

Assaults on Emergency Workers (Offences) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Justice and the Home Office with the consent of Chris Bryant, are published separately as Bill 7 – EN.

Assaults on Emergency Workers (Offences) Bill

CONTENTS

Aggravation

- 1 Common assault and battery
- 2 Aggravating factor
- 3 Meaning of “emergency worker”

Taking of samples

- 4 Taking of samples under the Police and Criminal Evidence Act 1984
- 5 Taking of samples under the Terrorism Act 2000
- 6 Taking of samples: related amendments

General

- 7 Financial provision
- 8 Extent, commencement and short title

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Make provision about offences when perpetrated against emergency workers, and persons assisting such workers; to make certain offences aggravated when perpetrated against such workers in the exercise of their duty; to require persons suspected of certain assaults against such workers which may pose a health risk to provide intimate samples and to make it an offence, without reasonable excuse, to refuse to provide such samples; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Aggravation

1 Common assault and battery

- (1) The section applies to an offence of common assault, or battery, that is committed against an emergency worker acting in the exercise of functions as such a worker. 5
- (2) A person guilty of an offence to which this section applies is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months, or to a fine, or to both. 10
- (3) For the purposes of subsection (1), the circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker. 15
- (4) In relation to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003 (increase in maximum term that may be

imposed on summary conviction of offence triable either way), the reference in subsection (2)(a) to 12 months is to be read as a reference to 6 months.

- (5) In consequence of subsections (1) to (3), in section 39 of the Criminal Justice Act 1988 (which provides for common assault and battery to be summary offences punishable with imprisonment for a term not exceeding 6 months) — 5
- (a) the existing text becomes subsection (1);
- (b) after that subsection insert —
- “(2) Subsection (1) is subject to section 1 of the Assaults on Emergency Workers (Offences) Act 2017 (which makes provision for increased sentencing powers for offences of common assault and battery committed against an emergency worker acting in the exercise of functions as such a worker).” 10
- (6) This section applies only in relation to offences committed on or after the day it comes into force.

2 Aggravating factor 15

- (1) This section applies where —
- (a) the court is considering for the purposes of sentencing the seriousness of an offence listed in subsection (3), and
- (b) the offence was committed against an emergency worker acting in the exercise of functions as such a worker. 20
- (2) The court —
- (a) must treat the fact mentioned in subsection (1)(b) as an aggravating factor (that is to say, a factor that increases the seriousness of the offence), and
- (b) must state in open court that the offence is so aggravated. 25
- (3) The offences referred to in subsection (1)(a) are —
- (a) an offence under any of the following provisions of the Offences against the Person Act 1861 —
- (i) section 16 (threats to kill);
- (ii) section 18 (wounding with intent to cause grievous bodily harm); 30
- (iii) section 20 (malicious wounding);
- (iv) section 23 (administering poison etc);
- (v) section 28 (causing bodily injury by gunpowder etc);
- (vi) section 29 (using explosive substances etc with intent to cause grievous bodily harm); 35
- (vii) section 47 (assault occasioning actual bodily harm);
- (b) manslaughter;
- (c) kidnapping;
- (d) an ancillary offence in relation to any of the preceding offences. 40
- (4) For the purposes of subsection (1)(b), the circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker. 45

- (5) In this section—
“ancillary offence”, in relation to an offence, means any of the following—
- (a) aiding, abetting, counselling or procuring the commission of the offence;
 - (b) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence;
 - (c) attempting or conspiring to commit the offence;
- “emergency worker” has the meaning given by section 3.
- (6) Nothing in this section prevents a court from treating the fact mentioned in subsection (1)(b) as an aggravating factor in relation to offences not listed in subsection (3). 10
- (7) This section applies only in relation to offences committed on or after the day it comes into force.

3 Meaning of “emergency worker”

- (1) In sections 1 and 2, “emergency worker” means— 15
- (a) a constable;
 - (b) a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes;
 - (c) a National Crime Agency officer; 20
 - (d) a prison officer;
 - (e) a person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of a corresponding kind to those carried out by a prison officer;
 - (f) a person employed for the purposes of providing, or engaged to provide, fire services or fire and rescue services; 25
 - (g) a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both);
 - (h) a person employed for the purposes of providing, or engaged to provide, ambulance services, accident and emergency department services or urgent treatment centre services. 30
- (2) It is immaterial for the purposes of subsection (1) whether the employment or engagement is paid or unpaid.
- (3) In subsection (1)(e), “custodial institution” means any of the following— 35
- (a) a prison;
 - (b) a young offender institution, secure training centre, secure college or remand centre;
 - (c) a removal centre, a short-term holding facility or pre-departure accommodation, as defined by section 147 of the Immigration and Asylum Act 1999; 40
 - (d) services custody premises, as defined by section 300(7) of the Armed Forces Act 2006.
- (4) For the purposes of subsection (1)(h), the persons employed for the purposes of providing, or engaged to provide, any of the services there mentioned include persons— 45
- (a) who support the provision of the services, and

- (b) whose general activities in doing so involve interacting with individuals receiving the services or other members of the public.

