacking your staff by the fact that the bill was on the statute book?

Colin Mackenzie: I think that they would.

Mr Maxwell: Really?

Colin Mackenzie: Yes.

Mr Maxwell: That is interesting.

Ruth Stark: There is another argument that members of the British Association of Social Workers who have experienced assaults would make. At the moment, such offences are classed as normal assaults. It tends to be social workers' experience that when cases come to court there is a degree of plea bargaining. Because the assault has been directed at a care worker or social worker, for some reason the court deals with it less seriously. I do not think that the process is intended to denigrate what we do, but it has the effect of doing so. Social workers feel that they are not seen in the same light as others who experience assaults. If the Parliament said that attacking a social worker was not an acceptable form of behaviour, perhaps the courts would approach such assaults differently.

Mr Maxwell: I am interested in this point. In its written evidence, the British Association of Social Workers questioned “what ‘added value’ would come from this type of legislation.”

Do you think that the existing criminal law provides social workers with adequate protection against being assaulted or impeded? Do you think that the problem is not the law, but the way in which it is or, as in the example that you have just given, is not enforced?

Ruth Stark: That is a dilemma for us. At the end of the day, if someone goes through the court system, we will probably have to work with them afterwards, in the context either of a probation order or of post-imprisonment work. We are saying that there is a problem that must be dealt with, but we must also continue to work with people who carry out assaults, probably for some years. We do not want to put up additional barriers to that work, but we want recognition of the fact that it is not appropriate for people to assault social workers.

Mr Maxwell: Do you agree that the existing common law on breach of the peace and assault provides adequate protection and that the problem is that guidance to the Procurator Fiscal Service and the courts does not give sufficient weight to the issues that we are discussing? Do you agree that we require the Lord Advocate to provide strong guidance to those organisations to ensure that people who carry out assaults on social
workers are prosecuted in the court system to the full extent of the law?

10:30

**Colin Mackenzie:** The Lord Advocate gave that guidance some time ago, and we welcomed that. Under the common law, it is open to interpretation whether an offence is a breach of the peace or an assault, and that affects the way in which a case is dealt with as it moves through the criminal justice system. The bill affords added protection through the evidence that is required to secure a charge in the first place, and that is an important aspect of the bill. It is a welcome addition that will clarify the law.

**Mr Maxwell:** Can you expand on what added protection you believe that the bill provides?

**Colin Mackenzie:** If we are seriously trying to protect public service workers—in our case, social workers—we need to be clear, as Ruth Stark has said, about the Parliament's statement of the value of those staff and to make that clear in our communities. When staff have been assaulted or threatened with assault and therefore diverted from the important pieces of work that they have been trying to carry out, the law has allowed for a whole range of discretion. The bill will tighten that up and make the situation clearer for those who are involved.

**Mr Maxwell:** Mr Pinkerton, do you have any views on that?

**James Pinkerton:** The remarks that you made about the common law could potentially be applied to the workers who will be encompassed by the new legislation. If that is the case, why do we need the new legislation?

**Mr Maxwell:** That is the question that I am asking.

**James Pinkerton:** You need to bring social workers into the definition of emergency workers alongside health workers, doctors and nurses. The alternative is to go down the line that you are advocating by making the existing guidance much more stringent and following it up much more assiduously.

**Mr Maxwell:** You mentioned a couple of times the need to send out the message that it is unacceptable in our society for social workers to be attacked when they are going about their normal duties and helping to protect people—often children—especially in emergency circumstances. We all want to send out that message; however, do you believe that it is appropriate that we use legislation to send out a message? Could we not just send out the message without putting more laws on the statute book?

**Colin Mackenzie:** The message has already been given regarding the protection of public service workers. The bill focuses particularly on those in emergency situations, and that will help. It gives a clear signal and I think that it is appropriate. However, we would not want a lot of people to be drawn into the criminal justice system unnecessarily. We are talking about serious incidents rather than low-level incidents. That is key.

**Margaret Mitchell (Central Scotland) (Con):** Inevitably, there is overlap in everything, but I will try to pin you down a little bit on who you think should be included in the definition. You said that you would like the definition to be extended to include social workers in crisis situations, such as mental health workers and those who are involved in child protection and community care. Would you prefer all social workers to be included in the definition?

**Colin Mackenzie:** There are two parts to the definition: the classification of an emergency worker and the classification of an emergency situation. Those two things need to come together. That is where the distinction becomes important. To have too narrow a definition of social work and social care staff in the bill would cause difficulties, as a range of our staff go into and deal with emergency situations. The definition of an emergency worker has to be linked to the definition of an emergency situation. You might want to return to that point in later discussion.

**Margaret Mitchell:** So, you do not want blanket coverage for all social workers. You would confine the definition to those in emergency situations. That is helpful.

In the witnesses' opinion, will social workers be given greater protection under the statutory offences that the bill will provide? Perhaps your silence says it all.

**Ruth Stark:** Guidance has been given to the courts about the need to take things more seriously, but we have seen no real results from that. We will need to see whether the bill works.

**James Pinkerton:** As Colin Mackenzie said, if the bill is linked with a publicity campaign to heighten awareness of the issue, that will help to deter attacks on public sector workers.

**Colin Mackenzie:** I agree. A very clear statement will help to influence and change people’s behaviours.

**Margaret Mitchell:** That brings me to an issue that we have already explored a little: whether we need legislation to bring about that change. Plea bargaining seems to be part of the problem with the implementation of existing law. If a clear message was given that plea bargaining was
frowned upon and that such common-law offences should be dealt with severely, would that be sufficient if it was accompanied by a high-profile campaign to raise awareness about the work of emergency workers? Could added protection be provided without the need for legislation?

Colin Mackenzie: We would certainly welcome such a campaign. We have seen the beginnings of a much wider approach to using media campaigns to change public attitudes on the whole antisocial behaviour agenda, but perhaps the jury is still out on that.

One problem is whether we want more pieces of legislation on the statute book that might simply draw more people into the criminal justice system. Nevertheless, if the bill’s intention is to send a clear message that is reinforced by judicial measures, we will support it. I think that the bill can make a difference.

Ruth Stark: Social workers can be fairly self-effacing about such assaults. They want to see the minimum amount of fuss and the minimum amount of legislation. I suspect that that is perhaps the background to our submission. However, objectively speaking, I think that the bill provides the Parliament with an opportunity to show social workers that they are valued and that violence against them is taken seriously. I suspect that, on its own, such a message would be helpful to social workers and social care staff who are involved in emergency situations.

Margaret Mitchell: To what extent will social workers be given added protection under the category of assisting an emergency worker?

Colin Mackenzie: Our staff will be covered by that provision when they are in situations such as civil disasters and civil crises. We welcome that, but we seek a similar provision to protect them when they are working by themselves in such situations rather than alongside emergency workers.

Margaret Mitchell: Do you think that the bill already provides protection for civil situations?

Colin Mackenzie: No. As I understand it, the bill provides protection to those who assist the police, the fire services and so on to carry out their role. Our staff will be covered by the bill when they assist emergency workers in local disasters such as a flood or a fire in residential establishments, but I think that they will be covered only when they work alongside other emergency services.

Margaret Mitchell: I understand that. I just wanted to clarify that you are quite happy that the bill would provide you with extra protection when you assist an emergency worker who is dealing with an emergency. Are you happy with that?

Colin Mackenzie: Yes.
It is good practice to take out a child protection order. In such circumstances they might be alone. They might be part of a team but unable to find someone to accompany them on a visit, so they might go alone to ensure that the child is all right.

**Margaret Smith:** Would it be right to assume that social workers who are fulfilling a child protection role should be covered by the bill on the basis that they are assisting a police officer, because more often than not a police officer would not be involved in such situations?

**Ruth Stark:** Absolutely.

**James Pinkerton:** Social workers do not always work in pairs and, even when they do, they are often in risky situations, particularly when they are out in the community dealing with the kinds of circumstances that you describe. Two social workers who were conducting a child protection investigation might find that the situation changed and became quite hostile. It might be difficult for them to extricate themselves from such a situation.

**Margaret Smith:** Colin Mackenzie said that risk assessment varies. I presume that you would say that further work can be done on risk assessment in such situations.

10:45

**Colin Mackenzie:** It is good practice to undertake a risk assessment before responding to such situations, but that varies according to the information that is available, which is different in each situation. If a clear element of risk and danger is present when our staff go out, they are accompanied by a colleague whenever possible. However, as the committee has heard, that is not always practical and sometimes something just happens. If we ask the police to assist us, they usually wait outside in case a breach of the peace occurs. That brings us back to the common-law issue. It is not so much that we assist the police as that they might be on standby if we require assistance. The two situations are different.

**Bill Butler (Glasgow Anniesland) (Lab):** Good morning. What steps would you like the Executive and other bodies such as employers to take on wider initiatives to improve the protection of emergency workers and other workers? I am thinking of public education, employer awareness raising and training.

**Ruth Stark:** Practical solutions are possible. For example, Fife Council staff and BASW members are entitled to use the guardian scheme, which allows people to summon help by pressing a button on a mobile phone if they enter an emergency situation. That must be paid for, but it is a good scheme to provide security if staff can assess that they might be entering a risky situation. That facility allows help to be summoned. It is not available to all social workers in Scotland, but it should be. That is one practical solution that I can think of immediately.

**Bill Butler:** How effective is that system and how often does it have to be employed?

**Ruth Stark:** The system is relatively new, so we are still researching whether it is effective. However, it reassures social workers before they go into a difficult situation that help will be on hand. Somebody can take a kitchen knife out of a drawer and put it into someone pretty fast. The scheme will not alter such situations, but usually a lead-up to something happening occurs, if a social worker is lucky.

An education programme is also needed to inform people that we are public servants who are doing a job out there to help vulnerable people in the community, including children and people with mental illness. An education programme that is a bit like some health programmes could be undertaken.

**Bill Butler:** Do other panel members concur?

**Colin Mackenzie:** I will take the measures in the order in which you described them. The Executive needs to continue to develop the initiatives that it is undertaking to reduce antisocial behaviour in our communities. As we have said, the bill is a small part of that.

Employers are adopting a range of measures. I share the commitment to developing electronic schemes that assist workers. As Ruth Stark said, such schemes help to reassure the worker, but they are not necessarily of great assistance when someone is in a crisis and their nearest colleague is 25 or 50 miles away. Nevertheless, in some situations, such schemes can help. Several councils are developing such systems, which also help if staff are detained against their will, rather than subjected to violence. Some of those systems are electronic and some are manual.

Education of children in schools will certainly help, as will education of the public at large. I understand the concerns about the effect of media campaigns, but those campaigns help to convey a message. Somewhere down the line, the media's treatment of incidents and the fact that the press might vilify people who are undertaking their statutory work would be worthy of attention from us all, because it does not help to have the media portray social workers as snatching children away from parents or detaining people against their will. We sometimes see such descriptions in the press.

**Mr Maxwell:** What is your view of the general philosophy behind the bill? We have talked about providing added protection for some workers and
you are here to talk about social workers and social care staff in particular. Is it reasonable to suggest that some public service workers should be given added protection while others who are not given that added protection could also face assault in going about their normal duties?

Colin Mackenzie: The distinction is the link between the emergency worker and the emergency situation—a situation that is more likely to be unpredictable than other situations. There is a much wider issue, which is the protection of public service workers. That perhaps needs attention, but it is not the main focus of the bill.

Ruth Stark: The other issue is the nature of what we are doing when what can be classed as an emergency situation happens—it is generally about affecting somebody’s liberty in the community, which is a big distinction between our role and that of many of our colleagues in the public service.

The Convener: That was the very point on which I was going to finish. It is important to ascertain where exactly you think the emergency circumstances in your work arise. You mentioned child protection orders, but it is not immediately obvious to me, because I do not have a social work background, in what way those relate to emergency circumstances. Would you confine the term “emergency circumstances” to cases where a child has to be removed from the home and the situation is likely to be more volatile? Will you expand on what you regard as emergency circumstances?

Ruth Stark: A protection order.

The Convener: Any child protection order?

Ruth Stark: Yes.

James Pinkerton: One of the recommendations in the Laming inquiry into the case in London—those recommendations have been picked up by the Scottish Executive in its review of child protection—is that any child that is suspected of having been abused should be seen within 24 hours of being referred. That is part of an emergency response. It might well be that, after we have seen the child, we need to take decisions about whether to go for a child protection order. If that recommendation is built into guidance, social work departments will have to see a child within 24 hours, sometimes with very little information about the case. That is potentially a very risky situation to go into. Social workers will not automatically ask the police to accompany them or to stand outside when they are teasing out a situation. However, there is a clear implication that that change will be required of social work departments.

Under the Mental Health (Care and Treatment) (Scotland) Act 2003, emergency and short-term detentions have to be carried out within a very short timeframe—indeed, emergency detentions have to be carried out within a matter of minutes. We have to be out of the office and saying that we will provide an emergency response to assist health colleagues in making an emergency assessment.

The Convener: That is what I really wanted to know. If we take child protection orders as a starting point, you are saying that there is a timeframe involved. That is important. The social worker has to act in a timeframe.

Colin Mackenzie: Yes.

The Convener: It is similar, I suppose, to the timeframe of a 999 call. That is obvious. You are saying that there is a similar timeframe attached to—

James Pinkerton: It is not quite the same timeframe, but there will be local agreements on response times.

The Convener: You must act.

James Pinkerton: Yes.

The Convener: And you do not know what situation you are going into. The decision that a social worker might have to take, which is to remove a child or to take some action, puts that social worker in a volatile situation. Is that the heart of the matter?

James Pinkerton: Yes. The situation is not dissimilar to those in which other emergency workers, as defined in the bill, might find themselves.

Ruth Stark: It might be that a social worker has been monitoring a situation for three months and then they suddenly think, “Gosh, this is the point where we really are in an at-risk situation.” It is difficult to give a timescale for some situations. A situation might suddenly deteriorate after a three-month monitoring period; it would not just be within 24 hours of a new referral coming in.

Colin Mackenzie: As the convener said, the important issue is that something has to be done in a certain timeframe. That is true of child protection and mental health work.

The Convener: What I am driving at is that, if we expanded the definition of emergency worker to cover social workers, we would have to consider the definition of emergency circumstances. At present, they are defined as circumstances that are “likely to cause … serious injury to or the serious illness of a person”. 
That is the test. That is why I asked about the circumstances that would be relevant if social workers were included in the definition of emergency worker.

Colin Mackenzie: Serious injury would be relevant for child protection and mental health work, given that that is a ground on which a child can be removed or a person can be taken to a hospital or detained in a mental health facility. The definition of emergency circumstances also includes serious illness. However, that is too narrow; it would be better if the definition was widened to include serious health risk. Illness and health risk are not the same; health risk is a wider term and would clearly encompass mental health and substance misuse issues.

The Convener: As there are no more questions, I thank the witnesses for their oral evidence and written submission, which have been helpful.

Colin Mackenzie: Before we finish, I would like to make a point that has not arisen. The financial memorandum envisages that no additional expenditure will be required; indeed, it states that there might be a reduction in expenditure. The ADSW does not believe that. As soon as new legislation is created, it will be used and people will appear before the courts. In some cases, that will require social inquiry reports and it may well result in community sentences, rather than prison sentences—we hope that that will be the case, but even so it will create more work. If children are referred to the children’s hearings system, which is possible under the bill, there will also be additional work for local authorities to create children’s hearings reports and to supervise children in the community. The bill is not a nil-cost proposal.

The Convener: The committee notes what you say.

Our second set of witnesses is from the Prison Officers Association Scotland and the Scottish Prison Service trade union side. David Melrose is the chair of the Prison Officers Association Scotland and John Speed and Alan Golightly are national officers. Andy Hogg is the secretary of the Scottish Prison Service trade union side.

Michael Matheson: Good morning, gentlemen. It would be helpful for the committee if you gave us illustrations of the difficulties that prison officers experience in carrying out their duties—for example, when prisoners resist, obstruct or assault officers.

David Melrose: Normal, routine duties can involve not violence or assault but obstruction—for example, a prisoner might prevent an officer from accessing an alarm system or a radio to call for additional measures to be put in place in the event of an emergency. We think that the bill should pick up on such obstruction.

Michael Matheson: Are staff more likely to experience a threat when they respond to an emergency situation than when they deal with normal, routine duties?

David Melrose: Normal, routine duties can easily lead to an emergency situation. To give a hypothetical situation, if a prisoner strikes out at an officer during a dinner or lunch time and other prisoners respond in a violent way, that can quickly lead to a concerted effort of violence from a group of prisoners. I would class that as a serious emergency situation.

Michael Matheson: Would you say that prison officers are more likely to be subject to a threat when they respond to an emergency situation?

David Melrose: The fact of the matter is that, within the confines of a prison, violence is part of emergency situations. Notwithstanding the fact that staff are trained in various tactics to protect themselves, they are open to regular violent attacks.

Andy Hogg: When an emergency situation is up and running in a prison, staff come under considerable pressure from inmates in the surrounding area. If there is concerted indiscipline, such as the loss of control over a hall, a number of
inmates will be involved and staff will experience a lot of resistance. Prisoners might drop pieces of furniture on staff who are trying to bring the situation under control in riot teams. The measures and procedures that we put in place to bring such situations under control are good; we have no problem with them, as they usually bring the situation to a head fairly quickly. However, there is often a degree of resistance. People might set fires in front of prison officers who are trying to regain control. A number of factors can exacerbate the situation, which will boil over for a considerable time. It is rare for there to be just one incident that goes away; usually, a number of incidents will be attached to a single act.

**Michael Matheson:** In your experience, is the number of threats that prison officers experience on the increase?

**Andy Hogg:** Do you mean the number of serious assaults, according to the key performance indicator?

**Michael Matheson:** I will come to that. I want to know, in general terms, whether staff are subject to more threats than they were in the past.

**David Melrose:** Some prisoners afford very little respect to prison officers and on occasions they do not think that to lift a hand to a prison officer and commit an act of violence is anything out of the ordinary—they think that being assaulted is just part of the prison officer’s job. That is why I think that the bill could prove fruitful.

**John Speed (Prison Officers Association Scotland):** There are probably more verbal threats than physical assaults against staff—I do not know what the figures are. There is a lot of frustration among prison officers over the fact that they cannot deal with discipline matters internally—for example, the remission system has been taken away—and a lot of verbal threats to staff are unreported.

**Michael Matheson:** The KPI, to which Andy Hogg referred, suggests that there has been a considerable increase in the number of recorded serious assaults, from an average of about 13 per year in the period 1999-2002 to 29 in 2002-03. Why has there been such a sudden increase? Are more assaults taking place, or has there been a change in recording procedures?

**Andy Hogg:** Probably more assaults are taking place. I do not think that there is a scientific explanation for the increase. The current overcrowding in Scottish prisons is the obvious area for consideration. I think that you mentioned the figures for 1999—

**Michael Matheson:** In 1999-2000, 13 serious assaults were recorded. In the following year, 14 such assaults were recorded and 12 incidents were recorded in the year after that. However, in 2002-03, the figure rose to 29.

**Andy Hogg:** I was trying to pin down the year so that I could determine what the prison population was at the time. If I recall correctly, there was a point in 1999 at which some prisons started to close, before the prison estates review was carried out and the Justice 1 Committee of the Scottish Parliament became involved in work on prisons. The SPS argued at the time that the prison population had reached a plateau of about 6,000. There are now about 6,500 to 7,000 inmates. Overcrowding raises the temperature in the prison environment, so—anecdotally—we might expect assaults to be more likely. We certainly do not think that that is acceptable.

**David Melrose:** The increase in the number of assaults is not just related to overcrowding. John Speed made it perfectly clear that some of the awards that governors used to be able to make through the orderly room procedures have been taken away, so inmates believe that nothing will happen to them in the orderly room if they commit an act of violence. There is a lack of consideration, shall we say, for staff because inmates know that they will not lose remission, for example, if they assault a member of staff. They know that what was done in the past no longer happens.

**Michael Matheson:** The bill creates three categories in which an offence would be committed. An offence would be committed if a person “assaults, obstructs or hinders an emergency worker” who is carrying out their emergency function. The Police (Scotland) Act 1967 provides that an offence is committed if a person “molests” or “resists” a police officer—so there are only two categories. I understand that the decision not to include the word “molests” in the bill was made because the provision in the 1967 Act has not really been used. However, I have raised concerns about the omission of the word “resists”, because I would have thought that prison officers might quite often have to deal with a situation in which prisoners resist their actions in the course of their emergency duties. Do you concur with that?

**David Melrose:** I certainly do. Prisoners can resist in many different ways and for many different reasons. For example, recently there was an incident when prisoners were informed that a trade union meeting was to take place and so, although they would be returned to their cells at the normal time, the cells would be opened a wee bit later. A prisoner decided not to move from the exercise yard, where they were enjoying the recreation period after lunch. There was a major emergency situation within the establishment, because the prisoners refused to move.
Andy Hogg: There can be a degree of resistance matters on a number of occasions. The bill addresses matters that may have been covered in the Police (Scotland) Act 1967 in relation to obstructing an officer in the course of his duty. The bill might have been drafted a bit more widely, to cover the environments in which a prison officer might find himself. I am thinking in particular of the provisions in the bill on "emergency circumstances" and which circumstances would be classed as an emergency. I certainly do not want to discuss the current escorting difficulties, but I will say that prison officers will still be called upon to escort prisoners in public or watch them in hospitals—what we term "hospital watch"—until such times as other people step in and take over those duties.

The three definitions of "emergency circumstances" in the bill would not necessarily cover those occasions, whereas had wording been used that was specific to the escape of a prisoner or which took a broader-brush approach and referred to obstructing a prison officer in the course of his duties, that would have encapsulated such circumstances. Although we welcome the addition of prison officers to the bill, we feel that the definition could have been widened.

Michael Matheson: Would you like to see "resisting" included within the categories in which an offence would be committed under the bill?

David Melrose: Yes.

The Convener: I seek clarification on what David Melrose said about prison officers who are assaulted. Are you saying that currently no action is taken? Are assaults not reported?

David Melrose: I am not saying that no action is taken. On some occasions officers are advised not to report it to the police. As far as I am concerned, under common law anyone who is assaulted at any time has the right to report that assault to the police and let them deal with the matter accordingly. It has been recorded and has come to our attention that on some occasions prison officers have been advised by their managers or their governors in charge not to proceed down that line.

I was referring to the fact that when there are acts of indiscipline or when staff are assaulted, the orderly room procedures that are currently in place are less effective than they were five or 10 years ago.

John Speed: I suggest that minor assaults and many verbal assaults are not reported.

Mr Maxwell: What is your view on the adequacy of the protection that the existing criminal law provides workers against being assaulted or impeded in carrying out their duties?

David Melrose: I am not a legal expert, but I think that the common law is there to protect every member of the public in Scotland and the United Kingdom and that there are certain public sector workers who must be afforded additional protection because of the job that they carry out on behalf of the public and of the Government. As prison officers are covered by the bill, it will afford them, if you like, additional help and assurance in carrying out their duties.

I welcome the fact that prison officers are included in the bill, because as far as I am aware, they have not been considered in any way to be emergency workers in the past and I am pleased that they have been given that consideration. In general, prison officers will feel more secure that there are laws of the land that give them added protection.

Mr Maxwell: I am extremely interested in the idea of the bill in some way giving additional protection. What do you mean when you say that? Could a longer sentence be imposed?

11:15

David Melrose: I can give examples in which the common law was applied and was not effective. The most recent example that comes to mind is of the assault of an officer in one of our establishments on the west coast. The assault was reported through the proper channels and to the police under the common law, but the PF decided not to proceed with the case because the prisoner who committed the assault was coming to the end of his sentence and it would not have been in the public interest to prosecute. If the bill emphasised the need to protect public service and public servants more, I would welcome it.

Mr Maxwell: I am surprised that the fiscal provided reasons for the decision, but I will put that aside.

Are you saying that if the bill was passed and somebody was reported to the fiscal under it, the fiscal could not do what you described and decide to take no action?

David Melrose: I am not implying that. However, I feel that such cases would be given more consideration if the added protection of the bill were provided.

Mr Maxwell: Is your concern that the current statute and common law are not being applied properly, or do you believe that the current law cannot deal with such situations? In the example that you described, the PF’s office did not pursue a case, but it could have done so if it so desired. Is the situation that the common law is all right but is not being enforced and implemented properly, or does the law have a gap?
David Melrose: As I said, I am not an expert in the common law and I do not wish to criticise the legal system. However, on occasions, the law is not applied properly and should be applied more rigorously for public servants who undertake a public duty. My opinion and that of my colleagues as public servants and workers in this country is that it is unacceptable in any walk of life to be assaulted while carrying out duties.

Mr Maxwell: I take it from that that you believe that all public service workers should be protected.

David Melrose: I do.

Margaret Mitchell: My questions will repeat and overlap with other questions a little. We are examining the justification for the bill, so will you define clearly why the offence as it covers prison officers will give you added protection?

Andy Hogg: I will talk about a point that seems to be overlooked. We are talking about the protection of workers, but the bill will also have a fundamental deterrent impact on people who might become involved in such situations. There is no doubt that under the summary and solemn procedures, the common law can deal with assaults on or violent acts against public sector workers. I heard my social work colleagues make a valid point about value, which I will speak about shortly.

The bill will be a deterrent. If a prison officer is prevented from reaching an alarm, experience suggests that that is unlikely to be pursued with the police or through identification of the individual who prevented the prison officer from reaching the alarm. The focus would be on the incident—perhaps a prisoner stabbed another prisoner. The perpetrator and victim of that incident would be the focus and the prevention of reaching an alarm to obtain assistance would be overlooked. I have no doubt that it would be mentioned, but it would not be treated as seriously as the other matter.

In many ways, the bill is a deterrent to prisoners in such a situation, who may feel that it would be appropriate or useful for them to obstruct an officer in that way and that they could get away with it. The bill highlights a route to challenging that thinking. The bill has great value because it offers deterrence as well as protection.

David Melrose: I agree. The prisoner who commits acts of violence against prison officers as a matter of course would perhaps think twice about doing so if the added protection in the bill existed. The bill would provide not only added protection but assurance that public servants are being treated more favourably because of the job that they carry out, as a result of which they may be assaulted at work more often than other workers are.

The Convener: The issue is fundamental. The problem that we have had all along is that although no one disagrees with the statement that nobody—I go further than just public sector workers—should be exposed to violence at work while carrying out their duties, the bill may not cover the situations that you are talking about because it will apply specifically to prison officers who are involved in emergency circumstances. I want to ensure that we are clear that the bill will not cover every worker who is assaulted—I presume that the present law will take care of other cases. Is that accepted?

David Melrose: I am perfectly clear on that point, but I am concerned about normal day-to-day working, which is when many assaults take place. The common law provides cover for that, but in emergency situations—

The Convener: You are not arguing that the bill will cover all situations.

David Melrose: No.

Alan Golightly (Prison Officers Association Scotland): The emergency situations with which we deal involve not only prisoners acting against staff, but prisoners acting against prisoners. As Andy Hogg said, if prisoners are fighting and are armed, there is a clear danger to life. If we are impeded in rectifying such a situation, there is little that we can do to the people who impede us. The bill would give us protection in those situations.

Margaret Mitchell: Is it your position that the bill highlights situations in prison that are becoming routine and which are not being accorded the severity that they deserve? You have mentioned under-reporting. The bill will send out a clear message to prisoners that they are in a special category. If an assault leads to an emergency situation, the bill will kick in, but is there a problem with under-reporting and with the prison culture, in which officers are discouraged from reporting incidents? We can have all the legislation that we like, but if the culture is such that officers are discouraged from reporting incidents, it will have no effect.

Andy Hogg: I do not know whether prison officers are actively discouraged from reporting incidents—that is probably a step too far. However, you are right about the culture of the organisation. Officers are inclined to—

The Convener: I apologise for interrupting, but I wrote down earlier that you said that officers were told by management not to report assaults.

David Melrose: I said that, convener. My point was that staff are sometimes discouraged from reporting incidents to the police or to the governor of the prison. I have no doubt that that happens, although I am not saying that it happens all the
time. The cases might be isolated, but they happen.

Andy Hogg: Margaret Mitchell asked about the culture. Incidents that happen in prisons are viewed as having varying degrees of severity. In some cases, prison officers focus on the main event. I return to the example of officers being prevented from accessing an alarm. We must consider the degree to which that might have had an impact on the main incident, such as a prisoner-on-prisoner assault, by delaying the arrival of aid, which might mean a paramedic. If the incident had a minimal impact, in that the aid arrived in five minutes instead of three, some officers might overlook that because, in the greater scheme of things, it was not all that serious. However, if there was a considerable delay that resulted in a fatality, the incident would take on greater significance.

Prison officers have to make a judgment call. Margaret Mitchell is right about the culture in the organisation, which is such that officers just deal with such incidents according to their degree of severity. The bill would have a deterrent effect if it meant that prisoners did not think that they would get away scot free after preventing an officer from reaching an alarm. The bill will help us if it makes prisoners think twice before they act in such a way.

Margaret Mitchell: I understand that it is currently difficult to pin down which part of the common law would be used to prosecute a prisoner who impeded an officer who was trying to raise the alarm. That is a good example. However, there is a wider issue about how incidents in prison are dealt with. There might be a better way to highlight what is and is not acceptable.

Margaret Smith: Would the definition of “emergency worker” in the bill and the provisions that protect someone who is assisting an emergency worker cover every person whom you would expect to be involved in an emergency situation in a prison context?

Andy Hogg: I think so. The proposals gave us some food for thought when we first considered them. The consultation document did not refer to prison officers and we made a pitch for them to be included, so we were more than pleased to see that they had been included in the bill.

I am the secretary of the SPS trade union side, which is the wider, collective group of trade unions in the service, so I represent workers who are not represented by the POAS. In a prison, there might be people from social work and education and other civilian workers—that is the term that we use for people who are not in uniform. Such workers would certainly not be expected to be involved in controlling a situation—that is not built into our procedures—but the nature of prisons is such that a riot or incident of concerted indiscipline might occur in the education department, so a teacher or social worker might become involved in an emergency. If a social worker came to the aid of a prison officer who was being attacked or obstructed as they tried to raise the alarm, the bill would cover them. We were relieved and grateful to find that workers who might not necessarily be in uniform would be adequately covered by the provisions.

Margaret Smith: This is probably a stupid question, but do prison officers accompany prisoners at all times? Would civilian staff always be in a situation in which they were assisting a prison officer?

David Melrose: The situation might be reversed. The education department might be carrying out its function and an officer might be there for security reasons—

Margaret Smith: But would a prison officer always be present?

David Melrose: A prison officer might well be present, but there are occasions on which only civilians—as Andy Hogg said—and no officers would be present, depending on the circumstances. Nursing staff might be present, for example.

Andy Hogg: A prison officer would always be in the vicinity, but the prisoners might not be under their direct supervision.

Margaret Smith: So a prison officer would always be in the vicinity. You gave the example of an educationist who works in an educational facility in a prison; that person would not be defined as an emergency worker and would be covered by the provisions only if they were assisting an emergency worker. That would not help them if the prison officer—the emergency worker—was not in the vicinity. I am just trying to establish whether a prison officer is always close to other workers.

Alan Golightly: In an education unit, half a dozen teachers might be working in individual classes and just one prison officer might be present for security. If a prisoner-on-prisoner fight were to break out, the prison officer, not the teachers, would intervene initially. The teachers are not there to intervene, but if they were trying to raise the alarm and were being hindered, they would be assisted, because they would be assisting in an emergency.

11:30

John Speed: One officer might cover six different areas as a peripatetic security man. He cannot be in all the different areas at the same
time, and he might have to answer an alarm that a teacher has raised.

Andy Hogg: I think that Margaret Smith is right. I am not sure that the bill would cover the circumstances in which the person concerned—the teacher, in this example—was directly attacked by a prison officer—[Laughter.]

The Convener: It is all coming out now.

Andy Hogg: Sorry, I meant attacked by a prisoner. I am not sure that the bill would cover those circumstances, because the teacher would be the direct victim of the action as opposed to an assistant in an emergency.

Margaret Smith: That is a grey area that we might investigate with the minister, because if such a person was the direct victim of an attack, they might be covered under common law rather than under the bill.

Should the bill be limited to emergency workers and those who assist them or should a similar bill be introduced to cover all public sector workers, as Mr Melrose said?

Andy Hogg: As David Melrose said, it would be ideal for the bill to cover all public sector workers, although I would not like to speak for individual areas in the public sector because I have neither the remit nor the experience to do so. The convener made an overall point about whether any worker, in the public or private sector, should expect to be the victim of an assault or act of violence. We must consider whether, by creating the impression that public sector workers are specifically protected, we create the illusion that we have less concern for private sector workers. That is a dilemma, and I would rather that the bill covered all workers.

David Melrose: If I could answer—sorry, convener.

The Convener: The minister is waiting. Is your answer different from Andy Hogg’s?

David Melrose: It is, because it relates to the prison environment. We discussed the position of civilian employees in the prison. An incident that involved a civilian employee, who is a public servant, could lead to a concerted act of indiscipline by a number of prisoners due to the nature of the job that the employee does in the prison. For example, civilian employees work in the reception areas where the prisoners are brought in from the court, and they look after warrants. There might be occasions on which those individuals have to approach a prisoner or group of prisoners to ask questions or clarify points. Incidents can arise from such situations and emergencies can arise from those incidents, so I would like consideration to be given to covering those who work in the prison environment.

Bill Butler: What wider measures would you like the Executive and other bodies, such as employers, to take to improve the protection of emergency workers and other workers? For example, would you like there to be public education, employer awareness training or electronic schemes?

Alan Golightly: We went to the consultation with the Scottish Trades Union Congress at which we discussed the various measures that we could take. A media campaign to educate and raise awareness would be worth while, because people do not consider an assault on a prison officer to be a big thing; they think of it as par for the course—something that we should expect in our work. That also applies to many other public sector workers, particularly in emergencies. A huge amount of education needs to be done, whether through a media campaign or other means, and the dangers need to be highlighted.

John Speed: When we were at the STUC consultation, we mentioned the television campaign on domestic abuse, which made that issue high profile. We thought that it would be a good example to follow.

David Melrose: More and more employers are becoming aware of the dangers and of the risk of assault and acts of violence against their employees. I am no expert on the amount of equipment that can be used just to identify assailants, but there is a great deal. For example, bus drivers have been given DNA sampling kits, which has increased the number of convictions for assault on them or bus conductors. That is a simple and effective piece of equipment that employers can supply. There must be a great amount of equipment on the market that could be provided to public servants—personal alarms, for example.

The Convener: That ends our questions. Thank you very much. You have given us some very useful information about the range of staff whom you represent and who are involved in operating our prisons, and we are grateful for that.

I think that a two-minute comfort break would be agreeable to members.

11:36
Meeting suspended.

11:41
On resuming—

The Convener: I reconvene the meeting and welcome the Minister for Finance and Public
Services and his two Scottish Executive officials. Gery McLaughlin, from the criminal justice division, is the bill team leader and David Cassidy is a legal officer in the Scottish Executive Legal and Parliamentary Services. It is nice to have them here for the closing evidence session. I was just saying to members that things seem to have been over in a flash. There have been four weeks of evidence, but this session will bring us to the close of evidence taking.

I want to begin by giving you the opportunity to tell the committee about the policy intention behind the bill. If you have been reading the Official Report, you might have read about some of the issues that the committee has had to wrestle with, including some of the confusion about what is at the heart of the bill and what people would like to see in it. It might be useful to allow you for a few minutes to give the Executive’s point of view about what is the heart of the policy.

The Minister for Finance and Public Services (Mr Andy Kerr): At the heart of the policy are the Executive’s focus on antisocial behaviour and the wider acceptance of the need to address such behaviour. The bill is part of the debate that we are having in Scotland about that matter and the partnership agreement commitment to “make communities safer, and people feel safer.”

The proposals are part of our overall strategy.

On the policy intention, the bill singles out workers in the public services who do a different job from other workers in the public services—I mean those who protect our health, possessions, property and environment. I have read as much of the evidence as I can and I listened to some of the previous evidence session, and I know that that has been a difficult issue for many people who are involved. However, we are reflecting the public mood. If the public were asked what an emergency worker is and who those who are involved in emergency situations are, I think that they would come up with a list that is fairly similar to the Executive’s list. We can deal with such matters differently to pursue the same policy intention, and the committee has discussed a number of common-law issues, but the bill sets us down the road of making it a specific offence to assault, obstruct or hinder an emergency worker.

We are trying to level up the protection that currently exists in different ways for the police, the fire service and other services that have developed over the years—I refer to, for example, Customs and Excise officers and inland fishery and inshore protection workers. A number of services have developed over the years that have, by virtue of particular legislation, developed their own levels of protection.

The policy intention is to ensure that services that are considered to be emergency services get the same level of protection across the board. That intention has been recognised, although others have commented on the difficulty with making definitions, and I am sure that that will feature in your questions. We understand that, to some extent, legislation is the wrong end of the process. It is just one part of an overall package that the Executive is trying to introduce. We will move on to wider issues such as public awareness campaigns, training, resources and other efforts by management and workers to ensure that all workers in public services receive both protection and recognition for the role that they play. People mentioned the Lord Advocate’s recent intervention and the instructions that his office issued about how such matters should be dealt with, which are having an effect. In terms of the policy intention, there are other aspects; the bill is just one subset of a wider suite of measures that the Executive intends to take and it should be recognised as part of that overall process.

11:45

The harder line that the bill takes will change sheriffs’ powers at a summary level and will increase possible sentences from three months to nine months. The bill allows us to deal with cases that fall between two stools in relation to the common law and the protection of emergency service workers. If there is an assault without substantial injury, where does that fit in the process and how would it be dealt with under common law? I would argue that the common law would deal with it inadequately. What about people who enter into situations without a track record of crime or where no adverse circumstances arose as a result? As well as the high-level policy intention to level up the amount of protection that is given to the emergency services, there will be effects on sentencing powers and on the way in which the summary and solemn systems work in Scotland.

The Convener: In the evidence that we have received so far, there seems to be a tendency for people to look to the bill for general protection. Violence against workers has been raised, whether that involves physical or verbal abuse. Do you think that there is confusion among those who want such protection and who look to the bill to provide it? In fact, the bill’s scope is much narrower than that.

Mr Kerr: Before the consultation, I spent a considerable length of time going through those difficult issues with trade unions and professional bodies. I, too, started with the wider perspective on the legislation, but as I examined its intentions I considered what would happen if we spread the
provisions to cover every worker in public services. That is an interesting point—what would we do about shop workers, taxi drivers, bus drivers and others? The intention is to protect emergency workers because, to be blunt, the work that they do for us merits a different level of protection. Many of your witnesses represent workers, as I used to do when I was the manager of a local authority service in which cleansing workers were frequently abused by the public in relation to their status and role and there was physical violence and intimidation in some of the more difficult areas of Glasgow.

We seek to recognise that the work of the emergency services is about life and limb and the protection of the community, the environment and property, and that a different level of protection is therefore merited for workers in emergency services. That does not mean that we cast aside other workers with no duty of care, and that is why a wider package of measures sits within our proposals, which I hope will come out fairly soon. Those measures address the areas that I mentioned earlier, such as public awareness, training and skills, and guidance to managers and staff about how to report incidents properly.

Where does the confusion about the definitions come from? All public service workers are, of course, valued, but there is a core of workers who do a different job, which is to protect us in emergencies. I do not expect trade unions to come to a parliamentary committee and say, “Do not protect our workers in the same way.” I expect them to ask for that protection, but I also expect them to understand—as I think that they have done in many discussions that I have had with them—that if we were to use such protection across the board, it would become no protection at all because the effect of the legislation would be diluted. Also, they should not ignore the fact that common law has, and will continue to have, a role diluted. Also, they should not ignore the fact that common law has, and will continue to have, a role.

The Convener: The bill’s policy intention is clear. To quote the policy memorandum, the protection that it will provide is “in recognition of the fact that these workers perform a vital service to society in difficult and often dangerous circumstances.”

Although you want to attach a higher penalty in law to offences that affect those workers, I presume that that does not exclude the point that other people make, which is that measures that deal with violence at work and physical threats should be included in the package; it is just that those measures will not be in the bill.

Mr Kerr: We will work on the wider package of measures with all our public sector partners. That will involve promotional campaigns to increase awareness and education in our schools. When I met, among others, the Fire Brigades Union, we heard about some excellent examples. In Northern Ireland and in Liverpool, efforts have been made from which we can learn. The health and safety at work organisations will be involved in education and consideration of how we can provide better training and back-up. If members visit their local hospital tomorrow, they will see posters on the wall about recognising the role of, and showing respect for, public servants.

The bill is a subset of all the work that we intend to do for public service workers. In fact, we are already doing such work. The further into the issue that one gets, the more interesting and challenging it becomes. We are examining closely the idea of a zero tolerance campaign. In schools, we might want to provide a specific message—both to pupils and at parents evenings—vis-à-vis the people who work in hospitals and accident and emergency units and those who work on the front line in the community in responding to fire and other incidents. Although we can all sign up to a generic campaign, there needs to be a degree of sophistication to ensure that we get the message right and target it appropriately at those parts of the community to which we need to talk.

Mr Maxwell: I want to clarify what you said about the fact that the bill would increase the sentence that it is possible to impose from three months to nine months. What, specifically, were you referring to when you said that?

Mr Kerr: The bill will give sheriffs the power to pass such sentences in the summary system; we are acknowledging that more severe sentencing will be possible at summary level. It will be possible to deal with cases that might have gone up to the higher levels of the court system and been dealt with under the solemn procedure at that level, because there will be additional powers of sentencing. That is what I meant when I referred to the additional powers in the bill.

Mr Maxwell: I am sorry. I am not clear on that point. What restrictions are you referring to when you say that the current maximum sentence is three months?

Mr Kerr: In the summary system, the general limit on sentencing is three months. We are changing that so that, in the situations with which the bill deals, it will be possible to impose sentences of nine months.

Mr Maxwell: I just wanted to clarify that you were not referring to the Police (Scotland) Act 1967, which originally provided for the imposition of a sentence of three months on a first offence. That was amended to allow a sentence of nine months to be passed.
Mr Kerr: I was not referring to that act; I was referring to the general powers in the summary system.

Mr Maxwell: Okay; that is fair enough.

We have had a great deal of evidence, some of which you have already mentioned, from people who could not understand or explain what the bill would add to the existing common law and the current statute. For example, witnesses from the Law Society of Scotland, the police and the fire service said that they could not identify any additional measures that the bill will implement, other than that it will send out the message that such behaviour is unacceptable. Will you clarify for the committee exactly what additional measures in law you think that the bill will provide?

Mr Kerr: I have already mentioned one such measure, which relates to the summary system. I think that one can argue that one of the statements that the Law Society made in its evidence to the committee supported the Executive’s position that the Law Society was behind the bill’s policy intentions, even though it made other comments about the bill.

I start from the premise that, on some occasions, there are overlaps between statutory legislation and the common law. The present case is an example of such a situation. The common law represents a catch-all, whereas the Police (Scotland) Act 1967 and the Fire Service Act 1947 provide specific provision. Acts contain specific policy intentions which, along with the common law, affect how the courts deal with cases. It is not unusual to have the two areas of law operating in tandem.

I view the assault of emergency service workers as serious enough to be marked as a specific offence, and that is one of our intentions. The ability to label and stigmatise such assaults and to add the offence to the armoury of the court system is useful. Under the bill, the more serious sentences can be dealt with differently in the summary system. The higher sentences and fines that will be available through the bill differentiate the offence from what is available in common law. That escalation reflects our recognition of the difference between unacceptable behaviour directed towards any citizen of Scotland, an emergency worker, a private sector worker or anybody else, identified under the common law, and such behaviour directed towards the people who risk life and limb to protect our lives, our communities and our property.

Those who wanted to extend protection under the bill to everybody have in fact always excluded somebody in their responses to us. Unfortunately, I am the person who has had to attempt to draw a line around those who are to be stipulated in the bill—that is not a nice position to be in, as we obviously want to support as much as we can every public sector worker, shop worker, taxi driver and bus driver. I would argue that we are helping that process, given the work that the Lord Advocate has been doing, and given our escalation of how such offences are considered in the court system.

At the heart of all this, we are saying that emergency workers are different. They respond to situations involving houses on fire and lives, possessions and the environment being in danger. We are recognising that difference. There are overlaps of statute and common law. I think that the offences under the bill are serious enough to be marked as different types of offence. If we can work with that as part of the overall package, that takes us in the right direction.

Mr Maxwell: You covered a lot of ground there and I would like to pick up a couple of points from your answer. You said that we should protect “people who risk life and limb”.

When various representatives of the medical profession came before us, we asked them about that. One response from a doctor, which I will paraphrase, was that, in all the years of their experience in an accident and emergency unit, they had never come across a nurse or a doctor risking life and limb. Given what you have just said, how would you respond to that answer? I accept what you have been saying about the police and firefighters, but it is not necessarily the same with doctors and nurses.

On the point about the ability to prosecute people who carry out such assaults, surely the procurator fiscal’s office is able to ascertain the seriousness that it wishes to place on an offence and to take the matter to a higher court and prosecute it there if it so desires, which would result in an increased sentence. Surely the motivation of increasing sentencing powers is not really the issue, as in effect the PF’s office can act accordingly under the current arrangements.

Mr Kerr: I read with interest the comments that were made about accident and emergency units. It is not just about doctors and their own life and limb, albeit that that is incredibly important; it is also about the fact that they have patients lying on a table or sitting in a waiting room whom they need to deal with. Any obstruction to their doing that has a consequence on individuals. Essentially, everybody who is involved in an accident and emergency unit is on standby for an emergency. A lot of interesting dialogue has been had on this matter, and perhaps some misunderstanding, which is probably largely the fault of the Executive, in the way in which we explained why accident and emergency units were
covered. Essentially, we view such units as standby areas for emergencies, and we therefore feel that it is appropriate to mention accident and emergency specifically. However, that does not rule out including other parts of hospitals.

**Mr Maxwell:** I do not wish to interrupt. I accept entirely what you are saying. However, I wrote down exactly what you said. You referred to “people who risk life and limb”.

However, the accident and emergency doctors were asked about that specifically and they said that they did not risk life and limb.

12:00

**Mr Kerr:** I found that a surprising statement when I read it in context. Having seen the drama unfold in certain fly-on-the-wall documentaries and having a sister who worked in accident and emergency at the Victoria infirmary for many years and who has personal experience of the difficulties with which staff have to deal, particularly around alcohol abuse and events such as football matches, I believe that the system does not adequately protect staff. We are trying to recognise that.

I found the evidence to which you referred counter-intuitive to advice that was given to us. That evidence was not raised with me during my pre-consultation discussion with representatives. I will happily check my notes from that discussion. Arguably, what that individual was saying was, “Well, we don’t actually risk life and limb,” but I think that there is evidence to suggest otherwise. I have spoken to people throughout the health service and know that they do risk their own personal safety on many occasions. For example, the situation in geriatric wards was graphically described to me. Elderly people who have lost some of their senses and values can lash out.

**Mr Maxwell:** That is not an emergency circumstance.

**Mr Kerr:** That is correct. That is the point that I was going to make to you: the bill does not cover such situations. That was understood by those I spoke to because, bluntly, they would not want to take somebody of that ilk to court. Such situations are outwith the bill’s definition, so that substantiates the case for a narrow definition, which we have tried to pursue in the bill.

**Mr Maxwell:** What about the question about the PFs right to choose?

**Mr Kerr:** Your point is correct. However, I tried to point to cases that might not get to higher-level courts but which cannot be dealt with adequately by lower-level courts. When a serious offence occurs—for example, if a receptionist or a doctor in a general practitioner’s practice is seriously attacked—it will go through the higher system. However, we are trying to tackle an area in relation to such individual workers that I believe is currently not adequately dealt with. If an assault, such as a slashing, stabbing or other serious assault, is a higher-level offence and the PF judges it so, it will go through the higher-level process. However, that process will miss other offences.

**Mr Maxwell:** This is an interesting debate around a legal point. Many witnesses gave evidence on, or we discussed with them, the current law and its application. Many people feel that the problem does not lie with the law as it stands, but with its implementation. A number of issues were raised—for example, plea bargaining. Emergency workers feel disappointed and let down by the PF’s office when a plea bargain is entered into or when a court does not treat an offence seriously enough. Is it not the case that the issue is more about the application of the current law than about a lack in the current law?

**Mr Kerr:** No. I will answer that in two ways. First, I think that it was recognised that there was a problem—hence the Lord Advocate’s guidance, which was issued to all those involved. I think that we have seen the product of that in that much longer sentences have been awarded. I cannot remember the individual cases, but people are giving evidence to the effect that the guidance is working within the system to ensure that courts treat cases involving attacks on emergency workers much more seriously. The guidance has bolstered existing common-law arrangements.

The bill’s original principles were that those who are involved in emergency, life-and-limb services deserve a different level of protection. That is what the bill is about. It is not intended to denigrate those who are outside its provisions. It recognises that emergency workers do a different job in a different way in responding to emergencies. Therefore, the bill will make higher levels of sentencing available within our court system. However, to get back to another point, the bill also gives recognition to a separate crime of assault on emergency workers and gives it a different level of attention within the justice system. The bill will also give attention to such a crime outwith the justice system in terms of public awareness. I think that the public will understand why we want to single out emergency workers for different recognition within the justice system.

**Michael Matheson:** Could you explain to the committee your main reasons for deciding that emergency workers require greater legal protection?

**Mr Kerr:** It arose from our focus on antisocial behaviour and the recognition of a series of
events. You will know that every now and again in the media we see coverage of attacks that we consider to be outrageous and irresponsible. It was in response to that that we introduced the bill.

Every bonfire night—although thankfully not last bonfire night—we see the increasing misuse of fireworks and increasing attacks on fire service vehicles and others. We also recognise—sadly and unbelievably—that those in our communities who choose to operate in that way are deliberately setting ambushes and using techniques to attack our emergency service workers. Incidents have been reported to me, and I am sure to you, of false calls being made, ambushes being set and attacks taking place.

Our approach reflects two issues. First, the police have protection under the Police (Scotland) Act 1967 and the fire service has protection under the Fire Services Act 1947, but such protection does not apply to other emergency workers. We think that it is right that that protection should apply to them. Secondly, attacks are happening more and more, unfortunately, and as part of our activities we want legislation to recognise that. In addition, we want to have a wider and deeper package of measures. We want to improve education, awareness, training, skills, management, and health and safety.

The motivation for the bill comes from a change in society, which we have all seen in our communities, and from a recognition that legislation that applies only to members of the police and fire services should apply to other emergency workers.

Michael Matheson: If the bill is enacted, do you anticipate that it will reduce the number of threats to which emergency workers are subjected?

Mr Kerr: On its own I hope that the bill would do that, but it is not on its own; it is part of a wider package of measures. I think that the number of threats will reduce, because the offence will be viewed as much more serious in the eyes of offenders and those who wish to copy them, as sentences will be greater. The stigma that will attach to somebody who is done for committing a crime against an emergency service worker is a significant part of what we are seeking to create.

Prevention measures are at the heart of all this. We need to get our emergency service workers into our schools and to educate people about the conduct that will be tolerated when they are dealing with all public service workers, but particularly emergency service workers. That is the motivation behind what we seek to do, and it is why we are here.

Michael Matheson: You referred to press reports about attacks on emergency workers—who were primarily, if I recall, fire service personnel—at particular times of the year. What evidence is there that emergency workers are being subjected to an increasing threat?

Mr Kerr: I do not have the statistics on me just now, but there has been a change in the way that people perceive those who serve us in emergencies, which we need to deal with. I will provide the convener with correspondence on the data that I have on attacks, which show an increasing trend.

Michael Matheson: It would help the committee if we had clear evidence that there has been an escalation in the number of attacks on or threats to emergency workers over a sustained period of time, which would support your argument that the bill is necessary.

Mr Kerr: That is a fair comment.

Michael Matheson: Your view is that there has been an escalation.

Mr Kerr: Yes, and that has been a determining factor in what we want to do. In addition, fire and police service workers are protected in some way, but other emergency service workers are not. We have sought to expand protection by lifting the measures from the 1947 and 1967 acts and applying them to other emergency service workers, which is the right thing to do.

