



Ministry of
JUSTICE

Memorandum to the Justice Committee

Post-legislative assessment
of the Emergency Workers
(Obstruction) Act 2006

March 2012



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Post-legislative assessment of the
Emergency Workers (Obstruction) Act 2006

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

March 2012

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This publication is available for download at www.official-documents.gov.uk and on our website at www.justice.gov.uk

ISBN: 9780101829625

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office
ID 2478420 03/12

Printed on paper containing 75% recycled fibre content minimum.

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Introduction

This Memorandum has been prepared by the Ministry of Justice for submission to the Justice Committee, and will be published as part of the post-legislative scrutiny process set out in Cm 7320.

The Emergency Workers (Obstruction) Act 2006 (2006, Ch.39) (“the Act”) received Royal Assent on 8 November 2006. The Bill was introduced in Parliament by Alan Williams MP as a Private Member’s Bill on 22 June 2005. At introduction it was entitled the Emergency Workers (Protection) Bill. The Bill was supported by the then Government. It was amended during Commons Committee.

At introduction, the ambit of the offences in the Bill included assaults on emergency workers and those assisting them. Amendments were made during Commons Committee to confine the offences to obstructing or hindering so as to avoid duplicating the existing offence of common assault. Duplicating that offence would have created difficulties for prosecutors deciding which offences to prosecute, and would not practically have furthered the aim of criminalising unacceptable conduct in respect of emergency workers. It was considered at the time that sentencing guidelines specifying aggravated sentences for assaults on those serving the public could more properly address the need to deal with attacks on emergency workers.

The Act created two separate offences. These are: obstructing or hindering an emergency worker responding to emergency circumstances, and obstructing or hindering a person assisting such a worker. Those emergency workers covered by the Act include fire and rescue workers, ambulance personnel and those transporting organs, coastguards and lifeboatmen. Both offences are subject to the defence of ‘reasonable excuse’. The maximum penalty for the offences created by the Act is a fine of level 5 on the standard scale (£5,000).

The Act repealed the then existing offence of obstructing a fire fighter in section 44 of the Fire and Rescue Services Act 2004. The maximum penalty for that offence had been a level 3 fine (£1,000) and so the effect of introducing the new offences in the Act was to increase the penalty for obstructing a fire fighter to a level 5 fine (£5,000).

Finally, following Commons Committee, during which “assault” was removed from the ambit of the offences, the title of the Bill was changed to reflect its particular focus on “obstruction”.

Objectives

The Act sought to address the perceived problem of obstruction of emergency workers, in particular fire fighters, but also hospital and ambulance staff. Ministers of the then Government noted during the passage of the Bill¹ that its offences would ensure that acts of obstruction were treated with the appropriate degree of seriousness. The Act was intended to underline the unacceptability of obstructive behaviour in emergencies; make clear that such behaviour is potentially damaging, and capable of putting lives at risk; and to form part of a programme of work to prevent low-level behaviour from escalating into more serious anti-social or violent behaviour.

Ministers in response to Parliamentary Questions² also said that they expected the numbers of prosecutions under the Act to be small. This was because of the narrow range of behaviour caught by the offences: any violent behaviour, threats or damage to property could and should be dealt with using existing offences, such as assault or criminal damage.

However, the Act should not be seen in isolation, but as part of a range of measures aimed at protecting fire fighters, hospital workers and other emergency personnel such as coastguards. These measures included improving fire service procedures for reporting and recording of incidents, and CCTV in vehicles to make detection of the perpetrators of these incidents easier. Some fire services also had education programmes aimed at young offenders who would spend time with fire services observing their work. For ambulance workers, measures included training in conflict resolution. Other initiatives included Youth Offending Teams working with young offenders to tackle anti-social behaviour and encouraging parents to take their role as parents more seriously.

¹ <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060714/debtext/60714-0006.htm#06071459000752> and <http://www.publications.parliament.uk/pa/ld199697/ldhansrd/pdvn/lds06/text/61013-0002.htm#06101348000375>

² <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080220/text/80220w0018.htm#080221111000023> and <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080507/text/80507w0023.htm#0805087000027>

Implementation

The 2006 Act was brought into force fully by the Emergency Workers (Obstruction) Act 2006 (Commencement) Order 2007 (SI 2007/153) on 20 February 2007. It was brought to the attention of criminal justice organisations, such as the police, judiciary and prosecutors by Home Office Circular 3/2007³. It was brought to the attention of fire fighters by the Department for Communities and Local Government; to the attention of the Health Service by the Department of Health; and to the attention of Coastguards by the Department of Transport's maritime and Coastguard Agency. The publicity itself went some way towards achieving the aim of underlining the unacceptability of obstructing emergency workers.

³ <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2007/003-2007/>

Devolved Administrations

The Act applies to England and Wales, and Northern Ireland. Whilst Northern Ireland had its own offence of obstructing a fire-fighter,⁴ its criminal law did not address the obstruction of other emergency workers, particularly ambulance workers,⁵ which were within the scope of the Act's offences. Consequently, the behaviour of obstructing a fire-fighter, or obstructing a person assisting a fire-fighter was excluded from the scope of the Act's offences as they apply in Northern Ireland – that behaviour is only within the scope of the offences in England and Wales. An offence of assaulting or obstructing an emergency worker in Scotland is contained in the Emergency Workers (Scotland) Act 2005.