Michael Matheson: Are threats to and attacks on the police on the increase?

Mr Kerr: I would need to get you the stats on that. I am unsure. My recollection is that that is the case, but I would want to provide you with the evidence. There is clear evidence of an increase in such incidents in the health service.

Michael Matheson: I understand that threats and attacks on the police are on the increase. The fact that you have lifted provisions from the Police (Scotland) Act 1967 to use in the bill suggests that the key to the problem is a preventive approach in which we work in communities and educate young people not to attack emergency workers. I question the benefit of legislating to deal with the problem.

Mr Kerr: You are advocating that we accept that only the police and fire services are singled out for special protection. That is the corollary of your argument.

We want to give the fire service the same level of protection as is afforded to the police. The level of protection for firefighters is currently below that for the police, because the relevant provisions of the Fire Services Act 1947 cover only members of the fire brigade who are on firefighting duties, or some similar wording. Firefighters are therefore covered when they attend a fire, but not when they attend a road traffic accident, assist at an event or
carry out any of the other functions in which the fire service is involved. The bill also, quite correctly, draws in people who provide other emergency services, such as health service workers—you are familiar with the areas that the bill covers.

Michael Matheson: I do not suggest that only the police and fire service workers should have additional protection; I suggest that all workers should have a right to work without being subjected to violence or threats in any form, whether they work in the public or the private sector.

Mr Kerr: Indeed.

Michael Matheson: If anything, I would go further than the bill.

It has been suggested to the committee that in deciding to single out emergency workers you are in danger of creating a two-tier system for the protection of workers. Because the bill focuses on emergency workers, it does not deal with vulnerable workers. For example, a home help who enters someone’s home and a bus driver who operates in a rural area are vulnerable because they work on their own. However, the bill would afford such workers no extra protection.

Mr Kerr: We are creating a system that recognises that the role that emergency workers play is different from the role of other workers in the public services. That was a difficult conclusion for me to reach, but it is one that I can justify. Emergency workers are out in the community protecting life and limb. They are out there to protect us and any hindrance to them puts other people’s lives at risk.

We are not somehow putting other public service workers into a second division—I agree that we must not do that. We are developing a package of measures that will generate a public debate around other public service workers. As you know, we could amend the bill if a case were made to include other workers.

I was the manager of a cleansing department for five or six years and although I was a public servant and had every right to expect to be treated with tolerance and respect at work, I did not provide an emergency service. I recognise that workers in the blue-light services and the health service and others who are out there protecting life and limb are doing something different. We are not creating a two-tier work force, but we recognise that people who save lives and property and who protect the environment do a different job. That is what the bill is all about. The wider package that we will develop, which we hope to bring to the Parliament fairly soon, will address the issues that you raise about home helps, bus drivers, cleansing workers and so on—and rightly so, because we value the contribution that those workers make.

In the parliamentary debate on the protection of emergency workers, your colleague Linda Fabiani eloquently said:

“There is a clear case for certain defined workers, such as firefighters and ambulance workers, to be included in the provisions that we are discussing.”—[Official Report, 15 January 2004; c 4935.]

Each of us sitting around this table is a public servant, in some shape or form. We have every right to be treated with respect in our workplace, but we can deal with problems through the common law. Emergency workers are intrinsically different: they save lives; they operate rescue boats; they save people in hospital; they protect property and the environment in cases of industrial spillage. That different role should be recognised.

Bill Butler: Why did the Executive settle on only the nine groups of workers that are set out in section 1(3) when producing the proposed definition of an emergency worker?

12:15

Mr Kerr: We reached that definition through much discussion and consultation with those who are involved in the public services and through an examination of the levels of protection in legislation. We considered who needed the added protection, what legislation protected or did not protect those individuals and how to reflect how society is changing. Those considerations supported the broad principle that emergency service workers do something different.

Bill Butler: Are the groups that were chosen those that are most at risk according to the latest trends and statistics?

Mr Kerr: That is one reason for the choice. The workers who were chosen provide a service. If that service is not provided adequately, the result can be death, industrial pollution or other problems. Those people work in a risky environment, as do many other workers. The difference between the workers to whom the bill refers and other workers is that obstructing the workers in the bill puts other people’s lives at risk.

Bill Butler: This morning, we heard from representatives of social worker organisations about social workers who serve child protection orders or who have to make an emergency detention under the Mental Health (Care and Treatment) (Scotland) Act 2003. Do you plan to extend the list in section 1(3) to such workers in such situations?

Mr Kerr: I have no plans to do that at the
moment and I will explain why. On many—but not all—of those occasions, the police may accompany the individuals who do those jobs. Workers who do those jobs need to assess the situation on their own. The judgment is based on the individual risk that may be borne.

The workers that you mentioned are exposed to risk, but that is not the result of obstruction. That is also important.

Bill Butler: I did not interrupt you, but we heard evidence about social workers who enter those difficult situations. Unless my memory serves me ill, we were told that an emergency detention order under the 2003 act is served very quickly, if not immediately, and that at best the worker is unlikely to be accompanied by any police officer. Will you consider giving us your thoughts on that evidence later? The example that was given struck all committee members as a matter that must be explored. That should at least be considered to be an emergency situation in which the worker is an emergency worker. Will you promise to reflect on that?

Mr Kerr: I have no difficulty with that. That action is mentioned for good reason, because it could have a consequence. The point is valid, so I am happy to reflect on it.

We have taken powers to add people to the definition, because we do not consider what is in the bill to be the end of the list. I will return to my opening comments. I started with the big list that the committee started with, but I saw the difficulties with applying that. I considered whether extending the bill to everybody would be good or bad law. Having been through the whole process over several months, my view is that it would be a bad law if we were to expand it to cover everybody. I am happy to examine that situation in greater detail at a later date.

Bill Butler: I am grateful for that answer and I am sure that the committee is as well. No one here would wish to expand the list of workers so that it dilutes the legislation because that would be absurd.

However, let us consider the definition of emergency worker at section 1(3)(b). Does that definition include all employees of a fire brigade? I refer you specifically to paragraph 7 of the explanatory notes, where it says that section 1(3)(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 firefighters".

That seems to cover only those who are uniformed operatives. In its evidence last week, the Fire Brigades Union Scotland questioned whether a hydrant operator would be covered. Those operators are not uniformed, but it could be argued that they are absolutely essential to ensuring that there is maximum operational capability in order to protect life and limb, the environment and property. Those are the very issues that you emphasised. Would you consider looking at that particular case?

Mr Kerr: I am happy for David Cassidy to answer that question, but I understand that the definition is a technicality to cover the fact that, if somebody is not directly employed by a fire board, they are still covered by the proposed legislation.

David Cassidy (Scottish Executive Legal and Parliamentary Services): The definition of members of fire brigades means full-time officers—that is a technical point to do with the language. The additional words catch those in the Highlands, for example, who are part-timers and, strictly speaking, not members of fire brigades.

Bill Butler: With respect, I hear what you are saying, but the committee is still concerned about that particular example. Another example is people who operate the video units that are attached to fire services. Is it acceptable to the minister to go back and look at those particular examples? Although Mr Cassidy said that the explanatory notes go into detail about those who are in rural areas, part time, retained or whatever the definition, I would like it to be investigated whether the legislation would cover the hydrant operator and the person or persons working in the video unit; I am sure that the committee would too.

The Convener: I think that it is clear that the definition refers to uniformed fire officers.

Mr Kerr: It also depends on the situation. Anybody who is involved in an emergency situation is covered and that includes members of the public. If somebody were dealing with a hydrant in an emergency situation, they would be covered by the legislation; if it were not an emergency situation, they would not be.

That applies equally to the people who might be recording in the video unit. I will be happy to clarify that in correspondence with the convener. It is the definition of the emergency situation that is important, as well as the broader definition that is in the proposed legislation, which covers those people who assist in an emergency situation. That means the hospital porter, the fire hydrant operator in the fire service or whatever—those people are covered. It is not the fact that they have a uniform on; it is the fact that they are participating and assisting in an emergency situation.

Bill Butler: I am grateful for that answer, but I am also grateful for the promise that you have just made to clarify the specific examples of the hydrant operator and the people who work in the
video unit. That clarification in correspondence would be more than helpful to the committee when it considers its stage 1 report.

Margaret Smith: Much of what I was going to ask has just been covered—again.

Earlier, we heard about how staff in the prison service—for example, teachers in the educational units—might be attacked or might intervene in a fight between two prisoners without the emergency worker, that is the prison officer, being present. Could you clarify the issues that relate to that sort of situation?

Mr Kerr: I was trying to listen to what was being said by the previous witnesses but I did not catch all of it. In the scenario that you describe, it is the situation that matters rather than who is involved. I will come back and clarify that more fully for you.

Mr Maxwell: Bill Butler talked about the video unit that is attached to the fire brigade and whose non-uniformed staff are called out to film emergencies for evidential, training or other reasons. If they are assaulted, would they be classed as assisting the fire brigade? They are employed by the fire brigade and are present in an emergency situation, after all.

Mr Kerr: They would be. Again, I will clarify that in writing for you so that you can have that evidence. If they are assaulted at the scene of the incident, I would consider them to be covered.

Mr Maxwell: Yes, but the issue is to do with whether the person is assisting in the response to the emergency situation. Would simply being present at the situation amount to assisting? They are not involved in saving life and limb or any associated activities; they are simply filming the event.

Mr Kerr: I think that, as they are in the environs of the incident, they would be considered to be assisting. Again, however, I would need to reflect on that. I am happy to do that.

Mr Maxwell: You can understand that there is a problem about where to draw the line.

Mr Kerr: Absolutely. I have struggled with that for a year or so.

Mr Maxwell: If those workers are included, a number of other types of workers who could be seen as assisting emergency workers could also be included. I am just trying to narrow the definition.

The Convener: A lot of clarification is required about how the bill is constructed. We are clear about your interpretation of section 1(3)(b), minister. However, we need clarification of who is covered by section 1(2), which talks about a person who is “assisting an emergency worker”.

The FBU’s evidence suggested that all the people who affect the operational capability of the emergency workers’ response to an emergency from the very beginning of the process should be included. There is a certain logic to that because, as you say, minister, the purpose of the bill is to identify those workers who are directly involved in putting their lives at risk to protect the safety of others. I would have thought that it made sense to suggest that all the people who were involved in that process might be included in the bill.

Mr Kerr: Yes, there is a chain of people involved in the response to an emergency situation.

The Convener: The question is which workers in that chain are judged to be affecting the operational capability of emergency workers. I am simply laying that issue before you for consideration, as it has come up in evidence.

I am clear about the sentencing powers, but how would they apply to someone who is obstructed while assisting an emergency worker? Would the sentencing be the same, or would assaulting an emergency worker who is directly involved in carrying out their duties be judged worthy of a higher level of sentence?

Mr Kerr: It would be the same, because they are involved in the situation. The situation is the key determining factor here. In other words, if I am a hospital porter assisting in an emergency situation, and you are the consultant, we are both treated the same.

12:30

The Convener: So when it comes to determining the sentence, there is no difference, as far as the bill is concerned, between an emergency worker and a person assisting an emergency worker, if the circumstances are the same.

Mr Kerr: It is the situation that counts.

Margaret Smith: I want to ask about the kinds of issues that we have just been considering in relation to the fire service, with reference to the national health service. Imagine that we are dealing with an emergency situation in a hospital. Let us say, for the sake of argument, that we are talking about the accident and emergency department—let us not complicate it any further at the moment. In the health service, when somebody is in an emergency situation, the operational capability—the chain that you have just described in relation to the fire brigade—involves the consultant, the nurse, the porter, the lab technician, the person providing blood and, potentially, the pharmacist who supplies any drugs required. Would the operational chains that you have just outlined in relation to the fire brigade be
just as likely in an NHS capacity or a police capacity?

Mr Kerr: It is proximity and role that count here. Section 3(4) says that a person is assisting an emergency worker

"only if a reasonable person would have grounds for believing that"

that person was involved in that situation. So the hospital porter would be covered if they were involved in such a situation. At the other extreme, while window cleaners are important, the window cleaner who comes every six months—or two months, or whatever the cleaning schedule is—would not reasonably be involved.

In a big emergency, radiography and pharmacists and so on are under pressure; they are all drawn in to the proximity of the emergency and therefore they are all covered by the legislation. It is about reasonable judgment, and that will develop as the courts interpret the law in such cases. It is about proximity, role, job description, and what a person’s function was on the particular day and at the particular time of the emergency.

Margaret Smith: So if an emergency blood transfusion is needed, the proximity and role of anyone who works with the blood, or transfers it to the scene of the emergency, mean that they would be covered?

Mr Kerr: Yes. The legislation asks whether a reasonable person understands their role, and that needs to be established in law.

Margaret Smith: I move on to the assault or impediment of health workers in hospital accident and emergency premises. You said earlier that that department is covered because it is on standby for emergencies at all times. Presumably you would accept that, in high-dependency units, intensive care units, neonatal units and special care baby units and so on, emergencies go on all the time. That is taken into account in staffing levels and so on. Why have you decided on accident and emergency and not on units that cover on-going emergencies?

Mr Kerr: It is an attempt to recognise the different role that accident and emergency plays within the hospital, but other departments may be included, depending on the situation and the circumstances. I cannot remember who gave this evidence, but the Executive was asked to include accident and emergency departments for good reasons. Accident and emergency departments are obviously on standby for emergencies and there was a valid argument for their inclusion. However, the bill will not set up an exclusion zone that draws a ring round accident and emergency to the exclusion of every other part of the hospital.

David Cassidy: When we considered the issue, we recognised that other places in hospitals that are not labelled as accident and emergency departments also deal with the reception of emergencies, although those may not be the general public’s everyday emergencies. For example, bespoke support is provided for emergencies in natal situations. Those situations are also meant to be covered by the definition.

Margaret Smith: Arguably, we need further clarification of that. My local general district hospital no longer has an accident and emergency department, but the blue lights take people into what is called the acute receiving unit. Every hospital in the country might call such units different things. Is a further definition perhaps required?

Mr Kerr: Such units would be covered when they deal with an emergency situation. The situation is what matters.

Margaret Smith: I take what you have said on board, but I return to my earlier point about the chain of people involved in the health service. Any successful prosecution under the bill will require the individual’s state of knowledge to be proved. It will need to be proved that the defendant was aware of the person's status as an emergency worker who was involved in an emergency situation at the time. For example, if a person walking along a hospital corridor to take blood to an emergency in another part of the hospital was assaulted for some reason or other, how would such a person be covered by the bill in the way that you claim, given that it would need to proven that the individual who carried out the assault knew that, on the journey in question, the person was involved in an emergency?

Mr Kerr: I refer you to what I said previously. Any reasonable person would assume that the person whom you mentioned was playing a role in an emergency situation. The reasonable person would have grounds for believing that to be so.

Margaret Smith: With respect, the person could simply be wheeling a pile of blood along the corridor from one fridge to another. There might be no on-going emergency at that time. There would need to be a state of knowledge on the part of the attacker that the person was in the middle of an emergency situation.

The Convener: In considering how the law should be applied, the committee must consider some important technical issues. As Margaret Smith has pointed out, how would the Crown prove mens rea on the part of the accused? What would the Crown point to in order to show mens rea in such an incident?

Mr Kerr: The proof would be based on the evidence that the court heard on what actions the
individual who was at the receiving end of the assault, obstruction or hindrance took to ensure that the critical nature of their role was understood. If I push my way through a crowd saying, “Excuse me, I’m a doctor” and I am carrying a bag and I start dispensing treatment to a patient, it is reasonable to assume that I may be a doctor. Such matters will have to be dealt with by the courts, but we have tried to define things as well as we can in line with what a reasonable person would understand such a situation to be. However, we are speculating about what are, I acknowledge, extremely difficult situations.

The Convener: I realise that we are speculating, but was no consideration given to how the Crown would prove the offence? That is perhaps a question for David Cassidy.

David Cassidy: It is difficult to deal with hypothetical situations because people can envisage different things. If the scenario that Margaret Smith envisaged was that the officer involved was gently pushing the bag of blood across the corridor rather than rushing along with it, there would probably be no reasonable grounds to establish in law that we were dealing with an emergency situation. On the other hand, the minister envisaged a situation where there is a mass of ambulances gathered at the scene, someone is carrying blood and there is a general furore—that is recognised as emergency. An example is the recent explosion in Glasgow’s Maryhill. Everyone knows that there is an ongoing emergency and someone is rushing with the bag of blood—

The Convener: Can I just stop you there? I think that we can all see that situation quite clearly. Margaret Smith’s example was useful because that is where I can see some difficulties in the application of the law. How would someone know the difference? If the person carrying the blood was assaulted, how does the Crown show the difference between a common-law assault and blood was assaulted, how does the Crown show the difference? If the person carrying the blood involved was gently pushing the bag of blood across the corridor rather than rushing along with it, there would probably be no reasonable grounds to establish in law that we were dealing with an emergency situation. On the other hand, the minister envisaged a situation where there is a mass of ambulances gathered at the scene, someone is carrying blood and there is a general furore—that is recognised as emergency. An example is the recent explosion in Glasgow’s Maryhill. Everyone knows that there is an ongoing emergency and someone is rushing with the bag of blood—

Margaret Smith: What kind of evidence do we need? Do we need two pieces of corroborated evidence or one?

David Cassidy: We need only one piece of corroborated evidence of the status of the person, otherwise the general rule of corroboration applies. Whether there were reasonable grounds would be established from all the evidence in the case. That might be the evidence of one witness that there was a 999 call or a collection of officers from the emergency services at the scene. Other circumstantial evidence would corroborate whether there were reasonable grounds. May I just return to an earlier point?

The Convener: I will let you do that, but we have to be clearer about this point.

Michael Matheson: The Executive’s written evidence includes a helpful letter from Katie Beattie, who is a member of the bill team—the letter was sent to the Scottish Parliament information centre and is now part of the committee’s written evidence. Katie Beattie illustrates that only one person has to state in evidence that someone is a medical practitioner. However, they then have to corroborate the evidence that an individual was obstructing or threatening that person. We need two individuals to say that they were being obstructed or threatened—

David Cassidy: That is a misapprehension. We do not need two individuals. The law of corroboration requires not two independent witnesses, but two sources.

Michael Matheson: I am sorry. Two independent sources have to say that the person had told the individual that they were an emergency worker—

David Cassidy: That is another misapprehension. It is not a requirement that the emergency worker must have told the person that they were an emergency worker. The emergency worker might be recognisable in a variety of ways. Most obviously, he might be in uniform—that would be the most simple and straightforward situation. If he was not in uniform, he might have identified himself. Even beyond identification, there might be other circumstances. The minister gave the example of someone holding the bag of blood. The emergency worker might already have identified himself and be known to the accused as an emergency worker.

Michael Matheson: I will read out what is in the letter from the bill team.

The Convener: Before you do, I should clarify that two distinct points are being debated. We started off with the mental element of the crime—how do we prove it? Michael Matheson has made a separate point about corroboration. There are two distinct issues.

David Cassidy: Yes.

Michael Matheson: The letter says:

“The prosecution will also have to prove that A knew or ought to have known that B was an emergency worker. Proof of this fact must be by corroborated evidence (i.e. from at least 2 independent sources). So, for example, the Crown might lead evidence from two independent sources that B was wearing a green uniform with ‘doctor’ printed on the back, which was clear for all to see.”

What happens if a GP is responding to an emergency situation and they do not have the green uniform on?
Mr Kerr: At the lowest level, the matter could come down to verbal identification, with the doctor saying, “I am a GP. I am coming to assist this individual.” Identification may be made by use of a card or by visual impression—the worker might be carrying a doctor’s bag, for example. It is about a reasonable person’s understanding of the situation and of what they determine the worker to be.

Michael Matheson: If someone obstructs an off-duty GP who is responding to an emergency in a public situation and the GP turns to that individual and says, “I’m a doctor,” but the individual continues to obstruct the GP, is it your view that the bill would be sufficient to bring that individual before the court?

Mr Kerr: That would depend on how it was done, but I would argue that that could be the case, although some issues need to be resolved with regard to how the legislation is applied.

12:45

Michael Matheson: Can you see where I am coming from? Someone could just come up and say, “I’m a doctor,” although they might not be a doctor. How do they demonstrate that they are a doctor if they do not have a uniform?

Mr Kerr: In that case, it might be unreasonable to assume—

Michael Matheson: They could say, “I’m a health visitor.” Health visitors do not wear uniforms, so how would someone be able to demonstrate that they were a health visitor? When they went to court, how could they show that they had demonstrated that they were a health visitor?

Mr Kerr: They may be carrying identification, as many people do. The issue comes back to reasonableness and to people’s understanding of a situation. However, the question that we need to ask is, “What the heck were they doing interfering with them anyway?” if someone was being told clearly in front of others in an emergency situation, “I am a doctor. Let me through. I’m trying to deal with this situation.” It is up to the court to decide these things but, by virtue of the bill, the court needs to determine what was reasonable. If I were involved in such a situation, I would reasonably understand that someone was a doctor. The odds on a person kidding on about being a doctor—although I do not know what the odds are and should not speculate on that—are a relevant consideration, but ultimately what must be considered is whether it was reasonable for anybody in that situation to assume that the person was a legitimate emergency worker.

The Convener: I have no difficulty with what the bill says about requiring one source of corroboration. As you say, that would stand the test—

David Cassidy indicated disagreement.

The Convener: I see you shaking your head, Mr Cassidy.

David Cassidy: That is a different situation. One source is needed to establish—

The Convener: To establish the identity of the worker?

David Cassidy: One source can be used to establish that the person is an emergency worker. If someone’s status as a doctor required corroboration, the doctor’s evidence would not be sufficient. The registrar of the General Medical Council might have to come forward and say, “Yes, that doctor appears on our register.” We are talking about confining sources of corroboration to what is reasonable. The Crown requires only to lead a doctor’s evidence. Of course, it is open to the defence to say, “That man is an impostor. I know him to be an impostor.”

The Convener: I think that we understand that.

Mr Maxwell: I am sorry to have to go on about this, but the idea of somebody having knowledge of a person’s status is central to the debate. Obviously, it is easier if the person wears a uniform, carries a doctor’s bag or even is running about carrying blood. I can accept all that has been said about that. However, I will outline another scenario. If somebody who is not wearing a uniform is running down a corridor or across a car park with a box, is that person assisting in an emergency? I do not see how anybody could know whether such a person was or was not assisting in an emergency, even if they were running through a hospital car park. They could just be running across with a bag and have nothing to do with any emergency, or they could be carrying an organ that is going to an aeroplane that will fly halfway across the country to save a life. It seems almost impossible for someone to have prior knowledge about that person’s involvement or assistance in an emergency situation.

Mr Kerr: If there is sufficient weight to the argument that a reasonable person should have understood that the person crossing the car park with a box was involved in an emergency situation, it is up to the prosecution to put that point to the court when it argues its case. The issue is all about the situation.

Mr Maxwell: Can you therefore really protect people who are assisting emergency workers? Apart from the obvious workers, I find it difficult to see how everybody else involved could be identified.
Mr Kerr: To be fair, I think that the obvious ones are the absolute majority.

The Convener: In the debate that we have just had, which is important from our point of view, it has become clear that the corroboration element is separate from the mental element. As Stewart Maxwell has said, proving that someone knew that the person whom they attacked was assisting in an emergency is much more difficult. We are looking for information from the Executive that convinces us that there is a way of proving that. If one cannot prove it, one will not be able to show the offence.

Mr Kerr: To put it bluntly, if the person is assaulting somebody randomly, or if the person is just a bad person—

The Convener: The issue touches on a fundamental principle of Scots law. In these circumstances, one must be able to show that the accused person knew that they were assaulting a person in the course of an emergency. Otherwise, the offence is just a common assault.

Mr Kerr: As I was trying to say, if the person is just a bad person who likes assaulting people and did not understand—or could not have understood—that the person whom they were assaulting was involved in an emergency, the case would not come under this legislation. We have to consider evidence and burdens of proof. We have struggled with these issues as well, but—

The Convener: You do not think that the Crown will have any real difficulty in showing the mental element of the crime if someone who was assisting in an emergency was assaulted or hindered.

Mr Kerr: There will be a simple choice of route—the Crown will use the common law or it will use this legislation.

The Convener: At last, I will bring Margaret Smith back in.

Margaret Smith: Thank you. Minister, we obviously have to prove the mental element of the crime. You have already accepted that section 3 means that, as well as considering the status of the individuals concerned, we can consider the status of the place. One possible way of getting round the scenario that Stewart Maxwell and I have described would be not to limit the place to “hospital accident and emergency premises”.

Instead, the place could be a hospital and its environs, if that hospital is defined by the local health board as being one that deals with emergencies. Any emergency workers there—and any other hospital staff who were assisting them—would be covered. Therefore, if a person assaulted somebody who was obviously a member of staff as they ran across a car park carrying a box, that person would be caught by the bill because of the status of the place—it is a place that deals with emergencies. Similarly, if that person assaulted somebody who was going down a corridor with blood, they would be caught because of the status of the place. Any reasonable person would at least be aware of the possibility that staff at a hospital that deals with emergencies could, at any time, be assisting in an emergency.

Mr Kerr: David Cassidy is bursting to answer that point. I will mop up if any other points arise.

David Cassidy: Margaret Smith has raised a broad policy issue about whether the definition should be simply hospitals. Because that is a policy issue, it will be for the minister to field.

In section 3, we were trying to get at the fact that, within hospitals, there is a place that is recognised as dealing with accidents and emergencies. Margaret Smith said that the hospital in her constituency did not have a recognised accident and emergency department. We knew that that was often the case. I attempted to answer this point earlier. We had two ways of going about setting a definition. Either we could attempt to list all the names by which such premises are now called—and risk missing one or two, or risk those names being changed in future—or we could attempt a general description. We did not use the phrase “accident and emergency departments”. The wording of section 3(2) refers to parts of hospitals the purposes of which are

“the reception and treatment of persons needing medical attention as a result of an accident or otherwise as a matter of emergency.”

That wording does not exclude departments that are not called accident and emergency departments. I am sorry to have laboured the point.

Margaret Smith: Certain parts of hospitals—such as high-dependency units or intensive care units—would come under that definition. However, the definition does not take us back through the operational chain. For example, somebody could come from an outbuilding or some other building with blood or organs or anything else. That person would be part of the operational chain. So we are still left with the mental test—being able to prove that a person knew that somebody on that journey was involved in an emergency.

My question, to which I would like an answer, is this. What is to prevent you from applying the status not to the individual wards but to the hospital as a whole, if it deals with emergencies? For example, the Western general hospital has
five different sites. Would it not be easier simply to include whole hospitals?

**The Convener:** The minister is clear about what he is being asked to consider.

**Mr Kerr:** I am happy to reflect on everything that has been said because I want the bill to work. I have dealt with many issues as a minister—the bill has been an incredibly difficult one, but at its heart, there is a good and proper intent.

To answer the question, the issue will be about the situation, the proximity and the reasonableness of what happens at a particular moment. I will consider Margaret Smith’s point that the policy should be broadened to cover whole hospitals. However, the issue is about whether a reasonable person would understand that an individual was playing a certain role. Otherwise, attacks on such individuals will be dealt with under common law.

**Margaret Mitchell:** You have touched on the wider measures that will accompany the bill, which will involve educating the public, reinforcing the message and raising public awareness. Will you be more specific about those measures?

**Mr Kerr:** I hope in due course to share some of our thoughts on the matter with the committee. We are involved with those who know better than I do how best to organise campaigns. Money and resources have been set aside and the Executive is considering how to support the campaign. I return to my original point about how difficult the matter is—even the campaign is difficult to get right. We need a general campaign to promote respect for workers and zero tolerance of abuse and assault. We must consider how we will conduct the campaign in schools, in the health service and through local government. The work needs a degree of sophistication.

We are taking a variety of measures. We are working with Scotland’s Health at Work, an organisation that we intend to support, to put in place training regimes backed up by video and training packages to increase the recognition of what emergency workers do. That will provide a professional approach to reducing the number of assaults. We will also introduce a wider package of education measures to give everybody an understanding of the role of public service and emergency service workers. We are considering how to record, categorise and deal with incidents. We also aim to promote best practice, such as the good models in Northern Ireland, Liverpool and elsewhere. Linda Shanahan, from the STUC and the FBU, has worked with us to ensure that we achieve the right balance of management, worker and Government responsibility.

**Margaret Mitchell:** To what extent do those measures complement the offences that are in the bill?

**Mr Kerr:** The bill is the unfortunate part of the matter; I would prefer it if we did not need to create legislation to separate out such particularly vile acts. The bill is an integral part of the measures, but it is the dirty end of the business. When things go wrong—when education has not worked or when people have no respect or understanding of the role of emergency workers in our community—we need to deal with that separately. However, the bill is a small subset of what we want to do. As I said earlier, we are carrying out education on respect for public service workers to make it clear why attacks on them are unacceptable. That work takes place every day, but we are trying to co-ordinate it to make it more effective.

The bill is arguably the wrong end of the business and it is a small part of what we want to do, but it is important nonetheless. The big aim is to stop the attacks. As my kids did, children should go to the local fire station to speak to firefighters about their job. Firefighters need to get across the messages about their importance to the community, about hoax calls, which could take them to one end of the town when there is a fire at the other end, or about interference with fire appliances or vehicles, which could cost somebody’s life. That work already takes place, but we want to do more of it. However, some people just do not get the message. We want to deal with them separately, to stigmatise them and to give greater powers to the courts to deal with them.

**Margaret Mitchell:** That reply was helpful.

Will you comment on the remark in the Finance Committee’s report that there was a lack of concrete evidence to support the assertion that there were likely to be fewer prosecutions?

**Mr Kerr:** Perhaps David Cassidy or Gery McLaughlin will respond to that question because—unlike you folk—I am not an expert on the court system. However, I have been trying to get to grips with it of late.

Certain cases involving greater offences that might previously have been transferred to the higher court could, under the bill, be dealt with in the summary justice system. We think that osmosis in the process will result in a levelling off with respect to the cases that end up in the higher courts and the cases that are dealt with in the sheriff courts and the summary justice system. Put bluntly, the experts’ projections suggest that movement in the system will allow cases that would automatically have been dealt with in the
higher court to be heard in the sheriff court and vice versa.

Gery McLaughlin has not spoken yet, so he can answer this question.

13:00

Gery McLaughlin (Scottish Executive Justice Department): I want to add only that as well as taking evidence on the financial memorandum, the Finance Committee received written evidence from the Crown Office and Procurator Fiscal Service and from the Scottish Court Service that suggested that the bill was unlikely to lead to significant additional costs.

Margaret Mitchell: Although the witnesses from whom we have taken evidence accepted that the matter could be dealt with adequately under existing common law, they held out some hope that, by raising awareness and introducing the offences, the bill would at least act as a deterrent. If it is unlikely that more prosecutions will result from raising awareness of additional offences, what is the bill’s deterrent element?

Mr Kerr: I am not sure that your argument should lead to your conclusion. The bill will act as a deterrent because it seeks to name and shame those who carry out such crimes, and to increase the sentences that are available. If the offence is particularly bad or features a higher-level assault—for example, if someone is stabbed while they are on duty—the court system would deal with that under common law anyway. The bill itself focuses on an especially invidious crime that falls in the middle ground and, despite the Lord Advocate’s efforts, has not been treated seriously enough in the system.

Margaret Mitchell: We have also established a high incidence of under-reporting of this crime in, for example, the prison service and hospitals. People were hoping that if they were specifically covered by the bill they would be able to use the new offence to pin down something that had been difficult to report before. Will that not lead to more prosecutions?

Mr Kerr: We want to receive more information about what is happening out there. In the light of the anecdotal and other evidence that we have received from the services involved, we have retained the ability to add public service workers to the legislation. If better monitoring allows us to evaluate whether a particular situation is valid in the context of the bill, we will deal with it. Indeed, we have introduced the wider package of measures that I mentioned earlier in order to get that level of information. At the moment, we think that the list of workers in the bill is about right; however, the door is not closed. We need to discuss the issue and bring together an evidence base that will allow us to make further decisions. This might just be the start of a process of adding other services to the list in the bill. In response to your question, if we receive data on particular situations, we will consider adding other services to the list.

Margaret Mitchell: We have your assurance that you are trying to beef up and give more substance to your assertion that the bill is unlikely to result in more prosecutions. However, this morning we have spoken to representatives of the British Association of Social Workers and the Association of Directors of Social Work, who say that there is bound to be a cost implication, because more social inquiry and children’s hearing reports will be required as a result of prosecutions under the legislation. The bill must have a cost implication, simply because of the community sanctions that may be implemented as a result. That cost implication is not outlined sufficiently in the memorandum.

Mr Kerr: I am happy to reflect on that point. However, under the common law the people to whom Margaret Mitchell refers would be in the system in any case. That applies to court proceedings and whatever disposals, social inquiry reports and background reports are required.

The Convener: I understand that there may be a tendency for prosecutions to shift around and that there might not be an increase in the number of prosecutions, although that would surprise us. However, we can find nothing in the policy memorandum that tells us that there may be no overall increase in the number of prosecutions. The document tells us that you are creating a new offence and repeats what you said in your introductory remarks—that you are trying to draw a circle around the group of emergency workers. It does not say what you have just said. This is the first time that we have heard that that is part of the policy intention.

Mr Kerr: Are you referring to the point that I made about which court deals with which cases and shifts within the system? I do not quite follow what you are saying.

The Convener: We have read all the documentation that accompanies the bill, and the committee assumed throughout its evidence taking that there was a deterrent aspect to the creation of two new offences. We were surprised to discover that there will be no deterrent aspect to the creation of two new offences. We were surprised to discover that there may be no official increase in the number of prosecutions, which you say is down to the fact that there may be shifts in how people are prosecuted. In some cases, people might simply be charged with a more serious offence. That would account for the fact that there will be no increase in the number of prosecutions, notwithstanding what Margaret Mitchell told you.
about the evidence of increasing costs that we received this morning from the British Association of Social Workers and the Association of Directors of Social Work.

One of the objectives of the bill may be to make some offences more serious, but that is not specified in the policy memorandum. It would have been quite useful to know that that was the starting point, regardless of whether we agree or disagree with the claim that there will be no increase in the number of prosecutions.

Mr Kerr: That is a fair point and I accept what you are saying. Perhaps the evidence that the Crown Office and Procurator Fiscal Service gave to the Finance Committee would be of use. I return to the point that I made to Margaret Mitchell; the people whom we are discussing will still be in the system, regardless of whether the bill is enacted. The financial memorandum says that there will, overall, be a levelling out and that there will not be a substantial additional financial cost. Regardless of whether cases are dealt with under common law or under the bill, there will be a process in play and costs will be incurred as a result.

Margaret Mitchell: That does not cover the issue of under-reporting, which has been raised by many witnesses.

Mr Kerr: I apologise for not addressing that point. We want to get an evidence base for what is happening. Are emergency workers being subjected to assaults or to abuse? What is the level of abuse? The situation is not clear. It is similar to the situation that existed in respect of assaults on teachers. Quite correctly, the reporting system was changed to enable us to analyse what was happening in our schools. The new system showed an increase of X per cent in the number of assaults. Many of those were verbal assaults, but some were physical. The issue is one of information. I accept that we need to clarify for the committee the data that we are collecting. We may find that there is an increase in reporting of assaults—perhaps verbal assaults—but how does that translate into assaults, obstruction and hindrance that will be dealt with under the legislation?

The Convener: That is an important point on which to end. We have heard evidence about the level of under-reporting. Whatever view people take on the construction of the bill, there is general agreement that the Executive's wider objectives in the measures are welcome, especially because of under-reporting. You may have heard the prison officers' trade union side say that prison officers are told that, in effect, assaults are not to be reported.

Mr Kerr: I do not know whether I was in the room at the time, but I certainly did not hear that comment. I am happy to reflect on the evidence.

The Convener: Perhaps you could pick up the point from the Official Report.

Mr Kerr: Absolutely.

The Convener: At the outset, the witnesses told us that there seems to be a tendency to persuade officers not to report minor incidents of assault. Perhaps that practice needs to be examined.

Mr Kerr: Absolutely.

Margaret Mitchell: Could I just add something?

The Convener: If it is brief. We do not really have time. What is your point?

Margaret Mitchell: It is on the financial implications. As things stand, it looks as though the assumption that there will not be a substantial increase in reporting will be negated. Will the minister reconsider the financial memorandum to take cognisance of that?

Mr Kerr: Yes—but I am not sure what the statistics will tell us about what would come under the bill, particularly with regard to verbal assaults.

The Convener: I agree with what you said earlier: we thought that the bill being short would make this dead simple. It has not been, because many people want it to cover things that it will not cover, which is a serious issue. For the purposes of our stage 1 report, any other information that you can give us about why you have constructed the bill as you have—such as statistics relating to emergency workers and trends that have been identified—would be useful. There might be one or two issues that we have not got round to. I presume that it will be in order for us to drop you some correspondence on that if we need more information for our stage 1 report.

Mr Kerr: Absolutely.

The Convener: It has been a long evidence-taking meeting, but it has been worth our while. I thank the minister and his team; we have had an interesting exchange.

Mr Kerr: Indeed. Thank you.
I am writing in advance of the Minister’s attendance at the Committee’s meeting next week to follow up some points raised when we gave evidence to the Committee last month.

Statistics

In the course of our evidence, we undertook to provide the Committee with the information we have available on assaults and other attacks on emergency workers. This is set out in the attached Annex.

While the Executive also collects and publishes statistics on all assaults, it is not possible to separate out cases of assault on emergency workers (other than cases falling under section 41 of the Police (Scotland) Act 1967). Further information on assaults and obstruction of the police, with a charge proved under section 41 of the Police Act, was contained in my letter of 19 May to the Finance Committee.

Special Constables and Neighbourhood Wardens

At the conclusion of our evidence session, the Convenor asked if we could clarify whether special constables are included in the term “constable” and confirm whether neighbourhood wardens would be included. I can confirm that the use of the word “constable” in the Bill as introduced is inclusive of special constables but not neighbourhood wardens.

Gery McLaughlin
Emergency Workers Bill Team
Scottish Executive
1 June 2004

Annex

Fire Fighters

The most up to date information on attacks on fire fighters was given in the following PQ on 2 February 2004.

Stewart Stevenson (Banff and Buchan) (SNP): To ask the Scottish Executive how many attacks on fire fighters there have been in each fire authority region in each of the last five years.
(S2W-5636)

Hugh Henry: Her Majesty’s Fire Services Inspectorate began compiling figures for attacks on fire service personnel in 2002-03 based on returns from brigades. There are no centrally coordinated statistics for the earlier years.

The figures for 2002-03 are as follows:

<table>
<thead>
<tr>
<th>Total Number Of Incidents</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
</tr>
</thead>
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<td>26</td>
<td>7</td>
<td>0</td>
<td>36</td>
<td>88</td>
<td>14</td>
<td>187</td>
</tr>
<tr>
<td>Non-Operational Personnel</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Total</td>
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<td>3</td>
<td>26</td>
<td>7</td>
<td>0</td>
<td>36</td>
<td>90</td>
<td>14</td>
<td>189</td>
</tr>
</tbody>
</table>

Notes:
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

As the request for brigades to record these incidents was made part way through the reporting year, it should be noted that the information shown represents only a partial picture of the problem of attacks on fire service personnel in 2002-03. Further details can be found in the 2002-03 report of Her Majesty’s Chief Inspector of Fire Services for Scotland.

Prison Officers

Statistics on serious assaults on staff are collected and published in the Scottish Prison Service annual report. A serious assault is defined as: when the victim has sustained an injury resulting in detention in hospital as an in-patient, or any of the following injuries, whether or not the victim was detained in hospital: fractures, concussion, internal injuries, crushing, severe cuts or laceration, severe bruising, scalds or burns or severe general shock requiring medical treatment. The figures are as follows:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Number of Serious Assaults</th>
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<tr>
<td>1999-00</td>
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<tr>
<td>2000-01</td>
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<td>2001-02</td>
<td>12</td>
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<td>2002-03</td>
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Medical Practitioners, Nurses, Midwives and the Ambulance Service

Comprehensive information on attacks on NHS staff was published last week as part of the first NHS staff Health & Safety Survey.

The Executive Press Release (http://www.scotland.gov.uk/pages/news/2004/05/SEHD752s.aspx) which announced the publication of these statistics noted that nurses and midwives experience the greatest number of violent incidents.

Further information and a full copy of the report can be found at the following addresses:
http://www.isdscotland.org/isd/new2.jsp?p_applic=CCC&p_service=Content.show&pContentID=2960
http://www.isdscotland.org/isd/info3.jsp?pContentID=2133&p_applic=CCC&p_service=Content.show
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.

Andy Kerr
Minister for Finance and Public Services
Scottish Executive
22 June 2004
Annex A:

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, fire-fighters, 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**

- 2000-2001: 14
- 2001-2002: 12
- 2002-2003: 29

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 record of similar, previous convictions; or where the obstruction does not result in adverse circumstances for the third party awaiting delivery of an emergency service.

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.

**Annex B:**

**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 armory 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.
**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
ANNEX E: OTHER WRITTEN EVIDENCE

SUBMISSION FROM JACKIE BAILLIE MSP

Further to our telephone conversation of 1 June 2004, I write to advise that I have been contacted by the Loch Lomond Rescue Boat Service in relation to the Emergency Workers Bill. In particular the organisation would like to be considered as one of the organisations specifically named in the Bill as a provider of an emergency service.

I note that crew members of a vessel operated by the Royal National Lifeboat Institute or a person who musters the crew of such a vessel etc is included in the Bill. As the crew of the Loch Lomond Rescue Boat Service offer a similar service to that of the Royal National Lifeboat Institute it seems logical to also include them in the Bill.

I would be grateful if you would raise this issue with the Justice 1 Committee when it next discusses the Emergency Workers Bill.

Jackie Baillie MSP
Dumbarton
2 June 2004

CENTRAL SCOTLAND FIRE BRIGADE

The general intent, direction and scope of the Emergency Workers (Scotland) Bill is wholeheartedly supported. It is fit and proper that the increase in acts of assault, obstruction or hindrance, against persons responding in performance of their duties, is recognised and will be subject to statutory enforcement. Members of the emergency services are readily identifiable and it is lamentable and a cause for social concern that they are subject to such abuse from the very society they are actively trying to assist.

The definition of “emergency” circumstances laid out in Section 1, Sub-section 5 is particularly welcome, clarifying and extending the rather limited circumstances contained in Section 30, Sub-section 2 of the Fire Services Act 1947 (i.e. “wilful obstruction of a member of a fire brigade engaged in operations for firefighting purposes”). It has been a matter of concern that a significant proportion of aggressive acts towards firefighters often occur at relatively minor incidents, particularly on the run up to occasions such as Guy Fawkes night. It is my view that firefighters deserve the greatest possible protection regardless of the incident being attended, be that a fire, road traffic accident or community fire safety work. The investment in the provision of a trained and competent firefighter is not inconsiderable and to bear the risk of losing the services of such people in the circumstances described above is not in the economic interests of the community as a whole.

There is also the question that such attacks could have an inhibiting or deterring effect on the very people needed for the “first line” of provision of service, hardly a welcome situation and a matter of concern common to all the emergency services.

A J Early
Firemaster
Central Scotland Fire Brigade
6 May 2004

SUBMISSION BY COSLA

COSLA welcomes the principles of the Emergency Workers (Scotland) Bill and shares the concerns of the Scottish Executive for the safety of, not only emergency workers, but the broad range of public sector workers in Scotland.

Emergency workers provide a vital service to society, as do all public sector workers, but COSLA recognises the distinction within the Bill and that the consequences of assault or obstruction of these workers could be more grave. It is important to note, however, that a range of workers in the
public sector are at risk from attack or abuse, particularly those in front line services such as social workers, teachers, housing staff or benefits staff and COSLA welcomes the recognition of this, the commitment to protect these workers and the work already underway to deliver this commitment. The legislation will extend the protection currently available to Police in that acts other than physical acts will be an offence and similarly extends the protection available to fire fighters by providing protection in a wider range of situations than the current legislation. In addition the rationalisation of protection applying equally to those classed as Emergency Workers, within the definition set out, and of the penalties set out for offences falling within the proposed legislation is welcome and will serve to reinforce, in the mind of the public, that an attack against any emergency worker is a serious crime.

A potential difficulty that COSLA sees is in the identification of an emergency worker. In cases where the emergency worker would wear a recognised uniform it will be easy to identify that worker as an emergency worker, however, in a number of cases the emergency worker will have no obvious means of being identified. This will need to be considered in the legislation. COSLA does not wholly agree with the Bill's Financial Memorandum. The legislation will, in fact, make it simpler for charges to be brought against individuals than under common law. Inevitably this will lead to an increase in cases. Increases in the numbers of arrests and prosecutions will have an impact on police forces and local authority services particularly, but not solely, social work services. In addition the legislation will criminalise some behaviours that may currently escape prosecution, again this could have an impact on resources.

In the absence of specific statistics the effects are difficult to quantify and COSLA recognises the additional benefit of the proposed legislation is the opportunity to better monitor the incidence of attacks on emergency workers through the introduction of a specific offence. This will provide useful and much needed statistics to help with future developments in this area.

COSLA also believes that the stated intention that the legislation should act as a deterrent is most likely to impact on the activities of those who perhaps under common law would not be committing an offence. It could be argued that in the case of individuals committing what would currently be regarded as the more serious offences, those willing to assault another person, emergency worker or not, are aware they are committing an illegal act. It seems likely that the deterrent effect of the bill will be less successful here. In any case the deterrent effect wholly relies on public awareness and efforts to raise public awareness of the legislation will be crucial.

COSLA does welcome the short and long term benefits that should result from the work, currently underway on the wider package of measures to address the issue of assaults against public workers and believes that these benefits will be felt by all public sector workers including those staff covered by this bill.

Terry Gray
Policy Manager
COSLA
7 May 2004

SUBMISSION BY THE CITY OF EDINBURGH COUNCIL

The City of Edinburgh Social Work Department responded to the original Scottish Executive consultation paper on the Protection of Emergency Workers earlier this year.

That response welcomed the Bill and suggested it should be extended to social workers working in emergency situations.

It is noted that in the Bill protection has not been extended to social workers in emergency situations, but that all doctors, nurses and midwives are to be classified as providers of emergency services.

It is also noted that Section 3 of the Bill defines further that for health workers working in hospitals accident and emergency premises all their activities will be regarded as emergency work.
Social Workers and social work staff not only assist the police and health services in a range of activities so could be protected under section 1 (i), but also undertake a range of assessments in the community in health settings and hospital premises. These assessments are not automatically assisting the police or health services but are statutory responsibilities in their own right. This can include emergency assessments.

These could include Mental Health Officer assessments, Child Protection assessments and the provision of community care services in an emergency to help prevent hospital admission.

The Scottish Executive has set out an agenda for the seamless provision of health and social work services to be provided on an integrated basis (e.g. Joint Future, Child Protection) yet this Bill fails to recognise the role that social work staff play in both assisting emergency services and providing emergency services in situations where social work staff may be at risk of violence.

It remains the view of the City of Edinburgh Social Work Department that not only should registered social workers be defined as emergency workers in Section One (3) of the Bill, but social workers and other social care staff should be included as workers in hospital accident and emergency premises.

Violence against social work staff is well recorded, particularly in the area of child protection, as a recent survey carried out by the British Association for the Study and Prevention of Child Abuse and Neglect demonstrated.

It is hoped the Justice 1 Committee gives consideration during the Committee stage of this Bill including social workers as providers as emergency services.

Roy Jobson
Acting Director of Social Work
City of Edinburgh Council
14 April 2004

SUBMISSION BY FALKIRK COUNCIL

The definition of ‘Emergency Worker’ needs to be expanded upon. The definition of the ‘emergency’ circumstances are outlined in Section 1 (5) and Social Workers, Social Care Workers and Housing staff can often find themselves working within such a definition of ‘emergency’.

Some examples are listed:

- Social Workers responding to Child Protection concerns.
- Social Workers dealing with troubled young people and their families.
- Social Workers acting as Mental Health Officers.
- Social Care Workers responding to emergency Care Alarm calls.
- Housing Officers responding to neighbour disputes.
- Housing Officers responding to concerns about building safety.
- Housing staff leading the provision of Rest Centres in any Civil Emergency.

A lack of inclusion of Social Work staff in particular implies a lack of value relative to the value placed on Health and Police / Fire services.

Janet Birks
Director of Housing and Social Work Services
Falkirk Council
5 May 2004

SUBMISSION BY FIFE COUNCIL

Fife Council Social Work in responding to the consultation paper Protection of Emergency Workers earlier this year welcomed the proposals contained in it.
The response outlined the need to extend the Bill to social workers and their support staff working in emergency situations particularly Child Protection work, Mental Health emergency assessments and civil emergencies. This work is not about routinely assisting colleagues in the health or police services but is statutory work in its own right.

The Joint Future agenda - Social Work and Health working together providing integrated services is not recognised by the Bill. It is hoped the Justice Committee takes into consideration that staff from different disciplines need to feel secure in working together and ensure the same protection is provided for all.

Social Workers, care staff and their support staff are subjected to violence in many different situations. Not just in hospitals but in care settings and offices. This is well documented. This violence leads to stress, sick leave and on occasions staff leaving the profession.

It is hoped that consideration is given by the Justice Committee during the Committee stage of this Bill to including social workers, care staff and their support staff as providers of emergency services and to extending the definition of emergency situation to including “any situation which may pose a risk to the health and safety of a person or person”.

Stephen Moore
Head of Social Work
Fife Council
7 May 2004

SUBMISSION BY NHS FORTH VALLEY

Summary of Views for NHS Forth Valley

The bill appears to create a two-tier system, as workers who are attacked out with an emergency situation are not included. We believe all our staff should be afforded the same protection of the Law.

The bill does not address the issue of identification of emergency workers who are not in uniform.

The Bill needs to address all areas that may deal with emergency situations and cover all members of the care team. Whilst any additional protection is welcome, the issue is that each and every member of staff within the NHS is entitled to work in an environment that is free from the threat of assault. To single out emergency workers may create divisions within team ethos, which is at the heart of how the NHS operates.

The bill if successful, in creating a Criminal offence of assault against emergency workers would be a very much appreciated by both staff and their representatives, providing a clearer process.

A Criminal Charge and possible sentence would be a very effective disincentive to “regular” offenders and the attendant publicity would raise the profile of the Scottish Executives “Zero Tolerance” campaign.

Background to Experiences within Organisation

In addition to Accident and Emergency Departments, Acute Receiving Areas and Paediatric Admission Units, it should be remembered that both general and psychiatric units deal with emergency admissions and are areas where staff are also vulnerable to assault. It should be noted that staff other than “Doctors, Consultants, Allied Health Professionals and Nurses” work in these areas. Porters, Domestic and Clerical staff and others form part of an integral emergency care team and should be offered the same Legislative support as their colleagues.

Many members of staff within this organisation are subjected to incidents of violence, which occur during the provision of care that would not be defined as an emergency situation.
Staff working within the community are difficult to identify as emergency care workers as they do not wear uniform specifically to remove barriers against them being perceived as figures of authority and the potential for escalation.

The current position where the individual has to raise the complaint is daunting, even with the support of the organisation or their staff representatives. The process of producing and giving evidence to support a civil case is traumatic and confusing for staff and acts to discourage staff from seeking support through the legislative processes.

Where the Procurator Fiscal has not raised cases to Court, the staff are demoralised by the belief that they are not being valued or protected, and that to raise a complaint is traumatic and adds to their burden for no effective purpose.

Our statistics confirm that despite staff training, the zero tolerance campaign, and structural alterations in high-risk areas, increasingly staff are subjected to violence and aggression from the public. A strong and clear message from parliament, to the general public in the form of a new Bill, would be very much appreciated.

Mr David McPherson.
General Manager.
NHS Forth Valley Facilities

Bernadette Fitzpatrick.
Health and Safety Manager.
NHS Forth Valley Acute Division
4 May 2004

SUBMISSION BY GLASGOW CITY COUNCIL

Glasgow Social Work Services welcome the introduction of legislation which protects emergency workers from assault and obstruction.

It is noted that the proposed legislation is not intended to cover public service workers. However, we would contend that Social Work Services has a number of staff working in situations we would define as emergencies. Details as follows:-

Who is an Emergency Worker?
Staff who work in our Standby Services, covering the West of Scotland and other staff within Area Services, who respond daily on an emergency basis across a range of situations, should be defined as emergency workers.

The most typical emergency situations affect adults with some impairment i.e. under the mental health legislation where staff following through as mental health officers are considering compulsory detention in terms of the Mental Health Act. This requires quite specific duties to be followed, including independent assessments. This can involve visiting an individual’s home where there can be a risk to staff which requires to be assessed and managed both before and throughout the process.

Secondly, in areas of child protection where staff are following through concerns regarding neglect or some other forms of physical/sexual etc abuse towards a child, it is not uncommon for direct threats to be made towards staff.

A third category includes some of our family placement services i.e. foster carers and respite carers, particularly at times where the homes of these individuals may be known to parents and again it is not uncommon for us to have to make specific arrangements in order to deal with any emergencies which may arise.

You will be aware that there are already well documented reports pertaining to these major areas of mental health - the Christopher Clunes report followed the death of a social worker in the early 90’s and the recent report into the death of Victoria Climibia by Lord Leeming also highlighted the
areas where professional staff were afraid to follow through their duties on account of the threats entailed in home visiting.

Although some of these were not always in emergency situations the link between routine and emergency is complex and should be considered in framing this legislation.

Consideration should also be given to include Home Care Staff who operate on a 24/7 basis and respond to emergency situations.

**Definition of Emergency**

Should include circumstances where uniformed authorities have declared a civil emergency or major incident. Where this occurs, all Local Authority staff providing support through opening centres, counselling and general support should also be covered.

It is unclear to staff and the public who is responsible for assisting emergency officers. It would be helpful in major incidents and civil emergencies that we define a list of staff, e.g. council workers, involved in these procedures.

David Comley  
Director of Social Work Services  
Glasgow City Council  
5 May 2004

**SUBMISSION BY GRAMPIAN FIRE BRIGADE**

Grampian Fire and Rescue Service welcomes the legislative proposals and is pleased to note that the majority of the issues that we raised in our response to the initial consultation have been taken into account in drafting the legislation. I would however ask that the Committee consider the following specific comments and observations on the Bill and Explanatory Notes, as currently drafted.

Under Section 1 (1), as read in conjunction with subsections (4) and (5), the provisions of the legislation may not extend to protect emergency crews, initially deployed to a defined emergency incident, whilst on their return to other duties or home station.

There are instances where crews have stopped to assist members of the public when returning from emergency calls (or indeed whilst engaged in other, non-emergency duties), and have been subjected to violent behaviour.

Fire and Rescue staff, whilst on duty, are potentially exposed to conflict situations in a wide variety of circumstances not prescribed in the Bill. Examples would include fire safety enforcement, community education and fire investigation duties. In addition, crews are increasingly tasked to standby potential incidents and non-fire emergencies albeit it appears that, for these particular circumstances, provision is made under Section 2 (4).

The current provisions of section 30 of The Fire Services Act 1947 may not extend the offence of obstruction to members of fire brigades in the circumstances outlined in (2) above. The Courts may not view violent attacks or aggression, as defined by the HSE, as an aggravated offence if it falls out with the specific definitions contained within the proposed legislation.

In Section 4, the restriction for disposal under summary hearing should, in our view, be supplemented by the alternative of conviction on indictment with the appropriate level of custodial sentence and fine. This disposal option would act as a further deterrent and more accurately reflect the seriousness of a conviction for the aggravated offence.

Grampian Fire and Rescue Service particularly welcomes the provisions of Section 2 (1), as there are increasing instances of verbal aggression toward operational crews and missiles being thrown at fire appliances.
In summary, the broad proposals of the proposed legislation are welcomed and, in noting the reference to the Lord Advocate’s guidelines to procurators fiscal (Policy Memorandum, paragraph 11), Grampian Fire and Rescue Service would ask that the Committee extend the definition of an aggravated offence to protect members of fire services (uniformed and support staff) whilst on authorised duty and not confine it to the narrower definition prescribed in Section 1 (5).

Mr John Williams
Firemaster
Grampian Fire Brigade
23 April 2004

SUBMISSION BY THE GUILD OF HEALTHCARE PHARMACISTS

This letter is sent as response to the call for evidence on the general principles of the above Bill from the Guild of Healthcare Pharmacists Section of AMICUS.

The Guild of Healthcare Pharmacists is the representative body of the majority of pharmacists working in both primary and secondary care settings for NHS Boards in Scotland.

We recognise that the Bill is probably intended to provide protection for those attending emergency situations. The Guild considers that the main omission from the Bill is in the definition of an “emergency worker” in section 1 paragraph (3). We would consider that the definition should be extended to include “a pharmacist registered under the Pharmacy Act 1954 and Medicines Act 1968”.

Many pharmacists working in Scottish hospitals have a commitment to provide emergency cover and are paid a separate Emergency Duty Allowance for so doing. The very nature of that commitment means that pharmacists are asked to attend Accident and Emergency and other hospital departments, for example, to ensure provision of medicines required in an emergency situation or to assist in the identification of medication brought in with a patient.

Although we do not represent them, we would also point out, on their behalf, that pharmacists working in the community as contractors may be required to attend their premises to provide an emergency supply of medication to a patient.

It is inconceivable that in all of these situations, pharmacists should not be given the same protection as the other professions listed therein.

Colin Rodden
Secretary for Scotland
Guild of Healthcare Pharmacists
7 May 2004

SUBMISSION BY HISTORIC SCOTLAND

Purpose
Historic Scotland wishes to propose that the Historic Scotland Park Rangers and Royal Parks Constabulary be included in the list of emergency workers in Section 1 (3) of the Bill.

Background
The Bill and subsequent Act proposes to make it an offence to assault or impede persons who are providing emergency services; and for connected purposes. It defines, in Section 1 (5), that circumstances are ‘emergency’ circumstances if they are present or imminent and:

(a) causing or are likely to cause-

- serious injury to or the serious illness of a person;
- serious harm to the environment (including the life and health of plants and animals and the fabric of buildings); or
- a worsening of any such injury, illness or harm; or
(b) are likely to cause the death of a person.

Both the HS Rangers and Royal Parks Constabulary deal with emergency circumstances as outlined in Section 1 (5). As these groups are not listed within Section 1 (3) however, if they were to be assaulted or impeded while carrying out their duties the assailant would not be liable under this Act.

We note that Section 1 (2) it covers people who are assisting emergency workers. This would not cover our staff because on occasion they are the first to attend and deal with emergency situations without other emergency services present i.e. rock rescues.

While it is less likely that our staff will be assaulted, it is possible that there may be times where staff are 'impeded' from carrying out their duties. For example, this may arise if a political rally spills onto the Park from the Parliament and blocks access routes.

Recommendation
Historic Scotland invites the Justice 1 Committee to consider adding Historic Scotland Park Rangers and Royal Parks Constabulary to the list of emergency workers in the Bill.

Gregor Stark
Regional Architect
Historic Scotland
6 May 2004

SUBMISSION BY AN INDIVIDUAL

I retired 6 weeks ago from Strathclyde Police after 30 years service. At the time of retirement I was a duty officer at a busy Police Station and one of my main roles and responsibilities was processing and disposal of prisoners which sadly included dealing with persons arrested at hospitals.

I note that aim of this Bill is to give protection to other emergency service workers similar to the police under Police (Scot) Act 1967.

I would submit that when it comes to assault on an emergency worker then the common law powers suffice as the normal rules of evidence will apply. Statute law has not prevented police officers being assaulted and it is up to the courts to deal with offenders and send out a strong message.

However under section 41(1)(a) of the Police (S) Act 1967 which covers assault...also includes the wording obstruct molest or hinder and this is advantageous where a person's conduct (e.g. in a A+E ward) or a fire fighter at the scene where the person's conduct is not a direct assault on the person but it is seriously disruptive, this would be a viable deterrent to have at the disposal of police called to the scene.

Invariably the majority of such offences are committed whilst the person is under the influence of alcohol or drugs and any such legislation must give the police power of arrest without warrant and not conditional power of arrest to be effective and to enable the police remove the offender from the scene.

Name withheld by request
4 May 2004

SUBMISSION BY LOTHIAN AND BORDERS FIRE BOARD

Recommendation
The Board is invited to agree the terms of the proposed response on the Consultation Paper on The Protection of Emergency Workers.
**Introduction**

Lothian and Borders Fire Board welcomes the move by the Scottish Executive to address an increasingly growing problem faced by emergency workers in the course of their employment. There is considerable concern at the level of attacks, both verbal and physical, made on such workers, particularly in the case of firefighters.

Brigade statistics reveal an alarming rise in the number of attacks on fire crews and regrettably, the trend is upwards. The scale of assaults comprises a wide spectrum from verbal abuse and missile throwing to physical assault, in some cases involving serious injury to the firefighters concerned. One particular instance of note involved the production of a replica firearm at an incident attended by one of our fire crews. It is distressing to note that the problem of attacks on firefighters is not peculiar to Lothian and Borders Fire Brigade but can be seen elsewhere throughout Scotland and the UK.

**Comments**

It is noted that the Minister for Finance and Public Services refers within his foreword to the consultation paper to existing legislation to protect everyone from assault and attack. However, it is also noted that, given the scale of attacks on firefighters, there are few successful prosecutions of offenders. Whilst appreciating the difficulties in apprehending and prosecuting such individuals, it must be the case that, where new legislation is introduced specifically to protect public service workers, it is more readily enforceable and assists all the relevant agencies in processing cases efficiently.

Furthermore, the Minister makes reference to ‘…a wider package of measures…’ to be taken to address this problem, in addition to the introduction of new legislation. This Fire Board feels that it is imperative that more work is carried out to develop good working and sound relationships with a wide variety of community groups and organisations that would prove useful in successfully engaging with disaffected youth and others who become involved in socially unacceptable behaviour of this kind. In isolation, a legislative approach can only have limited value.

This Fire Board sees the introduction of new emergency worker specific legislation as a good opportunity to make better provision for the protection of firefighters from assault and attack whilst in the course of their work. Current legislation draws distinctions in terms of penalties depending on the specific occupation of the public servant. It is strongly suggested that there should be no such distinction and that a standard penalty should be introduced comprising potential for both fines and custodial sentences where appropriate.

With regard to the proposals for legislation within the consultation paper, it must be noted that much of the work of fire brigades is of a non-emergency nature. This is likely to increase with greater emphasis now being placed on community safety initiatives which will inevitably bring firefighters into closer contact with the communities they serve.

There can be no guarantees that there will be no assaults on firefighters experienced under these non-emergency conditions. It is therefore imperative that the penalties for carrying out assaults on emergency workers under any circumstances reflect the fact that such behaviour will not be tolerated.

It is pleasing to note that the proposed legislation considers those who might have to respond to emergency situations in supporting roles, but are not themselves deemed to be emergency workers specifically. Many of the emergency services rely on the essential technical support of mechanics and technicians whilst at incidents and it is strongly suggested that these individuals should enjoy the same level of protection as their colleagues who are more readily identified as emergency workers.

It is suggested that some care should be exercised in attempting to define an ‘emergency situation’. Many incidents are attended by fire brigades that would not necessarily involve ‘an immediate risk to human life or where there is a risk of substantial damage to buildings or the environment’. These might include ‘secondary’ fires e.g. small rubbish fires, grass fires, etc., road traffic accidents with no people trapped, etc. It is reasonable to assume that firefighters working at incidents such as these should be afforded the same level of legislative protection from assault
and/or abuse. Additionally, this would apply equally to situations involving hoax calls where the safety of firefighters can be compromised indirectly by those originating such calls.

This Fire Board welcomes the proposal to broaden the approach to this issue by the inclusion of partnership working together with awareness and educational campaigns. Lothian and Borders Fire Brigade has achieved a degree of success in dealing with attacks on firefighters through heightened levels of liaison with Lothian and Borders Police. This type of 'joined-up' working has brought significant improvements but there is clearly a need to bring together all relevant parties to carry out analysis of the scale of the problem, co-ordinate information and reports of incidents of assault of identified workers and to develop wide-reaching strategies aimed at tackling the problem effectively.

Brian Allaway
Firemaster
Lothian and Borders Fire Board
9 January 2004

SUBMISSION BY NATIONAL GRID TRANSCO (SCOTLAND)

National Grid Transco (Scotland Network) welcomes the opportunity to comment on the Bill. As part of the emergency services and the operator of the gas emergency service we have staff that have to attend emergency situations on a daily basis. This includes operational staff, including single workers giving first call responses to reported gas incidents and escapes, supervisors and managers. Our staff have to respond to emergencies both within the house and also external when it necessitates work to our distribution network.

Regarding the proposed legislation we have some concerns that it only mentions major gas leaks. We consider all gas leaks as emergencies and our employees are equally vulnerable on all occasions. It would also be a matter of debate to establish what constitutes a major gas leak. It would also be worth considering changing the wording to “gas leaks and incidents including loss of supply” as this will encompass all emergency situations.

We have researched our records and provided evidence of both Physical and Verbal assaults on our employees over the period January 2000 to April 2004. Details of these are listed on the appendix attached. Each entry has a short summary of the detail of the assault, however, there are some abbreviations, which you will not be familiar with:

TSE = Transco Service Engineer
ESE = Emergency Service Engineer
TCP = Transco Competent Person
PRE = Public Reported Escape
LTI = Lost Time Injury
NLTI = Non Lost Time Injury

TSE, ESE, and TCP cover our employees who are the front line emergency operational staff.

The numbers we have reported are most likely significantly less than what has actually taken place; the reasons for this are mainly down to:

the "macho" image of a predominantly male work force, and
"apathy" in that very little can be done to the instigator of the assault.

National Grid Transco have been making good progress with the former, addressing this during many initiatives to promote our safety culture, indeed we have personal security procedures which we have supported with training to all appropriate employees. We believe this Bill will address the latter by providing encouragement to our employees to report assaults in the knowledge that there would be some tangible outcome (and thus a deterrent) which would provide in general for a safer working environment.
Thank you for asking NHS Borders to comment further on the above proposed legislation. I am aware that others within the organisation previously responded during the public consultation process and I welcome the opportunity to add to those comments.

Unfortunately those working in the Health Service, I suspect like others providing public services, are increasingly at risk of violence and aggression. This is sadly an upward trend and features in incident reports from accident and emergency to children’s wards as well as from medical wards to workers in the community, even in areas such as the Scottish Borders. In this context I welcome the proposal of additional protection to public sector workers in order that the “likelihood of solemn proceedings … is greater” as is suggested by paragraph 1.4 of the Consultation Document itself. The principle that those working, as well as those assisting, in emergency situations is supported. It is suggested that care be taken in the drafting of the legislation to ensure staff groups not explicitly mentioned in the Bill at present will be protected. To the untrained legal eye, it is unclear for instance whether a radiographer undertaking duties resulting from emergency, in the absence of a doctor, nurse or midwife, would be protected.

I feel that there is also the danger that this legislation may actually be creating a division similar to the “fixed category of workers that aggravation would apply to” (Paragraph 3.2) feared from the introduction of statutory aggravation to cover all public sector workers, rather only those working in emergency situations. For example as proposed it appears that an individual who assaults an A&E nurse may be subject to pursuit under this bill, but assaulting a ward nurse may not.

Equally it appears that a doctor undertaking an emergency house-call would be covered, but a midwife attending a mother and infant routinely at home following discharge from hospital, may not. One can envisage a scenario where a patient may assault a member of staff in A&E and later another employee following admission to a general ward, yet only the initial action would fall under the remit of the legislation as presently drafted.

I note that the proposed bill is not deemed to endanger the prosecution of those impeding emergency workers (paragraph 3.4), in the same manner that those relating to other public sector workers may be from the introduction of statutory aggravation. One wonders as a consequence therefore if it is possible to frame legislation to protect other public sector workers in a similar manner. I would welcome exploration of this issue as the bill passes through the parliamentary process.

John Glennie
Chief Executive
NHS Borders
7 May 2004

SUBMISSION BY NHS GRAMPIAN

NHS Grampian serves a large geographical area covering three thousand square miles, has a patient population of 525K and over 16K staff. Violent and aggressive behaviours will not be tolerated by the Organisation and continual efforts are being made locally to combat violence and aggression including an Emergency Response Team and a dedicated Management of Violence and Aggression Advisor.

The proposed Emergency Workers Bill has been circulated for comments, these represent the view of staff, including Accident and Emergency, Acute Medicine, Human Resources, Directors, Staff Governance, Forensic Medicine, Occupational Health & Safety, Security, Midwifery, Risk
Management and violence and aggression interest groups. Please be advised these comments as of a health care orientation only.

Overall, NHS Grampian welcomes the Bill and recognises it to be of great value for protecting emergency workings within Accident and Emergency and those assisting them. The Governments intolerance of this behaviour towards emergency workers is to be commended. Public recognition of the penalties for assaulting emergency workers will reduce the amount of violent incidences within the defined areas and circumstances.

Staff within NHS Grampian also feel supported by the Bill as it emphasises their value within wider society. The Lord Advocates guidance regarding aggravated assault when considering all public service workers is fully supported.

Breadth of the Bill

Our data demonstrates that more incidents occur in acute medical wards than in Accident and Emergency (A&E) departments in NHS Grampian, illustrating the vulnerability and susceptibility of staff in areas other than A&E.

Emergency situations can arise anywhere in the health care setting and a high percentage of staff a skilled to manage these situations. The Bill gives greater sentencing powers for assaults upon emergency workers in emergency situations only. Discussions have highlighted concerns regarding non-emergency staff (as defined) working outwith A&E. NHS Grampian would seek clarity as to whether a perpetrator would be given the same punishment if he/she had hindered, obstructed or assaulted a member of staff whilst they were dealing with an emergency in a medical ward for example.

Persistent offenders who are aware of the Emergency Workers Bill may contain violent or aggressive behaviours within the A&E department knowing they can vent their inappropriate behaviours toward staff on the ward, as they face a lesser charge. NHS Grampian may consider this to be ‘moving the problem’.

Who is covered

The Bill explicitly covers registered medical practitioners and registered nursing and midwifery staff working within Accident and Emergency. There is concern that this would exclude other staff within Accident and Emergency such as; Portering staff, students, auxiliary nurses, radiographers, plaster technicians and reception staff as they are usually always present within the department and are equally as vulnerable as emergency workers as defined. Some may not be considered to be assisting an emergency worker by a reasonable person.

NHS Grampian defines an emergency worker as ‘any individual working in the health care profession who has the knowledge and the ability to deliver life sustaining/ resuscitation treatment or, has the ability to prevent harm, of a life threatening nature to any individual’. This would include members of the public who may be endangered by another. It is recognised that the vast majority of these workers will not frequently work in a state of emergency, however, it is argued that they will be expected to deal with one should one arise. Scottish Ministers have the power to modify the Bill to include other emergency workers. NHS Grampian asks the following staff groups be considered in light of the NHS Grampian definition.

- Medical Staff: - Secondary Care and Primary Care, including, Acute, Mental Health and General Practice
- Registered Nurses, Health Visitors and Midwives
- Staff trained in basic life support
- Allied Health Professionals with the skills to deliver emergency treatment
- Community Psychiatric Nurses/ Specialist Nurses
- Mental Health Officers
- Social Workers /Out Reach Workers
- Security Staff and Emergency Response Team Members
Thank you for the opportunity to submit written evidence on the Emergency Workers (Scotland) Bill. I sought views from various interested parties within the Primary Care Division of NHS Greater Glasgow.

Generally the Bill is a most welcome initiative by the Executive, but there was concern that the Bill may not go far enough to protect a range of workers within the NHS (and other public sector workers) who may be outwith the definition set out in the Bill.

As you will be aware many of our direct employees and those staff working in General Medical Services are increasingly experiencing incidents of violence against them.

As we read the Bill the main objective is to create a specific criminal offence of assaulting, obstructing or hindering an emergency worker when responding to an emergency situation. A similar offence may be committed in relation to someone assisting an emergency worker, when they too are responding to emergency circumstances. As drafted the Bill relates to Police Officers, a member of the Fire Brigade, a person acting for the Scottish Ambulance Service, a Prison Officer, a Coastguard, a member of the crew of the RNLI, a registered Medical Practitioner, a Registered Nurse, Midwife or Health Visitor. Whilst there is power proposed to amend the definition of emergency worker after the Bill becomes law, it may be preferable to consider extending the definition during the Parliamentary process.

The Minister for Health is on record (20th April 2004 at the NHS Conference on Violence and Aggression) as saying that “There is not place in Scotland for violence against NHS staff”……. Violent and abusive behaviour towards NHS staff is not acceptable in a modern Scotland”. This legislation provides an ideal opportunity to ensure that there is a consistent and comprehensive message given to those who are violent to NHS staff whatever the setting. We would invite the Committee to consider extending the terms of the Bill. To restrict its application as drafted could be taken as downgrading the seriousness of violence and aggression to other staff at other times.

We have had many examples where a range of NHS staff are the subject of abusive or violent behaviour in situations which would not be covered by the Bill as it is currently drafted.

Whilst General Medical Practitioners are covered by the proposed legislation, dentists, pharmacists and opticians are not, given that they do not normally respond to emergency situations.

However, for example, there have been a number of attacks on pharmacy staff in Glasgow in the past year, and although they occur when the pharmacist is conducting their ongoing business, and as such would not fulfil the criteria of emergency worker, the events may be useful in determining the extent of these serious situations.

Community Pharmacists who are called on to deliver life saving domiciliary oxygen, or palliative care medication are not covered, nor would a dentist called out to his practice to provide arrest of dental haemorrhage.

Equally other community staff, district nurses and health visitors etc who frequently enter peoples homes to tend to their health needs, are often at risk of violence and aggression.

We also are responsible for the provision of community and in-patient mental health services. Whilst recognising the particular need for staff to act cautiously with patients who have a history of violence and aggression is it right that they have a less degree of protection under the law than their colleagues who may be responding to a specific emergency situation? We can support staff and ensure they are appropriately trained to deal with difficult situations, but there is a feeling that all public sector workers should have the benefit of the legislation proposed.
However, if it is not considered appropriate to extend the legislation to all NHS staff specific consideration should be given to including those Allied Health Professionals covered by the Council for the Regulation of Care. Another group who are not mentioned are Psychologists who on occasion are required to provide counselling in emergency situations.

The NHS staff survey is now well established as an indicator of how staff within the service feel about a wide range of issues. In the last survey in 2003, 24% of staff in Greater Glasgow who responded indicated that they had personally experienced a violent/aggressive incident.

Therefore in summary, we would encourage the Committee to consider the need for a “Public Sector Workers” Act to protect all those engaged in the provision of public services, or at least all those in the delivery of health and social care, or to extend the definition of emergencies and A & E departments to any situation where health care is provided (including patient’s homes). This would widen the application to ensure that staff who are at risk of violence or aggression through their employment can benefit from the legislation.

Ian H Reid
Chief Executive
NHS Glasgow Primary Care Division
7 May 2004

SUBMISSION BY NHS GREATER GLASGOW, YORKHILL DIVISION

Thank you for the opportunity to comment on this Bill. I have sought views from a number of senior staff within the Yorkhill Division of NHS Greater Glasgow. All comments received were supportive of the proposed legislation.

A comment was given that para 2.6 deals solely with A & E yet this is not the only focus within a health care setting where staff are subject to assault. The legislation should be widened to reflect all healthcare settings including primary care facilities.

A number of other comments reflected the same theme that the definition of an emergency worker should be widened to include a much broader range of healthcare workers.

Helen R Ostrycharz
Director of Human Resources
Yorkhill Division
NHS Greater Glasgow
23 April 2004

SUBMISSION BY NHS LOTHIAN

Summary
NHS Lothian employs some 26,000 healthcare workers across a range of sites within the Lothian area. Secondary care services are focussed around our major hospitals of Edinburgh Royal Infirmary, Western General Hospital, Royal Hospital for Sick Children, Royal Edinburgh Hospital, Astley Ainslie Hospital and the Royal Victoria Hospital as well as a number of smaller community hospitals. Primary Care services are provided from over 150 sites including health centres, general medical practices and other clinics.

NHS Lothian welcomes the Emergency Workers (Scotland) Bill and the move to providing statutory protection for emergency workers from the increasing number of assaults and aggressive situations that they face during the course of their work. The Bill will provide protection to our Medical and Nursing staff who are dealing with emergency situations and also staff working within our Accident and Emergency Departments.

However, following wide consultation within the service, some specific comments on the Bill have been raised and these are outlined below.
Specific Comments
The Bill gives specific protection to those health workers in hospital accident and emergency premises. However, whilst this is welcomed it is important to recognise that for a significant number of patients their first point of contact with the health service in an ‘emergency situation’ is often not the accident and emergency department but other settings. Outwith normal working hours, patients requiring the services of a General Practitioner can be required to attend one of our Out of Hours Centres some of which are based within local health centres. Other patients in an emergency situation may be admitted directly to an admissions ward or a psychiatric intensive care unit within one of our hospitals, by-passing accident and emergency.

It is our view that healthcare workers in these areas are just as likely to be subject to an aggressive incident as staff within an accident and emergency department. Extension of the definition within the Bill of an accident and emergency premise to cover these other settings would be more appropriate and afford similar protection to this equally vulnerable group of staff.

The Bill will also provide protection for any person assisting an emergency worker who is responding to an emergency situation only if a reasonable person would have grounds for believing that to be the case. Within an accident and emergency department many other staff in addition to medical and qualified nursing staff will be involved in the care of a patient in an emergency situation. It would appear that healthcare workers such as Nursing Assistants or Allied Healthcare Professions staff involved in assisting an emergency worker directly in the clinical care of the patient, would be protected by this Bill, as it is likely that any reasonable person would have grounds for believing that they were assisting an emergency worker. However, it is not clear that similar protection would be available for other healthcare workers in an accident and emergency department such as Porters and Reception staff who are also assisting an emergency worker but where the link is less obvious. There is a danger therefore that within an accident and emergency department some staff would be afforded protection through the proposed Bill whilst others may not. Extending the definition to include all healthcare workers in an accident and emergency premise would address this inequity.

The consultation document previously issued indicated that consideration had been given to introducing a statutory aggravation to cover attacks on all workers delivering a public service such as teachers, social workers and bus and train drivers. However, the view was taken that whilst such attacks are taken very seriously, it was felt that to bring in a statutory aggravation, replacing the common law aggravations would actually weaken protection for such workers rather than strengthening it. However, the view from within the service, particularly from the staff side organisations, is that the Bill does not go far enough and should be extended to cover all healthcare workers regardless of the setting or situation. Although the proposed Bill will given greater protection to some of our staff it is hoped in the future that statute legislation could be brought forward which will see similar protection for all healthcare workers and other public service workers.

Ruth Kelly
Director of Human Resources
Primary and Community Division
NHS Lothian
6 May 2004

SUBMISSION BY NORTH GLASGOW UNIVERSITY HOSPITALS DIVISION

With regard to the above, the North Glasgow Division of NHS Greater Glasgow has 3 accident and emergency departments at Glasgow Royal Infirmary, the Western Infirmary and Stobhill Hospital. We also operate an emergency treatment service at the Dental Hospital and School in Glasgow. As you will be aware such departments are traditionally ‘high profile’ in terms of both perceived and actual risk of violence and aggression towards staff. Consequently, such a Bill is generally welcomed within healthcare and we would hope that this will provide an additional deterrent within areas which would be regarded as ‘high risk’ in terms of violence.
It is however, relevant to mention that a number of instances of violence and aggression occur outwith what you have deemed a ‘state of emergency’. An obvious example and anomaly exists within acute medical receiving wards within our hospitals, and I am sure many others. Acutely ill medical patients and relatives, visitors etc, often are transferred directly from Accident and Emergency units to these wards. Medical receiving is also deemed as high risk due to the type of patients and statistics related to violence and aggression. Consequently, the Bill as described will not cover the staff who work in these wards environments and are arguably at the same level of risk. There are many other examples where healthcare staff would be in a similar situation. Our feeling is therefore that the Bill does not go far enough in extending protection to all healthcare workers, many of whom would be deemed at significant risk, but would not come under your definition of emergency workers.

I have attempted to keep this response brief but would be prepared to elaborate further on any aspect of this important issue if deemed appropriate by the Justice 1 Committee.

Tim Davison
Chief Executive
North Glasgow University Hospitals Division
29 April 2004

SUBMISSION BY THE ROYAL COLLEGE OF GENERAL PRACTITIONERS SCOTLAND

Background
RCGP Scotland is the Scottish Council of the Royal College of General Practitioners (RCGP). The College’s aim is to encourage, foster and maintain the highest possible standards in general medical practice by providing leadership and support to GP members in relation to clinical standards and professional development; as well as to provide personal support to members and to promote general practice as a profession.

RCGP Scotland welcomes the opportunity to comment on this Bill, which seeks to create a specific offence of attacking an emergency worker, or someone assisting an emergency worker, when responding to emergency situations.

We would like to make the following points on the general principles of the Bill.

Definition of an emergency worker
We are pleased to note that the legislation covers doctors, nurses and midwives. However, a number of other staff, particularly receptionist staff, are also frequently involved in violent attacks in a primary care setting. According to a recent BMA survey of doctors across the UK, almost two-thirds of respondents reported that they had witnessed violence from patients directed at others in their workplace including nurses (36 per cent) and receptionists/administrators (33 per cent). While violence towards nursing staff is more likely to occur in a hospital setting, the incidence of violence against receptionists/administrators is greater in general practice.203

We note that the legislation provides protection to those assisting an emergency worker, and would take this to include GP reception staff where appropriate and healthcare staff in training (e.g. medical students) who would not be registered with the GMC.

Definition of an emergency situation
We welcome the provision in the bill to create attacking an emergency worker, or someone assisting an emergency worker, a specific offence. While we accept the specific demands of operating in emergency situations, we feel the principle behind protecting emergency workers should apply equally to non-emergency as well as emergency situations.

We feel that if the legislation is going to be restricted to emergency circumstances, these need to be clearly defined as patient and staff perceptions of what constitutes an emergency can be very different.

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Accident and Emergency
Section 3 makes specific provision for assaults that take place in hospital accident and emergency premises. The presumption is that emergency circumstances may be assumed to exist or be imminent at all times in this setting.

We accept the special circumstances around A&E departments, although would argue that staff working in GP surgeries, or GPs attending house calls, have to deal with the same level of uncertainty, where the threat of an emergency situation is equally imminent. GPs are also more likely to routinely come into contact with patients who display violent behaviour, for example those with a history of violence or abuse, and those intoxicated with drugs and alcohol. One respondent in the BMA survey said that violence was 'considered part of practice life, especially with drug addicts'.

The clinical areas most associated with violence are accident and emergency departments, psychiatry and general practice, where 50 per cent of GPs say that violence is at least somewhat of a problem in their current workplace204. Consideration could be given to extending the rules for A&E to out-of-hours and general practice settings.

Wider measures
It is important that any legislation is backed up with a strong anti-violence campaign in support of all healthcare workers (not just emergency workers). The public should be reminded of their responsibilities as patients, including what is, and is not, acceptable behaviour. A campaign of zero tolerance does exist, although it is a difficult message to get across when all patients (including the most violent) have a right to be treated. It is anticipated that the new GMS contract will see the development of practices specialising in the treatment of violent patients, where the facilities exist to provide a stable environment for both staff and patients. This of course, only helps where patients have displayed violent behaviour before and does not prevent new circumstances arising in surgeries across Scotland. The message that violence is totally unacceptable should be emphasised at every opportunity and that sanctions do exist for patients to be removed from practice lists if they display violent behaviour.

The Scottish Executive’s 'Managing Health at Work' guidelines205 emphasise the importance of staff training in the management of violent situations, which we would wholeheartedly support. All health care staff should receive appropriate training to help them understand aggression and violence and how to deal with aggressive people.

One of the main problems in discussing violence is the problem of under-reporting, particularly among health professionals. Many doctors now consider violence to be part of their job. We suspect that the fear of being blamed is another reason for doctors not reporting more incidents. NHS Boards need to help encourage a culture where staff feel valued and supported in dealing with often very difficult situations. Extra support should be given to newly trained doctors to give them the confidence to deal with volatile situations and reporting even minor incidence when they occur.

Conclusion
The Royal College of General Practitioners (Scotland) welcomes the aim of this legislation to extend the level of protection for NHS staff. We think there is a strong case for extending this principle to GP practice staff so that they have a similar level of protection to A&E departments.

Jenny Britton
Executive and PR Manager
Royal College of General Practitioners Scotland
11 May 2004

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204 Violence at work: the experience of UK doctors, Health Policy and Economic Research Unit, British Medical Association, 2003, p.4
205 Managing Health at Work, Partnership Information Network, Scottish Executive, 2003
SUBMISSION BY THE ROYAL COLLEGE OF MIDWIVES UK BOARD FOR SCOTLAND

The Royal College of Midwives UK Board for Scotland is pleased to support the principles of the Bill and we look forward to the next stage in the procedure.

Ms Patricia Clarke
Royal College of Midwives UK
Board for Scotland
5 May 2005

SUBMISSION BY THE ROYAL COLLEGE OF PAEDIATRICS AND CHILD HEALTH SCOTLAND

The Scottish office of the Royal College of Paediatrics and Child Health fully supports the current bill in relation to abuse of emergency care workers. Health and other emergency care professionals must be protected from verbal abuse, and threats of or actual physical injury.

While paediatricians and nursing and other colleagues deal with ill children and their families are probably less exposed to these risks than those working exclusively with adults, the issue is still real and significant.

However, for those professionals working with children, another matter needs to be recognised and addressed.

Child abuse is a sad reality now acknowledged by our society. Perhaps not surprisingly, these incidences partly underlie the difficulty that currently exists in the maintenance and recruitment of medical and social work staff to work in child protection. Nevertheless in the UK, one or two young children are murdered each week by their abusive parents or carers, and very many more are deliberately injured physically or emotionally.

A major issue for professionals involved in the recognition, assessment and monitoring of such cases is the high level of associated physical or verbal threat. This may involve doctors and nurses in hospital children’s departments, or social workers in the community.

More recently, some pressure groups have mounted specific campaigns of intimidation against individual paediatricians (including Stoke, Great Ormond Street, Oxford, York, Sheffield, Cardiff and Glasgow). This campaign is different from the spontaneous angry or distressed comments of a stressed parent whose child has suffered. It often involves persistent and threatening letters and telephone calls to the individual and their family, and spurious orchestrated complaints to their employers or professional bodies.

There has recently been much media attention to cases where a parent may have been imprisoned on grounds of harming their child on what is subsequently held to be inadequate evidence. This is a matter of great regret for all and needs to be addressed by the courts and legal profession.

A family member receiving anonymous threatening letters is certainly as serious as firemen being threatened and stoned by young men who have set a school on fire, and those involved deserve the same protection.

We hope this can be addressed as part of this bill, since it applies widely across all public sector workers.

Mr Deanne Tamasino
Administrator
Royal College of Paediatrics and Child Health in Scotland
5 May 2004

SUBMISSION BY THE SHERIFFS’ ASSOCIATION

I refer to my telephone conversation with you on 10 May and enclose herewith a hard copy of our short comment on the Bill. The Association do not as you know become involved in policy matters
but we thought that we should comment that the Bill does not appear to apply to emergency workers who are making their way back to their base having dealt with emergency circumstances whether real or having been lured by a hoax call.

Sheriff Pamela Bowman
Honorary Secretary
Sheriffs’ Association
13 May 2004

SUBMISSION BY THE SCOTTISH AMBULANCE SERVICE

Thank you for the opportunity to submit evidence in respect of the above.

I attach a brief report from the Service which I would be grateful to have submitted as evidence.

The evidence is submitted in two parts. The first part provides statistical evidence of the incidence of violent attacks on Scottish Ambulance Service, the second summarises some general comments regarding the nature of the Bill and its potential operation within this Service.

This evidence has been gathered and is submitted with the support of our recognised Trade Union partners who are the Transport and General Workers Union and Unison.

I will be happy to provide any further information you require.

Evidence
The Scottish Ambulance Service responds to some 500,000 emergency calls each year along with some 2,500,000 non emergency patient journeys and some 3,000 air ambulance missions. The Service is a national body and operates throughout Scotland.

Statistical Evidence
In the 12 month period 1 January 2003 – 31 December 2003, there were 183 reported assaults on ambulance service staff, currently categorised as 104 physical assaults and 79 verbal assaults, a total average of 15 assaults per month. However, survey results would suggest that ambulance staff routinely report only 50% of the occasions where they have been assaulted which may mean “real” figures of approximately 400/500 assaults per year.

General Comments
Section 1 of the Emergency Workers Bill Policy Memorandum part A is very specific in terms of “emergency workers” in “emergency circumstances”. There is some concern that ambulance staff carrying out urgent, planned or unplanned emergency work would not be additionally protected by the provisions of the Bill. The increasingly diverse nature of ambulance service work has meant that the Service does not only provide an emergency response and it is important that all ambulance staff are protected under the Bill.

The explanatory notes to the Bill highlights the importance of increased public awareness and education, in particular among young people. It would be useful to see some linkage between this as an aspiration and any proposals regarding future education strategies and so on.

The Bill is clearly aimed at those individuals who “attack” emergency workers. It would be useful to know whether this definition covers those who threaten our staff.

Shirley Rogers
Director of Human Resources
Scottish Ambulance Services
30 April 2004

SUBMISSION BY SCOTTISH ENVIRONMENT PROTECTION AGENCY

I refer to your letter dated 25 March 2004 inviting written evidence on the general principles of the Emergency Workers (Scotland) Bill.
In general, SEPA welcomes the inclusion of ‘serious harm to the environment’ in the definition of “emergency” circumstances (Section 1). Staff involved in such situations require protection.

SEPA therefore supports the order making provision (Section 6) which enables Scottish Ministers to add other groups of emergency workers to the list, and the acknowledgement in the policy memorandum that this may include environmental emergency workers.

SEPA responded to the Scottish Executive’s formal written consultation paper (Protection of Emergency Workers: A Consultation Paper) and is in continuing dialogue with respect to the points raised. Copies of SEPA’s response are available on request or can be obtained from the Scottish Executive library.

Campbell Gemmell
Chief Executive
Scottish Environment Protection Agency
7 May 2004

SUBMISSION FROM SCOTTISH PARTNERSHIP FORUM

Further to your recent request seeking views from interested parties on the above Bill which was introduced to the Parliament on 22 March 2004. The following response is on behalf of the Scottish Parliamentary Forum (SPF).

As way of an overview, it might be helpful if we gave you a brief summary of the SPF. The SPF, which was set up in 1999 to support partnership working at a national level, will provide the main forum where Trade Unions, Professionals and NHS Scotland work together to influence national priorities and policy on health issues. In addition, the SPF will:

Ensure the principles of partnership are practices in NHS Scotland and the Scottish Executive
Champion partnership between NHS Scotland and other organisations
Develop partnership working through evidence based schemes
Promote and facilitate the behavioural changes that genuine partnership working entails

In summarising the views of it’s members, the SPF generally welcomes the Executive’s commitment to improve protection for emergency workers. However, members are also keen to see that the extent of the scope is widened to include all staff engaged in delivering public services such as GPs’. There is evidence that Health Care Staff working in all areas of the NHS, not just emergency workers, are at risk of violence and should be afforded the same protection through legislation.

I trust that you will find the response useful.

Trevor Jones
Chief Executive NHS Scotland
Co-Chair SPF

James Kennedy
Director RCN Scotland
Co-Chair SPF

9 June 2004

SUBMISSION FROM SCOTTISH WATER

Thank you for your letter of 25th March. Scottish Water welcomes the opportunity to comment on the draft Emergency Workers (Scotland) Bill.

Scottish Water would strongly support the Bills policy objectives of creating a specific offence of attacking an emergency worker or someone assisting an emergency worker when responding to
emergency circumstances. Scottish Water would enquire as to whether it would be possible within the legislative scope of the Bill to extend the protections available under the Bill to Water and other utility workers responding to emergency situations without the fire or police services being in attendance. The main area of concern for Scottish Water is in relation to the distribution of alternative supplies (bottled water, tanks etc) in an emergency situation where there was a failure of supply to customers or a water contamination incident.

Scottish Water has a specific obligation under the Security and Emergency Measures (Scottish Water) Directions 2002 to provide a supply of 10 litres of water per head per day where the public water supply is unfit for consumption or not available for the normal pipe supply.

We have encountered a number of difficulties in the provision of a supply and during an recent incident the distribution point had to be set up in a Police Station car park to avoid verbal or physical threats being made to staff by members of public intent on the appropriation of the bottled water with a view to resale.

The current definition of both “emergency” and “emergency workers” would not apply to Scottish Water employees in the above circumstances.

We would ask that in the review of the Bill the Committee consider whether it would be possible to widen the definition of “emergency”. The Civil Contingencies Bill currently before the UK Parliament provides a wider definition of “emergency”. The definition in that Bill includes an event or situation which threatens serious damage to human welfare or the environment. It prescribes that an event or situation threatens damage to human welfare if it involves a threat of one of the following; loss of human life, human illness or injury, homelessness, damage to property, disruption of a supply of money, water, food, energy or fuel, disruption of an electronic or other system of communication, disruption of facilities of transport or disruption of services relating to health.

A further change would be to wider the definition of “emergency workers” to cover Scottish Water employees attending an “emergency” as redefined.

Another situation where Scottish Water employees are often threatened with verbal or physical abuse is attending and repairing fire hydrants following an incident of vandalism.

We are aware that the Scottish Parliament is separately considering the issue of fire hydrant vandalism in relation to the anti-social behaviour Bill however, we would request that consideration be given to including protection of Scottish Water’s employees in terms of this Bill. Fire hydrant incidents can lead to a substantial drop in water pressure and the possibility of public water supplies being curtailed or supplied at reduced pressure which could hinder the fire service in their ability to respond to an major emergency.

Scottish Water would respectfully request that the Committee consider whether the further protection could be provided under the Bill for Scottish Water employees carrying out their normal duties in these areas.

Dr Jon Hargreaves
Chief Executive
Scottish Water
5 May 2004

SUBMISSION BY SOLACE

I refer to your letter of 25th March seeking comments on the above Bill and am replying on behalf of SOLACE.

The proposals in the consultation paper form part of the Scottish Executive’s broader strategy for dealing with anti-social behaviour and as such are welcomed.
The plan to bring forward legislation to give statutory protection to emergency workers, in line with that afforded to the police in terms of the Police (Scotland) Act is supported.

Further definition of what constitutes an ‘emergency worker’ would be welcomed. While categories of emergency workers covered would obviously include the traditional 999 services, health professionals working both within the wider community and in hospitals should also be covered. In the case of environmental emergencies, staff from a wide range of agencies could respond, depending on the nature of the incident. This would include local authority staff and could include voluntary aid workers such as the WRVS and Red Cross. Such persons, while responding to defined emergency situations, should come within the scope of the proposed legislation.

With regard to the definition of an emergency situation, The Civil Contingencies Bill, which will apply UK wide, contains a definition of ‘emergency’ which is much broader than has previously existed. It may be appropriate to have one common definition for all legislative purposes.

Finally, the legislation should apply to situations where emergency workers are attacked while responding to a call which turns out to be a hoax.

Mary Pitcaithly
Chief Executive
SOLACE
10 May 2004

SUBMISSION BY STRATHCLYDE FIRE BOARD

Thank you for the opportunity to comment on the general principles of the Emergency Workers (Scotland) Bill. Following consultation with the Firemaster the following comments are made on behalf of Strathclyde Fire Board. The Board welcomes the introduction of the Bill.

Similar to other Brigades and other emergency and public services Strathclyde Fire Brigade has witnessed an increase in both the frequency and severity of violent attacks on fire crews over the past number of years:-

<table>
<thead>
<tr>
<th>Year</th>
<th>Reported Incidents</th>
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<tr>
<td>2001 – 2002</td>
<td>72 reported</td>
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<tr>
<td>2002 – 2003</td>
<td>167 reported</td>
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<tr>
<td>2003 – 2004</td>
<td>161 reported</td>
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Whilst the last year recorded shows a slight fall of 3% on the previous year there has been an overall increase of 45% since 2001.

Violence at Work has certainly been an increasing problem over recent years across many services with, unfortunately, workers being faced with increasing levels of violence.

The Health and Safety Executive state in their publication “Violence” HSE (2002) that working people who have occasion to deal with members of the public directly may be threatened, attacked or verbally assaulted. Violence in the workplace is a major cause for concern to employers.

The workplace was traditionally perceived as a relatively benign and trouble free environment but this perception has altered. There have been many research projects initiated by employers into establishing the extent and cause of violence perpetrated at the workplace. The National Health Service produced one of the most prominent of these. This research resulted in a “Zero Tolerance” initiative, which issues clear advice and guidelines on how to prevent violence in the first instance, and how to deal with it, should it occur.

The aim of the Emergency Workers (Scotland) Bill to provide overarching protection to all emergency workers in Scotland is therefore helpful. Care, however, should be taken on what is defined as an ‘emergency situation’ as the fire service attends incidents that are non-emergency especially as we develop our community safety work. You will recognise that
as we move towards Integrated Risk Management Planning (IRMP) in line with Executive guidance there will be increasing emphasis on preventative work and community safety.

In Strathclyde there were 167 incidents of violence to firefighters in 2002-2003. These incidents resulted in 13 days lost to injury with 20 damaged vehicles at a cost of £5,974 and 72 days down time for repairs. There is also recognition within the service that these incidents of violence are likely to be under reported.

The service should not underestimate the extent of the threat work related violence poses or the damaging negative effects it can have on the organisation, its personnel and its resources.

It is accepted that the environment in which firefighters are called upon to work is inherently hazardous. While the general public expect firefighters to take risks within their working environment and, indeed, the firefighters themselves accept this fact, there is the now the added dimension of the firefighter coming under violent attack from members of the public.

Despite the occupation of firefighter being inherently hazardous, fire authorities as employers recognise their legal duty of care to all of their personnel to ensure that all activities are undertaken in a manner which is as safe as is practically possible. From a legal perspective there is no real conflict between the need to undertake dangerous activities and the need to comply with legislative requirements in order to ensure employee safety.

The Scottish Executive have shown by the introduction of this Bill that they acknowledge the valuable service provided by their emergency services and that they will not tolerate mindless individuals abusing Firefighters, Ambulance Personnel or Hospital staff. Indeed, there may be a case to extend this legislation even further to other frontline public services where instances of verbal and physical violence continue to be a significant issue.

It is hoped that the introduction of this Bill will provide a significant deterrent to the perpetrators of this violence. The potential that a conviction for assaulting any firefighter may result in a significant fine or a period of imprisonment should assist to reduce the number of incidents.

It should also be acknowledged, however, that legislation is only one aspect of responding to this overall issue. The need for educational and awareness programmes within our communities with a particular focus on youth is another key area for development and something this Board will look to develop and progress. Indeed such activities could form part of broader anti-social behaviour initiatives being progressed within local communities. We have an established Violence at Work policy and continue to look at methods to further protect our employees. An example is our pilot study of CCTV cameras in appliances.

I trust these comments are of assistance and I look forward to hearing how this Bill is to be further progressed.

Alan Cuthbertson
Clerk to the Board
Strathclyde Fire Board
14 May 2004

**SUBMISSION BY UNIFI**

UNIFI is a TUC and STUC affiliated trade union representing some 150,000 workers across the finance sector in the UK. The Union represents staff in all grades and all occupations.

UNIFI welcomes the opportunity to contribute to this Consultation and very much supports the steps the Government is taking to protect emergency workers. UNIFI particularly welcomes the non legislative work being done by Government to address the issue of violence directed towards emergency workers.
As a trades union UNIFI would nevertheless wish to see the extension of such coverage to protect all workers who may be faced with the threat of both physical or verbal abuse while at work.

Workers in the finance sector are no stranger to physical or verbal abuse and over the years UNIFI has campaigned for the protection of bank workers from such unnecessary violence.

Increasing pressure from employers within the finance sector to deliver ever greater profit margins has created an environment within bank branches conducive to both physical and verbal attacks on bank workers. Take-overs and mergers combined with inadequate training, long queues, and a pressure on selling as opposed to delivering quality service to customers, has lead to a breakdown in confidence between customers and bank workers which can manifest itself in verbal and in extreme cases physical abuse.

Another aspect concerning the safety of bank worker is armed raids. While the level of armed raids on bank workers has fallen in the past few years, UNIFI remains concerned at the move towards open plan, ‘customer focused’ offices which can leave our members vulnerable to attack. Bank raids and the threat of real or perceived physical harm can cause irreparable damage to individuals many of whom are unable to return to work and while the physical damage may heal the psychological impact is more difficult to overcome and can be debilitating for some workers.

UNIFI would therefore stress, that while we welcome the proposals outlined in the Consultation we would wish to take this opportunity to recommend that future legislation be extended to cover all workers.

Elizabeth Cairns
UNIFI Research
27 April 2004

SUBMISSION BY THE UNION OF SHOP, DISTRIBUTIVE AND ALLIED WORKERS (USDAW)

Introduction
Usdaw is the UK’s fifth largest trade union, representing over 330,000 members. We are the largest trade union in the retail sector, with approximately three-quarters of our membership being shopworkers.

In Scotland, we represent over 36,000 members, of whom 70% are shopworkers. Usdaw’s retail membership is mainly concentrated in the supermarket sector, including: Tesco, Sainsbury’s, Safeway, Kwik Save/Somerfield, Co-op Societies and many other smaller companies.

Background
We believe that the views of our members are important in your deliberations on protecting workers from violence. According to the Scottish Retail Consortium’s (SRC’s) Second Scottish Retail Crime Survey:

Four per 1,000 shopworkers were victims of physical violence in 2002 (compared to a figure of six per 1,000 for Great Britain as a whole and eight per 1,000 in the SRC’s 2000 survey).

24 per 1,000 were victims of physical violence, threats of violence or verbal abuse. 60% of these incidents were either physical violence or threats of physical violence.

The SRC states that there are 230,000 workers in retail in Scotland.

So, these figures equate to 800 - 900 victims of physical assault and nearly 4,000 victims of physical violence or threats of physical violence every year.

Information from the larger retail companies suggests that the vast majority of these victims (about 70%) are likely to be store managers/deputy managers and around 20% are likely to be specialist security staff.
Evidence also shows that over two-thirds of physical violence is associated with suspected shop theft.

The reason that security staff and store managers appear to dominate the statistics for physical attacks is that they are the staff who are expected to intervene when someone is spotted shoplifting or when someone’s behaviour is so unacceptable that they have to be ejected from the store.

In essence, the store staff involved in these incidents are carrying out the same kinds of duties as a police constable would be doing in the same circumstances if one were present. They are effecting arrests and trying to control anti-social behaviour.

An Anomaly in the Bill
Section 1(2) of the Bill states, “A person who assaults, obstructs or hinders another while that other person is assisting an emergency worker who is responding to emergency circumstances commits an offence”.

As currently drafted, it would appear that a shopworker who is assisting a police constable to detain a suspected thief would be covered if the thief or an accomplice became violent or interfered but a shopworker attempting to apprehend a suspected thief when an "emergency worker" is not around would not be covered.

This does appear to be anomalous. It would be better if the law extended the same protection to any workers who in the course of their employment are required to intervene in emergency situations, including workers in the retail sector.

Summary
Usdaw wants the offence of attacking emergency service workers in the Emergency Workers (Scotland) Bill to extend to all workers who deal with emergency situations.

This would greatly help shopworkers who are often involved in tackling thieves on retail premises.

David Williams
Research Assistant (Political)
Union of Shop, Distributive & Allied Workers
14 May 2004

SUBMISSION BY WEST LOTHIAN HEALTHCARE TRUST

Thank you for asking me to comment on this Bill; I strongly support this legislation designed to protect emergency workers.