⁴ See article 40(6) of the Fire Services (Northern Ireland) Order 1984

⁵ <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060714/debtext/60714-0001.htm> *Parliamentary Debates* House of Commons, 14 July 2006, column 1593

Preliminary Assessment

The Act was part of a range of measures implemented at around the same time, and as such it is difficult to assess its effect in isolation from other non-legislative measures such as those outlined above. However, we do have some statistics on prosecutions under the Act.

Court statistics, reproduced in Annex A, show prosecutions under the Act between 2007 and 2010. Before then the only comparable offence was obstructing a fire fighter, for which there was only one prosecution during the five year period 2000–2004.⁶

The court statistics for prosecutions under the Act are not broken down by the emergency service for which the victim worked. Nor is it possible to distinguish using court data how many prosecutions for other offences such as assault or criminal damage may have involved attacks on emergency workers, and whether the number of such offences has been affected by the existence of the obstruction offence.

Court statistics for the full year 2011 are not yet available but we do have information – shown in Annex B – from the Crown Prosecution Service on prosecutions for obstructing emergency workers during the months after the August riots which show that prosecutions are continuing at a relatively low rate (note that these include all offences in England and Wales for each month including any associated with the riots). By comparison, there were 1,984 people charged with an other offences following the riots which had reached a first hearing by 12 October.⁷

As expected, the number of prosecutions under the Act has been low although the low number of prosecutions may not reflect all instances where there has been obstructing behaviour in respect of an emergency worker. The maximum penalty under the Act is a level 5 fine (£5,000); the offence does not carry a custodial penalty. So where an obstruction offence is alleged to have been committed alongside an alternative offence carrying a higher maximum penalty, it is possible that the alternative offence will be charged alone. For example, where a person threatens an emergency worker with violence an offence under section 4 of the Public Order Act 1986, which carries a custodial sentence, might be charged. Where an incident involves an alleged assault or battery, section 39 of the Criminal Justice Act 1988 provides for a custodial sentence. These offences may therefore be preferred as they provide the court with greater sentencing options.

⁶ Under the Fire Services Act 1947. Section 44 of the Fire and Rescue Services Act 2004 contained an offence of obstructing a fire fighter which was repealed by the Emergency Workers (Obstruction) Act 2006.

⁷ <http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/public-disorder-august-11.htm>

Annex A

Numbers proceeded against at magistrate's courts and found guilty at all courts of offences under s. 1, 2 and 4 of the Emergency Workers (Obstruction) Act 2006

| Year | Proceeded against | Found guilty | Sentenced | Absolute/conditional discharge | Fine | Community sentence | Suspended sentence | Immediate custody | Otherwise dealt with |
|-------------------|-------------------|--------------|-----------|--------------------------------|------|--------------------|--------------------|-------------------|----------------------|
| 2007 | - | - | - | - | - | - | - | - | - |
| 2008 ³ | 10 | 7 | 7 | - | 1 | 4 | - | - | 2 |
| 2009 | 11 | 8 | 8 | 1 | 5 | 2 | - | - | - |
| 2010 | 5 | 4 | 4 | 2 | 2 | - | - | - | - |

Source: Ministry of Justice Analytical Services Courts Database

1. The figures given in the table on court proceedings relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.
2. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.
3. Excludes data for Cardiff Magistrates' Court for April, July and August 2008.

Annex B

Offences Charged and Reaching a First Hearing in the Magistrates' Court under the Emergency Workers (Obstruction) Act 2006, s. 1 and 4

| Month | Offences |
|----------------|----------|
| July 2011 | 2 |
| September 2011 | 1 |
| October 2011 | 3 |
| November 2011 | 1 |

Source: Crown Prosecution Services' Case Management System (CMS) and associated Management Information System (MIS).

1. Offences recorded are those which reached a hearing. There is no indication of final outcome or if the charged offence was the substantive charge at finalisation.
2. Data relates to the number of offences recorded in magistrates' courts, in which a prosecution commenced, as recorded on the CPS' CMS and MIS.
3. Offences data are not held by defendant or outcome.
4. Offences recorded in the MIS are those which were charged at any time and reached at least one hearing. This offence will remain recorded whether or not that offence was proceeded with and there is no indication of final outcome or if the offence charged was the substantive offence at finalisation.

Note

The CPS collects data to assist in the effective management of its prosecution functions. The CPS does not collect data which constitutes official statistics as defined in the Statistics and Registration Service Act 2007. These data have been drawn from the CPS's administrative IT system, which, as with any large scale recording system, is subject to possible errors with data entry and processing. The figures are provisional and subject to change as more information is recorded by the CPS.

The official statistics relating to crime and policing are maintained by the Home Office and the official statistics relating to sentencing, criminal court proceedings, offenders brought to justice, the courts and the judiciary are maintained by the Ministry of Justice.



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ISBN 978-0-10-182962-5



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