I have reviewed the violent incident report forms completed by Accident and Emergency medical and nursing staff for nine months to the end of January this year. In this time thirty forms have been completed all of which involve verbal abuse. In three cases violence was threatened to the staff, in two there was actual damage to the fabric of the A&E department and in four cases there was actual violence inflicted on medical or nursing staff. In only four were the patients obviously drunk. Of increasing concern, three incidents of verbal abuse were entirely racist, as the doctors concerned were of Asian descent, although both at least second generation British citizens. Overall, the police were involved in 11 cases and I must stress that our local police force has been incredibly supportive of staff, encouraging them not to tolerate verbal aggression or obscenities from patients whom they are trying to help.

The figures above demonstrate that, whilst Livingston is not I think a particularly deprived area, staff working in the Accident and Emergency department quite frequently cope with the threat of, or actual violence. Our new A&E Department was designed with staff and patient security and safety in mind. We have employed two security guards to work solely in A&E overnight in A&E since 2002. Verbal, and particularly racist abuse is a significant cause of stress at work and contributes to the decision of some excellent workers to leave Accident & Emergency for quieter, safer clinical areas.
I have specific comments on the content of the Bill as follows:

**Section 1, Subsection 4, Paragraph 9a**
I take it that this paragraph would cover medical or nursing staff, for example on an acute medical receiving unit. Some of the patients who verbally threaten or assault staff in Accident and Emergency are subsequently admitted to such units and only last week a nurse was attacked by a patient on the medical admissions ward here. I presume that any medical or nursing staff working in the hospital at night, by definition dealing with emergency circumstances, would be covered by the legislation?

**Section 2, Subsection 1, Paragraph (a)**
I presume that “…if effected by means other than physical means…” will include verbal aggression, obscenity or racism? I think it would be very helpful to specifically mention racism in this Bill. It is my impression that Scotland has a relatively small black and Asian community, but Asian people are proportionately more highly represented amongst Doctors working in Scotland’s hospitals. One of my A&E Consultants worked in central London for 10 years before moving here and recalls only one incident where a member of her staff was racially insulted. In the last 9 months here there have been three episodes. Even if racial abuse is covered by other legislation, I do think it would be most helpful to have it specifically included in the Emergency Workers (Scotland) Bill.

Thank you for asking me to comment on this Bill. I hope when it becomes law the Executive might add it to the excellent health promotion TV advertisement programme and also supply posters for Accident & Emergency department waiting areas to ensure that the public is aware that inappropriate behaviour will not be tolerated by workers trying to help them.

Peter Gabbitas
Chief Executive
West Lothian Healthcare Trust
15 April 2004
Present:

Mr Ted Brocklebank  Fergus Ewing (Deputy Convener)
Kate Maclean  Des McNulty (Convener)
Jim Mather  Dr Elaine Murray
Jeremy Purvis  John Swinburne

Apologies: Ms Wendy Alexander

Emergency Workers (Scotland) Bill: The Committee took evidence on the Bill’s Financial Memorandum from—

Richard Scott, Head, Criminal Justice Division and Gery McLaughlin, Bill Team Leader, Criminal Justice Division, Scottish Executive.

Items in private: The Committee agreed to consider the draft report on the Financial Memorandum of the Emergency Workers (Scotland) Bill in private at its next meeting.
Emergency Workers (Scotland) Bill: Financial Memorandum

11:27

The Convener: Item 4 on the agenda is consideration of the financial memorandum to the Emergency Workers (Scotland) Bill, which was introduced on 22 March 2004 by Andy Kerr. We have with us officials from the Scottish Executive: Richard Scott is head of the criminal justice division and Gery McLaughlin is the bill team leader. Welcome, gentlemen.

Members will have a copy of the bill, the policy memorandum and the explanatory notes. We also have copies of correspondence from the Scottish Court Service and the Crown Office and Procurator Fiscal Service. I ask the witnesses whether they want to make a brief opening statement or to go straight to questions.

Richard Scott (Scottish Executive Justice Department): We are quite happy to move straight to questions.

Fergus Ewing: Our job is to consider the financial implications and costs—to the Executive, in particular—of any piece of legislation. I notice that, in paragraph 22 in the financial memorandum, you state:

“It is not anticipated that there will be any significant additional on-going costs”.

You later argue that it is

“anticipated that savings arising from the deterrent effect of the legislation is likely to outweigh the costs of any additional prosecutions for the new offences”,

but you do not give us an estimate of the bill’s costs. Can you do that now?

Richard Scott: We cannot really give you any detailed costs. As the memorandum makes clear, to a large extent the bill replicates the existing law—in the case of assaults on any workers, the common law or, in the case of assaults on emergency workers such as the police and fire personnel, the provisions of statutory law. Therefore, we do not envisage—nor does the Crown Office, as the committee will have seen from its submission—any significant increase in the number of prosecutions as a result of the bill.

The bill’s main thrust is to highlight the fact that attacks on emergency workers are unacceptable; it is hoped that the bill will have a deterrent effect. It is difficult to project precisely what that deterrent effect might be. However, we hope that the bill will deter people from attacking emergency workers, which will mean fewer court cases, fewer people sent to prison, savings on manpower and loss of days’ work, savings on damaged equipment and,
generally, a more effective response to emergency situations. You will appreciate that it is difficult to put costs on that.

11:30

**Fergus Ewing:** I appreciate that it is not easy. However, although we all wish those benefits to arise, they seem to be speculative. Indeed, paragraph 16 of the policy memorandum seems to acknowledge that by saying that such things “might” happen.

I have a specific question to which I do not know the answer, although I am sure that you do. At present, assaulting an emergency worker is not a statutory offence, although it will be if the bill is passed. Looking at the matter from the point of view of someone who used to undertake defence work, I think that, as with any statutory offence, lawyers will seek to pick holes in the bill to find technical defences. I am thinking in particular about subsections (4) and (5) of section 1 and section 2(6). The state needs to prove that there has been an emergency. All sorts of technical arguments could be advanced to show that an ambulanceman may not be attending an emergency because the person may not be likely to suffer serious injury.

Given that there is always the danger of technical defences, whatever they may be, is it not likely that procurators fiscal will often hedge their bets by pursuing both the common-law offence and the statutory offence in respect of one accused? Is that likely to happen? If it does, will it not mean a duplication of effort and more work required of the police in providing separate precognitions and reports in relation to each offence? Will there not be a doubling of the paperwork and bureaucracy connected with such cases? Have you thought through whether that practice is likely to develop to ensure that a fiscal does not end up with egg on his face because of some unanticipated technical defence to the new statutory offence?

**Richard Scott:** Yes, we have considered that issue. We have had detailed discussions with the Crown Office on the framing of the offences in the bill. The Crown Office would be better placed than I am to answer detailed questions on that. The bill provides that an emergency situation is one in which

“a reasonable person would have grounds for believing that the emergency worker is or might be responding to emergency circumstances.”

We feel that the matter is fairly clear cut in most cases. However, you are right that there will, inevitably, be borderline cases. In each individual case, it will be for the PF to decide whether to prosecute under the bill—the act, as it will then be—or under the common law. It is important to retain that flexibility to ensure that no assaults slip through any kind of legal net.

**Fergus Ewing:** Under section 2(6), would there not be a requirement for an additional witness at each trial in which the statutory offence was pursued? Somebody would have to be able to certify that the person was an emergency worker.

**Richard Scott:** A person would not necessarily be required. For example, all that might be required would be a copy of the note from the medical register saying that the person was a doctor. It need not be someone testifying in person; it could be written evidence that the person was a doctor, police officer or fire officer.

**Fergus Ewing:** Fair enough. That is a minor point. A more substantive point is that the whole basis of the bill is that it will have a deterrent effect, which will produce welcome savings—albeit a reduction in the number of people being assaulted would be the most welcome outcome. Do you have any comparative data from any other jurisdiction to show that the creation of a specific statutory offence of assault of an emergency worker will have a deterrent effect?

**Richard Scott:** No, we do not.

**Fergus Ewing:** So that is purely a theory that you have come up with.

**The Convener:** You are straying into policy areas rather than financial areas, Fergus.

**Fergus Ewing:** I thought that, if we could point to such a provision being adopted in another country, we would be on more robust ground to consider the thesis that there will be savings because the deterrent effect will arise merely from the fact that legislation has been passed.

In paragraph 4 of the policy memorandum, you state that there may be “a public awareness campaign, measures to improve training of managers and staff and increased education of children and young people”.

Are not all those items—especially the public awareness campaign—that will have cost implications? If so, why are those costs not estimated in the financial memorandum?

**Richard Scott:** Ministers are of a mind to put together a wider package of measures separate from the bill although, to an extent, they will be complementary to it. They are currently in discussions with the Scottish Trades Union Congress, various trade unions and employer organisations about putting together that package. As the policy memorandum suggests, the package may well comprise advertising, publicity and an awareness-raising campaign. Other elements within it—particularly educational elements—will
be directed at young people. However, none of those measures has been costed in detail, nor have any financial resources been allocated to them, as ministers have not yet decided what the package will contain.

Fergus Ewing: I appreciate that you cannot deliver policy statements for ministers; I would not ask you to do that. However, we are being asked to look at the bill on the basis that it will have a deterrent effect. Will that be the case if there is not some sort of promotion of awareness? Should we not, therefore, have an allocation for the cost of any public awareness campaign that may be designed to promote the bill? I think that we should know the cost, as the measures in the policy memorandum might be expensive to implement. Moreover, there is a basic question to be answered if we are going to spend money and are being asked to hand over a chequebook, if not sign a blank cheque. There is now considerable doubt whether public awareness campaigns—whether directed towards health or towards stopping criminal behaviour—actually work. Can you point us to any data that show that a public awareness campaign would work?

Richard Scott: No, I do not have such data with me today. I do not have command of that. As I have tried to make clear, we do not envisage that the bill will create any particular cost. When ministers have decided exactly what measures they want to include in the wider package, they will be more than happy to discuss with the committee what the costs and the cost-effectiveness of the package are likely to be.

Fergus Ewing: Thank you very much. I have a few more questions, but I do not want to hog the floor.

The Convener: A technical issue has arisen in the context not just of this bill, but of other bills. It is a moot point whether we can confine the costs of a bill purely to the costs of implementing the detailed items in that bill. If this bill is part of a package of measures, it would help the committee if we had some indication of the parameters of that package. However, we should perhaps take up that issue more generally than just in the context of this bill.

Jeremy Purvis: Have any new offences been introduced in Scotland, since the establishment of the Parliament, on which data have been captured showing a deterrent effect?

Richard Scott: Not that I am aware of, but I am not responsible for the entire parliamentary legislative programme. I could make inquiries about that, but I am not aware of any such offences.

Jeremy Purvis: My point leads directly from Fergus Ewing’s question. Paragraph 24 in the financial memorandum states:

“It is however anticipated that savings arising from the deterrent effect of the legislation is likely to outweigh the costs of any additional prosecutions for the new offences created by the Bill’s provisions.”

There must be a reason why you put that in writing.

Richard Scott: Given the provisions in the bill, we—and indeed the Crown Office—do not expect there to be many additional prosecutions, so the cost of prosecuting offences should not rise significantly, if at all.

Jeremy Purvis: You said that savings are anticipated.

Richard Scott: For the reasons that I gave to Mr Ewing, we think that the deterrent effect of the bill may lead to savings. I accept that that is purely speculative. However, if there are savings, we think that they will outweigh the small costs—if there are any—of additional prosecutions.

Jeremy Purvis: Is it acceptable to speculate in a financial memorandum on proposed legislation?

Richard Scott: We were trying to be as helpful as possible and to explain our thinking, in particular in the absence of any firm, detailed costs, which we are unable to provide.

Jeremy Purvis: Paragraph 25 in the financial memorandum says:

“The Scottish Executive believe that the introduction of the new offence will not result in any significant change in sentencing pattern”.

Tougher penalties would not therefore be imposed in those cases. Moreover, as you have no evidence that the measures would have a deterrent effect, you cannot prove that public confidence will increase. On what exactly will you spend the money for a public awareness campaign?

Richard Scott: If ministers take forward such a campaign, I understand that the money will be spent on getting across the overarching message that attacks on public service workers in general—including bus drivers, train drivers and social workers—are totally unacceptable. The point of the package is to consider not just emergency workers, but all workers who provide a public service. The campaign will try to change attitudes.

Jeremy Purvis: We do not need a bill to do that.
Richard Scott: The bill focuses specifically on emergency workers in emergency situations. Ministers made a conscious decision to limit the provisions of the bill to those workers.

Jeremy Purvis: You have already said that there are no data that show that the bill would have a deterrent effect, so it is pure speculation to suggest that that will be the case. Your financial memorandum says that you do not expect sentencing patterns to change. You also recognise that people such as my dad, who is an ambulance technician—I suppose that I should have declared an interest—are already protected under existing legislation. The bill will have a cost in legislative and civil service time and a public awareness campaign will have a cost. The bill will generate a lot of additional costs, when the heart of the matter might be dealt with through a public awareness campaign to make it clear that it is absolutely unacceptable to assault or impede an emergency worker.

Richard Scott: Ministers’ intentions are that the bill—and indeed the wider package, to the extent that it is taken forward—will achieve a reduction in attacks on emergency workers and on public service workers in general. Over time, that reduction in attacks will reduce costs in the justice system and more widely.

Jeremy Purvis: You said that currently you do not capture the number of offences that are committed against emergency workers. I assume that those data are available in the sheriff courts. An incident in which such an attack clearly took place was dealt with in my local sheriff court two weeks ago and received quite a high profile in the local papers, so that incident was publicly reported. I do not understand why you do not have the data.

Richard Scott: Statistics detailing the victims of assault or other crimes are not kept centrally. Records are kept by individual courts, but research would have to be undertaken into those records to gather a sample and that has not been done. One of the advantages that will flow from the bill, if the Parliament decides to enact it, is that specific offences will be recorded and statistics on attacks on emergency workers will be kept.

Jeremy Purvis: We are considering the financial aspects of the bill. Would it not have been better to do the research before bringing the bill to the committee? You would then have had better data so that, instead of speculating, you could have answered our questions.

11:45

Richard Scott: Research on the number of attacks would answer your specific question, but I am not sure whether it would necessarily help in predicting the effectiveness of the legislation as a deterrent.

John Swinburne: Can you name an offence that is not covered by Scottish law and is not on the statute book but that an offender could be charged with under the bill? Give me one offence that could be committed that is not already covered.

Richard Scott: I could ask Gery McLaughlin to go into the question in more detail, but it is possible that giving a fireman false information or refusing to give him information—for example, about where the keys to a building are kept—might not be prosecutable under the common law. The bill makes it certain that such non-physical obstruction or hindrance of emergency workers will be an offence. That area is not clear at the moment.

John Swinburne: So we are going through all this—I hesitate to call it a charade—paraphernalia to ensure that someone will tell someone where the keys are. Come on. It seems a terrible waste of time, money and everything else, unless we are achieving positive objectives.

Richard Scott: No. You asked me specifically what the bill does that the common law does not do.

John Swinburne: And that is the only thing?

Richard Scott: Ministers have stressed that the bill will have a wider deterrent effect by making it clear in statute that attacks on emergency workers are unacceptable.

The Convener: We are in danger of getting into the business of the subject committee.

Jim Mather: I am keen to build on the points that Jeremy Purvis and John Swinburne have made. It strikes me that it would not be too onerous a task to survey and analyse the current cost of impeding or assaulting emergency workers—for example, the police, fire service personnel, hospital staff, general practitioners and people who work in surgeries—and thereby to set a target for savings. On the cost implications, it is clear to me that the money that is going out is negligible, non-existent or maybe even negative. You should identify the possible savings and have a mechanism by which you could revisit the penalties if the savings were not achieved. That would substantially bolster the bill. Do you have any thoughts on that?

Richard Scott: We can certainly examine particular cases. The consultation paper that went out last year cites a number of instances in which emergency workers were attacked. I am sure that we could revisit some of those cases and work out the costs that were incurred, both in the justice system and more widely as a result of people
being off work, equipment being vandalised and so on. We could try to project that forward to see what savings are achievable. However, I return to the point that the extent to which the bill will have a deterrent effect is speculative and that it is therefore difficult to set targets for savings. At one extreme, if the bill was super-effective, there would be no more attacks on emergency workers.

Jim Mather: That is a worthy objective. However, if the bill has to justify itself as an additional piece of legislation over and above what exists at the moment in order to earn its keep, it will have to prove that it is driving down compensation payments, lost days at work, insurance premiums and so forth. It strikes me that some speculation on that could be entirely useful and that you would be better off with that fig leaf than you are without it.

Richard Scott: Certainly, if the bill is enacted, you could certainly find some idea whether it has provided a deterrent effect on the policy issues, although I am surprised that people could be opposed to the extension of extra protection to emergency workers, which is an extremely laudable aim. I will return to the financial side and the question whether costs or savings could result from the bill. Given that similar legislation has been in place for 37 years, I would have thought that the Executive would have some idea whether a cost could be attached to the bill over the piece.

Richard Scott: I do not have the answer to that question, which members might like to put to the Association of Chief Police Officers in Scotland—I think that ACPOS is to give evidence to the committee. Ministers feel that the provisions in the Police (Scotland) Act 1967 have been successful, although, as I said, I do not have any cost details of how successful they have been.

The Convener: We are not having ACPOS in to give evidence. It is difficult to measure the deterrent effect of the Police (Scotland) Act 1967, but it should be possible to measure the number of prosecutions under the act in relation to such offences.

Richard Scott: Yes. You could certainly find that information.

The Convener: I presume that the Crown Office and Procurator Fiscal Service will have some idea whether, under the bill, it will be able to pursue cases involving attacks on emergency workers other than the police that it was unable to pursue under existing legal procedures. That would give a quantifiable estimate of the additional prosecutions that might be brought as a result of the bill.

Richard Scott: As is suggested in the financial memorandum, the Crown Office believes that it is unlikely that the bill will result in many more prosecutions. Most offences can be pursued under existing legislation—apart, that is, from the fairly narrow point about non-physical obstruction that I mentioned in response to a question from Mr Swinburne.

The Convener: I have one other question, which is probably not on a financial issue but on a policy issue. I seek clarification on the penalties that are mentioned in the bill—I think that the upper limit is nine months’ imprisonment. I presume that, if the assault was a serious one, the offence would not be prosecuted under the bill and that another piece of legislation would apply.

Richard Scott: A case involving a serious assault would probably be pursued under common law on indictment.
Fergus Ewing: In the mid-1980s I was in a mountain rescue team and in order to get a first aid certificate we went along one night to Glasgow royal infirmary to assist and observe. What we observed was that most of the customers were out of their minds on drink. I remember one unfortunate chap who had managed to embed a broken pint glass in his bahookie, as they would say in Glasgow. His state of intoxication was so advanced that not only was he unaware of the glass, but he did not know where he was.

I mention that because it illustrates a problem for a public awareness campaign—the sorts of people whose behaviour we wish to have an impact on are the people who are least likely to pay attention to a public awareness campaign and whose behaviour will not be affected. Do you accept that that is a basic flaw in a piece of legislation, whether or not it is accompanied by a public awareness campaign?

Richard Scott: No, I do not accept that. One important provision in the bill that we have not discussed so far is section 3, which deals with assaults on emergency workers in accident and emergency departments. In many instances, the kind of case that you describe would end up in an accident and emergency department. Often, the patient would be accompanied by his friends, who would probably be equally intoxicated. Those are the people who often cause the problem, because they are worried about what is happening to their injured companion and so start assaulting nurses. Ministers believe that section 3 will send out a clear message that attacks in accident and emergency departments are not acceptable.

Fergus Ewing: I understand the point—you have simply reasserted the thesis—but the friends are likely to be as non-responsive to appeals to their good nature as their injured pal is. That is the flaw in the bill.

I have one final point. Dr Elaine Murray said that nobody could be against providing extra protection to public service workers. Everybody would agree with that but, with respect, I argue that the bill will not provide extra physical protection; it will simply create a new statutory offence in the hope that it might impact on behaviour. Some might say that to provide extra protection one could use the money that the bill may cost to put another policeman in a busy accident and emergency department on Friday and Saturday nights. That would have an identifiable cost, but it might be more effective in providing real protection than the proposals in the bill.

The Convener: That is a policy question rather than a finance issue and ultimately it will need to be resolved by the lead committee on the bill. We have exhausted the questions on the financial memorandum. We will make our report to the lead committee, which I presume will be one of the justice committees. I thank our witnesses for coming along and giving evidence.
Note: (DT) signifies a decision taken at Decision Time.

Emergency Workers (Scotland) Bill – Stage 1: The Minister for Finance and Public Services (Mr Andy Kerr) moved S2M-1079—That the Parliament agrees to the general principles of the Emergency Workers (Scotland) Bill.

After debate, the motion was agreed to ((DT) by division: For 105, Against 20, Abstentions 0).
The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S2M-1079, in the name of Andy Kerr, on the general principles of the Emergency Workers (Scotland) Bill.

The Minister for Finance and Public Services (Mr Andy Kerr): As members will be aware, in our partnership agreement, the Executive undertook to “protect emergency workers from assault and obstruction” as part of our broader strategy for tackling antisocial behaviour and, clearly, our commitment to delivering a safer Scotland.

Emergency workers provide an invaluable service to society. We depend on them to save and protect our health, well-being, possessions and environment and they do so in difficult and often dangerous circumstances.

It is absolutely unacceptable that such dedicated and courageous workers should face the threat of abuse, assault or obstruction when responding to emergency situations. Such assaults endanger the lives of not just emergency workers and those assisting such workers, but those they are trying to help. That cannot be tolerated, which is why the Executive is taking action to ensure that all emergency workers receive the statutory protection that they deserve.

At present only the police have specific statutory protection from assault and obstruction. Firefighters have statutory protection, but only when they are fighting fires. The Emergency Workers (Scotland) Bill will protect all emergency workers from assault, obstruction and hindrance whenever they are responding to an emergency. It will also protect those assisting emergency workers, whether as part of their job or simply as individuals. That means, for instance, that auxiliaries or porters who are helping doctors or nurses while responding to an emergency will also be protected by the bill’s provisions.

Tommy Sheridan (Glasgow) (SSP): Is the minister willing to consider whether the nature of the work rather than the incident should provide the statutory cover? If the porter or auxiliary is assaulted in a hospital ward in a non-emergency situation, they will not be covered by the bill. Is there any way that the bill could be more flexible?

Mr Kerr: I will cover that point in more detail later. Common law protects any individual from any assault and the measures that the Lord Advocate has put in place have ensured that those
who are handing down sentences and fines in our courts are doing so much more rigorously. The bill is about ensuring that that specialist set of workers who are responding to emergencies, protecting life and limb or the environment, are protected in a greater way. By providing protection for emergency workers and those assisting them, we are covering a wide range of workers.

Margaret Mitchell (Central Scotland) (Con): Is the main thrust of the bill about protecting emergency workers per se or is it about the consequences of attacks on emergency workers?

Mr Kerr: I am not sure that I follow that point. The intention of the bill is to ensure the protection of emergency workers and those assisting them, including the public—which could mean you or me if we were providing assistance. By increasing the penalties and fines relating to attacks on that specialist set of workers—who are doing something different from other workers in the public sector—we are ensuring that they are properly protected.

On the point that Tommy Sheridan made earlier, to go further would risk diluting the effect of the bill. In effect, we would risk simply replicating the current common law protection from assault, which applies to everyone in all circumstances. Our purpose is much more specific; it is to protect emergency workers in emergency circumstances.

Creating the specific offence of assaulting, obstructing or hindering an emergency worker who is responding to emergency circumstances says that such behaviour is not only antisocial but criminal and will be dealt with appropriately. The bill will enable us to categorise that misconduct more clearly than we can now. It will enable us to label that behaviour and stigmatise the perpetrators accordingly and it will add to the armoury of the police and the prosecution.

As both the Association of Chief Police Officers in Scotland and the Chief and Assistant Chief Fire Officers Association testified, the bill will give emergency workers greater confidence to report any incidents. It will also give emergency workers greater confidence that action will be taken against those whose offensive behaviour plagues their working lives. Surely our emergency workers deserve that confidence.

Of course, there is more to it than that. We believe that by sending out the message that abusive or obstructive behaviour is unacceptable, the bill will have a deterrent effect and will ultimately decrease the number of offences and prosecutions in this area.

The Justice 1 Committee has been scrutinising the bill and I welcome its support for the general principles. I note, however, that the committee has raised several concerns in its comprehensive report. I am grateful for the work that the committee has done and will give the issues that are raised in its report the full consideration that they deserve.

Although we will return to the detail at stage 2, there are a number of comments that I would like to make at this point. First, I note that the committee recommends changes to the list of workers who are identified in the bill.

Jackie Baillie (Dumbarton) (Lab): On that point, I welcome the inclusion of the Coast Guard and the Royal National Lifeboat Institution in the list of emergency workers. Does the minister agree with the committee that inland rescue boat services such as the Loch Lomond Rescue Boat are also of value?

Mr Kerr: I am well aware of the member’s interest and the work that she has been doing in regard to that point in the bill. The Executive is in touch with the Loch Lomond rescue team. The bill contains an order-making power that will enable us to add groups of workers who deal with emergencies to the list. From my examination of the evidence that has been given, and from the points that the member has raised with me, it appears that the Loch Lomond Rescue Boat would be covered by that power. We are, therefore, exploring whether it would be appropriate to include it in the bill. We will look to do that, and our discussions point in that direction.

I have paid close attention to the evidence that has been submitted by and on behalf of social workers—another category of workers that has been talked about during the work of the committee. I have a great deal of respect for the enormously valuable and challenging role that is performed by mental health officers and child protection workers, and I am sympathetic to their case for inclusion in the bill. I am, therefore, happy to accept the committee’s recommendation to reconsider the issue at stage 2.

I also note that the committee questions the need for prison officers to be protected by the bill. It is clear, however, that the prison officers’ representatives who gave evidence to the committee on the matter did not share that view. It is the Executive’s belief that prison officers are the emergency services in our prisons. I therefore remain convinced that prison officers are entitled to the bill’s protection.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): Will the minister give me an assurance that that includes prison officers who are working in the private sector, especially at HMP Kilmarnock?

Mr Kerr: Yes, indeed that is the case. Those workers will be similarly protected by the bill.
The committee’s report raises some issues about the definition of emergency circumstances that is used in the bill and notes that those will be considered further at stage 2, when I will be happy to discuss those points. It might be helpful, however, if I comment now on the suggestion that the bill should be revised to refer to “serious health risk.” Having looked at this, I am happy to confirm that “serious illness”, as currently mentioned in the bill, will encompass serious mental illness as well as serious health risks. We therefore believe that the definition of emergency circumstances as it stands already satisfies that point. Nevertheless, I am more than happy to listen to the committee’s views on the matter when we consider the bill at stage 2.

I sympathise with the concern that was raised with the committee that the bill should apply to all parts of hospitals where emergencies may occur, not just to accident and emergency departments. However, let me make it quite clear that any medical practitioners or nurses and any staff who are assisting them in responding to emergency circumstances anywhere in a hospital or elsewhere are already protected by the provisions of section 1. There was some suggestion in the evidence that was heard by the committee that amendments would need to be made to section 3 to achieve that aim, but that is not the case. Section 3 already applies to any part of a hospital that

“is used wholly or mainly for ... the reception and treatment of persons needing medical attention as a result of an accident or otherwise as a matter of emergency.”

That clearly applies more widely than just to accident and emergency departments, and I believe that it addresses the concerns of members and those who gave evidence to the committee.

Margaret Mitchell: Will the minister give way?

Mr Kerr: I will make some progress and try to come back to that point. I have a fair bit still to cover.

The committee has also identified a number of issues surrounding the evidential requirements of the bill. I share the committee’s desire for clarity in what is a complex area of law. The same issues were raised by the Law Society of Scotland in a letter that was sent yesterday to all MSPs. I accept that there might be ways in which the bill can be amended to clarify the evidential requirements that will need to be satisfied. Officials will meet the Law Society of Scotland to explore the points that it has raised, and I am confident that those discussions will help us to resolve the difficulties. I will ensure that the committee is kept fully informed of progress on the issue in advance of stage 2.

Finally, I note the committee’s recommendation that the order-making power to modify the categories of worker that are covered by the bill’s protection should be subject to affirmative resolution. I am happy to agree that point, and the Executive will lodge an amendment to that effect at stage 2.

Legislation alone will not solve the problem. That is why the bill is just one crucial part of a range of actions the Executive is taking. I therefore welcome the committee’s full support for our wider package of non-legislative measures to tackle the problem of verbal and physical abuse of any worker who serves the public. That programme of actions is set out in a document entitled “When the customer isn’t right”. That Executive-commissioned report was published earlier this month. It commits the Executive to developing a package of measures aimed at preventing work-related violence and protecting all public service workers. Measures will include training in the prevention and handling of aggression; a model system for recording incidents of violence and abuse; and means of helping employers to meet their legal responsibilities to minimise the risks of verbal or physical violence towards staff.

Partnership working is vital to the success of those measures. We are working closely with the Scottish Trades Union Congress, employers and professional bodies to implement them. I am delighted that the STUC has been so supportive of this work, because no one party can solve the problem of work-related violence. When the Executive, trade unions, employers and others come together, we can make real progress and deliver real differences to those on the front line.

Our recently launched media campaign “Abusing workers is bang out of order” is one such achievement. Developed in consultation with our partners, the campaign will raise awareness of this problem; show the personal impact of violent and non-violent situations; and hit home the message that verbal and physical abuse of public service workers should not and will not be tolerated.

Of course, the assault of any person is unacceptable and should be punished. However, assaulting or obstructing an emergency worker can have especially serious consequences for that worker and for those whom he or she is trying to help.

I am conscious that Margaret Mitchell had a point to raise and I am happy to take it now.

Margaret Mitchell: On the point about emergency circumstances, does the debate around whether accident and emergency extends to the rest of the hospital not show distinctly the confusion in second-guessing or boxing into legislation a specific set of circumstances as emergencies? Is that not why the flexibility of the common law should be used and would be more effective in those circumstances?
Mr Kerr: I clearly disagree with the member and we had some interesting exchanges about the subject in committee. I expect that that will continue with amendments that I am sure the member will lodge at stage 2. Section 1 of the bill will allow us to separate out those in our society who would seek to assault a firefighter, a member of the police force or someone who works in a hospital, such as a nurse, doctor or otherwise. The bill will impose heavy penalties on that individual and indicate that we are not prepared to accept such a heinous crime as the norm. We believe that specific legislation is the best way to tackle the particular problems faced by emergency workers responding to emergency circumstances.

The bill might be short, but let me make it clear that its policy objective is crucial. In supporting the bill, members will be showing that they believe emergency workers are entitled not only to our respect and appreciation, which they clearly have, but to statutory protection that will enable them to carry out their jobs free from additional and unnecessary risk.

Criminal sanctions alone will not deter people from offending behaviour. However, together with our other measures, I believe that the bill will make the difference for our emergency service workers. I commend the bill to Parliament.

I move,

That the Parliament agrees to the general principles of the Emergency Workers (Scotland) Bill.

15:14

Mr Kenny MacAskill (Lothians) (SNP): I welcome the minister's comments and the bill. I also pay tribute to his willingness to take on board the committee's comments. The committee is to be commended for its work and I am grateful that the minister has taken cognisance of many of its points.

It is clear that we face two problems in addressing the issue, one legal and the other social, as the minister said. The number of people involved is not necessarily huge, but the consequences of their actions are substantial. Anecdotal evidence appears to show that there is an increase in the problem. Such behaviour is a danger to those who are trying to do their job, it is a threat to those who are being attended to or assisted, and it is simply unacceptable.

The issue is not simply legislative, but cultural. The bill will not be a panacea, but it does two things. First, it gives additional protection to those who are entitled to it. It is fundamental that we give such people the fullest protection that we can so that they can do their jobs properly. Secondly, the bill gives a clear message that this legislature, on behalf of the society that it represents, views such antisocial behaviour as intolerable and unacceptable and affirms that those who carry it out will be dealt with severely.

Emergency workers have a difficult enough task without their work being interfered with by loutish behaviour. They do their jobs to assist members of the public or to follow the policy directions that we make. They are entitled to the full protection that we can give them.

The debate on whether the problem is a legislative or a social one was touched on in committee; it is clearly both. A variety of organisations, such as the Law Society of Scotland and the Faculty of Advocates, have commented that we already have sufficient powers. That is true. We have common law powers and can create aggravated offences that can be referred to in the libel. All that is clear and we sympathise with that position. We are creating more and more law, and the more complex it is, the greater the likelihood of calamity. We must be clear that the law requires to be understood by all and not simply by the few. If we continue producing legislation ad infinitum, codification is ultimately essential. However, I do not think that we have reached that stage yet.

We must make it clear that there are two main reasons for the bill. First, attacks on emergency workers are symptomatic of a social malaise. Secondly, in enacting the bill, we will make it clear from the top down that such behaviour is unacceptable and that change must come from the bottom up. We have seen that before, to some extent, in the Police (Scotland) Act 1967, which the bill is partly attempting to replicate. We made it clear when we brought in that act that it was unacceptable to assault or impede a police officer in the exercise of his duty. The offence was not regarded as an aggravation of an assault or a breach of the peace, but as a specific offence that society viewed as intolerable. That has resulted in plea bargaining in an attempt to avoid conviction, which is not necessarily to be denigrated. It is part of the system in which we operate. However, the 1967 act made it clear that impeding or assaulting an officer is unacceptable. To some extent, the comments made to the committee by the Prison Officers Association Scotland touched on that.

There is no easy way; no legislative silver bullet. The minister commented correctly on that. The bill is part a multifaceted attack that we must make on unacceptable behaviour, if we are to ensure that it does not continue to fester. Sadly, there are people in our society who view uniforms as an incitement, service vehicles as legitimate targets and badges as a provocation. They are simply anti-authority, or against those whom they perceive as representing authority. Such people are nihilistic and antisocial and it is our duty as a
legislature to send out the message that their behaviour is simply intolerable, that they must desist from it and that we are determined to act against it.

As I said earlier, I think that the committee has done a vital job. The bill is well intentioned, even if aspects of it are flawed and require to be addressed. Our bill process has three stages and we are only at stage 1. However, it is to be appreciated that the minister has accepted many of the points made in the report, because it is important in a unicameral parliament that we get matters right.

My colleagues will touch on some other matters, but there are specific issues that I wish to make clear. Paragraph 118 of the committee's report refers to mens rea and it is important that we clear that up and simplify it. It is absurd if we are required to have an element of corroboration that an officer or paramedic was assaulted in the course of their duty. We must create a circumstance in which it is sufficient that a letter or form of authority from a chief constable or the director or chief executive of a health board confirms that emergency workers are members of their staff and, therefore, were acting in the course of their duty. There is no requirement for two people to be cited to speak to that. A certificate must be available to avoid that circumstance and we must take that on board.

On the Prison Officers Association's position, we are open to persuasion. I can see an argument both ways, because a prison officer is simply doing his duty, but he is doing a duty with which we entrust him and he is entitled to be protected whether he is in the private sector or in the public sector. If need be, we must ensure that that protection is given.

I also welcome the minister's comments on social workers. I was contacted by the chief executive of the social work department in the City of Edinburgh Council, who informed me that, from January to September this year, 222 incidents of assault on social work staff have been recorded: 95 reports of injury, from minor bruising through to general pain and soreness; and 127 reports of no physical injury. A total of 53 incidents were reported to the police, which is unacceptable.

There are circumstances—such as dealing with mental health issues or enforcing place-of-safety orders—in which we put the social work staff in the line of fire, whether or not they are accompanied by police officers. If we entrust them with that responsibility, it is our duty to ensure that we give them the maximum protection, and that is why I welcome the minister's comments that he will take on board the points that the committee raised.

The SNP hopes that the minister will learn from, and reflect on, the points that my colleagues and the committee have made, but we welcome the bill as a step towards ending antisocial behaviour towards those who carry out difficult and dangerous jobs.

15:21

Margaret Mitchell (Central Scotland) (Con):

When we discussed the protection of emergency workers in January, I said—and I maintain today—that it is a core principle of any civilised society that emergency workers, to whom we all owe so much, should have the confidence and assurance that, in the course of carrying out their frequently dangerous duties, they will be protected by the full force of the law. The Executive then introduced a bill, the purpose of which was to address the problem of attacks on emergency workers and those assisting them in responding to emergencies. Like everyone else at the time, I signed up to that general principle in good faith—who would not? However, having looked closely at the detail of the bill and having examined and heard evidence from a variety of witnesses, I have been obliged to take a different view for the following reasons.

In the first place, the bill's policy intent, which at first glance appears simple, shows itself on closer examination to be confused in that it is not clear whether the main thrust is to prevent attacks on emergency workers or to prevent the consequences of such attacks, which could, at worst, mean a loss of life. It is little wonder that the committee criticised the policy memorandum to the bill for being "generally lacking in detail and seriously deficient with regard to clearly establishing the policy intentions behind the Bill."

As a result the committee has had to spend valuable legislative time working out the general principles of the bill.

The Executive claims that it wants to do more for emergency workers by extending to them the kind of protection that is currently afforded to the police, but it has failed to consider the differences between the police and other workers. The police are always clearly identifiable as upholders of the law and, therefore, questions of proof that an accused person knew that someone was a policeman or policewoman do not arise. That is not the case with, for example, doctors or nurses out in the community.

The Police (Scotland) Act 1967 applies to anything that the police do while they are on duty, without differentiating the circumstances. The bill, on the other hand, seeks to cover only emergency circumstances, and defining those has proved extremely difficult. The Law Society of Scotland, among others, has also rightly expressed
concerns at the possible effect on prosecutions of legislation that tries to limit the law to workers responding only to such circumstances. That is the crux of the matter.

The Scottish Executive has set itself and, by extension, the committee an impossible task in trying to second-guess every conceivable circumstance that the bill could cover. Common law has the flexibility to ensure that assaults on emergency workers and the consequences of such assaults are treated with the appropriate gravity according to the individual circumstances of each case. The Executive itself has stated in its policy memorandum that that flexibility provides "the best protection for public service workers as a whole, as it is reinforced by the Lord Advocate’s guidelines to procurators fiscal emphasising that an attack on any worker delivering a public service is an aggravated offence."

There is more confused thinking from the Scottish Executive. Despite stating that the bill would raise awareness of the problem and act as a deterrent, the Executive says in its policy memorandum:

"It is unlikely that the Bill will lead to a significant increase in the number of prosecutions for attacks on emergency workers."

The deterrence and raising of awareness that the Executive seeks to achieve by introducing the bill can be attained through better application of existing law and higher penalties, together with a range of supporting measures, including a carefully targeted campaign to raise awareness of emergency workers’ work and of the consequences of preventing them from doing it.

Furthermore, having conducted a consultation, the Executive failed to publish a detailed analysis of the responses. Had it done so, it might have realised that respondents to the consultation also raised important issues, including the Royal College of Nursing’s concern, which others share, that the bill will create a two-tier system.

No reasonable person would sign up to the deeply flawed and confused principles in the bill. I therefore believe that this fledgling Parliament has reached a defining moment at which it can show that it has the maturity to reject a bill that I concede is well intentioned, but is also seriously deficient and unnecessary. In so doing, the Parliament would take the first steps to becoming the responsible institution that Scotland craves.

The Justice 1 Committee has made a valiant attempt to carry out the Executive’s will. The committee has been critical, but I urge members of that committee and other MSPs to go further in the pursuit of good government and to take no part in conducting what is clearly a face-saving exercise for the Executive. To do otherwise would be to abuse how the committee system was intended to operate.

15:27

Margaret Smith (Edinburgh West) (LD): When we debated protecting emergency workers some months ago, I enthusiastically supported the need for legislation to deal with what I believed was the growing incidence of attacks on emergency workers. I was not alone. Most of the members who have spoken today spoke then and we were united in our support for the tremendous work of our emergency workers and for the need to protect them not only for their own sake, but for the sake of those whom they assist. We must send a clear message from the Parliament that assaults on emergency workers are utterly unacceptable to us all.

Unfortunately, the Executive’s proposals to turn that support and concern into legislation are proving difficult and complex. The Justice 1 Committee has received a considerable quantity of evidence in support of the bill’s general principles, but much of that evidence has been conflicting and confusing. As our report says, as a result, it has been difficult to reach a conclusion on the bill’s general principles.

We have a very small bill—it is only a few pages long—yet the Justice 1 Committee had to ask for extra time to investigate it and has produced a stage 1 report that runs to more than 240 paragraphs. One reason for that is that in producing a bill that picks out workers for extra legal protection, the Executive has in effect opened a can of worms. The bill defines emergency workers as police constables, members of fire brigades, ambulance workers, coastguards, general practitioners, nurses, Royal National Lifeboat Institution crews and prison officers, and covers them only in emergencies. It is interesting that that list is different from the list of public sector workers to whom the Lord Advocate gave extra protection in his guidance to fiscals last year about aggravation of assault. Therefore, the list that the Executive has prepared lacks logic and consistency.

The committee expressed concerns about inclusions on and exclusions from the list. I would welcome its extension to include inland lifeboat crews, which Jackie Baillie mentioned. I highlight the case of social workers, as I have done ad infinitum at committee meetings. I welcome Andy Kerr’s comments on such workers, whose position was raised in committee by social work organisations. As the minister said, he has agreed to consider the case for including mental health officers and child protection social workers, both of whom find themselves regularly in emergencies, certainly as defined in the bill.

Margaret Mitchell: Does the member agree that it would be worth while to consider the possibility of equipping social workers with alarms, which
could help them if they were to find themselves in such circumstances?

**Margaret Smith:** I do not disagree. I echo the point that Margaret Mitchell has made on many occasions, which is that anything that goes into the legislation should be only part of a wider package of protection for emergency workers, or, indeed, workers more generally. In particular, I would include national health service workers and care workers who go into people’s homes on their own, who are distinctly vulnerable. We heard compelling evidence on that, particularly when we were told that such workers often undertake such duties without police cover.

The committee thought that the case had not been made for the inclusion of prison officers, partly because there was no evidence of need. One of the general problems that the committee had in scrutinising the legislation was that, although there was a certain amount of anecdotal evidence of an increasing incidence of assaults on workers, it was impossible, despite fervent attempts by the committee, to get much evidence of assaults against emergency workers in emergency situations. For that reason, we have noted that we have concerns about the reliability of some of the evidence that we have been given. There are certainly no sound statistical data on which to base the legislation.

Unison, the Scottish Trades Union Congress and others have lobbied hard on who should be included in the legislation. It is understandable that they think that either public sector workers or all workers should be included, which is a seductive argument, but we must consider what the legislation is trying to achieve. It tries to protect people whose job is to protect the rest of society from injury, and the impact of the legislation would be lost if it was significantly widened.

Rather unusually, the Justice 1 Committee has said that it wants to take further evidence at stage 2. We want to consider who is covered and whether it is right to go down the route of protecting only emergency workers in emergency situations. We share the concerns of many people, including people in the Law Society of Scotland and Unison, that that approach is too restrictive. In fact, Unison has gone as far as to say that it is concerned that the restriction could make a successful prosecution virtually impossible.

Crucially, a successful prosecution would rest on the prosecution being able to prove that the accused knew that the person whom he was assaulting or obstructing was an emergency worker, or someone assisting an emergency worker, in an emergency situation, which is even more difficult. At the committee, I used the example of a chain of support in a hospital for an emergency that involved not only front-line clinical or medical staff, but pharmacists, people working in labs, blood technicians and so on. How would we prove that someone who was taking an organ to the scene of an emergency could be identified as an emergency worker in an emergency situation, or somebody assisting such a person?

The Executive thinks that it has covered some of those issues in section 3 by specifically mentioning hospital accident and emergency departments. However, evidence from the British Medical Association, the Royal College of Nursing and others shows that assaults on NHS staff happen beyond the confines of accident and emergency departments—they happen in psychiatric wards, general practitioners’ consulting rooms and hospital waiting areas, for example. It is possible that we need greater clarity than is given in section 3. We ask the minister to reconsider whether including not only accident and emergency departments, but wider NHS premises would be clearer. We must ensure that no loopholes are left for people who wish to assault our NHS workers. We should protect those workers and accordingly we should consider whether we must extend the premises that are covered.

What difference would the bill make? I cannot cover all the issues that are raised in the committee’s report, but I draw the attention of colleagues to pages 17 to 21 of it, which highlight the fact that the bill would deliver some differences at the margins. The majority of committee members thought that the bill had the potential to add value at the margins for certain groups of workers—particularly for those other than the police—and should be generally supported, with the caveat that all of us need to do further work at stage 2 to make it effective. That will include work on the definition of “emergency circumstances” and of those who are covered by the bill, as well as reconsideration of section 3.

As I said, it is crucial that the legislation should be seen as part of a wider package of measures that highlight the issue. I welcome the recent media and information campaigns to which the minister referred. If we pass tokenistic legislation, we will not support such things or put out the clear message that such behaviour is abhorrent to us all and we will do all that we can to prevent or punish it. We should pass legislation that is effective in delivering greater punishment for such acts, greater protection for emergency workers and greater deterrence. We have some way to go before the bill matches those requirements, but the seriousness of the matter warrants our continued attention.

With those caveats, I say on behalf of the Liberal Democrats that we support the bill.
Tommy Sheridan (Glasgow) (SSP): This is one of those occasions when there is a general consensus in the Parliament that something must be done, but we need to work out whether we are doing the right thing. Unlike Margaret Mitchell, I think that we need to ensure that, as the old saying goes, we do not throw out the baby with the bath water. The bill needs some serious changes at stage 2, but the idea that the entire bill should be opposed is unacceptable.

As members will recall, we began this attempt in the first parliamentary session, when we set out to secure a high-profile public statement from the Scottish Parliament that it would no longer be acceptable for workers who are employed to try to save the lives of others to find themselves under attack in any way, shape or form. At the time, firefighters in particular were on the front line, because a new, unfortunate and unacceptable sport had developed whereby fire service workers in various parts of Scotland were called out on false alarms only to be attacked by youngsters. That was utterly unacceptable, but it became a spur for this type of legislation.

Margaret Mitchell: Is the member familiar with the Law Society of Scotland’s view that, in some circumstances, it might be more difficult to secure a conviction under the bill than it would be under common law? In other words, the bill could be counterproductive. Will the member reflect on that in his comments?

Tommy Sheridan: I am aware of the views of the Law Society and of other organisations, but I think that the thrust behind the bill is an attempt to achieve fewer convictions overall by influencing behaviour. We want to send out the message that anyone who, in any way, shape or form assaults an emergency worker will receive much harsher treatment.

I appeal for more listening at stage 2 to the arguments for extending the definition of an emergency worker to include all public service workers. Like many members, I served as a local authority councillor for a number of years. During my 11 years as a councillor, the workers who were most commonly assaulted were housing officers who had bad news for tenants. When housing officers visited a tenant to deal with a garden that had not been tidied or repairs that had not been done or to say that action would be taken on arrears, they were often verbally or physically assaulted. Citizens in this country need to know that a public service worker who visits their home has extra protection. That should make people think twice before assaulting them verbally or physically.

A similar requirement exists for health visitors. The Royal College of Nursing and others have given evidence at seminars about the situation that health visitors face when they visit people in their homes, especially when they have to deal with people with mental health difficulties. As the minister is aware, health visitors are also vulnerable when they are not in an emergency situation.

What constitutes an emergency situation? Bus drivers, who unfortunately face an increasing occurrence of assault, are not in an emergency situation. They are public service workers, but they will not be covered under the bill. Yes, we know that such assaults are covered by common law, but if we want to effect a change in behaviour patterns across Scotland, our whole thrust should be to send out a stronger message. The bill is almost a symbolic piece of legislation. It should say that public service workers across Scotland have not just normal protection but extra protection.

The bill’s general principles deserve support at stage 1, but I hope that, at stage 2, the minister and the Executive will be willing to accept that the definition of workers who require extra protection should be widened to include public service workers and that the legislation should not be restricted simply to emergency situations. The bill should be much more relevant to an individual worker’s role in society and the assailant’s behaviour.

I appeal to the minister for fewer restrictions in the legislation. Its thrust is right and should be welcomed; it is about the Parliament sending out a message about emergency workers. However, as I have said, the definition should be widened to include public service workers, who also require extra protection.

Pauline McNeill (Glasgow Kelvin) (Lab): I begin by paying tribute to my committee members for their hard work in scrutinising the bill. I should also acknowledge the work of Stewart Maxwell and Michael Matheson, who are, sadly, moving on. Perhaps they do not find the prospect so sad, because now they do not have to deal with stage 2. Lucky them.

As Margaret Smith pointed out, although this is a short piece of legislation, it is not so simple. If we had known that the matter would be so complex, we might have considered not so much running away as appointing an adviser. Our stage 1 report is a careful critique of the policy and the bill’s construction. We have examined in detail the evidential tests; the bill’s scope and effectiveness; and its ability to secure convictions, which after all is what it is intended to do.

I acknowledge the commitment of the Executive and, in particular, the minister Andy Kerr to protect...
public sector workers from general violence, as well as the minister’s work with the trade unions on this matter. It is important to understand that although the bill’s scope is currently very narrow, it can only work—however it is amended—as part of a wider campaign. In response to Tommy Sheridan, who gave a good speech, I should say that, as far as the committee can see, the Lord Advocate’s guidelines on public sector workers are now operating effectively. If any public service worker—and I emphasise the word “service”—is attacked or assaulted in the line of duty, the courts will take the matter very seriously.

The committee supports the bill’s principles because it believes that, at the margins, the legislation could add something to our criminal law. As far as the policy intention is concerned, those who have read the report will not have missed our remark that we felt that we lacked information about why the Executive supported the bill in this particular form. It would have been useful to understand why it proceeded with this particular bill instead of considering alternative approaches, such as the creation of an aggravated offence.

I seriously object to Margaret Mitchell’s suggestion that the bill is a face-saving exercise and that the committee has been somewhat complicit in the process. However, I agree that the explanatory notes were not very helpful. For example, they say that the bill is modelled on the Police (Scotland) Act 1967, whose provisions are completely opposite to the approach that the bill takes.

It is important to understand that the bill proposes a summary offence that comes with a maximum sentence of nine months and a £5,000 fine. After all, we have to distinguish these offences from other cases that involve more serious violence and which should still be dealt with under solemn procedure and before a jury. There has been some confusion on that point. The committee is clear that the offence should be used only where appropriate and that we do not want other offences to be downgraded as a result of the legislation. We find it difficult to understand the Executive’s view that the number of prosecutions would not increase if the new offence were introduced. We accept that the legislation could potentially have a deterrent effect; however, that has not yet been proven.

I must say that we found it difficult to take evidence because very few witnesses spoke to the bill itself. As Michael Matheson pointed out at the time, they were speaking to a virtual bill instead of the bill we had to scrutinise. The witnesses were all talking about different aspects of the issue, which made it difficult for the committee. The trade union groups wanted to lengthen the list of workers and to widen the circumstances covered by the bill.

We are grateful to Anne Keenan and Gerry Brown of the Law Society of Scotland for their work, and to Morag Jack of the Faculty of Advocates. It is worth mentioning that Anne Keenan did a lot of work in presenting to the committee the case for looking further at evidential tests.

Who should be covered by the bill? The committee agrees that the key test should be whether groups of workers are routinely responding to emergency circumstances, because the consequences of their failure to act would be serious. We suggest that the Executive has to reconsider a few areas and I welcome what the minister said in his speech.

The committee whole-heartedly accepts that prison officers play a vital role in our prisons. In their work, they are exposed to violence and difficult situations. However, we are not convinced that, in legal terms, they will be covered by the bill’s definition of emergency circumstances. If there were a prison riot or something more serious, we would use solemn procedure anyway and not the procedure in this bill. It is not that we do not think that prison officers should be covered, but we do not think that they are really responding to emergencies. At stage 2, we will have to explore that point further with the Executive. We are concerned about under-reporting and have heard that management discourages prison officers from reporting incidents of violence. We take that issue very seriously.

The evidential tests are complex and I do not intend to go through them all. However, work is clearly required. As I have said, the bill proposes an extremely narrow offence. It should be absolutely clear what the Crown is expected to prove in court in order to obtain a conviction. The Law Society of Scotland has suggested that that should be in the bill.

The committee asked this question: will the bill actually make any difference, or is the common law sufficient to protect our public sector and emergency workers? If members have read the committee’s report, they will know that we believe that the bill can make a difference at the margins, because greater sentences and penalties will apply.

The committee has said that, unusually at stage 2, it wishes to take further evidence on who and what circumstances should be covered. We want the Executive to consider widening the definition of emergency circumstances, because we are concerned that the present definition is so narrow that it will exclude a lot of cases. I am also concerned that, if the bill does not make it clear,
an expert witness might be required in court to define an emergency circumstance.

We want to ensure that this is workable law. It is only a small piece of legislation but it could be crucial. It could add benefit as part of a wider package of measures. We need to look more closely at who should be covered and at what parts of a hospital should come under the bill’s definitions. If the Executive gives us a bit of time to enter into dialogue, I am sure that we can come up with a piece of legislation that is worth while, useful and important in a package of wider measures to protect our public sector workers.

Michael Matheson (Central Scotland) (SNP): I have been on justice committees for five years and, of all the legislation that has come through, this bill is probably the smallest that I have had to deal with. That said, the drafting of the stage 1 report for this bill has probably been the most difficult. That was not because of the complexity of the bill, because the bill is relatively straightforward and simple. However, the consequences of the bill made it difficult to deal with, as did the failure of the Executive to prepare the arguments explaining why the legislation is necessary. Some members have already mentioned that issue, and I will return to it.

Although we are talking about the Emergency Workers (Scotland) Bill, it is important that the message that the Parliament sends out is that, regardless of whether someone is an emergency worker or a worker who is responding to emergency circumstances, they have a right to go about their daily work without hindrance or abuse—physical or verbal—and such hindrance or abuse will not be tolerated. It is important that we do not focus simply on emergency workers.

When I first considered the bill, my view was that we should think about a bill that was about the protection of all workers rather than just emergency workers. I have a lot of sympathy with some of the issues that Tommy Sheridan raised, but it is important that we do not start to distinguish between someone who is employed by the public sector and someone who is providing a public service. Although someone who works for FirstBus is working for a private company, they are providing a public service. We must not go down the route of making such a distinction.

Tommy Sheridan: I have a small point of clarification. When I spoke about people who provide a public service, I meant people who provide a public service rather than public workers. As we know, most bus drivers are not public workers even though they perform a public service.

Michael Matheson: I take on board what Tommy Sheridan says, but I reiterate that it is important that we do not send out the message that we are talking only about workers who are employed by the public sector.

When I considered the evidence that had been submitted to the committee, I began to support the need to address the situation of emergency workers in particular because, if they are hindered or obstructed in carrying out their work, that could have an impact on other individuals. Although most of the written evidence that the committee received was generally supportive of the bill, as Pauline McNeill mentioned, most of the oral evidence that we took was about a virtual bill—witnesses spoke about the bill that they would like to be drafted instead of focusing their comments on what was in the bill under consideration. We had to go over many matters repeatedly to tease out the issues that some of the witnesses had not been able to address in their evidence to the committee.

As members have already highlighted, the bill contains a number of limitations which, as paragraphs 21 to 25 of the committee’s report show, the unions have serious concerns about. The STUC would like the bill to go as far as to widen its definition to cover workers in general. There might be a need to provide greater protection to all workers at a future date and, if necessary, that should be given serious consideration.

Some members have picked up on the lack of detail that the Executive and the minister have provided. I have serious concerns about the quality of the bill’s policy memorandum. For example, paragraph 5 states:

“This Bill provides specific protection for emergency workers similar to that provided for police officers in the Police (Scotland) Act 1967.”

That is factually incorrect—the bill does not do that. It provides protection only to emergency workers who are responding to emergency circumstances. The Police (Scotland) Act 1967 provides protection to police officers when they are on duty, regardless of whether they are responding to emergency circumstances. It is important that such issues are highlighted and addressed, because people set their expectations on the basis of the arguments that the Executive puts forward.

The Executive suggests that one of the key reasons for introducing the bill is so that it will act as a deterrent. I think that it will act as a deterrent to some degree, but the Executive presents no evidence to support the claim that that is what will happen. We have a huge amount of legislation on a range of issues relating to criminal behaviour. One could say that if we were to keep legislating,
we would do away with criminality, but the reality is that legislation by itself will not do that. That is why it is important that the Executive regards the bill as only one element of a programme that will be rolled out to deal with violence against workers and sends out a much wider message.

Paragraph 7 of the policy memorandum says:

"Over the summer of 2003 the Minister for Finance and Public Services held an extensive series of consultations with trade unions and professional bodies" and so on. We then get only two paragraphs detailing exactly what came from that consultation exercise. In the policy memorandum for the Gaelic Language (Scotland) Bill, which was published this week, more than three pages are devoted to what came out in the consultation exercise.

It is important for the Minister for Finance and Public Services to take on board the deficiencies that the committee’s report highlights in how the Executive has handled the bill. I would go so far as to say that the way in which the Executive has presented the bill is disrespectful not only to members of the Justice 1 Committee but to the parliamentary process. If he is serious about legislation, the minister should at the very least marshal the proper arguments to justify the policy objectives in the bill. I hope that the minister will take those points on board and will deal with the civil servants who might be responsible for issues relating to the policy memorandum, because it is simply unacceptable to receive information in that fashion. It is precisely because of that lack of information that the legislation has been delayed so long in the committee.

I hope that the minister will go further and will rectify a number of the areas that the committee has highlighted as needing to be addressed at stage 2. The Justice 1 Committee’s stage 1 report is far from a ringing endorsement of the legislation. A lot of work needs to be done, which the minister should have done at an earlier stage, but I hope that members will give the bill a fair wind at this point and support its general principles.

I still believe—I am sure that all members of the committee concur—that the bill’s objective of creating a specific offence of attacking an emergency worker who is responding to an emergency, as part of a wider drive against antisocial behaviour and as part of a wider package to protect public service workers, is laudable and praiseworthy; it is a good thing. I suspect that everyone in the chamber would agree with the minister, who said in his foreword to a recent document that was published in conjunction with the Scottish Trades Union Congress, employers and professional bodies:

“No one should ever have to face violence and abuse as part of their job.”

The bill is clearly intended as part of the Executive’s and Parliament’s drive to create a society in which workers can go about their business without fear of assault, obstruction or hindrance. However, as the committee’s lengthy report suggests, there is still much work to be done to turn those worthy aspirations into good and effective legislation.

I will concentrate on a number of aspects of the bill that have given the Justice 1 Committee great difficulty and which have resulted in many hours of rather tortured, and certainly torturous, discussion before it was able to reach a majority conclusion. One area where the committee faced difficulty was the nature of the information that was made available to it—other members have referred to that. The information was of an especially limited and inconsistent nature with regard to whether the nine groups of emergency workers that are mentioned in the bill have suffered a significant increase in attacks when dealing with emergency circumstances in recent years.

I stress that the committee, on the initiative of its convener, Pauline McNeill, made a real effort to find reliable and consistent evidence of trends in respect of such violence against emergency workers. However, because of significant inconsistencies in the evidence that was supplied by the Executive and by other organisations, members were left, as the report states,

“seriously concerned about its reliability.”

The inconclusive nature of the information that was provided did not assist—to say the least—the policy intentions behind the bill. I hope that the Executive will in the future acknowledge the need to provide scientifically significant and reliable data in support of its policy intentions. To allow a committee to search around for such evidence to supplement the admittedly considerable amount of anecdotal evidence that was presented to it is, I respectfully suggest, not the most efficient way to proceed.

Another example of when the committee had to make considerable efforts to elicit information was
on the vexed question whether existing provisions were sufficient to protect emergency workers from attack and obstruction, as some witnesses argued, or whether the bill had the potential to provide emergency workers with additional protection from assault and obstruction and to make a genuine difference to the level of attacks on such workers.

On pages 19 to 23 of the committee’s report, a helpful assessment is provided in tabular form of the added value that the bill would provide for most, if not all, the nine groups of emergency workers. I think, as did the majority of committee members, that the bill will provide additional protection for such workers, especially in relation to increased summary sentencing powers of up to nine months’ imprisonment or, alternatively, a £5,000 fine.

Enough evidence was heard by the committee to suggest that such legislation has the potential, if enacted properly as part of a wider package of measures, to have a deterrent effect. We received evidence in support of that view from Unison, the Fire Brigades Union and CACFOA, as is evinced in paragraphs 89 to 91 of the report.

Above all, the elements of added legal protection and the potential to deter were enough to sway the majority of committee members to support the general principles of the Emergency Workers (Scotland) Bill. I hope that the minister, who has promised to give full consideration to the many points that were raised by the committee, takes seriously the many extant weaknesses in the bill and does all that is in his and the Executive’s power to work with the committee to rectify those deficiencies at stage 2. The committee is at one when it states in its report’s conclusion that it expects “significant changes to be made at Stage 2”, especially in relation to specifying groups of emergency workers on the face of the bill and with regard to the section that defines emergency circumstances.

If we can work in such a co-operative manner, effective and strong legislation can be fashioned. As it stands, I will vote at decision time for the bill to proceed because its general principles are worthy of support. I regret the fact that the Conservatives will not vote for the bill this evening; I believe that that is a mistake.

Workers in Scotland require strong legislation to support them. By working together, let us ensure that the next two stages of the bill deliver a resilient act that is fit for purpose.

16:03

Miss Annabel Goldie (West of Scotland) (Con): I am absolutely certain that everyone in the chamber is united in condemning the quite unacceptable behaviour of people who attack our public sector workers when they are doing the jobs that we entrust to them. That behaviour is unacceptable and must be the subject of criminal proceedings if the culprits are to be identified, detected, charged and then—it is to be hoped—convicted.

The dilemma for us is to take that worthy aspiration, which is shared by numerous contributors to the debate this afternoon, and to be absolutely objective and honest about whether we are turning that into the criminal legal framework that the bill aspires to. As has been suggested by my colleague Margaret Mitchell, it is the Conservatives’ opinion that that objective is not being achieved. That is not to impugn what I know is the united endeavour and will of members to create an acceptable environment for workers in our public services.

I come at the matter from two angles. I read with interest the Justice 1 Committee’s report, because there is an issue about the integrity of our committee system. Many of the committee’s members have been frank in their comments about the task that confronted them; clearly, it was challenging. The conclusion at paragraph 28 of the report refers to the committee trying to come to a view on the general principles of the bill. It states: “Much of this evidence has been conflicting, firstly with regard to the need for the legislation and secondly with respect to proposed amendments to it. It has, therefore, been exceptionally difficult for the Committee to reach a conclusion on the general principles of the Bill.”

The question that I must pose is this: how can there be unqualified support for the general principles if the committee has clearly been lukewarm during its consideration of those principles?

Tommy Sheridan: Will the member accept that what she has heard so far in the chamber is not unqualified support for the general principles, but qualified support? We are looking for amendments at stage 2.

Miss Goldie: Yes, and I say to Mr Sheridan that that goes to the nub of the issue. I started my remarks by saying that there has to be an honest appraisal of any legislative proposal. I submit that my colleague Margaret Mitchell, who is on the Justice 1 Committee, discharged that objectivity and honesty by stating candidly in the report that there are concerns that preclude the Conservatives from supporting the bill as it is drafted.

Paragraph 54 of the committee’s report, for example, refers to what is supposed to be the raison d’être of the bill:

“Given the limited and inconsistent information made available to the Committee it has been unable to reach any
firm conclusion on whether the nine groups of emergency workers on the face of the Bill have suffered a significant increase in attacks on them when dealing with emergency circumstances in recent years.”

The committee is candid, because it “considers that the absence of such information seriously undermines the policy intentions behind the Emergency Workers (Scotland) Bill.”

In fairness, Bill Butler alluded to that deficiency, but it begs the following question. If those are the genuine concerns of the committee, what are we legislating for? What is the underlying purpose of the bill that will be achieved by the way in which it is drafted?

**Bill Butler:** Will the member give way?

**Miss Goldie:** I would like to make progress with my line of argument.

Pauline McNeill, the convener of the Justice 1 Committee, repeated one of the most telling phrases in the committee report, which comes in paragraph 110. Members should remember that this is a committee stage 1 report on legislation to be enacted by this Parliament. The committee concluded “that the Bill will add, at the margins”. The question that must then be asked is this: are we as a Parliament doing our best by the very workers whom we all aspire to protect? Are we creating an environment that is safer and, in terms of criminal law, better regulated to deal with the offenders who offend against them? As an onlooker—I am not a member of the Justice 1 Committee—I have profound questions about the workability of the bill.

If I may, I will address the more technical aspect, to which my colleague Margaret Mitchell referred, which is the concept of common criminal law and statutory criminal law. My greatest fear is that there is a genuine misconception on the part of the Executive as to the value of Scottish common law. That law is flexible and we have the capacity to introduce aggravated offences—we can do that now. The Lord Advocate has issued guidelines. We can increase the penalties that are available to our courts that find offenders before them and which have, on conviction, to determine appropriate sentences.

Looking at the bill as it is currently structured, and having regard to the Justice 1 Committee report—which, in my judgment, my colleague Margaret Mitchell was absolutely right to dissent from—I believe that a paradise will be created by the bill. The perversity is that it will not be a paradise for emergency workers, but a paradise for criminal defence solicitors, who will have a field day when the legislation reaches the statute book. That is a cruel disservice to bring upon emergency workers, whom all members value and seek to serve responsibly. That is why the Conservatives have grave reservations about the bill.

The bill will not do what we need to do. The minister said that by supporting the bill we will be showing our wish to protect emergency workers—I apologise if I have paraphrased his words incorrectly. In fact, by supporting the bill we might show our wish to augment the earnings of criminal defence solicitors and lawyers and we might do very little for emergency workers. That concern must be articulated, which is why my party is unable to agree to the general principles of the bill at stage 1.

**16:10**

**Paul Martin (Glasgow Springburn) (Lab):** In recent weeks, members have been accused of a tendency to say, “It wisnae me.” However, I confirm that it was me—I raised the issue of protection for emergency workers in the previous session of Parliament, during the passage of the Criminal Justice (Scotland) Bill, when I lodged amendment 75 at stage 3 in response to concerns about attacks on firefighters in my constituency. I remember receiving widespread support from members and I am delighted that the Lord Advocate’s guidance on the matter has been well received in courts throughout Scotland.

Experience has taught many of us that if we become complacent about how we implement guidelines, things fall by the wayside. The Executive should be commended for not being complacent on the issue. I appreciate a number of the points that Margaret Mitchell, Pauline McNeill and others raised about the complexity of the issue, but the fact that complex issues present us with serious challenges should not prevent Parliament from raising its game and ensuring that it takes on the serious issue of public sector and emergency workers being attacked in their communities. It is unacceptable and repugnant that people who work in emergency services, particularly firefighters and paramedics, should be attacked. I welcome the Executive’s approach.

The detail of stage 2 should be left to the Justice 1 Committee. I will raise a number of important issues that should complement the bill. First, we must consider how we educate young people about the importance of public services that are delivered in communities. All too often, the curriculum in educational establishments does not cover the importance of public sector workers, but the bill presents an opportunity to inform young people about the important role that firefighters, police officers, paramedics and other emergency workers play. The Minister for Education and Young People and the Minister for Finance and Public Services could work in partnership to
consider complementing the legislation with measures to tackle unacceptable behaviour in communities. It is not just young people who become involved in attacks on firefighters and paramedics; people who belong to various age profiles give our public sector workers a hard time.

I agree with Tommy Sheridan that housing officers have a difficult time of it out there and I would not oppose attempts to explore the possibility of extending the bill to cover such workers and others who are affected in their daily lives. Traffic wardens were mentioned. They are perhaps not the most popular individuals but they, too, serve communities in one way or another.

Tommy Sheridan: The member is taking things too far.

Paul Martin: Tommy Sheridan has a sense of humour—that is welcome news.

There is a serious issue about how we ensure that organisations put in place procedures for staff to report attacks. I have met staff from a number of organisations—particularly health organisations—and it is evident that staff are not confident that their reporting of attacks will be taken seriously.

I welcome the Executive’s proposed requirement—as stated in the explanatory notes to the bill—that organisations set in place a method to ensure that members of staff are taken seriously when they report concerns or attacks at their places of work and that such incidents are recorded properly. That deals with some of the issues that were raised by the Justice 1 Committee at stage 1.

In debates on this subject, we often miss out consideration of how we can prevent the attacks from happening in the first place, and of the design of the areas or environments where they occur. I have seen examples of health boards examining the design of accident and emergency departments to ensure that attacks become much more difficult. Let us consider how we can prevent attacks from happening in the first place. Let us ensure that the public are informed of the importance of public services. I want the Executive to add to the existing legislation, which will send a clear message that attacks on our public sector workers are absolutely unacceptable and will not be tolerated in a modern democracy.

From my reading of the bill—I have, of course, not had the opportunity of studying it to the same depth as other Justice 1 Committee members—the question that goes to the heart of the matter is this: why do we wish to protect emergency workers? The question why is key to understanding whether we should do something, and what it is that we should do. The answer in this case is straightforward: it is because emergency workers protect those whom they assist. The existence of emergency workers, and the work that they do, serves a broader public purpose, which is of broader benefit.

The bill seeks to protect a relatively small number of people for the benefit of a very large number of people—the public as a whole. That goes to the nub of the matter, in that we are seeking to deliver a benefit to a large number of people. We are seeking to help the general population—all of us—when we are in extremis. The aim is to save life and to mitigate the effects of emergencies.

The partnership agreement says:

“We will protect emergency workers from assault and obstruction.”

I contend that achieving that, and serving the purpose that we all share in this respect, does not require us to define who emergency workers are, but rather to define what an emergency situation is and what an individual, whatever their qualification, rank or employment—indeed, it could be a volunteer—is doing. If the bill were to be amended at stage 2 so as to delete subsections (1), (2) and (3) of section 1, which deal with the definition of “emergency worker” and so as to open with what is currently subsection (5), which defines emergency circumstances—that is the nub of the bill, as nothing matters unless emergency circumstances exist—we could move on to identifying whether a person is responding to an emergency, but without having to specify that person.

Margaret Mitchell: Does the member appreciate that that is the nub of the problem? Just as it is difficult to define, by second-guessing any situation, who could potentially be an emergency worker, it is even more difficult to define and second-guess what circumstances could arise to constitute an emergency. That is why we must consider the individual circumstances of each case and use the common law, with all the increased powers of the Lord Advocate under the aggravated—

Stewart Stevenson: I think that we have got it. Curiously enough, I do not necessarily disagree with Margaret Mitchell’s analysis, but I disagree with her conclusion.

There is scope for improving the law in this regard. After all, we are talking about relatively
low-end offences. However, before talking about the law—I do not have much time—there are practical things that we should consider doing. For example, how much would it contribute to the safe operation of accident and emergency departments if we excluded non-patients where drink had been taken? Should we breathalyse people as they come into the department on a Friday or Saturday night? Funnily enough, that might deliver a huge benefit.

The minister responded to a question about the Loch Lomond Rescue Boat—a voluntary organisation, of which there are many. I am concerned that if we keep focusing on defining the people, we will exclude many of those whom we would wish to include.

Tommy Sheridan led us into slightly murky waters by talking about public service workers. I argue that that would include us—at least that is the way in which I seek to discharge my duties—so there would be difficulties with that.

The present definitions create problems. Let us envisage a situation in which somebody comes into an accident and emergency department with a double-barrelled shotgun and a doctor and his secretary are at reception, standing back to back. The secretary is there from another department to talk about the Christmas party with some of the people in the department. The double-barrelled shotgun injures both the doctor and the secretary, but one of them comes under the bill’s remit and the other does not. If, on the other hand, they were standing face to face discussing an issue relating to the work of the department, the bill would apply to both. That is because at present the bill defines the people rather than the actions to which it applies.

There has been discussion about solemn procedure versus summary procedure.

**Tommy Sheridan:** Will the member take an intervention?

**Stewart Stevenson:** I am in my last minute. I am summing up.

**The Deputy Presiding Officer:** You can take an intervention if you wish.

**Stewart Stevenson:** In that case, I will.

**Tommy Sheridan:** It will be short. Surely the example that Stewart Stevenson gave is not that helpful, because in the circumstances that he described, the person would be charged with attempted murder. We are talking about extra protection, so I am not sure that the example was illuminating.

**Stewart Stevenson:** Let us suppose, instead, that the person in the example throws paint over the doctor and secretary. The general point is illustrated in broad terms—the bill makes distinctions between people that are not related to their actions in emergency situations, which I think is unhelpful.

I say to Annabel Goldie that in considering the bill we are not, as she appeared to suggest, required to agree with it as it is presently framed.

**Miss Goldie:** That is the difficulty. The question is whether the bill is in a form in which it can be made good. Our submission is that it cannot be made good; it is fundamentally flawed.

**Stewart Stevenson:** It will be for the convener of the Justice 1 Committee at stage 2 and the Presiding Officer at stage 3 to determine whether amendments will enable us to maintain and sustain the general principles of the bill. The long title of the bill allows us to see what they are likely to conclude. It is:

> "An Act of the Scottish Parliament to make it an offence to assault or impede persons who are providing emergency services; and for connected purposes."

That does not require us to define those people as medically qualified, nurses or doctors.

All sorts of issues of definition might cause us real difficulties. One of the curious issues relates to my personal life. Paragraph 165 of the Justice 1 Committee’s stage 1 report suggests that only police constables have powers of arrest. That of course is not true. Nearly 40 years ago, I spent an enjoyable summer with a warrant card in my pocket when I was a water bailiff under the salmon fisheries acts. I do not imagine that we would want to respond to that fact by extending the definitions to cover my summer job as a water bailiff. By the way, I admit that purely on the basis that it will be excluded from the *Official Report*, in case people get to know about it.

We are, I hope, all seeking to solve a problem of which we have a common understanding. I suspect that that is the case. The bill—imperfect as it is—is our best opportunity to do so. I hope that all members will find it possible to accept the general principles so that we can move forward to an improved act derived from the bill at stage 2.

16:25

**Karen Gillon (Clydesdale) (Lab):** I register my interest as a member of Unison and as the wife of a psychiatric nurse.

In September 2002, I was fortunate to secure a debate in the Parliament on emergency services staff. The debate was held at a time when the number of vicious, sustained attacks on emergency services staff was increasing and causing considerable concern in communities. In that debate, members asked for consideration to be given to the provision to other emergency...
services staff of the level of protection that is given to the police in responding to emergencies. I am pleased that the bill will go some way towards doing that.

The bill gives protection in certain, limited situations. Surely, if someone is caught in a fire, is a victim of a road accident or needs treatment at an accident and emergency unit, the staff who provide them with a quality service deserve better protection under the law. However, we must be careful to ensure that, when offences are committed, they are not downgraded and prosecuted under the new legislation instead of being prosecuted under more serious legislation. Let us imagine a situation in which a brick is thrown through the window of a fire engine, which is then unable to make its way to a fire with the result that the fire causes much greater damage to humans or property. That offence is not adequately covered by the current law. For that reason, the bill will provide much greater protection.

However, one of the examples in the Executive's guidance—the case of an ambulance worker being stabbed—is not an especially helpful illustration of the bill's effect, as such an offence should be prosecuted under the law on assault or attempted murder. There are situations in which both types of legislation can apply. The Parliament has to acknowledge that our emergency staff need extra protection in responding to emergencies, as they still receive those attacks and people still require to be prosecuted.

I thought that the bill was quite simple until I came into the chamber today and listened to other members' speeches. Clearly, a lot of work remains to be done at stage 2. We need to define much better the section on emergency situations so that there is absolutely no room for dubiety in the law regarding what is and is not an emergency situation. The groups of workers that are named in the bill need to be looked at in more detail.

I welcome the minister's commitment to reconsider the position of social workers who operate in emergency situations. Nevertheless, he needs to look slightly further and wider. First, in relation to nursing staff in psychiatric admissions wards, it is not clear why the bill makes no mention of mental health staff. Emergency situations will exist in those wards. Although I appreciate the fact that it is a complex legal issue, it seems bizarre that there is no specific section relating to mental health staff.

Secondly, there is the position of staff in the state hospital in my constituency. The state hospital provides a unique service that we require and the staff who work there may well find themselves responding to an emergency situation, yet there is no specific reference to them in the bill. Prison officers are included, and the minister said that it is the view of the Executive that prison officers should be included because they provide emergency services in our prisons. I know that there is some argument about whether prison officers should be included; however, if that is the rationale that is being put forward by the Executive, I argue that the staff at the state hospital should similarly be included, as they provide the emergency service within the state hospital. I therefore urge the minister to reconsider that staff group, and I hope that when the committee is taking further evidence for stage 2, it will examine specifically the position of the staff at the state hospital.

The bill considers a specific set of situations, but there is little that I could disagree with in Tommy Sheridan's speech. It is clear that there is significant concern about attacks on public service workers and workers in general, be they hospital porters, bus drivers, call centre staff, the local village shopkeeper, health visitors, Benefits Agency staff or, dare I say it, traffic wardens. There is clearly a desire, particularly from our colleagues in the trade union movement, to expand the focus of the bill. My union, Unison, has called for a much wider definition to be included in the bill.

Although I am sympathetic to that point of view, that is not the focus of this bill. If there is a need to legislate to provide greater protection to public service workers, we should do so, but a separate bill would be required. I would like the Executive to evaluate the effectiveness of the Lord Advocate's guidance; to consider how it has been implemented during the period for which it has been in place; and to examine what other means, whether through legislation or by other means, are needed to provide much greater protection to our public service workers.

Society must begin to acknowledge and accept that attacks on any worker who is going about their job are unacceptable. Workers deserve to be able to do their jobs without fear of verbal abuse or physical attack. I welcome the current publicity campaign that shows how verbal abuse can lead to someone spitting on someone, and then to someone being physically assaulted. We must stop that chain of events at its earliest stage so that it is not allowed to escalate. The publicity campaign goes a long way towards that.

My colleague Paul Martin made several valuable comments about the role of education and how we can begin to educate children and their parents to the effect that it is totally unacceptable to attack any worker who is going about their job, whether that attack is physical or takes the form of shouting down the phone.

I will support the bill, although changes will be required at stage 2. The bill will enhance our
criminal justice system in a specific set of circumstances for those emergency workers who provide support to us when we need it in an emergency situation. I hope that the chamber will support the bill.

16:32

Donald Gorrie (Central Scotland) (LD): I do not have the pleasure of serving on the Justice 1 Committee. I came to the issue thinking—as I am sure that most people do—that it seemed to be a good idea to protect emergency workers in such situations. However, having toiled through the report carefully during the past day or two, I think that it is quite the most critical committee report on a bill that I have ever read. The next bill that we will need will be one to protect ministers and departments from savage attacks by committees.

I suggest that the minister should take longer than usual before stage 2 so that he and his colleagues can work out how to meet the report's many criticisms. Like Edward II, he should go home and think again about some of the aspects of the bill.

A lot of people have made very good points criticising the bill. I will run through a few of them. There is the question whether going for aggravation of existing offences would work better than inventing new offences. I am not a lawyer and my only experience is of introducing a bill section about offences that are motivated by religious hatred. That use of aggravation seems to have worked well and, so far, 110 people have been found guilty of the offence and of the aggravation. Therefore, it is worth considering the approach of aggravation.

The Executive must be clear whether the bill seeks to help the emergency workers or the people who should be receiving the emergency services and are not. The purpose of the bill must be clear.

Stewart Stevenson: I agree with the member. Does he agree that the meals-on-wheels service arriving at an old person’s house and finding that vandals have set a fire at the front would constitute an emergency service?

Donald Gorrie: That is probably right.

The bill involves defining an emergency worker, what an emergency is and where it is. Personally, with a reasonably fresh view of the issue, I find it a ludicrous concept that it is a bigger crime to thump a nurse in one part of a hospital than it is to do so in another part. In fact, thumping auxiliary workers does not seem to be an offence at all under the bill, although it is an offence under other legislation. The bill does not seem to protect doctors in surgeries, although other laws protect them. The bill is very specific and involves unnecessary identification and categorisation. As has been said, the bill’s provisions mean that it must be proved that an offender had reasonable grounds for knowing that the person whom they assaulted was an emergency operative and that the situation was an emergency. As Annabel Goldie said, that will be a lawyer’s charter.

Parts of the bill are seriously unnecessary. I would like to explore further ideas that have been suggested by some unions. Unison in particular thought that the bill’s distinction between an emergency worker and a non-emergency worker was illusory. The STUC proposed a protection of workers bill. Other people mentioned most other categories of workers. We had a welcome assurance from the minister that social workers would be included in the bill, but they should be included whether or not they are involved in an emergency.

Housing staff also get assaulted frequently, as Tommy Sheridan said. Benefit staff get assaulted. Bus drivers get assaulted. Ticket collectors on trains, who do not have a very romantic job, have serious trouble with difficult people. Hospital workers other than doctors and nurses, people who are involved in mental health services and traffic wardens all get assaulted. Shop staff also get assaulted. A shop assistant who refuses to serve an under-age person with booze is performing a useful public service, yet is liable to be thumped. They all deserve some protection. Even MPs are vulnerable. One of my political colleagues was injured and his assistant was killed when the MP was doing his public duty.

Many people who work for the benefit of the public should get protection. That may mean that it will be necessary to have another bill. I personally think that the bill’s focus on emergencies is wrong. However, we have the bill and it is important to send out a clear message to the public that assaults of all sorts are not acceptable at all. Firemen and so on, in particular, need to be protected much better than they seem to be at the moment.

We will not send out a good message if we have a bill that does not work. To change attitudes, the minister and the committee have a lot of work ahead of them to produce a bill that works. The committee deserves great credit for its report and I look forward to its producing, along with the minister, a bill at stage 2 that we can genuinely vote for at stage 3; otherwise, I will not vote for it.

16:38

Bill Aitken (Glasgow) (Con): I have not previously been involved in this matter but, as I have listened to the debate unfold, I have become
more and more alarmed. That is a commentary on the bill rather than on members' speeches, which I thought were sound and made well-argued points.

Let us start from the basis on which we all agree, which is that there is a problem of unacceptable behaviour by those who should know better but clearly do not in respect of attacking firefighters when they are attempting to rescue people in emergency situations, and assaulting and interfering with hospital workers and others who are endeavouring to contribute to society. It is not surprising that the Executive should represent the views of the Parliament as a whole in wanting to do something about the problem. The good intentions that lie behind the bill are not doubted for one moment. However, I take issue with the idea that legislation is the best way of solving the difficulty, because there are a number of ways in which it could have been solved.

First, the difficulty could have been resolved by examining the Police (Scotland) Act 1967, which has not been without its interpretive difficulties. In a group disorder that is attended by plainclothes police officers who grab hold of somebody who then assaults one of the police officers, the question of identification arises: how did that accused person know that the individuals were police officers? That is one example of the difficulties that occur, and Mr MacAskill will agree that it is not an infrequent one. We are asked to approve a bill that makes the difficulties of definition and of establishing mens rea much more complicated. That is not how we should be proceeding, because there are so many more sensible approaches.

We should rely on the common law. Time and again when the Executive frames criminal justice legislation, it diverges from the basic sound principles of common law. The common law has been established over centuries. It has been made through judicial decisions that have, frequently, been subject to appeal and it not only reflects, but frequently changes in accordance with, the way in which society is moving. Therefore, why is the Executive reluctant to rely on the common law and why is it almost obsessed with legislating and tying things down in a manner in which they do not need to be tied down? That is unnecessarily restrictive.

There are other ways in which the Executive could have used existing legislation. Why did it not increase the sentencing powers that are available to summary courts by implementing section 13 of the Crime and Punishment (Scotland) Act 1997, which could in turn have been used to adjust the summary procedures legislation? Why did it not implement the recommendations of the McInnes report? That report seems, strangely enough, to have been kicked into the long grass at the moment, so we will have to await developments on that. Why did it not accept the stage 3 amendment to the Criminal Justice (Scotland) Bill that was lodged by Paul Martin, who was exceptionally active on the protection of emergency workers? That would have dealt with the matter. Why did the Executive not accept the amendment in my name to increase to 12 months the sentencing powers of the summary courts? That would have dealt with all the specific difficulties much more efficiently than the bill. Frankly, I think that what is likely to end up on the statute book will have so many complications that it will be a lawyer's paradise, and heaven knows what the legal aid bill will be.

Mr MacAskill: I have some sympathy with the points that Bill Aitken makes on the bill being a lawyer's paradise, but even the common law is subject to that criticism and we sometimes simply have to rectify law that we created as a reaction to a specific issue. For example, legislation was brought in to deal with the possession of weapons, which was viewed as a significant problem, because we wished to highlight the fact that the common law was dealing with it inadequately. It became a beanfeast for lawyers debating what length a knife had to be before it fitted the definition, but we closed down the loopholes through legislation. There will be problems with the definition of emergencies, but if we create the legislation, we can deal with the problems that will arise anyway.

Bill Aitken: I do not disagree profoundly, but the firearms legislation was more specific than what is proposed in the bill. That is the basic issue. When I look through my notes on the speeches in the debate, I see that every member has expressed serious concerns about whether the bill will be able to work. Pauline McNeill used the phrase "workable law", but the fact of the matter is that the bill is not workable law.

I suggest to the Executive—and I think that it would agree—that in extreme cases, in which the assault is serious, the accused should be prosecuted on indictment, which is a straightforward solution. Of course, in February 2003, the Lord Advocate issued a guidance note to procurators fiscal that highlighted the extent of the Parliament's concerns and advised fiscals that the matter should be taken much more seriously and that they should consider very carefully in which court such incidents should be prosecuted.

There is not all that much more that the Executive needs to do, but what it is doing in the bill will create a legal quagmire that will result in hundreds of appeals. At the end of the day, the section of society that we are all anxious to protect will be no better off. I say in all seriousness to the
minister—I am not making a political point—that he must re-examine the bill. If he allows this mishmash to be passed, it will have consequences, which will include bringing the law into disrepute, to the point of being a laughing stock.

16:45

**Mr Stewart Maxwell (West of Scotland) (SNP):** I welcome the intention behind the bill. I hope that we all support the idea that we should protect our emergency workers in all circumstances and not just in emergency circumstances. Many members who have spoken today also spoke in the debate back in January, when we all welcomed the intention to protect emergency workers.

I commend my colleagues on the Justice 1 Committee. They must have thought that they had it easy when they received a small four-page bill, but it ended up as a wrestling match. I am glad that the wrestling match was not with one another but with the bill, the explanatory notes and the policy memorandum, which were not up to the job and left the committee in great difficulty throughout the process.

Many members have talked about protecting emergency workers. That is all well and good, but I clarify that the bill is not intended to protect emergency workers in all circumstances; it protects them in emergency circumstances. Understanding that is crucial. Many of the witnesses and the people who gave written evidence failed to understand that fundamental point.

The bill is narrowly drawn. I have great concern that it will not protect emergency workers in the way that we want to and in the way that they believe that it will protect them. The bill is also a bit of a missed opportunity, as the committee believes that it helps only at the margins. The Executive should re-examine the bill and think hard about the comments that we have heard today and which are in the committee’s report.

I echo the comments that many members of different parties, including Michael Matheson and Bill Butler, have made about statistics. The committee wrote to the Executive and to the minister several times. I and others, I am sure, also asked the minister in his evidence session about the lack of information on the number of attacks on emergency workers in emergency circumstances and the trend in the statistics. I am afraid to say that we never received those figures. We received some information, which was about the number of attacks on various groups of workers, such as doctors and firefighters, but it was incomplete and did not concern attacks on emergency workers in emergency circumstances.

The lack of statistical information to back up the bill’s policy intention is a serious flaw.

That is indicative of the Executive’s poor thinking and lack of logic about, and sloppy attitude to, the bill. The committee was provided with no statistical evidence to support the bill’s rationale. I agree that many attacks are occurring and that even the evidence that we received seems to show that the number of attacks on emergency workers is rising, but we do not know whether those attacks are on emergency workers in emergency circumstances.

The policy memorandum did not deal properly with the alternatives, several of which Bill Aitken mentioned a moment ago. One is the common law. The Lord Advocate issued strengthened guidance only a few months ago and we have not seen whether that will deal with the problem. Several witnesses talked about plea bargaining in such aggravated cases. Implementing section 13 of the Crime and Punishment (Scotland) Act 1997 is a possibility, as is implementing the summary justice review recommendation that sentencing powers should be increased to 12 months and a £20,000 fine. Many of the arguments for those proposals are valid and the Executive did not explain properly the reasons why it rejected them and decided to go down the legislative route.

The committee was far from convinced by the arguments of the Executive and the minister about the bill. That is clear from the debate, and that nearly led us to reject the bill at stage 1, not because we do not want to support emergency workers, but because the bill’s ineptitude and the lack of background information, statistical evidence and a rationale were unacceptable.

I will not go through all the different categories in the bill. We have heard many arguments about who should and should not be included, but I want to highlight a couple of groups of people. I agree with what Jackie Baillie said about the Loch Lomond Rescue Boat and other inland or estuary rescue boats that basically do the same job. I think that there is a rescue boat on the Black Isle at the northern edge of the Kessock bridge.

Prison officers are mentioned in paragraph 145 of the committee’s report. I certainly agreed with the committee’s recommendation that prison officers do not meet the criteria that are laid down in the report, but I have changed my mind on the matter. I have done so because I accept the minister’s argument and in particular what was said in discussions with representatives of prison officers. I think that there is a mistake in the paragraph, which states that prison staff call the police when they lose control. Prison officers say that they call the police, but the police do no more than patrol the prison’s perimeter. It is the prison officers who deal with situations inside the prison, which puts a different light on such situations.
Perhaps the committee was not fully aware of that when the paragraph was written.

Margaret Mitchell: Does the member recall that when we were taking evidence, we heard that one of the prison officers’ grievances was that existing law was not being used? There was existing law to protect them, but charges were being dropped or plea bargained away. If existing law were used, perhaps we would not need such legislation.

Mr Maxwell: A number of witnesses said that, and I questioned a number of them about it. I accept much of the logic of the member’s argument, but there is much more that we can do with the legislation. As it stands, the bill does not do the job.

The other point that I want to make is that special constables are included, but community wardens are not, which is perhaps a flaw in the bill.

When emergency workers and emergency circumstances are put together, things will be difficult to prove in many different areas. I do not understand the difference between attacks on emergency workers in emergency circumstances and attacks on them in non-emergency circumstances. For example, will the minister explain whether a false alarm or a malicious call will be covered by the bill? Such things do not seem to be covered in sections 1(4) and 1(5), as they are not emergency circumstances. Perhaps the minister could explain further.

A possible solution to the problems is to simplify the whole process and the bill. One of the greatest fundamental difficulties with the bill lies in the bringing together of emergency workers and emergency circumstances. Emergency workers can be called on to deal with emergency circumstances at any time. Therefore, it would be much more sensible to concentrate on on-duty situations, as the Police (Scotland) Act 1967 does, so that if doctors, nurses, paramedics, firefighters and others are on duty, they will receive protection for being emergency workers at all times and not only in emergency circumstances. It does not seem right that if a brick goes through the front window of a fire engine when firefighters are on call to an emergency circumstance, the firefighters will be protected by the legislation, but if a brick goes through that window when they happen to be out checking hydrants, for example, they will not be protected by it.

Tommy Sheridan: Will the member take an intervention?

Mr Maxwell: No—I am in my final minute.

The Deputy Presiding Officer: You must finish now, Mr Maxwell.

Mr Maxwell: What I suggest would be much simpler to prove and for everybody to understand.

In conclusion, I think that it is right to support the general principles of the bill, but only so that it can be seriously amended at stage 2.

The Deputy Presiding Officer: There is quite a lot of noise in the chamber. Andy Kerr has six minutes.

16:53

Mr Kerr: Six minutes is a short period in which to address the substantial issues that have been raised this afternoon. I thank all members for their contributions.

I add my name to the list of people who said, “Here’s a short bill that looks simple.” I thought that I would be happy to take the committee, deal with the whole parliamentary process and not even use my deputy for the bill. However, the bill has proved somewhat more interesting than I expected it to be.

The afternoon has been interesting. Mr Sheridan made a joke—which was groundbreaking in many ways—and Mr Stevenson added another job to that long list of jobs that he had in the past that are relevant to our discussions in the Parliament. Paul Martin brought us back to the origins of our work, and I want to talk about that.

As I said at the start of today’s debate, extending the definition would risk diluting the effects of the bill. Our clear intention is that the purpose of the bill should be very specific, in that it should protect emergency workers in emergency situations. Members have rightly raised some important issues to do with mental health officers and those who deal with child protection, and I have agreed to reflect on those matters at later stages. Mr Maxwell has dealt with the point about whether prison officers are included, although we can further discuss the committee’s view at later stages.

On whether workers such as the inland water rescue teams that Jackie Baillie mentioned should be included within the bill, I think that we should not forget that we are not cutting off the avenues that exist under common law. The common law will continue to protect workers and it will continue to be upheld in the work that the Lord Advocate does and will continue to do. The bill is about specific situations for which we seek to move our statute law forward by providing additional cover.

I think that the point about Reliance officers has already been clarified.

Karen Gillon mentioned the state hospital at Carstairs. I understand that doctors, nurses and security staff who are called to respond to emergency circumstances there will be protected by the bill. Doctors and nurses will be covered
under section 1 and security staff who act under the direction of doctors will be assisting persons, so they will be covered by the bill. I am happy to address those matters at stage 2, but that is my indicative response to Karen Gillon’s point.

Some speakers throughout the afternoon talked about a lack of evidence, but everybody else has acknowledged that attacks on emergency workers are happening more and more in our society and that we need to deal with them. The Executive is trying to deal with the situation that we all know is out there. Clear action is required. In every discussion that I have had with trade unions and professional bodies, I have been told that the problem is bigger than people would think. It happens all over Scotland and we need to deal with it. However, despite the fact that we all agree on that, we have been criticised for lacking evidence on the problem. Arguably, the anecdotal evidence is clear, but the bill will ensure that we get further evidence. We need to encourage people to come forward by using the bill in a positive way. That will ensure that we develop our evidence base.

Members have made some useful contributions, but we must now seek to ensure that the bill makes a difference. People have said that we are showboating and that the bill is not worth having, but I argue that the job now—at stage 2—is to make the bill work. Members can rest assured that, as the Executive minister responsible, I want to make the bill work and I will work with the committee to ensure that we get this right.

Just because we disagree, that does not mean to say that the Executive is not right on these matters. I am not a barrack-room lawyer—or any sort of lawyer—but I take advice from Scotland’s most senior law officer. On occasions, that should count.

On the financial memorandum, members said that it cannot be right that the bill will not create more costs. Actually, the bill will add to the suite of legislation that is available. On occasions, the common law and the bill will replace each other, so additional costs are not an issue—[Interruption.]

The Presiding Officer (Mr George Reid): Order. There is far too much buzz. Members must keep their conversations down.

Mr Kerr: The point that Paul Martin raised was absolutely right. I know that my daughters’ school has received visits from police and has made trips to the local fire station to learn more about the respect that is owed to emergency service workers, but we need more of that. Our wider package of such measures was welcomed by many members.

I welcome what Mr MacAskill said in his intervention on Mr Aitken. He is absolutely right that we should let the lawyers sort it out and let the justice system resolve the doubts that have been expressed. That is exactly what the law does. That will lead to increased definition and a further refining of the bill as it is rolled out. He asked me to learn from and reflect on the issues at stage 2, and I assure him that I will do that.

I would rather not finish on this point, but the one note of discord in the whole afternoon came not from the Tories, who took a principled position against the bill, but from Mr Matheson, who accused me of being disrespectful to the Parliament and to its committees for trying to do what we think is right to protect emergency service workers. We are doing our best to make this legislation work. Indeed, that is what I will continue to do. As a result, I think that Mr Matheson’s comments were out of order in this debate.

I wanted to respond to many other points, and I will try and do so at stage 2. I will happily spend more time with Conservative members to explain more fully our intentions behind the bill. I think that it is right and worth fighting for, because it will make a difference.
The Presiding Officer: The next question is, that motion S2M-1079, in the name of Andy Kerr, on the general principles of the Emergency Workers (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
The Presiding Officer: The result of the division is: For 105, Against 20, Abstentions 0.

Motion agreed to.

That the Parliament agrees to the general principles of the Emergency Workers (Scotland) Bill.
PROTECTING PUBLIC SERVICE WORKERS

When I appeared before the Justice 1 Committee on 9 June, I confirmed that the Emergency Workers (Scotland) Bill was a crucial part of a range of actions the Executive was taking to reduce verbal and physical abuse towards all public service workers. I am pleased to note that the Committee’s report on the Bill expressed support for this wider package of measures.

As you will know, the Executive-commissioned report, “Protecting public service workers: When the customer isn’t right” was published recently and copies have been sent to your Committee’s members.

We are now working with the STUC and others, to implement the report’s recommendations through a package of measures to be developed over the coming three years. That package will include ways of helping employers meet their legal obligations to minimise risks of verbal or physical violence towards staff; training in preventing and handling abuse; and a model reporting system. We will also seek to support and build on the good practice already being undertaken by employers and trades unions.

I am delighted to be able to tell you that our partnership approach to tackling this problem has already borne fruit. On 14 September, I launched a public awareness campaign, “Abusing workers is bang out of order.” The multi-media campaign will raise awareness of this issue; show the personal impact of even non-violent situations; and hit home the message that verbal and physical abuse of public service workers should not and will not be tolerated. A more detailed breakdown of the elements of the first stage of the campaign is attached at Annex A.

Clearly, it is imperative for the public to start to think about this issue, and to begin to challenge their own assumptions about what is and is not acceptable. The first stage of our campaign has focused on the fact that public service workers are abused, and that such behaviour is unacceptable. It is our intention to build on these simple messages over the next three years. Following an interim evaluation of the impact of the first stage of media coverage, we will refresh and refine our messages for future years.

I note that the Committee’s report on the Emergency Workers Bill agreed that it should be part of a wider package of measures, including a campaign of public awareness and education. I hope you will agree that the launch of this awareness campaign marks an important step in tackling both perceptions of work related violence and the behaviour itself. Underpinned by the range of measures outlined above, I am confident that this activity will be to the benefit of all public service workers.

Andy Kerr MSP
Minister for Finance and Public Services
30 September 2004
<table>
<thead>
<tr>
<th>Month</th>
<th>Activity</th>
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<tbody>
<tr>
<td>September</td>
<td>Publication of “Protecting public service workers: when the customer isn’t right”</td>
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<td>Ministerial launch of media campaign – national television coverage, national and local press.</td>
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<td>Scottish Radio Holdings “Life Matters” slots on the issue of violence towards public service workers</td>
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<td>Talking Scotland slots from three public service workers who have been affected by the issue of work related violence.</td>
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<tr>
<td>September/October</td>
<td>Punchbag adverts televised (still from advert attached – video enclosed) through to end October (run up to Bonfire Night).</td>
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<tr>
<td>November</td>
<td>Poster campaign, using 340 bus shelter sites. Executive’s Media Group currently liaising with range of industries (e.g. public transport, NHS) re. potential for tailoring generic punchbag campaign to more specific interests.</td>
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<tr>
<td>December</td>
<td>Re-run of television adverts up to Christmas.</td>
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Scottish Executive  
September 2004
2. Item in private: The Committee agreed to take item 5 in private.

5. Emergency Workers (Scotland) Bill (in private): The Committee considered its approach to stage 2 of the Bill and agreed to make a targeted and focussed call for written evidence on specific elements of the Bill; to consider whether and from whom to take oral evidence on the basis of responses to the call, and to request an informal meeting with the Minister for Finance and Public Services, the Emergency Workers (Scotland) Bill team and the Law Society of Scotland.
Present:

Marlyn Glen  Mr Bruce McFee
Pauline McNeill (Convener) Margaret Mitchell
Mrs Mary Mulligan Margaret Smith
Stewart Stevenson

2. Item in private: The Committee agreed to take item 4 in private.

4. Emergency Workers (Scotland) Bill (in private): The Committee considered further its approach to stage 2 of the Bill and agreed not to seek oral evidence.
Submission from T&G Scotland

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.

Submission from the Association of Directors of Social Work

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 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 hypomanic, 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.

Colin Mackenzie
Vice President of ADSW
19 October 2004

Submission from Scottish Trades Union Congress

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 outset.

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.

Submission from the Scottish NHS Confederation

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
19 October 2004

Submission from RCN Scotland

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.

Pat Dawson
Head of Policy & Communications
RCN Scotland
1 October 2004

Submission from the Royal College of Physicians of Edinburgh

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
Submission from the Royal National Lifeboat Institution

Lifeboats

Pauline McNeill MSP
C/o Justice 1 Committee Clerks
T3.60, The Scottish Parliament
Edinburgh
EH99 1SP

11th October 2004

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
Submission from the Loch Lomond Rescue Boat

Loch Lomond Rescue Boat

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

Secretary - Ian Bistol,
"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)

1/2
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 cooperation 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 45 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. SC0 20014
**LLRB Incidents of Threat or Violence towards crew**

<table>
<thead>
<tr>
<th>Date</th>
<th>Pager Code</th>
<th>Zone</th>
<th>Event Details</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 Bothy where youths were drinking and causing damage.</td>
</tr>
<tr>
<td>21/08/1994</td>
<td>4</td>
<td></td>
<td>LLRB called to attend a collision between a jet skier and a water skier near Inchmorean. Police crew were present and a male was reported to the procurator 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 Cannon House.</td>
</tr>
</tbody>
</table>
Date   Pager Code  Zone
16/07/1998  4
Event: See previous report 16 July 98. LLRB launched to transport 3 people from dingy in the 'Narrows' to Luss. 1 male taken to Dumbarton Police, 1 male & 1 female treated in boathouse.

18/07/1998  4
Event: Transport 2 drunk casualties with hypothermia to Luss/VOG hospital. See 2nd report for 18 July 98.

11/08/1998  4

08/08/2000
Event: Call for assistance. Two males causing a disturbance on Inchmurrin. Both apprehended. Two of three LLRB crew were Police Officers.

07/08/2002  999  4
Event: Boat stolen from Luss pier. Someone shouting for help in middle of loch. 1st casualty to ambulance, 2nd recovered to shore

24/08/2003  4
Event: 2 x fishers crashed in Luss Bay. Assistance given to female with serious injuries
<table>
<thead>
<tr>
<th>Date</th>
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<tbody>
<tr>
<td>10/07/2004</td>
<td>999</td>
<td>7</td>
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</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, assaul ts, 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* 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
Submission from an individual

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.

28/9/2004
Email correspondence from the Scottish Prison Service TUS

Having read the Committee’s Stage 1 report on the Emergency Workers Bill I discussed with my colleagues on the TUS the misunderstanding the Committee appeared to have in respect of how emergency situations are handled within prisons and in particular the role the police play. I had the fortunate opportunity to discuss this with Stewart Maxwell just prior to the parliamentary debate and was pleased to note he brought the matter to the parliament’s attention. As we didn’t discuss the role of the police in these situations when we gave evidence on the bill I appreciate that the committee would naturally assume the police would be expected to deal with such matters. However this is not the case and the management and control of emergency situations in prisons are dealt with by SPS staff.

This is carried out by SPS intervention teams comprising of prison officers. The police, although they have the powers to enter the prison always confine their activities to patrolling the outside perimeters of the prison and managing access routes to the prison. I hope this helps to clarify the matter and is useful to the committee’s deliberations.

Andy Hogg, Secretary, SPS Trade Union Side
Emergency Workers (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 7          Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Before section 1

Mr Tom McCabe

11 Before section 1, insert—

<Assaulting or impeding certain providers of emergency services

(1) A person who assaults, obstructs or hinders another person acting in a capacity mentioned in subsection (3) below commits an offence.

(2) No offence is committed under subsection (1) above unless the person who assaults, obstructs or hinders knows or ought to know that the person being assaulted, obstructed or hindered is acting in that capacity.

(3) The capacity referred to in subsection (1) above is—

(a) that of a constable;

(b) that of a member of a fire brigade maintained in pursuance of the Fire Services Act 1947 (c.41) or a person who, not being a member of such a fire brigade, is paid by a fire authority under section 3(1)(b) of that Act for rendering services and is doing so; or

(c) that of a person acting for the Scottish Ambulance Service Board in exercise of the function referred to in article 4(1)(a) of the Scottish Ambulance Service Board Order 1999 (S.I. 1999/686) (exercise by the Board of function of providing ambulances and other means of transport for ill and other persons).>

Section 1

Mr Tom McCabe

12 In section 1, page 1, line 4, leave out <an emergency worker while the worker is> and insert <another while that other person is, in a capacity mentioned in subsection (3) below,>
In section 1, page 1, line 5, at end insert—

( ) No offence is committed under subsection (1) above unless the person who assaults, obstructs or hinders knows or ought to know that the person being assaulted, obstructed or hindered—

(a) is acting in that capacity; and

(b) is or might be responding—

(i) to emergency circumstances; or

(ii) as if there were emergency circumstances.

In section 1, page 1, line 6, leave out subsection (2)

In section 1, page 1, line 7, leave out <responding to emergency circumstances> and insert <on duty>

In section 1, page 1, leave out lines 9 and 10 and insert <The capacity referred to in subsection (1) above is>

In section 1, page 1, line 19, at beginning insert <that of>

In section 1, page 1, line 22, leave out from <or> to end of line 24

In section 1, page 1, line 25, at beginning insert <that of>

In section 1, page 1, line 26, at beginning insert <that of>

In section 1, page 1, line 26, after second <of> insert <an independent rescue craft or>
Mr Tom McCabe
20  In section 1, page 1, line 27, after <Institute> insert <(the “RNLI”); or
     (ii) any other person or organisation operating a vessel for purposes similar to those of the RNLI.>

Mr Stewart Maxwell
Supported by: Stewart Stevenson
2  In section 1, page 1, line 27, after second <a> insert <craft or>

Mr Tom McCabe
21  In section 1, page 1, leave out line 29 and insert—
     ( ) that of a registered medical practitioner;

Mr Tom McCabe
22  In section 1, page 2, leave out lines 1 to 3 and insert—
     ( ) that of a registered nurse;
     ( ) that of a registered midwife.

Margaret Smith
51  In section 1, page 2, line 3, at end insert <; or
     ( ) that of a social worker, within the meaning given by section 77(1) of the Regulation of Care (Scotland) Act 2001 (asp 8) while taking action required or permitted by a child protection order.>

Mrs Mary Mulligan
52  In section 1, page 2, line 3, at end insert <; or
     ( ) that of a mental health officer, that is to say—
     (i) a mental health officer within the meaning given by section 32(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13); or
     (ii) until section 32(1) of that Act (appointment and deemed appointment of mental health officers) comes into force, a mental health officer within the meaning given by section 125 of the Mental Health (Scotland) Act 1984 (c.36).>

Mr Kenny MacAskill
50  In section 1, page 2, line 3, at end insert—
     ( ) a social worker registered under section 44(1) of the Regulation of Care (Scotland) Act 2001 (asp 8) who is exercising duties or powers by virtue of—
     (i) section 12A of the Social Work (Scotland) Act 1968 (c.49);
     (ii) section 53, 55, 57, 58 or 61 of the Children (Scotland) Act 1995 (c.36); or
(iii) section 36 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (or, until that section comes into force, section 24 of the Mental Health (Scotland) Act 1984 (c.36)).

Mr Stewart Maxwell
Supported by: Stewart Stevenson
5 In section 1, page 2, line 4, leave out subsections (4) and (5)

Mr Tom McCabe
23 In section 1, page 2, line 4, after <of> insert <this section and section (Assaulting or impeding persons assisting emergency workers) of>

Mr Tom McCabe
24 In section 1, page 2, line 4, leave out <an emergency worker> and insert <a person>

Mr Tom McCabe
25 In section 1, page 2, line 5, leave out <worker> and insert <person>

Mr Kenny MacAskill
6 In section 1, page 2, line 12, after <injury> insert <or significant harm>

Marlyn Glen
53 In section 1, page 2, line 12, after <illness> insert <(including mental illness)>

After section 1

Mr Tom McCabe
26 After section 1, insert—

<Assaulting or impeding persons assisting emergency workers

(1) A person who assaults, obstructs or hinders another in the circumstances described in subsection (2) below commits an offence.

(2) Those circumstances are where the person being assaulted, obstructed or hindered is assisting another while that other person is, in a capacity mentioned in section (Assaulting or impeding certain providers of emergency services)(3) or 1(3) of this Act, responding to emergency circumstances.

(3) No offence is committed under subsection (1) above unless the person who assaults, obstructs or hinders knows or ought to know—

(a) that the person being assisted is acting in that capacity;

(b) that the person being assisted is or might be responding—

(i) to emergency circumstances; or

(ii) as if there were emergency circumstances; and
(c) that the person being assaulted, obstructed or hindered is assisting the person acting in that capacity.>

Section 2

Mr Tom McCabe
27 In section 2, page 2, line 18, leave out <1(1) or (2)> and insert <(Assaulting or impeding certain providers of emergency services), 1 or (Assaulting or impeding persons assisting emergency workers)>.

Mr Tom McCabe
28 In section 2, page 2, line 22, leave out <an emergency worker> and insert <a person referred to in that section>.

Mr Tom McCabe
29 In section 2, page 2, line 22, at end insert—

<( ) A person who gives false information with the intention that a person acting in a capacity mentioned in subsection (3) of section (Assaulting or impeding certain providers of emergency services) will act upon that information is to be regarded, for the purposes of that section of this Act, as hindering the person acting in that capacity.>.

Mr Tom McCabe
30 In section 2, page 2, line 23, leave out <an emergency worker> and insert <a person acting in a capacity mentioned in subsection (3) of section 1 of this Act>.

Mr Stewart Maxwell
Supported by: Stewart Stevenson
7 In section 2, page 2, line 24, leave out <responding to emergency circumstances or instead of doing so> and insert <on duty>.

Mr Tom McCabe
31 In section 2, page 2, line 25, leave out <section 1(1) of this Act> and insert <that section>.

Mr Tom McCabe
54 In section 2, page 2, line 26, leave out <the emergency worker> and insert <the person acting in that capacity>.

Mr Stewart Maxwell
Supported by: Stewart Stevenson
8 In section 2, page 2, line 28, leave out subsection (4).

Mr Tom McCabe
33 In section 2, page 2, line 28, leave out subsections (4) and (5) and insert—
< ( ) For the purposes of sections 1 and (Assaulting or impeding persons assisting emergency workers) of this Act, circumstances to which a person is responding are to be taken to be emergency circumstances if the person believes and has reasonable grounds for believing they are or may be emergency circumstances.>

Mr Tom McCabe 34 In section 2, page 2, line 37, leave out <shall be> and insert <is>

Mr Tom McCabe 35 In section 2, page 2, line 38, leave out <1(3)> and insert <(Assaulting or impeding certain providers of emergency services), 1 or (Assaulting or impeding persons assisting emergency workers)>

Mr Tom McCabe 36 In section 2, page 2, line 38, leave out <an emergency worker> and insert <acting in a capacity referred to in that section>

Section 3

Mr Tom McCabe 37 In section 3, page 3, line 3, leave out from first <part> to <below> in line 4 and insert <hospital>

Mr Tom McCabe 38 In section 3, page 3, line 4, leave out from <an> to <Act> in line 5 and insert <a person acting in a capacity mentioned in subsection (2B) below>

Mr Tom McCabe 39 In section 3, page 3, line 6, leave out <that worker> and insert <such a person>

Mr Tom McCabe 40 In section 3, page 3, line 7, leave out subsection (2)

Mr Tom McCabe 41 In section 3, page 3, line 8, at end insert—
<(2A) No offence is committed under subsection (1) above unless the person who assaul ts, obstructs or hinders knows or ought to know that the person being assaulted, obstructed or hindered is acting in that capacity or, as the case may be, that the person being assisted is acting in that capacity and that the person being assaulted, obstructed or hindered is assisting the person acting in that capacity.>

Mr Tom McCabe 42 In section 3, page 3, line 8, at end insert—
<(2B) That capacity is—
(a) that of a registered medical practitioner;
(b) that of a registered nurse;
(c) that of a registered midwife; or
(d) that of a person acting for the Scottish Ambulance Service Board in the exercise of the function referred to in article 4(1)(a) of the Scottish Ambulance Service Board Order 1999 (S.I. 1999/686) (exercise by the Board of function of providing ambulances and other means of transport for ill and other persons).>

Mr Tom McCabe
43 In section 3, page 3, line 13, leave out from <the> to end of line 14 and insert <a person referred to in that subsection>

Mr Tom McCabe
44 In section 3, page 3, line 15, leave out subsection (4)

Mr Tom McCabe
45 In section 3, page 3, line 18, leave out <shall be> and insert <is>

Mr Tom McCabe
46 In section 3, page 3, line 19, leave out from <an> to end of line 20 and insert <acting in a capacity referred to in subsection (2B) above>

Mr Stewart Maxwell
Supported by: Stewart Stevenson
9 Leave out section 3

Section 6

Mr Tom McCabe
47 In section 6, page 4, line 1, leave out from beginning to <of> and insert <No such order shall be made unless a draft of it has been laid before and approved by>

Long Title

Mr Stewart Maxwell
Supported by: Stewart Stevenson
10 In the long title, page 1, line 1, leave out <persons who are providing emergency services> and insert <emergency workers>

Mr Tom McCabe
48 In the long title, page 1, line 1, leave out <are providing> and insert <provide>
Emergency Workers (Scotland) Bill

Groupings of Amendments for Stage 2

Circumstances in which offences can be committed
11, 12, 3, 13, 14, 4, 15, 16, 17, 18, 19, 21, 22, 5, 23, 24, 25, 26, 27, 28, 29, 30, 7, 31, 54, 8, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 9, 10, 48

Prison officers
49

Independent rescue craft
1, 20, 2

Emergency circumstances: social workers and mental health officers
51, 52, 50, 6, 53

Power to modify by order
47
JUSTICE 1 COMMITTEE
EXTRACT FROM THE MINUTES
36th Meeting, 2004 (Session 2)
Wednesday 24 November 2004

Present:
Marlyn Glen
Pauline McNeill (Convener)
Mrs Mary Mulligan
Margaret Mitchell
Stewart Stevenson

Mr Bruce McFee
Margaret Smith

Also present: Tom McCabe (Minister for Finance and Public Service Reform) and Jackie Baillie MSP.

Emergency Workers (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 13, 14, 15, 16, 17, 18, 19, 21, 22, 31, 34, 45, 47

The following amendments were agreed to (by division)—

11 (For 6, Against 0, Abstentions 1)
12 (For 6, Against 1, Abstentions 0)
20 (For 6, Against 1, Abstentions 0)
51 (For 6, Against 1, Abstentions 0)
52 (For 6, Against 1, Abstentions 0)
23 (For 6, Against 1, Abstentions 0)
24 (For 6, Against 1, Abstentions 0)
25 (For 6, Against 1, Abstentions 0)
53 (For 6, Against 1, Abstentions 0)
26 (For 6, Against 1, Abstentions 0)
27 (For 6, Against 1, Abstentions 0)
28 (For 6, Against 1, Abstentions 0)
29 (For 6, Against 1, Abstentions 0)
30 (For 6, Against 1, Abstentions 0)
54 (For 6, Against 1, Abstentions 0)
33 (For 6, Against 1, Abstentions 0)
35 (For 6, Against 1, Abstentions 0)
36 (For 6, Against 1, Abstentions 0)
37 (For 6, Against 1, Abstentions 0)
38 (For 6, Against 1, Abstentions 0)
39 (For 6, Against 1, Abstentions 0)
40 (For 6, Against 1, Abstentions 0)
41 (For 6, Against 1, Abstentions 0)
42 (For 6, Against 1, Abstentions 0)
43 (For 6, Against 1, Abstentions 0)
44 (For 6, Against 1, Abstentions 0)
46 (For 6, Against 1, Abstentions 0)
48 (For 6, Against 1, Abstentions 0)
Amendment 3 was disagreed to (by division: For 1, Against 6, Abstentions 0)

Amendments 49 and 1 were moved and, with the agreement of the Committee, withdrawn.

Other amendments were not moved or were pre-empted.

Sections 1, 2, 3 and 6 and the Long Title were agreed to as amended.

Sections 4, 5, and 7 were agreed to without amendment.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament
Justice 1 Committee
Wednesday 24 November 2004

[THE CONVENER opened the meeting at 11:06]

Emergency Workers (Scotland)
Bill: Stage 2

The Convener (Pauline McNeill): Good morning everyone, and welcome to the 36th meeting this year of the Justice 1 Committee. We are all present today, so there are no apologies. I ask members to ensure that they switch off their mobile phones.

The only item of business today is stage 2 of the Emergency Workers (Scotland) Bill. Before we move to the formal process, I have a statement to read out on the admissibility of amendments. I would be grateful if the committee would bear with me, because I would like to get it on the record. Members will see why when they hear what I have to say.

A number of the amendments before us today would, if agreed to, represent a significant extension of the bill. They would mean that offences created by the bill could be committed in circumstances that are not emergency circumstances. Because of that, the amendments in question offer the committee alternative mechanisms for achieving that aim. I have therefore concluded that all the amendments are admissible.

The committee experienced many difficulties in scrutinising the bill at stage 1, and had particular difficulty in establishing the policy intention of the bill. The view that the scope of the bill was so narrow that the provision under section 2(4) relating to emergency circumstances could not be broadened out to mirror the Police (Scotland) Act 1967 was never clear to the committee, particularly as the policy memorandum to the bill referred to the bill providing

"specific protection for emergency workers similar to that provided for police officers in the Police (Scotland) Act 1967."

The emergency circumstances provision was one of the issues that the committee wished to explore further at stage 2 and, as such, it said in its stage 1 report that it would consider all the evidence on emergency circumstances, including the on-duty provision, at stage 2. While at no time did the committee recommend any particular option for stage 2, it was clear that members wanted to discuss a full range of options to ensure the effectiveness of the legislation. I believe that the scope of the bill is the protection of emergency workers, and the committee should have the opportunity to debate the variety of mechanisms that are proposed by the amendments to achieve that objective.

I am conscious that to rule against any advice given on the admissibility of particular amendments could set an unhelpful precedent, so I make it clear that I believe that there are unusual and particular circumstances relating to this bill that have led me to take this unusual step.

I thank members for their patience. I now propose to move to the marshalled list of amendments. I welcome the Minister for Finance and Public Sector Reform, Tom McCabe, and his officials. Minister, you will be aware that at stage 2 officials are not allowed to speak on the record. However, I realise that there may be times when you need to confer with your officials, therefore I will be generous if you need to do that, to ensure that you are able to take any advice that you need to take.

The Minister for Finance and Public Service Reform (Mr Tom McCabe): That is appreciated, convener.

Before section 1

The Convener: Amendment 11, in the name of the minister, is grouped with amendments 12, 3, 13, 14, 4, 15 to 19, 21, 22, 5, 23 to 30, 7, 31, 54, 8, 33 to 46, 9, 10 and 48. Amendment 14 pre-empts amendment 4; amendment 5 pre-empts amendments 23 to 25, 6 and 53—amendments 6 and 53 being in a later group; and amendment 10 pre-empts 48. As members know, pre-emption means that if the first amendment is agreed to, the other amendment or amendments cannot be called.

This first group is of such a large size because it was very difficult to separate out the issues. I have decided to split the debate. The first part will be on the circumstances under which offences can be committed; the second will be on the evidential provisions. This is the most important grouping for us to discuss at stage 2. I want to make sure that, by the end of our discussion, the minister and committee members feel that they have aired all the issues and that they have raised all the questions or comments that they might have. If
members or the minister wish to speak on more than one occasion, I will be generous in that regard, so as to ensure that there is a full debate. Once we get past this first grouping, we will have done quite a bit of our stage 2 consideration.

Mr McCabe: I start by speaking to the amendments relating to the widening of circumstances in which offences can be committed. Those are amendments 3 to 5, 7 to 11, 16, 37 to 40, 42 and 48. I will begin with the amendments that have been lodged by the Executive—amendments 11, 16, 37 to 40, 42 and 48.

The Emergency Workers (Scotland) Bill is about protecting those who provide emergency services to protect our society. The bill recognises the unique and special support that emergency workers provide for people throughout Scotland. Any one of us might need that support at any time and if such support is hampered in any way, that might have far-reaching consequences for those who are in need of assistance.

The Executive believes that, for the police, firefighters and ambulance workers, the very real possibility of being required to respond to an emergency is ever present—responding to emergencies lies at the core of those workers' functions. Even when they are undertaking non-urgent tasks, they need to be ready and able to respond to any emergency that may arise. Similarly, hospitals are clearly and indisputably places where serious illness and injury are treated, so they are effectively in a constant state of emergency—by their very nature, they deal with emergencies, as defined by the bill, virtually all the time. That means that health workers in hospitals must be constantly ready and able to provide emergency services. As is the case with police, fire and ambulance workers, any act that impedes those health workers in the course of even their more routine duties could have significant implications for their ability to respond to the next emergency, which could occur at any moment. We feel that we need to take action to prevent that from happening. It is for that reason that we have lodged amendments to safeguard the operational capacity of those workers to respond to emergencies, should they arise.

Amendments 11, 16 and 48 extend the bill's protection to police, fire and ambulance workers whenever they are on duty. Amendments 37 to 40 and 42 extend on-duty protection to doctors, nurses, midwives, ambulance workers and those who assist them anywhere in a hospital setting.

The amendments significantly extend the protection afforded to the police, to fire and ambulance workers and to health workers in hospitals. In doing so, we will achieve a more robust and comprehensive package of protection for emergency workers providing emergency services. I therefore commend amendments 11, 16, 37 to 40, 42 and 48 to the committee.

11:15

With the convener's permission, I will now address Stewart Maxwell's amendments 3 to 5 and 7 to 10. These amendments, to which Stewart Stevenson will speak on behalf of Stewart Maxwell, go further still than those lodged by the Executive by extending on-duty protection to all emergency workers, and it will be clear from what I have already said that I do not support them. If the bill is amended in line with the Executive's amendments, it will give the right level of protection to the right workers in the right circumstances.

It is absolutely right that general practitioners, prison officers and others should be protected by the legislation when they are responding to emergency circumstances. In such situations, they are indeed emergency workers and should receive the proper protection. For the majority of their time, however, such workers are not involved in the provision of emergency services. Their work is, of course, valuable, but it is not connected, first and foremost, with emergency responses in the way in which the work of the police, fire and ambulance workers can be construed. The Executive believes that those workers are adequately protected in non-emergency situations by common law, under which it is already an offence to assault any person no matter what their professional status.

Further to that, the Lord Advocate's guidance to procurators fiscal will ensure that assaults against any workers who serve the public are treated particularly seriously. That is supported by the package of non-legislative measures that we are developing to protect all public service workers. I believe that that will provide the most suitable protection for those who are not directly providing emergency services. Providing on-duty protection to those workers would be entirely inconsistent with the emergency focus of the bill. Therefore, I ask Stewart Stevenson, on behalf of Stewart Maxwell, to consider not moving amendments 3 to 5 and 7 to 10.

I move amendment 11.

Stewart Stevenson (Banff and Buchan) (SNP): My colleague Stewart Maxwell is experiencing the delights of the health service over the next few weeks, so I am sure that he will be thinking of our activities here today.

I welcome the set of amendments that the minister has just spoken to. We regard them as useful changes to the bill and will have no difficulty supporting them if the arguments for the
amendments in Stewart Maxwell’s name do not carry the day. The situation in which the amendments were originally lodged has changed significantly with the Executive’s broadening of the scope of the bill, which we welcome.

Nonetheless, I make a distinction between some of the amendments in Stewart Maxwell’s name—amendments 3 to 5 and 7 to 9—and amendment 10. Amendments 3 to 5 and 7 to 9 seek to extend protection to people who are on duty rather than simply in emergency circumstances. The logic associated with that definitional underpinning of the amendments is that those people are required to be available to respond to emergency circumstances. The minister properly makes the point that people such as doctors, and GPs in particular, do not have as their primary role responding to emergency circumstances. In circumstances in which there are relatively few doctors available, if they are taken out of line through any action by a member of the public, that could impact their subsequent ability to respond in an emergency. That is the core of the argument that caused Stewart Maxwell, who has been involved with the bill throughout, to lodge the amendments.

Amendment 10 is slightly different and I do not think that it should necessarily stand or fall with the other amendments, which clearly stand or fall as a group just as the minister’s amendments do. Amendment 10 relates to the long title and reflects the bill’s change in emphasis from people providing emergency services to emergency workers. There is a case for saying that amendment 10 could sensibly support and augment the minister’s amendments.

However, I do not intend to be particularly doctrinaire or prescriptive about this. I will listen to the debate and the minister’s summing up before finally coming to a conclusion on the actions I want to take. The minister therefore has every opportunity to persuade me to his point of view.

The Convener: I invite members of the committee to speak to any of the amendments. As I said, I would quite like to divide up the issues but that is just for the sake of tidiness and to ensure that all the issues are aired.

Mr Bruce McFee (West of Scotland) (SNP): I welcome the change in emphasis that is clear in the Executive amendments. It has gone quite a long way towards clearing up the central sticking point, as it appeared to me as a newer member of the committee. The question is whether we stop at the three services, with the extra provisions for health workers, or whether the bill should go on to provide on-duty protection throughout. That is the essential argument for me and I am open-minded about it because the Executive’s amendments take a lot of my concerns out of the equation.

Amendment 37 seeks to remove some words from section 3 of the bill and insert the word “hospital” in their place. In his remarks, the minister said that that would mean that on-duty protection was extended to doctors, nurses and midwives while they are working in hospitals. However, what is the definition of “hospital”? Does it include maternity units and clinics that can also deal with emergency situations?

The Convener: Minister, I am open-minded about how you want to respond. Do you want to pick up points as members make them, or to hear what everyone has to say first?

Mr McCabe: It might be helpful to pick up and respond comprehensively to points. I would be more comfortable with that.

The Convener: So will you respond to Bruce McFee? I am sorry; I now realise that you meant the opposite.

Margaret Smith (Edinburgh West) (LD): I welcome the Executive amendments. They go a long way towards addressing many of the concerns that the committee had about the bill.

From the point of view of public perception and for the sake of clarity, I can understand why the amendments seek to emphasise that the people who work for the blue-light emergency services are key people whose jobs are about dealing with emergencies.

Most of my comments are about health services and members of the health team working in, and outwith, hospitals. I want to go with the idea of health workers other than doctors, nurses, midwives and ambulance staff working in a hospital. What extra protection will such workers get under the bill? As I understand it, they have the added protection of being seen as people who may potentially assist in an emergency. My question comes back to the evidential chain that the committee fixed on during the earlier meetings.

I return to my example of the medical records secretary at the other side of the hospital finding medical records for someone who is undergoing an emergency operation. I presume that if the medical records secretary was bopped over the head at that point, she would be protected by the legislation. However, if she was taking out a piece of paper that related to someone who had a broken arm she would not be protected by it. The key point is: how can it be proved in court that the person who assaulted the medical records secretary knew that she was in any way assisting in an emergency? I am not saying that the bill, as it is crafted, does not potentially give the medical records secretary extra protection. I am saying that the person who assaults her may not know that that protection is there, so it may not be
possible to prove in court that they had that knowledge when they carried out the assault.

My second point is one that has been made by the British Medical Association, the Royal College of Nursing and others. I welcome the extra protection provided by extending the legislation to cover a hospital rather than only accident and emergency premises—we all welcome that. However, the organisations make the point that the shift in health services is very much to try to get services out of hospitals and into the community. A lot of work that is done in the community could be seen as emergency work. What protection might be available to people who work in other national health service premises? Has the minister considered the potential for extending the legislation to cover NHS premises in addition to hospitals?

Mrs Mary Mulligan (Linlithgow) (Lab): I am also interested in the points that Margaret Smith raises.

I welcome the clarification that the minister has provided on the bill, not only because I was a late starter on the bill but because there was uncertainty as to where we were going in relation to those who would be protected by the bill. The minister’s comments this morning have been helpful and have clarified the situation considerably.

On Stewart Maxwell’s amendments, which Stewart Stevenson has spoken to, I would like both the minister and Stewart Stevenson to comment on the points that I raise.

It is helpful that we now have a definition in front of us, but I understand Stewart Maxwell’s concern that those who, at some stage in the future, may be involved in an emergency situation should in some way be protected. However, there are practical difficulties related to that. I use as an example a GP who may have been required to respond to an emergency situation, but because of an assault a couple of days earlier is not available. Would the legislation be applicable were he to be required to deal with an emergency six months after the assault? That seems to stretch the point too far.

The minister’s comments that generally people will be protected by the common law and that the Lord Advocate’s guidance would offer additional protection for those who may be caught up in circumstances such as those that I described lead me to think that Stewart Maxwell’s amendments are not necessary. I appreciate the point that he is making about ensuring that anybody who should be available to deal with emergencies should not be assaulted, but on balance we are better to stick with a strict definition so that there can be no misunderstanding and people cannot misinterpret what is intended. When we are dealing with such legislation it is particularly important that people can be clear about the circumstances, the people involved and the nature of the event. It might muddy that somewhat if we go with Stewart Maxwell’s amendments, which might give us problems in the future.

The Convener: Would other members like to comment?

Stewart Stevenson: Can I respond to a point that Mary Mulligan made? Strictly speaking, you do not have to let me do so.

The Convener: I will let you back in. Would the minister like to respond now?

Mr McCabe: I am okay at the moment if you want to carry on. I am noting the points as they arise.

Stewart Stevenson: Mary Mulligan invited me to comment further—I will do so briefly. The argument turns on a relatively simple point. I use GPs as the example. If we extended protection to GPs while they are on duty—rather than leaving them protected only in emergency circumstances—we would remove the need to test whether a person who subsequently assaulted them knew or ought to have known that the GP was responding to an emergency. I do not know how one would know that. It would be extremely difficult to demonstrate that the person committing the assault or impeding the GP knew or ought to have known that they were responding to an emergency. That is where the argument turns. It is a judgment call and I do not think that it is straightforward.

11:30

The Convener: Like other members of the committee, I welcome the debate, which was initiated by Stewart Maxwell’s amendments and the Executive’s response to them. As the minister knows, we were clear in our stage 1 report that we wanted significant changes to be made to the bill, so I welcome the Executive amendments that are before us, which demonstrate the Executive’s positive response.

The questions which workers we cover and to what extent we cover them have always been difficult for us. Gerry Brown from the Law Society of Scotland in his evidence at stage 1 drew the analogy—I do not know whether this is a good parallel, but it is the one that we have—with a balloon full of water: if we poke it at one end, it pushes out at the other. The bill is a good example of how, when we start to amend legislation, we have to ensure that it balances up.

The policy intention is a lot clearer to me than it was at stage 1. The minister stated in his opening
remarks that it was important to acknowledge the work that emergency workers do and the consequences of any failure to act—a point that Margaret Mitchell put repeatedly at stage 1. The policy intention now is what I thought it should have been, so I welcome the fact that the Executive has made it clear.

I come down on the side of the Executive’s proposals in relation to the extent of protection and the group of workers covered. I am satisfied that the group of workers that the Executive has chosen to cover under the on-duty element are those who are routinely and regularly involved in emergencies. Other groups of workers are involved in responding to emergencies, but not to the same extent.

There are anomalies in the bill, some of which the amendments address. We will come on to prison officers later, but I think that they carry out more of a public-order duty than an emergency duty. To extend the protection to all groups of workers when they are on duty would give rise to other problems. I welcome what the Executive has suggested and I hope that the committee will support extending the groups of workers who are covered by the bill when they are responding to emergency circumstances.

I have comments to make on the evidential test, to which Margaret Smith has referred, but I will leave them just now and let the minister respond to the points that have been made so far. Before he does so, Margaret Mitchell has points to make.

Margaret Mitchell (Central Scotland) (Con): First, I want to comment on the ruling that you made at the start of the meeting, convener. The fact that you felt that you had to make it indicates the problems that we have had with the bill. I came to the conclusion at stage 1 that it would be impossible to produce a bill to protect emergency workers acting in emergency circumstances. The minister’s amendments mean that the bill is not really about protecting emergency workers in emergency circumstances; instead, it provides for a two-tier level of protection for public sector workers. That has to be acknowledged from the outset.

The minister’s amendment 11 is welcome in so far as it clearly stipulates emergency workers with the blue-light services—the police, the fire service and the ambulance service—and I suppose that it is possible to frame the bill to include that limited range of people. However, were the Parliament to agree even to that measure, it would do so in the knowledge of a certain absurdity, because a serious assault on any of those people would be prosecuted under common law—which would take into cognisance the serious circumstances—rather than under the bill. That is the problem with the bill.

The minister has lodged amendments that are designed to make some sense out of the bill. The first matter in that regard is the extension of the category of people who will be affected. In many ways, we are trying to second-guess every conceivable category of people who could be in an emergency circumstance. That is not what statute should do. That is why we have common law, which has the necessary flexibility. For example, the bill does not mention Transco workers investigating a gas leak, which might put their lives at risk, nor does it deal with the possibility that, if a railway maintenance crew were obstructed or hindered in its work, there could be a derailment and a huge loss of life. Nothing like that is covered in the bill.

We cannot legislate for every conceivable circumstance that could constitute an emergency situation or for every conceivable person who could, on any given day, be classed as being an emergency worker. For that reason, I will not support the minister’s amendments, apart from the ones that are designed only to tidy up or simplify the bill.

Mr McCabe: I will do my best to answer all the points that have been raised. If I miss anything, I would appreciate it if members would get back to me.

I appreciate the comments that were made by Stewart Stevenson, Bruce McFee and other members of the committee. It is an important principle that, when the Executive proposes legislation, we do our best to accommodate the comments made by committees of the Parliament. Obviously, that will not always be possible and there will be times when we do not agree, but I hope that, at least in part, we are demonstrating that there is a strong willingness on the part of the Executive to listen to what has been said by committees and to do our best to respond to that.

Stewart Stevenson talked about doctors on call. In a situation in which a doctor believes that they are responding to an emergency situation, they are covered by the bill. It is as simple as that. We do not think that every situation in which a doctor is called out will necessarily be an emergency but, if the doctor, having made an assessment of the information that has been made available to them, believes that they are responding to an emergency, they are covered by the bill.

I am being passed bits of paper by my official, convener, but, as I cannot read when I am speaking, I will just speak.

Bruce McFee rightly asked about the definition of “hospital”. We are talking about the commonsense interpretation of the word. The facilities that are contained in the hospital building,
such as the maternity unit and various clinics, are covered by the bill.

Mr McFee: That is fine as far as it goes. However, if a clinic is situated outwith the hospital grounds—many clinics are situated in town or village centres—is it covered by the bill’s definition of “hospital” or will we have to return to that matter at stage 3?

Mr McCabe: Unless the clinic is in a hospital, it is not covered by the definition. However, if a doctor is responding to an emergency situation in one of those clinics, he or she will be covered.

Mr McFee: So two levels of protection are given to a doctor depending on whether he is inside or outside the hospital grounds.

Mr McCabe: As I tried to explain, our intention is that, under the bill, a hospital—in the ordinary sense of the word—is a place that the public will clearly identify as a facility that needs to be ready to respond to an emergency. That means that the building and the people who work in it—including the people who are specifically mentioned—need to be ready to respond. In that sense, a hospital is always ready to cope with emergencies. That is why we have framed the bill in such a way.

Mr McFee: So the definition would cover a maternity hospital that stood on its own.

Mr McCabe: That is a hospital—yes.

I cannot remember which member raised the awkward situation of the receptionist—

The Convener: It was Margaret Smith.

Mr McCabe: I am sorry—it was Margaret Smith. The first point that I stress is that, under the bill, a hospital—in the ordinary sense of the word—is a place that the public will clearly identify as a facility that needs to be ready to respond to an emergency. That means that the building and the people who work in it—including the people who are specifically mentioned—need to be ready to respond. In that sense, a hospital is always ready to cope with emergencies. That is why we have framed the bill in such a way.

Mr McFee: So the definition would cover a maternity hospital that stood on its own.

Mr McCabe: That is a hospital—yes.

I cannot remember which member raised the awkward situation of the receptionist—

The Convener: It was Margaret Smith.

Mr McCabe: I am sorry—it was Margaret Smith. The first point that I stress is that the vast majority of the situations that will arise under the bill will be clear cut. However, there will be always be awkward situations. Our trained and experienced procurators fiscal will be able to assess the appropriate approach to take in each situation. Procurators fiscal take such decisions on prosecutions on a daily basis. They will use their experience to assess what is appropriate under the bill depending on the circumstances of the case.

Margaret Mitchell said that the Executive seems to be invoking a two-tier system. In a sense, that is true. In the bill, we advocate the principle that certain categories of workers need to be ready to respond in emergency situations and that, because they need to be in that position more than other workers do, we want to afford them a particular level of protection.

In the bill, we have not tried to second-guess every conceivable situation. That is why we have framed the bill as we have. We have tried to delineate certain premises, to identify certain workers and to make it clear that actions pertaining to them would attract higher penalties in that they would be prosecuted under the bill.

The Convener: I return to some of the issues that Margaret Smith raised. I accept that most situations will be clear cut. We have experienced procurators fiscal who will understand what the bill is driving at and the difficult circumstances of the workers that it provides for. However, it is still worth exploring the unusual situations that might arise.

We are interested in the chain of staff in a hospital: the people who are assisting. Is the radiographer who is assisting the staff in accident and emergency who are covered by the bill in a clear-cut situation? If the radiographer X-raying a patient who has come through the door of an accident and emergency ward is hindered, obstructed or assaulted, is that enough for an offence to have occurred?

Mr McCabe: Yes. The response is an assistance to an emergency situation. If the person is assisting the group of workers in a hospital setting who are identified under the bill, he or she is covered.

The Convener: I suppose what I was trying to explore are the difficulties that arise from the fact that the X-ray department might be quite a distance away from the accident and emergency department. My question was an attempt to test the chain. The chain is probably set out clearly in the bill, in that the accused probably does not need to know that someone came through the door of accident and emergency with a fractured skull or whatever. Can we reasonably assume that the radiographer who is carrying out his or her duties in X-raying a patient is assisting staff in an emergency situation?

11:45

Mr McCabe: There are two points. First, if someone is assisting in a hospital, that is about their being in the hospital and not necessarily about an emergency, because we are defining a hospital as a specific location where people would expect to be ready to respond to emergencies.

Secondly, we have discussed the bill’s provisions quite extensively, with the Law Society of Scotland, the Crown Office and our other legal advisers, and we are convinced that the bill’s provisions can and will be applied in practice. We have tested out with important bodies how practical it will be to apply the provisions of the bill and we are satisfied that that body of opinion agrees that the provisions can be applied in practice.

The Convener: Would you say that we therefore do not need to define any further what is
meant by “assisting”? I do not think that there is a definition of “assisting” in the bill. If there is a permanent state of emergency in a hospital, we can infer from that that a radiographer, for instance, is assisting a doctor or nurse in an emergency.

Mr McCabe: The test would be that it should be obvious to a reasonable person that the work of that radiographer was making a contribution to a situation. I think that that is the test that we would apply: is it obvious to a reasonable person that the assistance provided is making that contribution?

The Convener: We will come to the question of the evidential test, but that is a useful answer.

Stewart Stevenson: I want to test that my understanding is complete of the minister’s response on GPs, because it is perfectly possible that it is not. I preface my remarks by saying that, if we agree to the minister’s amendments, we shall end up with three bits of the bill at the beginning. The first of those covers the core emergency services, which is fair enough. The third covers people who are assisting, which is also okay. The middle bit, which is cut down from the existing section 1, basically leaves us with prison officers, Her Majesty’s Coastguard staff, Royal National Lifeboat Institution staff and, in section 1(3)(g), “a medical practitioner”.

The amendments also add the following wording:

“No offence is committed under subsection (1) above”.

Subsection (1) is the one that will refer, after the amendments are agreed to, to

“A person who assaults, obstructs or hinders another person acting in a capacity mentioned in subsection (3) below”.

That subsection is the one in which GPs are referred to. However, the new wording says:

“No offence is committed … unless the person who assaults, obstructs or hinders knows or ought to know that the person being assaulted, obstructed or hindered is acting in that capacity.”

In other words, the person committing an assault must know that the GP is acting in the capacity mentioned in the subsection. The amendments make the bill a very circular piece of legislation, although I am quite prepared for the minister to assure me absolutely that that gives the necessary protection.

I continue to have concerns and, if I am wrong, which I can be, it would be useful to get that on the record. However, it appears to me that it is not simply sufficient for the GP to have the view—with which the courts would agree—that there are emergency circumstances, if another test is that the person who assaults also

“knows or ought to know”

that there are emergency circumstances surrounding what the GP is doing or is about to do. I want to nail that issue down and it would be useful if the minister could help me. I see some nodding heads, so I suspect that other committee members are also concerned about those difficulties, which may simply be difficulties of drafting rather than of intent or outcome.

Mr McCabe: I understood that we were going to split the debate between the circumstances that might obtain and the evidential requirements.

The Convener: That is right.

Stewart Stevenson: I am content as long as the subject will be covered.

The Convener: What Mr McCabe said is correct and we can return to the matter.

Margaret Smith: I return to my question about other health care workers in a hospital. Perhaps I am being daft, but are they covered only if they are actively assisting a defined emergency worker in an emergency situation in a hospital? Are they assumed to be assisting by virtue of working in a hospital? If the answer to the second question is yes, the bill protects every health care worker who works in a hospital, because the assumption will be that emergencies occur regularly and routinely in every hospital. That would give health care workers a level of protection that would be welcome as a clarification of the situation on hospital premises. Somebody who assaulted any health care worker in a hospital would know that they risked prosecution under the bill.

Mr McCabe: The provisions apply when someone is assisting in a hospital, full stop. It is not automatically assumed that such a worker is assisting; they must show that they were providing assistance. However, they are protected when they are assisting.

Margaret Smith: If a radiographer is assaulted when sitting at her desk to have her tea break, she will not be covered, because she is not actively assisting another emergency worker in the hospital.

Mr McCabe: That is correct. The bill does not cover her, but the common law does.

Margaret Smith: Absolutely. Is the radiographer who X-rays my badly staved finger covered? The radiographer who X-rays somebody’s fractured skull is clearly covered. If I understand you, the
radiographer who X-rays a broken ankle or staved finger on hospital premises should be assumed to be assisting because she is in a hospital, but that means that she would be covered when undertaking any of her duties in hospital.

The Convener: That is the point that I was going to make. The position needs to be clear. We know about the health worker who is not engaged in anything and about the health worker who is involved in what no one would dispute is an emergency circumstance, but the bit in the middle is unclear. How will the bill treat a person who is assisting and is clearly not involved in emergency circumstances but is dealing with a minor fracture?

Mr McCabe: I am sure that Margaret Smith’s finger is important to her—

Margaret Smith: It is very sore.

Mr McCabe: However, it would probably not be categorised as an emergency. As long as a person is assisting a doctor or any other emergency worker in a hospital, they are covered.

Margaret Smith: Does that apply whether the health care worker is assisting to deal with a minor fracture or an emergency fractured skull?

Mr McCabe: I am sorry; I missed that.

Margaret Smith: You say that such a worker is covered while they assist, but must they assist in a situation that could be defined as an emergency?

Mr McCabe: No—the provisions apply as long as they are assisting.

Margaret Smith: As long as health care workers assist any of the defined people in a hospital, they are covered.

Mr McCabe: Yes.

The Convener: So the cover is quite wide.

Margaret Smith: It is very wide.

Mr McCabe: That is why we identified the hospital as an entity in the commonsense understanding of it.

The Convener: That means that assisting need not be defined, because the meaning can be inferred from the fact that assistance is being given to a person who is covered while they are on duty and in a hospital. That makes a lot of sense. I understand Bruce McFee’s point that a line must be drawn between hospitals and clinics, but drawing the line round hospitals gives a group of workers substantial added protection in some circumstances, which is important.

Margaret Smith: I have a small point about drafting. We have achieved more clarity, but we have had some ambiguity on the way. Could the bill be redrafted to make it clear, without having to go through the assistance route, that health care workers who work in a hospital are covered? I ask that to find out whether you can tidy up the bill to make it clearer.

The Convener: You can respond, minister. I am being generous with this debate because of the Pepper v Hart scenario and so that we get you on the record and are clear about what the bill is driving at.

Mr McCabe: I do not quite know the mechanisms that we would use to clarify the point. I am trying to help and I am thinking off the top of my head. Margaret Smith used the example of the radiographer making a cup of tea and asked whether they would be covered.

The Convener: I would like it to be made clear, for the purposes of the record, that they would not be covered by the bill but would be covered by the common law.

Mr McCabe: It would be as wrong to assault that individual in that setting as it would be in any other setting. The law would give the appropriate protection.

Margaret Mitchell: If a doctor in a hospital situation is making a cup of tea and is assaulted, is he covered?

Mr McCabe: Yes.

Margaret Mitchell: That is because of the causal link.

The Convener: It is because he is on duty.

Mr McCabe: It is because he is on duty and the person committing the assault would remove his immediate ability to respond to an emergency.

Margaret Mitchell: That opens up a Pandora’s box, because the doctor is not in an emergency circumstance; he is having a tea break in the canteen, but he has special protection because of the consequences of interfering with him.

The Convener: Let me just throw that point back at you, Margaret. A doctor might be assaulted, even though he is having a cup of tea, to such an extent that he is not available for duty. I have always supported the argument that we have to examine the consequences. The test cannot be applied to every worker in the same way, which is why I think that the Executive has got it right.

Margaret Mitchell: That is where we cannot legislate, because there are so many causal links. The number of scenarios is limitless in which there is a causal link that has the potential—

The Convener: The answer to your question is yes.

Margaret Mitchell: Which is why I think that the bill will create bad legislation.
Mr McCabe: As I said, there will be points on which we disagree, and I do not agree with that point of view.

Mr McFee: From what you have said, minister, it is now pretty clear who would and would not be covered in a hospital setting and the circumstances in which they would or would not be covered. You referred to the police, ambulance and fire services. However, there is a difficulty with the position of GPs, particularly when it comes to evidence and proving that a person knew that the GP was responding to an emergency. Is there not a case for simply including GPs when they are on duty, along with the police, ambulance and fire services?

Mr McCabe: We think not, because a large number of situations that doctors encounter are not emergency situations. Doctors carry out a range of routine duties. When they are responding to an emergency, it is appropriate that they are covered, but it is not appropriate to give them the comprehensive cover to which you alluded.

Mr McFee: We will revisit that when we come to the sections on evidential tests.

Stewart Stevenson: It might help us to see a way forward if you could respond positively to my next question. Section 6 seeks to give ministers the power to make secondary legislation. Would that enable you to move people between what will be the first three sections of the bill? In other words, would section 6 give you the power to take GPs out of section 1 in the bill as introduced and put them into the section that will be section 1 in the bill as amended, if it were judged, in light of experience, that that was the appropriate thing to do, or will we have to amend section 6 to allow that to happen?

Mr McCabe: I understand that the answer is yes, that would be possible.

The Convener: That is a good question.

I know that you will address the question of evidential tests. It would be helpful to get on the record how they will operate. The test for emergency circumstances is that the emergency worker believes that they are responding to an emergency, but does it matter how ridiculous that belief is? Is that covered by the word “reasonable”?

12:00

Mr McCabe: Yes. The test involves a “reasonable person”. There has to be reasonable belief. That is the answer. Would you like me to address the amendments that the Executive has lodged?

The Convener: Yes. That would be helpful.

Mr McCabe: Thank you. The Executive’s amendments are designed to address the issues that were raised at stage 1 on the bill’s evidential requirements. For the record, they are amendments 12 to 15, 17 to 19, 21 to 31, 33 to 36, 41, 43 to 46 and 54.

It is critical that the legislation that we produce is robust, effective and, above all, workable. I know that the committee shares our wish that the evidence that is required to prove each aspect of an offence under the bill is clearly apparent to all. I welcome the many useful points that were raised on the issue in the stage 1 report. As I mentioned a few moments ago, since stage 1 the Executive has closely consulted the Law Society to ensure that the bill’s evidential requirements are as clear as they can be and that it will be possible for offences to be prosecuted successfully under the legislation. Those discussions with the Law Society have proved immensely valuable and I am confident that the approach that we have agreed fully addresses the concerns that the committee raised.

The significant quantity of amendments includes a number of technical and drafting amendments that are consequential to other, more substantial changes. Fundamentally, however, the amendments will ensure that the evidential requirements for the four separate offences that are created by the bill are laid out explicitly and incontrovertibly. Our amendments clarify the mens rea requirements of the offences under the bill. In other words, we will set out on the face of the bill what the Crown needs to prove in relation to the knowledge of the accused in order to prove an offence under the bill. The Crown will have to prove that the accused knew or ought to have known the emergency worker’s status, for example as a constable or a doctor; where appropriate, that the emergency worker was or might have been responding to emergency circumstances or as if there were emergency circumstances, and that the emergency worker believed or had reasonable grounds to believe that there were or might have been emergency circumstances; and, where the victim is the person assisting an emergency worker, that the victim was assisting the emergency worker.

I am aware of the concerns that were expressed at stage 1, but it will not be necessary for the Crown to lead expert evidence to prove the existence of emergency circumstances. The bill will make it clear that circumstances are to be taken to be emergency circumstances provided that the emergency worker reasonably believed that they were or might have been emergency circumstances.

The bill also covers emergency workers who are responding to hoax calls. Emergency workers who
reasonably believe that they are responding to emergency circumstances will receive the bill’s protection even if there are no such circumstances—for example, where the emergency call is the result of a hoax.

Amendments 21 and 22 have been lodged for technical reasons. They are designed to ensure that definitions that are provided in the bill are consistent with the interpretation order. I commend amendments 12 to 15, 17 to 19, 21 to 31, 33 to 36, 41, 43 to 46 and 54 to the committee.

Stewart Stevenson: On amendment 13, I return to the point that I made earlier. I am perfectly happy that the definition of "emergency circumstances" lies in the reasonable belief of the worker. That is extremely useful. However, unless you can reassure me, I have a slight concern about what is in section 1, which will become section 2. Under very many circumstances, the person committing an assault—in particular, an assault of a GP—may be able to show that they could not have known or could not have been expected to know that the GP was responding to emergency circumstances. Can you flesh out how the assaulter might be able to make a judgment to which the court could respond about whether a GP was responding to emergency circumstances? The knowledge of the person who commits an assault is one of the evidential requirements for which you seek to make provision in amendment 13.

Margaret Smith: Minister, you have set out what the Crown will need as regards the accused's knowledge of—or what they ought to have known about—the status of the person whom they assaulted. That person will need to have been responding to emergency circumstances, to have thought that they were responding to emergency circumstances or to have been assisting with such a response. That is welcome recognition of the fact that they might have been responding to a hoax call, which is a possibility that many of us had concerns about.

I presume that the evidential requirements for when someone is assaulted in a hospital are different, because the Crown will need to be able to prove that the accused knew or ought to have known that the person whom they assaulted was a worker who was assisting someone who was on duty in a hospital. What are the evidential requirements for an assault in such a situation?

The Convener: I have a point of clarification, although I think that I know the answer. The emergency worker must believe that they are responding to an emergency. Must that be an emergency as defined in the bill and nothing else? For example, they could not say, "Well, I thought that it was an emergency." Is it correct that their belief must correspond with the definition of an emergency that is given in the bill?

Mr McCabe: Yes.

Mr McFee: I am mindful of the minister's earlier comment that he could not read and speak at the same time; I do not know whether that applies to reading and listening.

Mr McCabe: I am better with listening.

Mr McFee: I return to the point that Stewart Stevenson made about the evidential requirement as regards attacks on GPs. Although other matters have been cleared up reasonably well, I still have difficulty with that. If a GP is entering someone's house or walking along the road to go to someone's house, how can the person who carries out the attack reasonably be expected to know whether the GP is attending someone who has had a heart attack, dealing with a case of flu or visiting a wean with the mumps? Indeed, how can they be expected to know that the person is a GP at all, the big bag notwithstanding?

Mr McCabe: It is important to be explicit about the fact that, if there are circumstances in which it can be demonstrated that an individual could not reasonably be expected to have known that the person whom they attacked was responding to an emergency, it would not be possible to prosecute the case under the bill. However, I stress that I think that such occasions will be extremely rare.

Margaret Smith asked about assaults in a hospital. The definitions of the various situations are clearly laid out in the bill. It is open to people to read and understand what is meant. To return to the point that Stewart Stevenson made earlier, and to which Bruce McFee returned, we could spend the rest of the week speculating about what circumstances and occurrences might arise. For example, is the doctor running at speed in an excited manner? Such questions have to be taken into account. It is possible that a doctor who arrives at a situation and who receives significant verbal abuse will make his identity known to people in an explicit way, by saying something along the lines of, "I am responding to an emergency here. It would be in your best interests to move away." Under such circumstances, the severity of the situation might be conveyed to people who might have bad intentions.

The Convener: That is one area that gave the committee some concern. I presume that, under those circumstances, a GP would say that they were a GP. The court would have to consider that as evidence of whether the accused knew or ought to have known that the person whom they attacked was a GP.

Mr McFee: I accept that if a GP says, “I’m a doctor,” it is reasonable for the person to know
that the GP is a doctor. However, will that GP have to say, “I'm a doctor and I'm going to a heart attack victim,” “I'm a doctor and I'm going to a flu victim,” or whatever the situation happens to be? If, when someone drops down in the street, a guy rushes across saying, “I'm a doctor,” and takes out his stethoscope to make sure that the victim's heart is still beating, it is very clear to everybody that there is an emergency situation.

Home visits concerns me, however. I think that we are missing a golden opportunity to give additional protection to GPs. Whether we are talking about somebody breaking into a doctor's car to steal their bag and the drugs that they carry around with them, or about obstructing them in some way other than carrying out an assault, I think that the possibility of giving some added protection is being missed. I rather suspect that we are introducing an unnecessary grey area with respect to that group of workers.

Mr McCabe: I hear the point that is being made, although I do not necessarily agree with it. As I said, we could spend an awful lot of time trying to illustrate the situations in which it would be conveyed to an individual who had ill intent that there was an emergency going on. If a doctor arrives in a car in front of a house in response to a serious cardiac situation, there must be a strong likelihood that at least one member of the family will be at the front door or the gate. I do not think that they would be sitting back, relaxing and having a cup of tea while they waited for the doctor to arrive. There is potential for a whole range of circumstances to demonstrate to someone with ill intent that the situation was serious. I say again that we could be here for a long time trying to portray lots of different situations. We think that there is enough in our proposals for a reasonable person to assess whether someone with ill intent is obstructing a doctor or whomever else is responding to an emergency.

The Convener: The key thing is that GPs are referred to specifically in the bill. I am sympathetic to the point that Bruce McFee makes—in fact, the whole committee is, having discussed it. That is one of the open doors in the proposed legislation. We might have to consider another set of workers who might be making home visits for medical purposes.

I realise that you will have the power to modify the provisions. It is fair enough that GPs are a specified group—the Executive might simply have to monitor how things develop. I think that the committee is at one with the Executive in identifying that GPs, health visitors and a whole range of other workers, including social workers, who visit people in their homes are a vulnerable section of the community.

As the Executive has stated before, the bill is just the centrepiece for the other messages that it wants to make clear, which relate to the protection of a whole range of workers, as we have discussed. I hope that the Executive will agree that the situation of some workers whom we have been discussing might require a bit of monitoring to see whether the power to modify might be used in the future.

Mr McCabe: The modifying provisions are in the bill for a good reason. Even if they were not there, there would always be representative bodies and individuals who could lobby and make representations to the Parliament if they felt that the legislative cover was inadequate or that we could, in certain circumstances, improve the legislation that we had created.

However, it is important to note that there is a dearth of recorded incidents, as the committee acknowledged. That surprises me, because people know that such incidents happen. I have experience of what happens on Saturday nights in the accident and emergency department at Glasgow royal infirmary and it strikes me as remarkable that so little of what goes on is recorded in a way that would enable action to be well founded and justified. If groups of workers such as general practitioners or their representatives think that there is scope to make changes through the bill's order-making provisions, it is important that they build up and present a body of evidence that supports their case.

12:15

The Convener: I propose to wind up the debate unless members want to raise further matters. Minister, do you want to add anything on the amendments in conclusion?

Mr McCabe: No. I am quite content.

The Convener: In that case, the question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

Abstentions
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 0, Abstentions 1.

Amendment 11 agreed to.
Section 1—Assaulting or impeding providers of emergency services

Amendment 12 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 12 agreed to.

Amendment 3 moved—[Stewart Stevenson].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 3 disagreed to.

Amendments 13 and 14 moved—[Mr Tom McCabe]—and agreed to.

Amendment 4 not moved.

Amendments 15 to 17 moved—[Mr Tom McCabe]—and agreed to.

The Convener: Amendment 49, in my name, is in a group on its own.

I lodged amendment 49 as a probing amendment, because the issue to which it relates would otherwise not have been debated at stage 2. At stage 1, the committee debated whether prison officers and prisoner custody officers fitted well into the definition of an emergency worker. I am satisfied that prison officers should be included, but amendment 49 relates specifically to section 1(3)(d)(ii), which mentions “a prisoner custody officer within the meaning of Chapter II of Part VIII of the Criminal Justice and Public Order Act 1994”.

The point of lodging the amendment was simply to get on the record whether that paragraph refers to Kilmarnock prison officers. Initially, we assumed that the term “custody officer” referred only to officers who work for Reliance Secure Task Management Ltd, or anyone else who calls themselves a custody officer.

I move amendment 49.

Mr McCabe: As I said, the purpose of the bill is to protect the providers of emergency services. The Executive believes strongly that prison officers are the main providers of emergency services within prisons. Equally, Reliance prisoner custody officers may be called on to act in an emergency circumstance while on prisoner escort duty. Therefore the Executive does not support amendment 49. The unique circumstances within prisons mean that the first response to an emergency is not to dial 999, but to call on the prison’s emergency response team. Prison officers respond to emergencies and, in the vast majority of even life-threatening cases, they deal with them without the assistance of other emergency services. That applies whether the prison officer is an employee of the Scottish Prison Service or a prisoner custody officer in Kilmarnock prison. Amendment 49 would remove from the bill prisoner custody officers who work in private prisons.

Amendment 49 would also remove Reliance prisoner custody officers from the bill. Like prison officers more generally, Reliance custody officers work in unique circumstances in close proximity to prisoners. If emergencies arise during prisoner escort duty, it is incumbent on Reliance officers to deal with them in the first instance. Like prison officers, they do not have the benefit of being able to rely on a 999 call to deal with immediate emergencies. As I hope I made clear earlier, the role played in prisons and on escort duty by prisoner custody officers in responding to emergencies is a vital one that is not filled by the other emergency services.

I invite the withdrawal of amendment 49.

The Convener: That has been helpful in clarifying to whom amendment 49 refers.

What would the Executive consider to be an emergency circumstance in relation to a Reliance officer?

Mr McCabe: I hesitate to mention the tragic occurrence that happened recently in which a Reliance officer was stabbed in the back in a custody van, but that was obviously an emergency situation.
The Convener: Who responded to that situation?

Mr McCabe: The officer’s colleagues who were present.

The Convener: That is helpful. I lodged the amendment to get clarification on those points because it was the only available mechanism by which to do so.

Amendment 49, by agreement, withdrawn.

Amendments 18 and 19 moved—[Mr Tom McCabe]—and agreed to.

The Convener: Amendment 1, in the name of Stewart Maxwell, is grouped with amendments 20 and 2.

Stewart Stevenson: I welcome the acknowledgement that is implicit in amendment 20 that we should extend the definition of workers who carry out rescues on water. However, in mentioning a “person or organisation operating a vessel for purposes similar to those of the RNLI”;

amendment 20 would not achieve the Executive’s intent. I cite as my source for that page 22 of the RNLI annual report 2003, where the RNLI outlines its purpose. It states:

“The RNLI saves lives at sea. The objects of the institution also include promoting safety and providing relief from disaster, both at sea and on inland waters.”

It is clear that the RNLI’s purposes in relation to inland waters are considerably more restricted than they are to sea. Therefore, it may be that in requiring other organisations to be operating for purposes similar to those of the RNLI, the bill would not extend the benefit of its protection to the Loch Lomond rescue boat, which is an example that has been talked about before.

A secondary piece of information is that the RNLI’s website carries throughout in its banner heading at the top the phrase “Safety on the Sea”.

I will move amendment 1 on the basis that the phrase “independent rescue craft” provides a more clear-cut definition and avoids potentially restricting the definition and denying rescue craft that operate on inland waters the protection that is offered by the bill.

I move amendment 1.

Mr McCabe: Stewart Maxwell wants to extend the protection provided by the bill to inland water rescue teams that are not affiliated to the RNLI. Although the Executive agrees with the objective of amendments 1 and 2, we do not support the amendments, because we do not believe that they would achieve their purpose. As a result, we have lodged our own amendment on the issue, amendment 20, which I hope the committee will agree fulfils the objective.

I will shortly deal with why amendments 1 and 2 would not achieve their intention, but first I will set out the Executive’s policy position on the issue.

The bill seeks to protect those who provide emergency services. The Executive believes that people on whom we depend to protect our health, our well-being and our possessions, in difficult and often dangerous circumstances, are uniquely deserving of specific statutory protection. I share Stewart Maxwell’s respect for crews such as the Loch Lomond rescue boat and the Nith and Port William inshore rescue teams. I also recognise the valuable emergency response role that such crews fulfil. That is why we fully agree that the crews of the rescue boats that are not covered by the RNLI are every bit as entitled to the bill’s protection as are other workers who are listed. That is why we also want those workers to be added to the bill.

I will now deal with the effect of Stewart Maxwell’s amendments. In making reference to “independent rescue craft”, the amendments fail properly to define the workers whom they seek to support. It is inaccurate to speak of rescue crafts as being either dependent or independent. That status belongs to those who operate the rescue vessels. Even then, the question must be from whom or what such crews are independent. It is not clear from the amendments that the workers intended to be protected are crew members of vessels that are not operated by the RNLI. We believe that amendment 20 provides a clear statutory definition that will cover members of the rescue vessels that are not currently covered by the bill. We believe that amendment 20 more accurately fulfils the intention to extend the bill’s protection to that group of workers. Given that our intentions are very similar, I ask Stewart Stevenson to consider withdrawing amendment 1 and not moving amendment 2.

Mr McFee: I have a genuine concern about amendments 1, 2 and 20. I do not think that any of them does the job that the committee wants them to do. The general view of the committee is that we want people who are not part of the RNLI who are carrying out such rescue operations, whether in fresh or salt water, to be covered.

I note the minister’s concerns about what he regards as the deficiencies of amendments 1 and 2, but I also note that there is concern about the perceived deficiencies of amendment 20. I am not sure how to deal with such concerns at this stage, other than by rejecting the amendments. However, I would not want that to give out the signal that we are happy with what is currently in the bill. The bill must have a form of words that gives protection both to RNLI lifeboat people and to inshore rescue
people on Loch Lomond or on any other body of fresh water. Having heard Mr McCabe’s arguments against amendments 1 and 2 and Mr Stevenson’s arguments against amendment 20, I am not convinced that any of the amendments covers inshore rescue people.

The Convener: I welcome Jackie Baillie to the meeting. She has a special interest in the subject that we are debating, so I invite her to speak.

Jackie Baillie (Dumbarton) (Lab): Thank you, convener. I will attempt to be brief. I am grateful that the committee recognised in its stage 1 report the importance of inland water rescue craft and sought to have their crews covered by the bill. I am equally grateful that the Executive not only reflected on that but went out to speak to the Loch Lomond rescue boat group—that was well received—and introduced recognition of it in an Executive amendment. Stewart Maxwell has also lodged amendments on that aspect.

The Loch Lomond rescue service is a vital one. It is a voluntary service, but that should not mean that its crew are excluded from enjoying the same protection that the bill will afford to other categories of emergency workers. The key question is which amendment would do the job best. I am happy to rely on the Executive’s legislative competence and the minister’s on-the-record assurance that the Loch Lomond rescue boat crew will be included in the bill’s provisions.

I must say to Bruce McFee that my understanding is that the bill will afford protection to RNLI boat crews and that that will continue to be the case. The question is whether amendment 20 captures the scope of what the committee wanted. Given the minister’s on-the-record commitments, my view is that amendment 20 provides what the committee wanted. The Loch Lomond rescue boat group is at pains to point out that it is not the RNLI, but it is equally at pains to point out that it undertakes the same training as the RNLI does and that the only difference between it and the RNLI is the body of water on which the Loch Lomond group operates.

I thank the convener for the opportunity to attend the meeting. I support amendment 20.

Margaret Smith: As Jackie Baillie just said, the only difference between the Loch Lomond rescue group and RNLI services is the body of water on which the former operates. Was any thought given to stating explicitly in the bill that it covers both offshore and inland rescue vessel crews?

I take this opportunity to put on the record my appreciation of the excellent work that the RNLI does in my constituency from the Queensferry lifeboat station.

The Convener: I am not sure whether there is a difference of opinion between Stewart Stevenson, who represents Stewart Maxwell, and the Executive on this issue. It might help if we try to flush out whom we think the amendments do not cover. Before I ask the minister for his opinion, does Stewart Stevenson want to say anything?

Stewart Stevenson: I listened carefully to what the minister said about the drafting of amendments 1 and 2 and I accept what he said, so I seek the committee’s consent to withdraw amendment 1. However, like Margaret Smith, I would like the Executive or someone else to add words at stage 3 to what amendment 20 proposes to make it explicit that the protection would apply to inland water rescue crews as well as to those at sea.

Mrs Mulligan: I was going to ask about the point to which Stewart Stevenson just referred. The minister said in his opening comments that the Loch Lomond rescue service was similar to RNLI services and that amendment 20 would cover it. Stewart Stevenson pointed out that the RNLI operates at sea and asked for the bill to include a reference to inland water rescue services. I do not know whether that aspect is covered somewhere else in the bill. It would be helpful if the minister responded to Stewart Stevenson’s point.

Mr McCabe: It is what the crews do that is important. The RNLI and the inland water rescue crew save lives. That is the comparison that I would draw. Given that the Executive thinks that inland water rescue crews do similar things to the RNLI, we are extending the same protection to them.

Mrs Mulligan: So you are not differentiating between where they would be saving lives; rather, it is the role that they play that is important.

Mr McCabe: Exactly.

Mr McFee: I think that all members on the committee, as well as Jackie Baillie, want inland and offshore craft covered. The question is whether that is what the amendments achieve. That is my concern. With respect to the minister, that is what he means and that is the Executive’s intention, but I would not want to get into a situation where a court comes up with a different definition of amendment 20 from the definition that we are being assured about today. If amendment 20 is passed, we should invite the Executive to consider tightening the definition so that it is clear. The RNLI’s purpose is to save lives at sea, and I would not want there to be arguments in court about what kind of water it happened to be. It may
The Convener: I think that the minister has been clear that the intent behind the provision is for a court to consider what a worker does. If a worker is saving a life, and it is an emergency, a court would need to look no further and would not need to know what sort of water it was. There is really no need to tighten the provision. It makes sense, because it is at the heart of the bill.

Mr McCabe: I would agree with that. I will turn my mind to a form of words that will help me to explain the position more clearly at stage 3, and to ensure that that is clearly on the record in that part of the proceedings. That may help.

The Convener: The committee would welcome that clarity.

Amendment 1, by agreement, withdrawn.

Amendment 20 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 20 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 20 agreed to.

Amendment 2 not moved.

Amendments 21 and 22 moved—[Mr Tom McCabe]—and agreed to.

The Convener: Amendment 51, in the name of Margaret Smith, is grouped with amendments 52, 50, 6 and 53. I remind members that amendments 6 and 53 are pre-empted by amendment 5, which was debated in the first group.

Margaret Smith: I wish to put the case for the inclusion of professionally qualified social workers “taking action required or permitted by a child protection order.”

The main objectives of the bill are twofold. The first is to protect emergency workers. We heard compelling evidence from the British Association of Social Workers and the Association of Directors of Social Work about why social workers should be included. The second objective is to protect others in emergency circumstances, where there could be present or imminent serious injury or worsening of injury, illness or harm. I am convinced that social workers acting in child protection cases need protection; not only can they find themselves in volatile, difficult and potentially dangerous situations but they prevent children who are at risk from being caused further illness, injury or harm. There is a compelling argument for their inclusion.

We heard evidence that in a child protection situation it is normal for two social workers to go into a house to take a child. We were also told that it was unusual for the police to be present and that in some circumstances a social worker might decide in the course of a normal visit that they need to take out a child protection order immediately. Social workers can find themselves in emergency circumstances very quickly. For those reasons, I am convinced that social workers working in child protection should be included in the group of emergency workers in the bill.

Other social workers have argued for their inclusion in the bill; I support the case for the inclusion of mental health officers, who are covered in amendment 52. Many of the points that I have made about child protection officers can be made about MHOs. Mental health officers and child protection officers go into situations in which they restrict people’s liberty, which they have statutory obligations and cover to do. Extension of the definition of emergency workers to include mental health officers would be worth while. Marlyn Glen’s sensible amendment 53 is consequential on amendment 52 and would include mental illness in the definition of emergency circumstances.

Kenny MacAskill’s amendment 50 goes further and would include in the definition of emergency worker all sorts of community care workers. I have wrestled with my conscience on the amendment and the matter is a judgment call. I would prefer to see further evidence about whether the case could be made for including those workers through the minister making an order to modify the list, rather than going with what we have heard. The key point is that both child protection officers and mental health officers can make the case that they are regularly and routinely involved in emergencies. Making that case for other social workers, social care workers or community care workers becomes much more problematic. I am not saying that such workers never deal with emergencies, but including them would take us into the grey area of making a judgment call, as colleagues have said.

My judgment is that to expand the definition to include all social workers or community care workers would go against what the Executive is
trying to do in terms of the breadth of the bill. It would become complicated to determine who should be included and who was not included and the sorts of circumstances in which they could find themselves. We would have to rely on the common law in many circumstances.

Stewart Stevenson might be minded to take forward Kenny MacAskill’s amendment 50 to stage 3. The amendment refers to registered social workers. That might create a loophole, because under the Regulation of Care (Scotland) Act 2001, a third or a quarter of qualified social workers have been registered. If we went with that definition of a social worker, we would have a period of a year or two when social workers dealing with child protection, mental health officers or community care workers would not be covered. I suggest that if colleagues want to accept Kenny MacAskill’s amendment 50 rather than my amendment 51—or if Stewart Stevenson wants to take amendment 50 forward to stage 3—they might want to consider amending it. I might have the information wrong, but that is my understanding.

I move amendment 51.

12:45

Mrs Mulligan: I am keen not to repeat what Margaret Smith has just said, although I agree with what she outlined in opening the debate on this group of amendments. Earlier, I said that I welcomed the minister giving us a clear definition of the groups of people and the situations that are covered by the bill. It might therefore seem a little ironic that we should now suggest additional people who we think should be included. However, it was recognised in the committee’s discussions that other people operate in emergency circumstances.

Amendment 52 relates specifically to mental health officers acting to prevent further harm or to restrict a person’s liberty, but not to all mental health officers in whatever circumstances they might be operating. Exactly who is being referred to is clear, and the amendment is not totally an attempt to widen the helpful definition that the minister has provided. It was recognised in the committee’s discussions that there is an acknowledged risk when a mental health officer is acting in such a capacity in such circumstances. Extending the legislation to cover them would therefore be appropriate and would recognise the circumstances in which they operate.

I hope that members will support amendment 52. Likewise, I will support amendment 51—which again relates to specific categories within a profession in which there is an additional risk—and amendment 53.

Stewart Stevenson: I very much agree with the broad thrust of what colleagues have said about their amendments so far. I do not intend to move amendment 5 and therefore to pre-empt other amendments in the group, although, of course, other members could move amendment 5 if they wished to do so.

On Kenny MacAskill’s amendment 50, Margaret Smith made a good point about not all social workers being registered yet, although the window within which that will be a problem is probably not all that great. We are not clear about how many social workers have still to register, but it is clear that there will be a point in the not-too-distant future at which they will all be registered. The general point about amendment 50, in contradistinction to Margaret Smith’s amendment 51 and Mary Mulligan’s amendment 52, is that it would throw the net wider on much the same basis as section 1(3)(g) of the bill includes GPs who spend the majority of their working lives in more mundane and non-emergency work. One could say the same of social workers or many mental health workers because they deal with emergency situations only in extremis. By the same token, their contribution to society is of immense value. Indeed, it is generally recognised that there are considerable recruitment difficulties in social work and mental health, and perhaps we will make the professions more attractive to potential recruits as an unintended consequence of extending the net as wide as possible.

However, that is not the primary purpose of amendment 50, which simply aims to extend the same rights to social workers who may often find themselves in emergency circumstances, even if they started a working day or a trip out of the office without intending to be in such circumstances.

Amendment 6 would usefully extend the definition to include “significant harm” and would make the circumstances absolutely clear. Marlyn Glen’s amendment 53 would also be useful, and I have no difficulty in supporting it.

Marilyn Glen (North East Scotland) (Lab): The purpose of amendment 53 is to include mental illness in the bill’s definition of an emergency circumstance. That follows logically from amendment 52, which proposes to include mental health officers in the bill. It also fits in with the Executive’s position on prioritising mental health and putting it on an equal footing with physical health.

Mr McCabe: As we have heard, amendments 50, 51 and 52 would add mental health officers and social workers dealing with child protection to the list of workers who will be protected by the bill. The Executive agrees with that objective. Those workers are emergency workers similar to those already listed in the bill and should be included.
alongside those other workers. However, although amendment 50 on the one hand, and amendments 51 and 52 on the other, share a similar objective, they go about achieving it in differing ways. Having examined the two approaches, the Executive’s view is that the approach that is taken by amendments 51 and 52 represents a better way of achieving that objective. We have reached that view because amendment 50 would cover a wider range of duties and social workers than would amendment 51. Amendment 50 covers routine activities, such as assessments, which would move the focus away from emergencies. The bill is about protecting providers of emergency services.

In addition, amendment 50 would not cover mental health officers when they respond to all emergency circumstances, as recommended by the committee. It would protect that type of social worker only when they were actively dealing with emergency hospital admissions or detentions. I therefore believe that amendment 52 would better fulfil the committee’s recommendation in that regard. The Executive therefore opposes amendment 50 and supports amendments 51 and 52. I urge the committee to do the same and ask Stewart Stevenson not to move amendment 50 in favour of amendments 51 and 52.

Amendments 6 and 53 would change the bill’s definition of emergency circumstances. In amendment 6, Kenny MacAskill seeks to broaden the definition of emergency circumstances so that occasions that are causing or are likely to cause significant harm to a person are covered by the bill. We cannot support that amendment.

This bill is firmly, intentionally and explicitly focused on emergency circumstances. Our objective in introducing it was to protect those who provide emergency services. We believe that the valuable function that emergency services provide for our society makes them particularly deserving of such additional protection. However, by extending the definition of emergency services to include the words, “significant harm”, the range of circumstances that would be covered by the bill would go far beyond genuine emergencies. The word “significant” suggests something less severe than the word “serious”, as currently used in relation to serious injury or illness. However, the issue goes further than that. The notion of harm is not confined to a person’s physical or mental health. Harm might be inflicted just as easily upon a person’s economic status or their emotional well-being. Quite clearly, that is not the sort of circumstance that we are trying to cover in the bill. I therefore ask members to consider not moving Kenny MacAskill’s amendment 6.

In amendment 53, Marlyn Glen seeks to make it clear that the definition of emergency circumstances covers situations in which the mental health of a person is at risk. That would ensure that people responding to such circumstances were covered by the legislation. I fully support that amendment. In defining emergency circumstances as those that “are causing or are likely to cause … serious injury … or … serious illness”, the Executive has always intended that mental illness should be covered.

The addition of mental health officers to the list of workers who will be protected by the bill makes it all the more relevant and important that circumstances involving mental illness be explicitly recognised as emergency circumstances. The Executive therefore agrees that amendment 53 would strengthen the bill by clearly and indisputably setting out the types of circumstance in which the new legislation could be used. I therefore support amendment 53.

The Convener: Thank you, minister. If members have no further points to make, I ask Margaret Smith to wind up.

Margaret Smith: I welcome the minister’s acceptance of the arguments in favour of including child protection and mental health officers.

The Convener: Sorry—I have made a mistake. You need to wind up, so you get the last word. I will stop you there and let Margaret Mitchell speak.

Margaret Mitchell: I have a problem with including in the definition social workers per se. As we look at the intent behind the legislation, we must look at its deterrent effect. Often the members of blue-light services, which we have already looked at, are the victims of malicious and reckless conduct. I freely admit that social workers are often in dangerous circumstances and we want to do everything that we can to protect them, but I do not see how amendments 51 and 52 would give them protection in the circumstances into which they go.

If social workers are dealing with someone with a mental illness, that person lacks the capacity to know what is going on. If they are in a fraught situation caused by a child custody case, equally, it is the passion of the moment that may induce the conduct against them. Using common law is the best way to deal with all such scenarios. If we want to give extra protection to social workers in any kind of dangerous situation, I suggest that the Executive consider using technology such as personal alarms, for example, so that social workers have that added protection on the spot. I honestly do not think that putting in statute what is proposed in the amendments will help—it could, in fact, hinder.

Stewart Stevenson: I acknowledge the minister’s point that the drafting of amendment 50
does not cover all mental health workers during all emergencies. On that basis, I will not move the amendment. However, I will consult Mr MacAskill further on his intentions at stage 3.

Mr McFee: I, too, was going to mention that point because there was concern that the drafting of amendment 50 might be deficient. Mr MacAskill might have to revisit the matter.

However, contrary to what was said at the other end of the table by Margaret Mitchell, I think that there is a case for ensuring that certain types of social worker are covered by amendment 50. The out-of-hours services in particular place social workers in very difficult situations—their job is not just about extracting vulnerable individuals from particular circumstances; sometimes they have to extract the circumstances from round about the individual. If a social worker has to face a group of five or six people who might be hell-bent on preventing them from carrying out their work, which is to protect a vulnerable person, there would be some merit in amendment 50. However, if Stewart Stevenson is of a mind not to move the amendment and to seek some redrafting, I will be happy with that.

Mr McFee: I, too, was going to mention that point because there was concern that the drafting of amendment 50 might be deficient. Mr MacAskill might have to revisit the matter.

However, contrary to what was said at the other end of the table by Margaret Mitchell, I think that there is a case for ensuring that certain types of social worker are covered by amendment 50. The out-of-hours services in particular place social workers in very difficult situations—their job is not just about extracting vulnerable individuals from particular circumstances; sometimes they have to extract the circumstances from round about the individual. If a social worker has to face a group of five or six people who might be hell-bent on preventing them from carrying out their work, which is to protect a vulnerable person, there would be some merit in amendment 50. However, if Stewart Stevenson is of a mind not to move the amendment and to seek some redrafting, I will be happy with that.

The Convener: Finally, I invite Margaret Smith to wind up.

Margaret Smith: I welcome what the minister said about my amendment 51 as well as Mary Mulligan’s amendment 52, both of which deal with mental health officers. The evidence that we took on those workers was clear, although it was less clear on other sectors of the social work work force.

I might have said in error in my earlier remarks that the power to modify the definition was contained in amendment 6, when in fact that power is in section 6 of the bill. The power to modify the definition of emergency workers might be called upon by ministers in the future if people can present examples of the kind of situation we have spoken of. It might be that groups of social workers are the people to gather such data.

I agree wholeheartedly with Margaret Mitchell’s point about using technology to support social workers, key health care and social care workers, professionals allied to health care and medicine and housing officers who go into people’s houses and who work out in the community. We must embrace the fact that these workers need to be supported by more technology. I do not think that anyone in this committee has done anything other than echo the Executive’s view that the bill is only part of a jigsaw puzzle in the effort to assist and protect key workers. As a result, I certainly support Margaret Mitchell’s comments about the use of technology.
The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 52 agreed to.

Amendments 50 and 5 not moved.

Amendment 23 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 23 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 24 agreed to.

Amendment 24 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 24 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 25 agreed to.

Amendment 6 not moved.

Amendment 53 moved—[Marlyn Glen].

The Convener: The question is, that amendment 53 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 26 agreed to.

Amendment 26 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 26 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 27 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 27 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.
The Convener: The question is, that amendment 27 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

Against
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 27 agreed to.

Amendment 28 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 28 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

Against
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 28 agreed to.

Amendment 29 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 29 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

Against
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 29 agreed to.

Amendment 30 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 30 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

Against
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 30 agreed to.

Amendment 31 moved—[Mr Tom McCabe]—and agreed to.

Amendment 54 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 54 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

Against
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 54 agreed to.

Amendment 8 not moved.

Amendment 33 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 33 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

Against
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 33 agreed to.

Amendment 34 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 34 be agreed to. Are we all agreed?

Members: No.
Amendment 33 agreed to.

Amendment 34 moved—[Mr Tom McCabe]—and agreed to.

Amendment 35 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 35 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 35 agreed to.

Amendment 36 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 36 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Section 2, as amended, agreed to.

Section 3—Assaulting or impeding health workers in hospital accident and emergency premises

The Convener: I now call amendments 37 to 46, all in the name of the minister and all previously debated. I invite the minister to move those amendments en bloc.

Amendments 37 to 46 moved—[Mr Tom McCabe].
FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 39 agreed to.

The Convener: The question is, that amendment 40 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 40 agreed to.

The Convener: The question is, that amendment 41 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 41 agreed to.

The Convener: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 42 agreed to.

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 43 agreed to.

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 44 agreed to.

The Convener: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.
Amendment 46 agreed to.
Amendment 9 not moved.
Section 3, as amended, agreed to.
Sections 4 and 5 agreed to.

Section 6—Power to modify

The Convener: Amendment 47, in the name of the minister, is in a group on its own.

Mr McCabe: At stage 1, the committee raised concerns that the order-making power in section 6 was too far reaching to be subject to the negative resolution procedure. My predecessor, Andy Kerr, listened to those concerns and gave a commitment to amend the bill. Amendment 47 will fulfil that commitment by making the order-making power subject to the affirmative resolution procedure. That will mean that changes to the list of workers who are protected by the bill cannot be made unless a draft order has been laid before, and approved by resolution of, the Parliament.

I move amendment 47.

Margaret Mitchell: I welcome that amendment.
Amendment 47 agreed to.
Section 6, as amended, agreed to.
Section 7 agreed to.

Long Title

Amendment 10 not moved.
Amendment 48 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.
Amendment 48 agreed to.

Meeting closed at 13:21.
Emergency Workers (Scotland) Bill
[AS AMENDED AT STAGE 2]

CONTENTS

Section
A1 Assaulting or impeding certain providers of emergency services
1 Assaulting or impeding certain emergency workers responding to emergency circumstances
1A Assaulting or impeding persons assisting emergency workers
2 Provisions supplementary to sections A1 to 1A
3 Assaulting or impeding health workers in hospital premises
4 Penalties
5 Saving for certain other offences
6 Power to modify
7 Short title and commencement
Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Emergency Workers (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make it an offence to assault or impede persons who provide emergency services; and for connected purposes.

A1 Assaulting or impeding certain providers of emergency services

(1) A person who assaults, obstructs or hinders another person acting in a capacity mentioned in subsection (3) below commits an offence.

(2) No offence is committed under subsection (1) above unless the person who assaults, obstructs or hinders knows or ought to know that the person being assaulted, obstructed or hindered is acting in that capacity.

(3) The capacity referred to in subsection (1) above is—

(a) that of a constable;

(b) that of a member of a fire brigade maintained in pursuance of the Fire Services Act 1947 (c.41) or a person who, not being a member of such a fire brigade, is paid by a fire authority under section 3(1)(b) of that Act for rendering services and is doing so; or

(c) that of a person acting for the Scottish Ambulance Service Board in exercise of the function referred to in article 4(1)(a) of the Scottish Ambulance Service Board Order 1999 (S.I. 1999/686) (exercise by the Board of function of providing ambulances and other means of transport for ill and other persons).

1 Assaulting or impeding certain emergency workers responding to emergency circumstances

(1) A person who assaults, obstructs or hinders another while that other person is, in a capacity mentioned in subsection (3) below, responding to emergency circumstances, commits an offence.

(1A) No offence is committed under subsection (1) above unless the person who assaults, obstructs or hinders knows or ought to know that the person being assaulted, obstructed or hindered—

(a) is acting in that capacity; and

(b) is or might be responding—

(i) to emergency circumstances; or
(ii) as if there were emergency circumstances.

(3) The capacity referred to in subsection (1) above is—

(d) that of a prison officer, that is to say—

(i) a person who holds a post, otherwise than as a medical officer, to which the person has been appointed for the purposes of section 3(1A) of the Prisons (Scotland) Act 1989 (c.45); or

(ii) a prisoner custody officer within the meaning of Chapter II of Part VIII of the Criminal Justice and Public Order Act 1994 (c.33);

(e) that of a member of Her Majesty's Coastguard;

(f) that of a member of the crew of a vessel operated by—

(i) the Royal National Lifeboat Institute (the “RNLI”); or

(ii) any other person or organisation operating a vessel for purposes similar to those of the RNLI,
or a person who musters the crew of such a vessel or attends to its launch;

(g) that of a registered medical practitioner;

(h) that of a registered midwife;

(j) that of a social worker, within the meaning given by section 77(1) of the Regulation of Care (Scotland) Act 2001 (asp 8) while taking action required or permitted by a child protection order; or

(k) that of a mental health officer, that is to say—

(i) a mental health officer within the meaning given by section 32(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13); or

(ii) until section 32(1) of that Act (appointment and deemed appointment of mental health officers) comes into force, a mental health officer within the meaning given by section 125 of the Mental Health (Scotland) Act 1984 (c.36).

(4) For the purposes of this section and section 1A of this Act, a person is responding to emergency circumstances if the person—

(a) is going anywhere for the purpose of dealing with emergency circumstances occurring there; or

(b) is dealing with emergency circumstances or preparing to do so.

(5) For the purposes of this Act, circumstances are “emergency” circumstances if they are present or imminent and—

(a) are causing or are likely to cause—

(i) serious injury to or the serious illness (including mental illness) of a person;

(ii) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings); or

(iii) a worsening of any such injury, illness or harm; or

(b) are likely to cause the death of a person.
1A **Assaulting or impeding persons assisting emergency workers**

(1) A person who assaults, obstructs or hinders another in the circumstances described in subsection (2) below commits an offence.

(2) Those circumstances are where the person being assaulted, obstructed or hindered is assisting another while that other person is, in a capacity mentioned in section A1(3) or 1(3) of this Act, responding to emergency circumstances.

(3) No offence is committed under subsection (1) above unless the person who assaults, obstructs or hinders knows or ought to know—

(a) that the person being assisted is acting in that capacity;

(b) that the person being assisted is or might be responding—

(i) to emergency circumstances; or

(ii) as if there were emergency circumstances; and

(c) that the person being assaulted, obstructed or hindered is assisting the person acting in that capacity.

2 **Provisions supplementary to sections A1 to 1A**

(1) A person may be convicted of the offence under section A1, 1 or 1A of this Act of obstructing or hindering notwithstanding that it is—

(a) effected by means other than physical means; or

(b) effected by action directed only at any vehicle, apparatus, equipment or other thing or any animal used or to be used by a person referred to in that section.

(1A) A person who gives false information with the intention that a person acting in a capacity mentioned in subsection (3) of section A1 will act upon that information is to be regarded, for the purposes of that section of this Act, as hindering the person acting in that capacity.

(2) A person who gives false information with the intention that a person acting in a capacity mentioned in subsection (3) of section 1 of this Act will, while responding to emergency circumstances or instead of doing so, act upon that information is to be regarded, for the purposes of that section, as hindering the person acting in that capacity.

(3) Subsection (2) above does not prejudice the generality of subsection (1)(a) above.

(3A) For the purposes of sections 1 and 1A of this Act, circumstances to which a person is responding are to be taken to be emergency circumstances if the person believes and has reasonable grounds for believing they are or may be emergency circumstances.

(6) Evidence from a single source is sufficient evidence to establish, for the purposes of section A1, 1 or 1A of this Act, whether a person is acting in a capacity referred to in that section.

3 **Assaulting or impeding health workers in hospital premises**

(1) A person who, in a hospital, assaults, obstructs or hinders a person acting in a capacity mentioned in subsection (2B) below or a person assisting such a person commits an offence.
(2A) No offence is committed under subsection (1) above unless the person who assaults, obstructs or hinders knows or ought to know that the person being assaulted, obstructed or hindered is acting in that capacity or, as the case may be, that the person being assisted is acting in that capacity and that the person being assaulted, obstructed or hindered is assisting the person acting in that capacity.

(2B) That capacity is—
(a) that of a registered medical practitioner;
(b) that of a registered nurse;
(c) that of a registered midwife; or
(d) that of a person acting for the Scottish Ambulance Service Board in the exercise of the function referred to in article 4(1)(a) of the Scottish Ambulance Service Board Order 1999 (S.I. 1999/686) (exercise by the Board of function of providing ambulances and other means of transport for ill and other persons).

(3) A person may be convicted of the offence under subsection (1) above of obstructing or hindering notwithstanding that it is—
(a) effected by means other than physical means;
(b) effected by action directed only at any vehicle, apparatus, equipment or other thing used or to be used by a person referred to in that subsection.

(5) Evidence from a single source is sufficient to establish, for the purposes of subsection (1) above, whether a person is acting in a capacity referred to in subsection (2B) above.

4 Penalties
A person guilty of an offence under this Act is liable, on summary conviction, to imprisonment for a period not exceeding 9 months or to a fine not exceeding level 5 on the standard scale or to both.

5 Saving for certain other offences
Nothing in this Act affects section 41(1) of the Police (Scotland) Act 1967 (c.77) (assault etc. of constable in execution of duty or of person assisting a constable) or section 30 of the Fire Services Act 1947 (obstruction etc of member of fire brigade engaged in fire-fighting operation).

6 Power to modify
(1) The Scottish Ministers may by order modify this Act by—
(a) adding a person or description of person to; or
(b) removing a person or description of person from,
those mentioned in this Act as persons the assault, obstructing or hindering of whom is an offence under this Act and by making such provision connected with that modification as they think fit.

(2) The Scottish Ministers shall not make an order under subsection (1)(a) above unless it appears to them that the person to be added (or, as the case may be, each person of the description 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.
(3) An order under subsection (1) above is to be made by statutory instrument.

(4) No such order shall be made unless a draft of it has been laid before and approved by a resolution of the Scottish Parliament.

7 Short title and commencement

(1) This Act may be cited as the Emergency Workers (Scotland) Act 2004.

(2) This Act (except this section) comes into force on such day as the Scottish Ministers may, by order made by statutory instrument, appoint and different days may be so appointed for different purposes.

(3) An order under subsection (2) above may contain such transitional, transitory and saving provision as the Scottish Ministers think appropriate.
Emergency Workers (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make it an offence to assault or impede persons who provide emergency services; and for connected purposes.

Introduced by: Mr Andy Kerr
On: 22 March 2004
Supported by: Tavish Scott
Bill type: Executive Bill
Emergency Workers (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections A1 to 7 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section A1

Stewart Stevenson

2 In section A1, page 1, line 18, at end insert <;
   ( ) that of a registered medical practitioner;
   ( ) that of a registered nurse; or
   ( ) that of a registered midwife.>

Section 1

Mr Tom McCabe

4 In section 1, page 2, line 11, leave out <Institute> and insert <Institution>

Jackie Baillie

5 In section 1, page 2, line 11, leave out <(the “RNLI”)>.

Stewart Stevenson

1 In section 1, page 2, line 12, after <vessel> insert <on the sea or on inland waters>

Jackie Baillie

6 In section 1, page 2, line 12, leave out from <purposes> to <RNLI> in line 13 and insert <the purpose of providing a rescue service on a body of water>

Stewart Stevenson

3 In section 1, page 2, leave out lines 15 to 17

Mr Tom McCabe

7 In section 1, page 2, line 20, after <by> insert—
   <( )>
Mr Kenny MacAskill

15 In section 1, page 2, line 20, after <by> insert—

<(  ) section 53 or 55 of the Children (Scotland) Act 1995 (c.36); or>

Mr Kenny MacAskill

16* In section 1, page 2, line 20, leave out from <a> to end of line 27 and insert—

<(  ) the National Health Service and Community Care Act 1990 (c.19);
(  ) the Children (Scotland) Act 1995 (c.36); or
(  ) the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).>

Mr Tom McCabe

8 In section 1, page 2, line 20, after <order;> insert <or

(  ) an authorisation under section 61 of the Children (Scotland) Act 1995
(c.36) (emergency protection of children where child protection order not available);>

Section 2

Mr Tom McCabe

9 In section 2, page 3, line 22, after <A1> insert <of this Act>

Mr Tom McCabe

10 In section 2, page 3, line 23, leave out <of this Act>

Mr Tom McCabe

11 In section 2, page 3, line 29, leave out <Subsection (2) above does> and insert <Subsections (1A) and (2) above do>

Section 3

Mr Tom McCabe

12 In section 3, page 3, line 37, after <hospital> insert <or on land adjacent to and used wholly or mainly for the purposes of a hospital>

Mr Tom McCabe

13 In section 3, page 4, line 6, leave out <That capacity> and insert <The capacity referred to in subsection (1) above>
In section 6, page 4, line 34, leave out from <those> to <under> in line 35 and insert <section A1(3), 1(3) or 3(2B) of>
Emergency Workers (Scotland) Bill

Groupings of Amendments for Stage 3

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

*Group 1: Circumstances in which offences can be committed*
2, 3

*Group 2: Workers providing a rescue service on a body of water*
4, 5, 1, 6

**Debate to end no later than 30 minutes after proceedings begin**

*Group 3: Definition of emergency worker: social workers*
7, 15, 16, 8

*Group 4: Technical amendments*
9, 10, 11, 13, 14

*Group 5: Health workers in hospital premises*
12

**Debate to end no later than 55 minutes after proceedings begin**
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 2, No. 40       Session 2

Meeting of the Parliament

Wednesday 22 December 2004

Note: (DT) signifies a decision taken at Decision Time.

Business Motion: Ms Margaret Curran, on behalf of the Parliamentary Bureau, moved S2M-2201—That the Parliament agrees that, during Stage 3 of the Emergency Workers (Scotland) Bill, debate on each part of the proceedings shall be brought to a conclusion by the time-limits indicated (each time-limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended or otherwise not in progress):

Groups 1 and 2 – no later than 30 minutes

Groups 3 to 5 – no later than 55 minutes

Motion to pass the Bill – 1 hour 40 minutes

The motion was agreed to.

Emergency Workers (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to without division: 4, 9, 10, 11, 13 and 14.

The following amendments were agreed to (by division)—

5    (For 86, Against 11, Abstentions 0)
6    (For 89, Against 9, Abstentions 0)
7    (For 89, Against 12, Abstentions 0)
8    (For 89, Against 13, Abstentions 0)
12   (For 87, Against 14, Abstentions 0)

The following amendments were disagreed to (by division)—

2    (For 31, Against 70, Abstentions 0)
15   (For 31, Against 69, Abstentions 0)
16   (For 30, Against 70, Abstentions 0)

Other amendments were not moved.

Emergency Workers (Scotland) Bill – Stage 3: The Minister for Finance and Public Service Reform (Mr Tom McCabe) moved S2M-2157—That the Parliament agrees that the Emergency Workers (Scotland) Bill be passed.
After debate, the motion was agreed to ((DT) by division: For 95, Against 15, Abstentions 0).
Business Motion

14:34

The Presiding Officer (Mr George Reid): The next item of business is consideration of business motion S2M-2201, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Emergency Workers (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during Stage 3 of the Emergency Workers (Scotland) Bill, debate on each part of the proceedings shall be brought to a conclusion by the time-limits indicated (each time-limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended or otherwise not in progress):

Groups 1 and 2 – no later than 30 minutes
Groups 3 to 5 – no later than 55 minutes

Motion to pass the Bill – 1 hour 40 minutes—[Ms Margaret Curran.]

Motion agreed to.
Emergency Workers (Scotland)
Bill: Stage 3

15:08

The Deputy Presiding Officer (Trish Godman): The next item of business this afternoon is stage 3 consideration of the Emergency Workers (Scotland) Bill. For the first part of the stage 3 proceedings, members should have the bill as amended at stage 2, the marshalled list, which contains all amendments that have been selected for debate, and the groupings.

I will allow an extended voting period of two minutes for the first division. Thereafter, I will allow a voting period of one minute for the first division after a debate on a group. All other divisions will be 30 seconds long.

Before I call group 1, I ask those members who are conducting conversations to conduct them somewhere else.

Section A1—Assaulting or impeding certain providers of emergency services

The Deputy Presiding Officer: Amendment 2, in the name of Stewart Stevenson, is grouped with amendment 3.

Stewart Stevenson (Banff and Buchan) (SNP): My colleague, Kenny MacAskill, will speak to later amendments on the subject of social workers, but amendments 2 and 3 concern health workers who would not benefit from the support that the bill seeks to give to various categories of emergency workers. I will touch on a few important issues that relate to that matter.

First, I am told that 70 per cent of occupational injuries to national health service staff who are working in a community setting—an area of the health service that the Executive says it is seeking to expand and grow in importance—are due to violence and aggression. That is a higher percentage of injuries than is the case for NHS staff who work in the acute services. Paradoxically, it is to acute services staff that the bill offers protection. We support that, of course, but in doing so we note that it is paradoxical that we are not extending that support to those who work elsewhere. Unison highlighted the fact that the weakness in the bill overall is that it extends protection only to a limited number of workers. Later, we will welcome the extension of the definition of “hospital,” modest as it undoubtedly is, and the inclusion of blue-light workers.

I will quote from an e-mail that I received yesterday from an Inverness-based general practitioner. Of the present arrangements, he says that this is a “clearly absurd situation as we are at some of the highest risk. I have been assaulted whilst GP Visiting at night, in a quite serious manner, and find this division”—between various categories of health service staff—“quite unintelligible.”

When the minister responds to amendment 2—to which amendment 3 is simply consequential—he ought to speak to the concerns of that Inverness GP and to those of midwives and nurses who are putting themselves at risk on a regular basis and explain to them why we are, so far, denying them the kind of protection that we are prepared to offer to other important workers in emergency services. He should explain to people across Scotland why those important workers, upon whom the population depends and to whom people look for succour in times of crisis, are not entitled to the kind of protection that is given to workers elsewhere.

I move amendment 2.

Pauline McNeill (Glasgow Kelvin) (Lab): It is important for Parliament to recognise that a key principle of the bill is to define those who act in emergency circumstances regularly and routinely. The Minister for Finance and Public Service Reform is on record as having said that. When we try to establish who is covered by the bill, it is important to ensure that they fit into that definition.

A line must be drawn, and I think that if we are to extend the provisions of the bill beyond those who are already covered, we will never stop redrawing that line. It appears to me that there are many other groups who could fall into the category of workers subject to the protection of the bill.

Stewart Stevenson’s final comments were about other groups wanting protection. That is a critical point. The bill is designed to protect people who are regularly and routinely in emergency circumstances; it is not about violence against public sector workers in general. However, in no way do I want to give the impression that that is not a vital issue, and I am sure that that is the Executive’s position, too. There is plenty of legislation that will cover other groups. More serious crimes will be covered by the criminal law, under which all the groups with whom we are concerned will be protected, but it is important to draw the distinction.

As we said at the end of stage 1, this was a difficult bill for the Justice 1 Committee to scrutinise. There has been a lot of confusion about the purpose of the bill. I am pleased to say that the Executive has now put on record the fact that its primary purpose is to identify emergency circumstances. What we do about violence in the workplace in general is a matter for the Parliament, but the bill is not the only place where
we can address that. I hope that one of the advantages of passing the bill is that we can make it clear to everybody that we will not tolerate violence, not just against health service workers, but against any public service workers. That extends, for example, to bus drivers and estate agents—many estate agents work alone in the community and put themselves at risk. When we are legislating, we have to ensure that we provide protection for everyone working in the relevant circumstances.

It is important to emphasise the particular circumstances covered by the bill—we should remember why it has been called the Emergency Workers (Scotland) Bill. The issue is not that any worker is any less important than another; it is simply that the provision is different. I ask members to reject Stewart Stevenson’s amendments.

15:15

Margaret Smith (Edinburgh West) (LD): I support Pauline McNeill’s comments. The Emergency Workers (Scotland) Bill has been difficult to deal with—at various points it felt like we were dealing with a can of worms. If we accept the difficulties during a home birth, but a GP in a high dependency unit? What if they are being wheeled along a corridor by a porter on their way to a high dependency unit? What if the person concerned is in the blood bank or the medical records department? They are part of the chain of people who are involved in an emergency. We managed to persuade the Executive to extend the bill to cover the entire hospital, not primarily because of doctors, nurses and midwives, who are already covered as emergency workers, but because of the large number of other people who work in emergency circumstances in hospitals but were not covered.

However, if we agree to Stewart Stevenson’s amendment 2 we will compound the anomaly by including GPs, nurses and midwives but not GPs’ receptionists or the workers that Pauline McNeill mentioned. I suggest that we should resist the amendment, not because I do not have sympathy with it, but because the bill is about emergency workers in emergency circumstances and the people to whom the amendment seeks to give extra protection—GPs, nurses and midwives—are already given extra protection by the bill. The minister will be able to extend the list of who is covered by the legislation in due course if he wishes. I seek an assurance that he will take time to monitor and review how it works—and to see whether we are given the evidence that was sadly lacking during the Justice 1 Committee’s deliberations—to see whether we have got the legislation right or whether we need to include others.

Marlyn Glen (North East Scotland) (Lab): I too oppose amendment 2, not because I do not value the work that doctors, nurses and midwives do day in, day out, but because the bill is about emergency workers in emergency circumstances. All workers should have the right to work in safety, unimpeded and unharmed, and the bill should not affect that right.

The primary role of the blue-light services—the police, the fire brigade and the ambulance service—is to respond to emergency circumstances and so they are included in the first section of the bill. Although doctors, nurses and midwives have to respond to emergency circumstances, doing so does not make up the bulk of their work. The bill covers doctors, nurses and midwives when they are responding to emergencies and when they are on hospital premises. People who assist them are also covered.

Some groups have unjustifiably criticised the bill’s narrow scope. The Justice 1 Committee took much evidence on and had lengthy discussions on that point. It is essential that the bill—like any other—is clearly focused.

The bill recognises that attacks on emergency workers are unacceptable and recognises the
effect that attacks can have on the ability of workers to save lives. The bill is part of the action to deal with that most serious issue. I oppose amendment 2.

Margaret Mitchell (Central Scotland) (Con): Amendment 2 would extend the bill to cover workers in services other than the traditional blue-light services—the police, ambulance and fire services. It would create a two-tier system for public sector workers. Stewart Stevenson quoted a GP saying that dividing health sector workers into categories was unacceptable. We agree and identify with that comment, which is why we oppose the amendment.

We shall also oppose amendment 3, which is consequential to amendment 2.

The Minister for Finance and Public Service Reform (Mr Tom McCabe): Stewart Stevenson's amendments would extend the bill's protection to doctors, nurses and midwives whenever they were on duty. I share his respect and admiration for the valuable service that such workers provide, but the amendments are wrongly focused.

In considering the amendments, we must be clear about the fact that the bill is explicitly and intentionally emergency focused. It is right that the bill should protect GPs, district nurses, health visitors and others when they respond to emergency circumstances. In such situations, they are emergency workers and should be protected accordingly.

However, most of the time such workers are not involved in the provision of emergency services. Valuable though their work is, it is not first and foremost connected with emergency responses in the same way as is the work of the police, firefighters, ambulance workers or health workers in hospitals.

The bill provides on-duty protection for health workers who work in hospitals. It already ensures that doctors, nurses or midwives who work elsewhere are protected whenever they respond to emergency circumstances. I emphasise that point because it did not appear in some of the briefings that groups with health interests sent members. If a doctor, nurse or midwife responds to an emergency—wherever that might be—the bill covers her or him.

In non-emergency situations, such workers are protected by the common law, under which it is an offence to assault any person, no matter what the circumstances and their professional status are. In addition, the Lord Advocate's guidance to procurators fiscal ensures that assaults against any worker who serves the public will be treated particularly seriously.

Karen Gillon (Clydesdale) (Lab): Some concerns have been expressed—particularly by psychiatric nurses who work in the community—about an unwillingness in some situations to deal with attacks. Will you undertake to work with the Lord Advocate and your colleague the Minister for Health and Community Care to ensure that health boards, as managers, take such incidents seriously and that prosecutions are seen to take place if assaults occur?

Mr McCabe: I have no hesitation in giving that assurance, which complements exactly what we are trying to achieve in promoting the bill.

Today is not the last chance to add workers to the bill or to extend on-duty protection to the workers that are already listed. This is not the end of the matter. I remind members that the bill's order-making power enables us to change the level of protection that is afforded to groups of workers that are listed in the bill. If it can be shown that all doctors, nurses and midwives—like the police and fire and ambulance workers—must be able to respond to emergency circumstances as a core part of their functions, we must certainly safeguard their operational capacity to do so. I am happy to consider the case for providing such workers with on-duty protection by order at that time. I hope that that provides the reassurance that Margaret Smith sought.

However, providing on-duty protection to such workers before that case has been made would be inconsistent with the bill's emergency focus. It could open the floodgates to extending on-duty protection to other groups of workers whose duties are primarily of a routine nature, which would serve only to undermine the clearly emergency-centred nature of the bill. I re-emphasise that those groups of workers are already protected by the Emergency Workers (Scotland) Bill when they are responding to emergencies, and are covered by the common law when they are not.

I urge members to disagree to amendments 2 and 3.

Stewart Stevenson: I have listened to members with considerable interest, and their contributions were fair and balanced. After the debate, I would like Pauline McNeill to give me the telephone number of the emergency estate agents service, as I may need it at some point in the future.

Tom McCabe gave the game away a little in referring to the protection for a number of workers that is provided by the common law. However, the Executive says that the bill has been introduced because the common law does not provide sufficient protection for various workers. Therefore, a contradiction remains at the heart of the bill.

I will not be too churlish. I welcome the minister's acknowledgement that the issue that has been raised by doctors, nurses and midwives
is not closed, even if it appears from the arithmetic today that we are unlikely to amend the bill. I hope that the minister will arrange to meet representatives of those professions at an early date so that they can make their case directly to him for subsequent amendment of the bill by order, if it is not amended today. I will press amendment 2.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mathew, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Russel, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Sturgeon, Stewart (Banff and Buchan) (SNP)
Welsh, Ms Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

Against
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Cragie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Bearsden) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Montgomery, Lord James (Lothians) (Con)
Edie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Montelth, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Swinson, John (Central Scotland) (SSCUP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 31, Against 70, Abstentions 0.

Amendment 2 disagreed to.

Section 1—Assaulting or impeding certain emergency workers responding to emergency circumstances

The Deputy Presiding Officer: Group 2 is on workers who provide a rescue service on a body of water. Amendment 4, in the name of the minister, is grouped with amendments 5, 1 and 6.

15:30

Mr McCabe: In extending the bill's protection to crews of rescue vessels that are not operated by
the Royal National Lifeboat Institution, our stage 2 amendment referred to "purposes similar to those of the RNLI".

At stage 2, it was brought to my attention that, because the Royal National Lifeboat Institution describes its function with the phrase "The RNLI saves lives at sea", rescue vessels that save lives on bodies of water other than the sea might not be covered by the bill.

As I made clear to the Justice 1 Committee at the time, our intention was to draw comparisons with the water rescue operations of the RNLI, but the body of water on which those operations take place should be irrelevant. That is why our stage 2 amendment did not specify bodies of water. However, an amendment that makes that explicit will be helpful.

I sympathise, therefore, with the intention behind Stewart Stevenson’s amendment 1, but I do not believe that it would achieve its purpose. Stewart Stevenson has argued that the reference to the purposes of the RNLI in the bill’s existing definition of non-RNLI rescue vessels would have the effect of restricting the bill’s protection to vessels that operate at sea. If that is the case, his proposed definition in amendment 1 might similarly restrict the bill to vessels that operate for the purpose of saving lives at sea, as his amendment would retain a reference to the purposes of the RNLI.

Jackie Baillie’s amendments 5 and 6 provide an all-encompassing definition of the rescue crews that the bill seeks to protect. Her amendments would clarify that the bill will provide protection to crew members of any rescue vessel responding to emergency circumstances on any body of water. By focusing on the purpose for which the vessel operates—namely, water rescue—Jackie Baillie’s amendments are consistent with the bill’s focus on emergency circumstances. The important issue is the work of saving lives that rescue vessels undertake rather than the body of water on which that is undertaken. For those reasons, I will support amendments 5 and 6, but cannot support amendment 1.

Amendment 4 is a purely technical amendment that will ensure that the bill makes correct reference to the “Royal National Lifeboat Institution” rather than to the “Royal National Lifeboat Institute”.

I move amendment 4.

**Jackie Baillie (Dumbarton) (Lab):** I welcome the minister’s comments. In briefly providing members with some background to amendments 5 and 6, I hope that I will be forgiven for being ever-so-slightly parochial.

The Loch Lomond rescue boat service, which is staffed by volunteers, operates 24 hours a day, seven days a week, 52 weeks a year. Quite simply, its objective is to save lives. However, the bill as introduced did not explicitly cover inland water rescue services. I agree with Pauline McNeill that we do not want to end up with a lengthy list of particular groups of workers, but the Loch Lomond rescue boat volunteers should be included, given that they are emergency workers who work in emergency circumstances.

We had quite a debate at stage 2, during which the minister helpfully sought to address that omission by amending the bill. Although the committee was generally supportive of his approach, we had lingering doubts as to whether we had achieved our aim. I shall not subject members to the finer arguments that were put by Stewart Stevenson on the role of the RNLI and on the differences between different bodies of water—he can be relied on to go over the arguments again.

Suffice it to say that amendments 5 and 6 are an attempt to put the matter beyond doubt. The amendments would include within the scope of the bill rescue boat services that operate in clearly defined emergency circumstances. In providing protection to crew members of any rescue vessel that responds to emergency circumstances on any body of water, the amendments are consistent with the overall approach of the bill.

I thank the minister for indicating the Executive’s support for amendments 5 and 6, which I hope Parliament will support.

**Stewart Stevenson:** It is clear that the minister listened at stage 2, as he has articulated to perfection where I was coming from.

Given that the issue was originally raised by Jackie Baillie, I was delighted to hear the minister say that the Executive will accept her amendments. I have no intention of pressing amendment 1 in the face of such well-argued, well-reasoned and consistent support for Jackie Baillie’s position. After a performance like that in seeking up to the Executive, one never knows, but she might be a minister soon. Friends in high places are always worth having.

Amendments 5 and 6 would remove the potential anomaly that the bill could cover rescue services at sea but not rescue services on inland waterways. Given the increase in the amount of activity on inland waterways, it is important that we provide appropriate support.

We will happily support Jackie Baillie’s amendments 5 and 6 and the minister’s technical amendment 4.

**Margaret Mitchell:** We will support amendment 4, which is a drafting amendment. We will not support the other amendments in the group, for
the same reason that we opposed the amendments in group 1. The amendments would create a two-tier system of provision for public sector workers. All the provisions could be dealt with much better under the flexibility of common law.

Mr McCabe: I commend Jackie Baillie for her continuing support for the Loch Lomond rescue boat and other similar rescue vessels. I share her concern for ensuring that such rescue crews are adequately protected by the bill. The amendments that she has lodged provide helpful clarification. I accept entirely that Stewart Stevenson’s amendments were well intentioned, but I do not believe that they would have achieved their purpose.

Amendment 4 agreed to.

Amendment 5 moved—[Jackie Baillie].

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigen, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Edie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Graeme, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kane, Rosie (Glasgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyne, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatling, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

Against

Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGregor, Mr Jamie (Highlands and Islands) (Con)
Mile, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteilh, Mr Brian (Mid Scotland and Fife) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

The Deputy Presiding Officer: The result of the division is: For 86, Against 11, Abstentions 0.

Amendment 5 agreed to.

Amendment 1 not moved.

Amendment 6 moved—[Jackie Baillie].
The Deputy Presiding Officer: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

**For**
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Martyn (North East Scotland) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kane, Rosie (Glasgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springfield) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Martin, Pauline (Glasgow Kelvin) (Lab)
McAteer, Mrs (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mullan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatlie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

**Against**
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

The Deputy Presiding Officer: The result of the division is: For 89, Against 9, Abstentions 0.

Amendment 6 agreed to.

Amendment 3 not moved.

The Deputy Presiding Officer: Group 3 is entitled “Definition of emergency worker: social workers”. Amendment 7, in the name of the minister, is grouped with amendments 15, 16 and 8. If amendment 16 is agreed to, amendment 8 will be pre-empted.

Mr McCabe: I remind Parliament that this issue was considered in the Justice 1 Committee’s stage 1 report and was discussed, debated and agreed at stage 2. At stage 1, the committee recommended that the bill be extended to cover the emergency role that is played by mental health officers and social workers in dealing with child protection orders. The Executive supported the amendments that were lodged by Mary Mulligan and Margaret Smith, which included mental health officers and social workers dealing with child protection orders.

Amendments 7 and 8 will extend the bill slightly further to include social workers who are dealing with emergency protection authorisations, which
are similar to child protection orders. Such authorisations provide local authorities with the same powers to remove a child to a place of safety or to prevent the removal of a child. They act as a back-up to child protection orders, as they can be awarded by a justice of the peace when a child protection order cannot be obtained from a sheriff. Like child protection orders, they are intrinsically connected with emergencies and, as with child protection orders, social workers who are charged with enforcing them are essentially providing an emergency service. The Executive therefore believes that social workers who are dealing with emergency protection authorisations should be added to the list of workers who are protected in responding to emergency circumstances. I urge Parliament to support amendments 7 and 8.

The issues that are raised in Kenny MacAskill’s amendments 15 and 16 were considered at stages 1 and 2, when he lodged similar amendments that were, after discussion by the Justice 1 Committee, withdrawn in favour of amendments lodged by Mary Mulligan and Margaret Smith. Essentially, amendments 15 and 16 would extend the circumstances in which the bill will protect social workers from the emergency situations that were identified by the committee—carrying out mental health officer functions and child protection activities—to their carrying out more routine duties. I cannot agree that the bill should be extended to protect social workers in undertaking their more routine activities; therefore, the Executive does not support Kenny MacAskill’s amendments 15 and 16.

Amendment 15 relates to social workers carrying out assessments and investigating whether there is a need to apply for child protection orders. Although those are crucial functions, by their very nature they are about finding out whether emergency circumstances exist and so are not, in themselves, emergency responses. Therefore, they do not fall within the reach of the bill.

Amendment 16 would go still further by extending, in effect, the bill’s protection to all social workers, which would serve to compound the problem that would be created by amendment 15 by including in the bill people who are much less likely to respond to emergency circumstances in their professional lives.

I also draw members’ attention to significant technical problems that are presented by Kenny MacAskill’s amendments. Although the problems being technical may make them seem unimportant, they are failings that would remove the protection that is offered by the bill. In removing the references to mental health officers, the amendments would exclude all such officers from the bill’s protection. In carrying out duties under the Mental Health (Care and Treatment) (Scotland) Act 2003, such officers act not as social workers, but as mental health officers. Kenny MacAskill’s amendments would make no provision for such workers and would, in effect, remove the protection that was secured for them at stage 2. I am sure that that is not what Kenny MacAskill intends; however, that would be the practical effect of his amendments.

Technical issues aside, I make it clear that I do not support amendments 15 and 16. I hope that, when he speaks, Kenny MacAskill will point out that the amendments are incompatible with each other. The Executive is clear that they are also incompatible with the bill’s objectives. I have said that the bill is about protecting providers of emergency services. Common law, the Lord Advocate’s guidance to procurators fiscal and our package of non-legislative measures will ensure that social workers who undertake any tasks in any other circumstances will be protected from verbal and physical assault. The bill highlights and seeks to address the particular problems that emergency workers face; undermining that deliberate aim would serve only to dilute the impact of this important legislation. For those reasons, the Executive does not support amendments 15 and 16.

I move amendment 7.

15:45

Mr Kenny MacAskill (Lothians) (SNP): I appreciate the minister’s comments and accept that amendment 7 represents an advance. However, in pressing amendments 15 and 16, I point out that the devil is in the detail and that we are dealing with matters that will result in criminal prosecutions, that will be pored over by sheriffs and that will be argued by learned advocates and solicitors in courts throughout the land. As a result, we must get things as right as possible.

It is not enough simply to fall back on the argument that common law can already deal with such matters. Indeed, the arguments that have been made in response to my amendments were raised in the earlier discussion between the minister and my colleague Stewart Stevenson. The bill’s purpose is to go beyond the common law. We do not subscribe to the Conservatives’ view of the bill; we appreciate the logic in introducing legislation that will ensure that we try to change the culture and that makes it quite clear from the highest position in the land that certain behaviour is unacceptable. I say again that we do not accept the argument that, in respect of the bill’s provisions, the catch-all provision exists in common law. The bill must add value to the current provisions and let us get to where we want
to go, which is why we need to be specific about certain definitions. That is the purpose of amendments 15 and 16.

I accept that difficulties remain about how we specify matters. Amendment 15 seeks to broaden the bill’s definition of emergency worker, and amendment 16 seeks to deepen it. I have listened to the points that have been made and acknowledge that the minister is taking matters substantially beyond the current situation; indeed, organisations, especially the Association of Directors of Social Work, welcome that. However, as Stewart Stevenson pointed out, social workers and those who act in a health care capacity still face significant problems. Not every emergency that a social worker goes into will fall within the current criteria. For example, they might have to act in response to a telephone call or other information and deal with a situation in which a warrant would not be required.

I appreciate that we need to find out how the legislation beds down and works in practice and I welcome the minister’s earlier comment that the book is not closed as far as categories of emergency workers are concerned. However, some social workers have to deal with extremely difficult situations that might require a police escort. They will not be covered by the bill’s provisions if, for example, that escort is not available and they are assaulted. I realise that the common law is available to procurators fiscal and sheriffs who have to deal with such offences. However, in moving amendments 15 and 16, I seek to put on record the various difficult circumstances that are faced by social workers—who often do not get the credit that they deserve—and which should be covered by the bill. Although I welcome amendment 7, I will press my amendments.

The Deputy Presiding Officer: In calling Scott Barrie and Margaret Mitchell, I ask for short contributions.

Scott Barrie (Dunfermline West) (Lab): I take that on board.

Kenny MacAskill is absolutely right to say that amendments 15 and 16 seek to broaden the bill’s current definition. However, although child assessment orders under the Children (Scotland) Act 1995 are part of the child protection system, they do not represent the emergency elements of it. Instead, they are seen as a means of gathering more information to ensure that direct emergency intervention is not needed.

In such a case, one seeks a child protection order via the sheriff. As Pauline McNeill said, we must be careful about the amendments that have been lodged by Stewart Stevenson. If the bill is about emergency workers in emergency situations, we need to hold on to that point firmly. I was previously a social worker, so I welcome the opportunity to acknowledge the hard work and difficult task of social workers, but we cannot say that social workers are acting in emergency situations when they do the work that is entailed under sections 53 and 55 of the Children (Scotland) Act 1995, or in some of the more routine work that they do.

If we agree to amendments such as those that have been lodged by Stewart Stevenson and Kenny MacAskill, other local authority colleagues who work in difficult situations—such as housing officers dealing with homeless families in emergency situations—will feel that they are being disadvantaged. The devil is in the detail, so we must be careful about broadening the scope of the bill too far so that we do not lose its main thrust.

Margaret Mitchell: Amendment 7 is consequential on amendment 8, which seeks to extend child protection to cover authorisation situations. Amendments 15 and 16 cover NHS workers in the community and social workers responding to mental health situations. Those amendments seek to extend the bill to cover social workers going into situations that could flare up at a moment’s notice. The bill is intended to have a deterrent effect, and I therefore do not believe that it is appropriate to make such amendments.

The British Association of Social Workers has questioned the added value that would be offered by the introduction of the legislation. I agree with Kenny MacAskill that it is not really enough to invoke common law. What is certainly required is a high-profile campaign to highlight the problems that some workers, including social workers, are facing. The social work profession believes that it should have safer working practices, and employers, politicians and society at large should be more aware of the fact that social workers face violent situations.

For those reasons, it is not appropriate to include amendments 15 and 16 in the bill, so we shall vote against them.

Mr McCabe: It is crucial that the bill provide the right level of protection to those who genuinely provide emergency services. We believe that the bill as amended at stage 2 and the Executive’s additional amendment—amendment 8—will extend protection to social workers who are most likely to respond to emergency circumstances, as they are defined in the bill.

In the interests of time, I will not repeat the arguments that I made against Kenny MacAskill’s amendments, but I stress again that we cannot support amendments 15 and 16. However, a decision today need not rule out the possibility of protecting a broader range of social workers in the...
future. The bill’s order-making power means that social workers who undertake duties other than those relating to child protection orders and emergency protection authorisations can, at a future date, be added to the list of workers who will be protected by the bill, if a case is made for their inclusion.

The Deputy Presiding Officer: The question is, that amendment 7, in the name of the minister, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baird, Richard (North East Scotland) (Lab)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Barkin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Graham, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glascow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Kan)Kane, Rosie (Glasgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kilmarnock) (Lab)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (SNP)
Martin, Paul (Glasgow Springfield) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeil, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Petrie, Cathy (Falkirk East) (Lab)
Pringle, John (Mid Scotland and Fife) (SNP)
Robson, Euan (North Lanarkshire) (Lab)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Surgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Alan (Cunninghame North) (Lab)
AGAINST
Aitken, Bill (Glasgow) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteilh, Mr Brian (Mid Scotland and Fife) (Con)
Scanlon, Mary (Highlands and Islands) (Con)

The Deputy Presiding Officer: The result of the division is: For 88, Against 12, Abstentions 0.

Amendment 7 agreed to.

Amendment 15 moved—[Mr Kenny MacAskill].

The Deputy Presiding Officer: The question is, that amendment 15, in the name of Kenny MacAskill, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Ruskael, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Sturgeon, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Edie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoo, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Swinburne, John (Central Scotland) (SSCUP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 31, Against 69, Abstentions 0.

Amendment 15 disagreed to.

Amendment 16 moved—[Mr Kenny MacAskill].

The Deputy Presiding Officer: The question is, that amendment 16, in the name of Kenny MacAskill, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Ruskael, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Sturgeon, Nicola (Glasgow) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAteer, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteilh, Mr Brian (Mid Scotland and Fife) (Con)
Morrisson, Mr Alasdair (Western Isles) (Lab)
Muldoo, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunningham South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy ( Falkirk East) (Lab)
Pingleton, Mike (Edinburgh South) (LD)
Pervis, Jeremy (Tweddle, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Swinburne, John (Central Scotland) (SSCUP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 30, Against 70, Abstentions 0.

Amendment 16 disagreed to.

Amendment 8 moved—[Mr Tom McCabe].

The Deputy Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

FOR
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkeirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kane, Rosie (Glasgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAteer, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteilh, Mr Brian (Mid Scotland and Fife) (Con)
Morrisson, Mr Alasdair (Western Isles) (Lab)
Muldoo, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunningham South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pingleton, Mike (Edinburgh South) (LD)
Pervis, Jeremy (Tweddle, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
May, Christine (Central Fife) (Lab)
Mcaveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahan, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, John (Ayr) (Con)
Stevenson, Mr Jamie (Highlands and Islands) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Grogan, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
MonteiIth, Mr Brian (Mid Scotland and Fife) (Con)
Scanlon, Margaret (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

The Deputy Presiding Officer: The result of the division is: For 89, Against 13, Abstentions 0.

Amendment 8 agreed to.

Mr McCabe: During stage 2, I was asked whether the bill’s order-making power would enable the Executive to move a group of workers from one section of the bill to another. I confirmed that it would.

I have considered the issue further and my view is now that it would be helpful for the bill to be more explicit on that. Amendment 14 is a technical amendment that reflects the changes that were made to the bill at stage 2 and clarifies that the order-making power may be exercised so as to move a group of workers from one section to another. It also simplifies the process of changing the level of protection that is afforded to any group of workers by moving them from one section of the bill to another.

Amendments 9 to 11 and 13 have been lodged for purely technical reasons. They will ensure that the language in the bill is consistent.

I move amendment 9.

Amendment 9 agreed to.

Section 2—Provisions supplementary to sections A1 to 1A

The Deputy Presiding Officer: Amendment 12, in the name of the minister, is in a group on its own.

Mr McCabe: Amendment 12 will ensure that the Executive’s policy objective of providing on-duty protection to doctors, nurses, midwives, ambulance workers and people who assist them anywhere in the grounds of a hospital can be fully satisfied. The bill as amended at stage 2 will clearly protect such persons in hospital buildings, but amendment 12 will ensure that they are also protected when they are outside the hospital building but on the hospital campus.

I move amendment 12.

The Deputy Presiding Officer: I call Stewart Stevenson, to be followed by Margaret Mitchell, but I ask them to be very brief, as the axe will fall in four minutes.

Stewart Stevenson: We support amendment 12, which represents a useful but small increment. However, the matter of other health service premises—such as health centres, where doctors, nurses and others who are equally deserving of protection work—has been left wide open. We hope that the minister will revisit the matter in the future.

Margaret Mitchell: Amendment 12 seeks to second-guess particular emergency circumstances and therefore epitomises everything that is wrong with the bill. Common law has the flexibility and the power to deal with any given situation with the correct degree of severity. We will not support amendment 12.
The Deputy Presiding Officer: Do you want to add anything, minister?

Mr McCabe: In the interests of time, I will not.

The Deputy Presiding Officer: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

**FOR**

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballard, Mark (Midlothian) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kane, Rosie (Glasgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mathers, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McCavey, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNell, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatle, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Ian (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

**AGAINST**

Aitken, Bill (Glasgow) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Montheil, Mr Brian (Mid Scotland and Fife) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Murray (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 87, Against 14, Abstentions 0.

Amendment 12 agreed to.

Amendment 13 moved—[Mr Tom McCabe]—and agreed to.

Section 6—Power to modify

Amendment 14 moved—[Mr Tom McCabe]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.
Emergency Workers (Scotland) Bill

The Deputy Presiding Officer (Trish Godman): The next item of business is the debate on motion S2M-2157, in the name of Tom McCabe, that the Emergency Workers (Scotland) Bill be passed.

16:03

The Minister for Finance and Public Service Reform (Mr Tom McCabe): It is with great pleasure that I open the debate on the bill. The bill is the product of considerable work on the part of the Executive in consultation with the Crown Office and Procurator Fiscal Service. It is also the product of invaluable partnership working with the Justice 1 Committee at stage 2, which demonstrated again the genuine and powerful contribution that the Parliament’s committees can make to the legislative process in Scotland and showed that the Scottish Parliament is strongest when it pulls together to find the right solutions for the people of this country. Most important, partnership working has helped to achieve focused, effective and workable legislation, which tackles head on the problems that face emergency workers. First, therefore, let me record my thanks to the Justice 1 Committee for its tireless work on the bill to date. I am sure that members will agree that the bill has come a long way since stage 1. I look forward to seeing that hard work bear fruit this afternoon.

We have all seen sickening stories in the press about firefighters, paramedics and others being attacked when they respond to emergencies. None of us here will understand such behaviour and all of us will condemn it. The bill makes it clear that the Scottish Parliament will not tolerate such behaviour. Emergency workers provide an invaluable service to our society. We depend on them to protect our health, our well-being, our possessions and our environment. It is the Parliament’s responsibility to ensure that, in return, they receive the protection that they deserve.

The Emergency Workers (Scotland) Bill will provide that protection by creating the offence of assaulting, obstructing or hindering someone who is providing an emergency service. Since the bill was introduced, its coverage has been extended considerably to ensure that the right workers receive the right levels of protection in the right circumstances.

Michael Matheson (Central Scotland) (SNP): I refer members to my entry in the register of interests.

A group of emergency workers who are not included in the bill are mountain rescue teams. The Mountain Rescue Committee of Scotland is consulting teams across the country on whether they believe that they should be included in the bill. Can the minister confirm that, if the MRCS believes that the bill should cover mountain rescue team personnel, he would be sympathetic to amending the legislation by using the order-making provision in the bill?

Mr McCabe: I confirm that the order-making provision is in the bill so that we can back up any desire to add workers to the bill, based on an evidence-based approach. We have said that our minds are open to anything that is evidence-based.

We have expanded the list of workers who are included in the bill, so that all those who provide emergency services, be they doctors, prison officers, mental health officers or volunteer rescue boat crews, will be protected. We have recognised that the very nature of some workers’ jobs requires them to be constantly ready and able to provide emergency services. Therefore, we have extended on-duty protection to police, firefighters, ambulance workers and designated health workers in hospitals, so that their operational capacity to respond to an emergency, should one arise, is completely safeguarded.

Clearly, the amendments that were agreed at stage 2 have resulted in significant changes to the bill. The additional amendments that have been agreed at stage 3 are perhaps less significant in comparison, but they will ensure that the bill is consistent and comprehensive and, above all, that it effectively meets our policy aim. What has not changed is the fact that the bill is firmly, intentionally and explicitly focused on emergency circumstances.

Pauline McNeill (Glasgow Kelvin) (Lab): I thought that it would be helpful to confirm some of the discussion that we had in the Justice 1 Committee, particularly at stage 2. The provisions in the bill are about a summary offence. It is important to note that, for all groups of workers, more serious assaults, involving a weapon for example, would generally be dealt with on indictment in front of a jury. It is important to note that the common law covers everybody for more serious offences.

Mr McCabe: That is an important contribution, which informs our understanding of what the bill is designed to achieve and which will reassure people that the bill is not, in any way, a dilution of protections that are already in place.

Legislation alone will not solve the problem. That is why the bill is just one crucial part of a range of actions that the Executive is taking to tackle...
violence towards any worker who serves the public. The report “Protecting Public Service Workers: When the customer isn’t right”, which was published earlier this year, provides a blueprint for action in this area. The report was produced in partnership with the Scottish Trades Union Congress, employers and representative bodies and it makes a series of recommendations for preventing work-related violence and protecting all public service workers. The Executive has committed to implementing those recommendations over the next three years.

Already, we have launched the first phase of a multimedia campaign to raise awareness of the problem, which highlights the personal impact of even non-violent situations and sends the strong message that abusing workers is bang out of order and simply will not be tolerated.

Partnership working is vital to success in this area and I am delighted that the STUC has been so supportive of our work. Trade unions have a crucial contribution to make to the issue. I am confident that by working together we can find the right solutions and deliver real differences to those at the front line. Criminal sanctions alone will not deter people from offending behaviour but, together with our non-legislative measures, the bill will make the difference our emergency workers deserve.

The Parliament has the opportunity to vote on the bill today and to send a clear message to emergency workers and to the perpetrators of abhorrent crimes against them that the members of this Parliament value emergency workers, condemn the assault of emergency workers and the disruption of emergency services and are prepared to take action to see that such behaviour is punished appropriately.

I commend the bill to the Parliament. I move,

That the Parliament agrees that the Emergency Workers (Scotland) Bill be passed.

16:11

Mr Kenny MacAskill (Lothians) (SNP): I echo the minister’s comments that the legislation will have been produced not only in the chamber today or in committee; its passage has been a long and laborious process, and many people outwith the parliamentary field have input considerable time and effort. Thanks and credit must go to them.

In supporting the motion, we return to the initial question: why should we support the bill when we have the common law in our armoury? The clear answer is that the common law is not working. Incidents have been narrated on numerous occasions, first in a debate initiated by Karen Gillon. We have the common law, but every member will be aware of incidents, and the number of such incidents is multiplying. Such behaviour is antisocial and unacceptable. We are not seeking to replace the common law, as the minister clearly stated in his reply to Pauline McNeill’s intervention.

Margaret Mitchell (Central Scotland) (Con): Does Kenny MacAskill accept that in many cases the common law is not even being given a chance, because procurators fiscal are not using it to prosecute to deal with the situation?

Mr MacAskill: Such crimes are not prosecuted for a variety of reasons, including people’s failure to give evidence or report crimes and difficulties in apprehending the perpetrators because people do not bother telling officers who did it, even though they saw them. A variety of factors are at play; it is not simply down to problems in the Procurator Fiscal Service.

I accept that we have problems that must be addressed, but we support the bill and the minister today because the common law is not working. Will the bill be the solution? Clearly, the answer is that, on its own, it will not be a solution. It will not make the attitudinal or cultural changes that are required to stop the bad behaviour, but—as the minister, to his credit, made clear—we are sending a message from this chamber that actions such as stoning firemen who are trying to put out fires and throwing bricks at paramedics are unacceptable and will not be tolerated. We are the elected Parliament of the people of Scotland. If we do not send that message and let it ring out true, nobody else will.

First, the bill will give fisca l the opportunity to libel a variety of charges. Simply throwing an egg at an ambulance could be libelled as a breach of the peace under the common law. However, there are circumstances—sadly too prevalent—in which fires are raised or malicious calls are made to draw fire engines into circumstances simply so that they can be attacked. That is unacceptable. Although such offences could be libelled under the common law, a decision could be taken that it would be appropriate to use the full weight and majesty of this legislation to show that the behaviour is unacceptable and to make an example of the person. That is why we are giving this option to those who are charged with dealing with such behaviour.

Secondly, as the minister said, the bill sends a message that, although there is no single, simple solution to the antisocial behaviour that manifests itself in such offences, such behaviour will not be tolerated, will be dealt with heavily and there will be no acceptable excuses for it. It might not be proceeded against in every instance following the passing of the bill, but the legislation will be there for the fiscal to use and the sheriff to implement if they so desire.
As I said, the bill is part of the process of sending the simple message that we are not prepared to accept such behaviour. I have sympathy for the Conservatives’ view that such attacks can be dealt with under common law, but the common law is not working and we must change the situation. The bill on its own is not necessarily the solution, but it is one more string to the bow of those who seek to end such behaviour. The bill makes it clear that the Parliament believes that that spirit is unacceptable. We support the bill.

16:15
Margaret Mitchell (Central Scotland) (Con):
No doubt a few headlines in tomorrow’s newspapers will say what a good piece of work the bill is, but I regret that it is not; it will be bad legislation that, I believe, will not stand the test of time. I say that not out of any anti-devolutionary spirit—since the people of Scotland decided that they wanted a Scottish Parliament, my party has worked hard to make devolution work. However, the people of Scotland deserve a strong Parliament that makes good laws and it is in that spirit that we are totally unable to support the bill.

At the start of the process, we all signed up to the bill in good faith—who would not want emergency service workers to be protected from assault and obstruction? However, it quickly became clear that the bill had not been thought through. The Executive’s aims were muddled and the Justice 1 Committee did not know whether the bill was aimed at protecting emergency workers at all times or whether the focus was on the consequences of obstructing or hindering them. The so-called blue-light services—the police, the fire service and ambulance crews—are clearly emergency workers whose work is almost always carried out in emergency circumstances. However, when the committee took evidence, it became clear that those whom the bill is intended to protect had real difficulties with and concerns about it. For example, a witness from the fire service expressed reservations about the service’s inclusion in the bill, which, he feared, could result in the loss of the fire service’s neutrality by aligning it with the police and hence increasing the risk of attacks.

Other witnesses wanted to extend the bill to include more public service workers, but it was evident that if we had started that process, the list of those who could be included might be endless. The minister has chosen to extend the category to include a limited number of public service workers who are not blue-light service workers. In doing so, he has created a two-tier public service workers bill, although he was honest enough to admit that in evidence. I would have preferred him to go further and acknowledge that, despite everyone’s good intentions, the bill is simply not necessary, it creates more problems than solutions and extra legislative time has been allocated and wasted on a face-saving exercise for the Executive.

The common law can already deal with such situations and has the flexibility to take account of individual circumstances. The situation has been enhanced by the Lord Advocate’s guidance to procurators fiscal, which emphasises that an attack on any worker who is delivering a public service is an aggravated offence. That goes a long way towards achieving the bill’s objectives, without the need for new legislation. Two more elements are needed. First, we need a high-profile campaign that stigmatises attacks on public service workers in emergency circumstances in much the same way as the drink-driving campaign stigmatised that behaviour. Secondly, we must ensure that the increased sentencing powers that are proposed in the bill are available to sheriffs under the summary procedure.

We have heard many references to the impressive chamber and the importance of ensuring that the quality of our work matches the quality of our surroundings. Today, we have failed to do that. The Emergency Workers (Scotland) Bill is not good enough for the people of Scotland.

16:19
Margaret Smith (Edinburgh West) (LD): Like most members, I agreed that we needed legislation on the issue. As Margaret Mitchell said, who would not stand up and say that we want to give the best possible protection to emergency workers? However, as we went through the process of scrutinising the bill, we realised that the matter was not as simple as it had appeared at first sight.

In more than five years in the Parliament, I do not think that I have come across a piece of legislation that has been more difficult to deal with or on which it has been more difficult to understand the Executive’s thinking than this bill. For a bill that runs to only a few pages, we ended up with a stage 1 report that ran to 240 paragraphs.

I thank the minister for his comments about the partnership between the Executive and the committee. We have given it due scrutiny and put more of ourselves and our views into it than we have done with any other bill, and we have seen that reflected in the Executive’s responses. Unison went further and said that the rigorous approach of the Justice 1 Committee had salvaged legislation that should provide a measure of additional protection for many workers. That is where we have got to.
The Justice 1 Committee felt that the legislation would give added protection at the margins for certain workers. The changes that the minister proposed and accepted at stage 2 have improved on that. The bill will give greater protection, especially to the blue-light services—ambulance, fire and police. The police already have certain protections, but the bill goes further to protect them from assault as well as from being obstructed and hindered. It also improves the positions of the other two blue-light services, the ambulance and fire services.

Throughout consideration of the bill, we have heard conflicting and confusing evidence, partly because there is no data on how many assaults against emergency workers there are, in particular when they are in emergency circumstances. We have heard conflicting evidence from unions and other bodies who represent groups of workers about who should be covered by the legislation and into which categories they should fall; whether they should be covered when on duty, as Stewart Stevenson discussed when he talked about general practitioners, nurses and midwives, or whether being covered in emergency circumstances is enough.

Even now, I do not believe that any of us could say that we are 100 per cent happy that we have got the bill right. The legislation opened a can of worms and Mr McCabe is to be congratulated on trying his best to put those worms back in, but we might not have got it right. That is why I am reassured that the minister will consider whether other workers should be added.

I welcome the fact that my amendment about child protection officers was accepted at stage 2. I also welcome the extension of cover from the accident and emergency department to the entire hospital. That gives greater clarity to the bill.

Many people have been disappointed by the narrowness of the bill. We hope that the minister will monitor the effectiveness of the bill and whether or not the legislation is being used. One of the areas that concerned us was the evidential process of proving that someone was an emergency worker working in emergency circumstances when they were assaulted.

Along with everyone else, I believe that it is totally unacceptable for someone who is working for the good of the public to be assaulted. As part of the package that the Executive is proposing, the bill should be welcomed and supported.

However, I acknowledge that the use of those two phrases has caused some consternation and I will return to that.

When I joined the Justice 1 Committee after the stage 1 report had been debated, I was aware of the concerns that had been raised. I thank the committee clerks for bringing me up to speed with what was quite a complicated issue. I was also surprised at the committee’s delay in moving on from stage 1, but I realised why there had been so many problems when I had my first briefing session.

Following some constructive discussion with the minister, Tom McCabe, I believe that the committee was right to focus on the “Emergency Workers” part of the bill’s title. That allowed the committee to scrutinise the bill that was before it and not some imaginary bill.

When I was involved in taking evidence and making visits throughout Scotland for the Antisocial Behaviour etc (Scotland) Bill, I was made aware of the difficult circumstances that some workers face far too regularly. Many workers, from bus drivers to shop workers, had been threatened or even assaulted just for doing their jobs. I believe strongly that everyone should be able to go about their work without fear and, as a member of the Union of Shop, Distributive and Allied Workers, I have supported USDAW’s high-profile campaign on the matter. However, the bill relates to emergency workers. I do not accept Margaret Mitchell’s position that we should reject the bill because it creates a two-tier workforce. As I said, no one should go to their work in fear, but when threats and violence put at risk not only the workers, but those whom they seek to help, we must go one step further, which is why we must support the bill.

We know that, for legislation to be effective, it needs to be clear. People understand what the blue-light services—the police, fire and ambulance services—are, what emergency circumstances are and who those assisting in such circumstances are. I thank the minister for accepting my stage 2 amendment on mental health officers.

The bill is important and I hope that, on this occasion, the Conservatives will put aside their opposition, because it is important that the Parliament gives the message that we are determined to stamp out any kind of aggression towards the workforce, and that, because this piece of the jigsaw refers to those who work in emergency circumstances, we should support the bill.

Mrs Mary Mulligan (Linlithgow) (Lab): I welcome the passage of the bill and the additional protection that it will give to emergency workers and to those in emergency circumstances.

Patrick Harvie (Glasgow) (Green): I add the Scottish Green Party’s support to the general
support for the bill. One problem that members from smaller parties have is keeping track of the detailed arguments that arise in committee stages when their parties do not have members on the relevant committee, so I am particularly grateful to the researchers in the Scottish Parliament information centre for keeping us informed of developments.

As we heard in the various arguments on amendments in the stage 3 debate, there is a balance to be struck in defining circumstances and categories of workers. I confess that I do not understand what the huge problem is with defining categories of workers. I do not consider it to be the case, as some members have said, that protection for emergency workers in emergency circumstances would be undermined by extending that protection to others in other situations.

I am sure that every member of every party acknowledges the importance of the problem of aggression towards emergency workers. We depend on emergency workers and many others for the protection that they offer to society. The impact of violence against them is profound; it affects not only their health and safety, but their dignity, motivation and ability to provide essential services, so it is entirely right that society should make a pointed and determined effort to reflect protection back on them. However, I make a plea for a restorative and constructive approach towards dealing with offenders. The offence of violence towards public service and emergency workers is particularly offensive and disturbing and is to be condemned, but to draw young offenders into the criminal justice and prison systems when their offending behaviour might be the result of peer pressure, ignorance, thoughtlessness or boredom would be short sighted.

I especially welcome the minister’s words on prevention. He will have the Greens’ enthusiastic support for his efforts to inform and educate the public and to raise awareness of the issue to make the problem less likely to occur. Prevention is certainly better than cure.

I restate the Scottish Green Party’s support for the bill.

16:29

Miss Annabel Goldie (West of Scotland) (Con): Since the bill came before the Parliament’s Justice 1 Committee for stage 1 scrutiny, it has been perfectly clear that it has not received a glowing commendation. That has nothing to do with the policy intention and everything to do with the substantive content of the bill and what it tries to achieve. It has been exceedingly instructive to listen to the debate and to the debate on the amendments.

The question that must be posed, and which illuminates the difficulties surrounding the bill, is who the bill is not for. Clearly, it is not for the medical practitioners, registered nurses or midwives who are mentioned in Stewart Stevenson’s amendment 2, and it is not for the social workers to whom Kenny MacAskill referred. However, the bill is for the water rescue services personnel whom Jackie Baillie has discussed and for those social workers referred to by the minister. The bill does not cover the bus drivers, estate agents et al mentioned by Pauline McNeill, although she would like it to. The distinction between who the bill is intended for and who it is not intended for is incomprehensible.

Margaret Smith has been honest enough to recognise that today. She spoke about the existing anomaly, and was right to do so. She did not want to extend that anomaly by supporting Mr Stevenson’s amendments. Karen Gillon mentioned psychiatric nurses. It was interesting that, in responding to her and to Stewart Stevenson, the minister said that, where the bill does not cover a situation, the common law will prevail and will cover the incident in question. The minister reiterated that point when responding to Kenny MacAskill’s amendments.

It would have been infinitely preferable to allow the common law to do what it is best at: to provide flexibility of application according to the severity of the offence under either summary or solemn procedure. In the cases of the many workers to whom the Parliament is desirous of giving adequate protection, that flexibility could be achieved now by a direction from the Lord Advocate to say that such cases should be prosecuted on indictment and that, on conviction, sentence should reflect the aggravating circumstances.

If the existing law is not being applied for the various reasons that Mr MacAskill advanced, the bill will address not one of those reasons. It is deeply troubling that offences under the bill might be prosecuted under a less robust regime than indictment at common law.

The policy intention of the bill is commendable, but the bill does not meet that policy intention. It has inadvertently created confusion and inconsistency. In so doing, it does a disservice to all those whom it should protect. We support our emergency workers, but we cannot support bad law. The Emergency Workers (Scotland) Bill is very bad law, which is why my party will be unable to vote for it.

16:32

Jackie Baillie (Dumbarton) (Lab): I seem to recollect that the Tories introduced a number of
bad laws, not least of which was the one that brought the poll tax to Scotland, so I take what Annabel Goldie has just said with a pinch of salt.

I add my thanks to the Minister for Finance and Public Service Reform, his officials, the Justice 1 Committee and the committee clerks for getting us to this point. Despite the fact that it is relatively short, the Emergency Workers (Scotland) Bill has a degree of complexity, as was clearly reflected in the committee's deliberations. I will not attempt to repeat the minister's eloquent explanation of the purpose or nuances of the bill. Let me instead paint a picture of what I hope the bill will prevent from happening in my constituency and in constituencies throughout the country.

The firefighters at Dumbarton fire station tell me that, in responding to 999 calls to put out what can be serious domestic fires in parts of my constituency, their vehicles have been stoned; they have had a variety of missiles hurled at them, which have not just shattered windows and damaged the vehicles, but caused injury to the firefighters, delaying them in attending emergencies. Ultimately, it has delayed the firefighters in doing their job, which is about saving lives.

I hope that the staff nurse working at the accident and emergency department of the Vale of Leven hospital will never again have to contact me to say that she was assaulted as she attended to a patient. The patient was drunk and violent and left her with substantial physical injuries—never mind the emotional injuries—which meant that she could not return to work.

I welcome the recognition that the bill now gives to services such as the Loch Lomond rescue boat. That service is provided on a voluntary basis by men and women from my constituency and Sylvia Jackson's constituency. It is an essential emergency service that is engaged in saving lives and its volunteers deserve the same level of protection as others who are specified in the bill. I thank the minister and the committee for their support in that regard.

Nothing justifies any attack on any emergency worker, especially those who are directly engaged in emergencies and in saving lives. Unlike the Tories, I very much welcome the bill. The Tories have once again demonstrated to the rest of us in the Parliament and to the people of Scotland just how out of touch they are.

Although I have no doubt that the penalties that are contained in the bill will have a deterrent effect, I am clear that the legislation must sit in a much wider package of measures. Therefore, I particularly welcome the Executive's intention to bring forward such measures, including the public awareness campaign, improved training for managers and staff and more education for children and young people about the unacceptability of antisocial behaviour directed at emergency workers. We need practically to reinforce the bill's message that attacks on public service workers are completely unacceptabe and will not be tolerated. I commend the minister and the Executive for introducing the bill.

16:35

Mike Pringle (Edinburgh South) (LD): My colleague Margaret Smith referred to the bill as a can of worms. I remember the discussions that I had with her at the early stages of the bill's consideration, when it was more the case that the can had arrived but the worms were not in it—the committee had to find out where they were. I have had discussions with Margaret Smith throughout the process and, like the minister, I congratulate the Justice 1 Committee on the good job that it has done.

The whole thrust of the bill is, as its title suggests, in the word "emergency". That point was well made by Mary Mulligan and others. There is a growing trend of more assaults in our society and, as Kenny MacAskill said, an increase in antisocial behaviour. Throughout the public sector, assaults are reported to be on the increase. Little research has been done on the issue, but there is no doubt that the bill will help to address the problem. Perhaps some research is needed on the continuing increase in the number of attacks on emergency workers.

I have some sympathy with the various health agencies that wanted us to support Stewart Stevenson's amendment 2, but common law and the Lord Advocate's guidance to procurators fiscal give the level of protection that is needed. Pauline McNeill and Margaret Smith covered that point extremely well earlier in the debate. The bill introduces a maximum sentence of nine months' imprisonment or a fine of up to £5,000. Those penalties are greater than the penalties under common law and the increases are very much to be welcomed.

It is worth making the point that fire officers and policeman who think that they are going to an emergency will be covered by the bill even if they find out when they get there that the situation is not an emergency. In my constituency, on a number of occasions, the fire brigade has been called out and youngsters have heaved stones at the fire engine as it is driven up the Gilmerton Road. We can now deal with those people, many of whom are over 16, in a far more aggressive manner. As the minister said, no one in the chamber can understand the behaviour that those youngsters are involved in. The bill will protect emergency workers and I support it. I congratulate
the Justice 1 Committee on its work in bringing the bill to a conclusion.

The Deputy Presiding Officer (Murray Tosh): I now go to Tom McCabe to wind up the debate. Minister, you are entitled to seven minutes, but it would be helpful if you could take fewer.

16:38

Mr McCabe: This has been a good debate and I have listened to it with interest. I sincerely thank members for taking part and for their amendments, which added to the bill and assisted us with our explanation of the issues.

In concluding the debate on the bill, I think that it is important to remember what we are seeking to do. Emergency workers save lives. They protect our society from harm in difficult and often dangerous circumstances and they deserve to be protected in return—that is what the Emergency Workers (Scotland) Bill is about. Devolved government provides us with important opportunities to address critical issues that impact on our society in Scotland. It is therefore genuinely sad that the Conservatives have, yet again, failed to rise to that challenge and failed to recognise that the heroes in our health and emergency services—they are nothing less than heroes—need and deserve the level of protection that the bill will provide.

Miss Goldie: I hope that my colleague Margaret Mitchell and I made it crystal clear on the Conservatives’ behalf that we support our emergency workers and applaud what they do. We question the technicality of whether the bill addresses the need that must be addressed.

Mr McCabe: Actions matter, not words. That is how emergency workers will respond. They need to see actions and real things from the Parliament. The bill will give them that and protect them, unlike the Conservatives’ words.

I reiterate my thanks to the Justice 1 Committee and its convener, Pauline McNeill, for their considerable contribution to the bill’s development. I also thank the Crown Office, the Law Society of Scotland, our Executive officials and many other organisations and individuals who played a part in shaping the bill.

The bill’s passage through the Parliament has been eventful, but I am convinced that our journey has been worth while. The bill will give robust and comprehensive protection to those who provide invaluable emergency services to the people of Scotland. Who here would deny such committed workers that protection? That is the question to consider this afternoon. I commend the bill to the Parliament and urge members to support the motion.
17.00

On resuming—

Decision Time

The Presiding Officer (Mr George Reid):

There are four questions to be put as a result of today’s business. The first question is, that motion S2M-2157, in the name of Tom McCabe, that the Emergency Workers (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Fergusson, Patricia (Glasgow Maryhill) (Lab)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillan, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Graham, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kane, Rosie (Glasgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyons, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)

Against

Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrisson, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Ind)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robison, Euan (Rothesay and Berwickshire) (LD)
Russell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephens, Nicol (Aberdeen South) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

Motion agreed to.

That the Parliament agrees that the Emergency Workers (Scotland) Bill be passed.

The Presiding Officer: The result of the division is: For 95, Against 15, Abstentions 0.
Emergency Workers (Scotland) Bill
[AS PASSED]

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1 Assaulting or impeding certain emergency workers responding to emergency circumstances
1A Assaulting or impeding persons assisting emergency workers
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4 Penalties
5 Saving for certain other offences
6 Power to modify
7 Short title and commencement
Amendments to the Bill since the previous version are indicated by sideling in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Emergency Workers (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make it an offence to assault or impede persons who provide emergency services; and for connected purposes.

A1 Assaulting or impeding certain providers of emergency services

(1) A person who assaults, obstructs or hinders another person acting in a capacity mentioned in subsection (3) below commits an offence.

(2) No offence is committed under subsection (1) above unless the person who assaults, obstructs or hinders knows or ought to know that the person being assaulted, obstructed or hindered is acting in that capacity.

(3) The capacity referred to in subsection (1) above is—

(a) that of a constable;

(b) that of a member of a fire brigade maintained in pursuance of the Fire Services Act 1947 (c.41) or a person who, not being a member of such a fire brigade, is paid by a fire authority under section 3(1)(b) of that Act for rendering services and is doing so; or

(c) that of a person acting for the Scottish Ambulance Service Board in exercise of the function referred to in article 4(1)(a) of the Scottish Ambulance Service Board Order 1999 (S.I. 1999/686) (exercise by the Board of function of providing ambulances and other means of transport for ill and other persons).

I Assaulting or impeding certain emergency workers responding to emergency circumstances

(1) A person who assaults, obstructs or hinders another while that other person is, in a capacity mentioned in subsection (3) below, responding to emergency circumstances, commits an offence.

(1A) No offence is committed under subsection (1) above unless the person who assaults, obstructs or hinders knows or ought to know that the person being assaulted, obstructed or hindered—

(a) is acting in that capacity; and

(b) is or might be responding—

(i) to emergency circumstances; or
(3) The capacity referred to in subsection (1) above is—

(d) that of a prison officer, that is to say—

(i) a person who holds a post, otherwise than as a medical officer, to which the person has been appointed for the purposes of section 3(1A) of the Prisons (Scotland) Act 1989 (c.45); or

(ii) a prisoner custody officer within the meaning of Chapter II of Part VIII of the Criminal Justice and Public Order Act 1994 (c.33);

(e) that of a member of Her Majesty’s Coastguard;

(f) that of a member of the crew of a vessel operated by—

(i) the Royal National Lifeboat Institution; or

(ii) any other person or organisation operating a vessel for the purpose of providing a rescue service on a body of water, or a person who musters the crew of such a vessel or attends to its launch;

(g) that of a registered medical practitioner;

(h) that of a registered nurse;

(i) that of a registered midwife;

(j) that of a social worker, within the meaning given by section 77(1) of the Regulation of Care (Scotland) Act 2001 (asp 8), while taking action required or permitted by—

(i) a child protection order; or

(ii) an authorisation under section 61 of the Children (Scotland) Act 1995 (c.36) (emergency protection of children where child protection order not available); or

(k) that of a mental health officer, that is to say—

(i) a mental health officer within the meaning given by section 32(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13); or

(ii) until section 32(1) of that Act (appointment and deemed appointment of mental health officers) comes into force, a mental health officer within the meaning given by section 125 of the Mental Health (Scotland) Act 1984 (c.36).

(4) For the purposes of this section and section 1A of this Act, a person is responding to emergency circumstances if the person—

(a) is going anywhere for the purpose of dealing with emergency circumstances occurring there; or

(b) is dealing with emergency circumstances or preparing to do so.

(5) For the purposes of this Act, circumstances are “emergency” circumstances if they are present or imminent and—

(a) are causing or are likely to cause—

(i) serious injury to or the serious illness (including mental illness) of a person;
(ii) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings); or
(iii) a worsening of any such injury, illness or harm; or
(b) are likely to cause the death of a person.

1A Assaulting or impeding persons assisting emergency workers

(1) A person who assaults, obstructs or hinders another in the circumstances described in subsection (2) below commits an offence.

(2) Those circumstances are where the person being assaulted, obstructed or hindered is assisting another while that other person is, in a capacity mentioned in section A1(3) or 1(3) of this Act, responding to emergency circumstances.

(3) No offence is committed under subsection (1) above unless the person who assaults, obstructs or hinders knows or ought to know—

(a) that the person being assisted is acting in that capacity;
(b) that the person being assisted is or might be responding—

(i) to emergency circumstances; or
(ii) as if there were emergency circumstances; and

(c) that the person being assaulted, obstructed or hindered is assisting the person acting in that capacity.

2 Provisions supplementary to sections A1 to 1A

(1) A person may be convicted of the offence under section A1, 1 or 1A of this Act of obstructing or hindering notwithstanding that it is—

(a) effected by means other than physical means; or
(b) effected by action directed only at any vehicle, apparatus, equipment or other thing or any animal used or to be used by a person referred to in that section.

(1A) A person who gives false information with the intention that a person acting in a capacity mentioned in subsection (3) of section A1 of this Act will act upon that information is to be regarded, for the purposes of that section, as hindering the person acting in that capacity.

(2) A person who gives false information with the intention that a person acting in a capacity mentioned in subsection (3) of section 1 of this Act will, while responding to emergency circumstances or instead of doing so, act upon that information is to be regarded, for the purposes of that section, as hindering the person acting in that capacity.

(3) Subsections (1A) and (2) above do not prejudice the generality of subsection (1)(a) above.

(3A) For the purposes of sections 1 and 1A of this Act, circumstances to which a person is responding are to be taken to be emergency circumstances if the person believes and has reasonable grounds for believing they are or may be emergency circumstances.

(6) Evidence from a single source is sufficient evidence to establish, for the purposes of section A1, 1 or 1A of this Act, whether a person is acting in a capacity referred to in that section.
3 Assauling or impeding health workers in hospital premises

(1) A person who, in a hospital or on land adjacent to and used wholly or mainly for the purposes of a hospital, assaul ts, obstructs or hinders a person acting in a capacity mentioned in subsection (2B) below or a person assisting such a person commits an offence.

(2A) No offence is committed under subsection (1) above unless the person who assaults, obstructs or hinders knows or ought to know that the person being assaulted, obstructed or hindered is acting in that capacity or, as the case may be, that the person being assisted is acting in that capacity and that the person being assaulted, obstructed or hindered is assisting the person acting in that capacity.

(2B) The capacity referred to in subsection (1) above is—

(a) that of a registered medical practitioner;
(b) that of a registered nurse;
(c) that of a registered midwife; or
(d) that of a person acting for the Scottish Ambulance Service Board in the exercise of the function referred to in article 4(1)(a) of the Scottish Ambulance Service Board Order 1999 (S.I. 1999/686) (exercise by the Board of function of providing ambulances and other means of transport for ill and other persons).

(3) A person may be convicted of the offence under subsection (1) above of obstructing or hindering notwithstanding that it is—

(a) effected by means other than physical means;
(b) effected by action directed only at any vehicle, apparatus, equipment or other thing used or to be used by a person referred to in that subsection.

(5) Evidence from a single source is sufficient to establish, for the purposes of subsection (1) above, whether a person is acting in a capacity referred to in subsection (2B) above.

4 Penalties

A person guilty of an offence under this Act is liable, on summary conviction, to imprisonment for a period not exceeding 9 months or to a fine not exceeding level 5 on the standard scale or to both.

5 Saving for certain other offences

Nothing in this Act affects section 41(1) of the Police (Scotland) Act 1967 (c.77) (assault etc. of constable in execution of duty or of person assisting a constable) or section 30 of the Fire Services Act 1947 (c.41) (obstruction etc. of member of fire brigade engaged in fire-fighting operation).

6 Power to modify

(1) The Scottish Ministers may by order modify this Act by—

(a) adding a person or description of person to; or
(b) removing a person or description of person from,

section A1(3), 1(3) or 3(2B) of this Act and by making such provision connected with that modification as they think fit.
(2) The Scottish Ministers shall not make an order under subsection (1)(a) above unless it appears to them that the person to be added (or, as the case may be, each person of the description 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.

(3) An order under subsection (1) above is to be made by statutory instrument.

(4) No such order shall be made unless a draft of it has been laid before and approved by a resolution of the Scottish Parliament.

7 Short title and commencement

(1) This Act may be cited as the Emergency Workers (Scotland) Act 2005.

(2) This Act (except this section) comes into force on such day as the Scottish Ministers may, by order made by statutory instrument, appoint and different days may be so appointed for different purposes.

(3) An order under subsection (2) above may contain such transitional, transitory and saving provision as the Scottish Ministers think appropriate.
Emergency Workers (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make it an offence to assault or impede persons who provide emergency services; and for connected purposes.

Introduced by: Mr Andy Kerr
On: 22 March 2004
Supported by: Tavish Scott
Bill type: Executive Bill