Taking of samples

4 Taking of samples under the Police and Criminal Evidence Act 1984

- (1) The Police and Criminal Evidence Act 1984 is amended as follows. 5
- (2) After section 62 (intimate samples) insert—
- “62A Intimate samples: assaults on emergency workers**
- (1) An intimate sample may be taken from a person (whether or not in police detention) where—
- (a) there are reasonable grounds for suspecting that the person has, or may have, assaulted an emergency worker acting in the exercise of functions as such a worker; 10
- (b) a police officer of at least the rank of inspector authorises the sample to be taken;
- (c) the sample taken is a sample of blood; and 15
- (d) the appropriate consent is given.
- (2) An officer may only give an authorisation under subsection (1) if the officer has reasonable grounds for believing that—
- (a) the person from whom the sample is to be taken is aged 14 years or over; 20
- (b) the emergency worker has, as a result of the suspected assault, been exposed to a risk of transmission of an infectious disease carried by the person from whom the sample is to be taken; and
- (c) the taking of the sample is necessary for the purposes of establishing whether the person from whom the sample is to be taken has any such disease. 25
- (3) For the purposes of subsection (1)(a), the circumstances in which an assault takes place against a person acting in the exercise of functions as an emergency worker include circumstances where the assault takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker. 30
- (4) For the purposes of subsection (2)(b), it does not matter whether or not there is reason to believe that the person from whom the sample is to be taken has any infectious disease. 35
- (5) Where an authorisation for the taking of an intimate sample from a person is given under subsection (1), an officer must give the information mentioned in subsection (6) to—
- (a) the person, and
- (b) if the person is under the age of 18, his or her parent or guardian. 40
- (6) The information is that—
- (a) an authorisation for the taking of the sample has been given under this section, and

- (b) a person requested to provide the appropriate consent to the taking of the sample may be liable to prosecution for an offence if he or she refuses to give that consent without good cause.
- (7) Subsections (3) to (8) and (9A) to (12) of section 62 apply to an intimate sample taken (or proposed to be taken) under this section as they apply to an intimate sample taken (or proposed to be taken) under that section. 5
- (8) A person commits an offence if, without good cause, the person refuses to give the appropriate consent to the taking of a sample that has been authorised under this section. 10
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine.”
- (3) In section 63 (other samples), after subsection (3H) insert –
- “(3I) A non-intimate sample may be taken from a person without the appropriate consent where – 15
- (a) there are reasonable grounds for suspecting that the person has, or may have, assaulted an emergency worker acting in the exercise of functions as such a worker; and
- (b) a police officer of at least the rank of inspector authorises the sample to be taken without the appropriate consent. 20
- (3J) An officer may only give an authorisation under subsection (3I) if the officer has reasonable grounds for believing that – 25
- (a) the emergency worker has, as a result of the suspected assault, been exposed to a risk of transmission of an infectious disease carried by the person from whom the sample is to be taken; and
- (b) the taking of the sample is necessary for the purposes of establishing whether the person from whom the sample is to be taken has any such disease.
- (3K) Subsection (3) of section 62A applies for the purposes of subsection (3I)(a) as it applies for the purposes of subsection (1)(a) of that section. 30
- (3L) For the purposes of subsection (3J)(a), it does not matter whether or not there is reason to believe that the person from whom the sample is to be taken has any infectious disease.”

5 Taking of samples under the Terrorism Act 2000

- (1) Part 1 of Schedule 8 to the Terrorism Act 2000 (treatment of detained persons) is amended as follows. 35
- (2) In paragraph 10 –
- (a) in sub-paragraph (6), for “sub-paragraph (6A)” substitute “sub-paragraphs (6A) and (6C)”;
- (b) after sub-paragraph (6B) insert – 40
- “(6C) An officer may also give an authorisation in respect of a person detained in England or Wales –
- (a) under sub-paragraph (4)(a) for the taking of a non-intimate sample, or

- (b) under sub-paragraph (5)(c) for the taking of an intimate sample, so far as that sample is of blood, if there are reasonable grounds for suspecting that the person has, or may have, assaulted an emergency worker acting in the exercise of functions as such a worker. 5
- (6D) But the officer may give an authorisation by virtue of sub-paragraph (6C) only if the officer has reasonable grounds for believing that—
- (a) the emergency worker has, as a result of the suspected assault, been exposed to a risk of transmission of an infectious disease carried by the person from whom the sample is to be taken, 10
- (b) the taking of the sample is necessary for the purposes of establishing whether the person from whom the sample is to be taken has any such disease, and 15
- (c) in the case of the taking of an intimate sample, the person from whom the sample is to be taken is aged 14 years or over.
- (6E) For the purposes of sub-paragraph (6C), the circumstances in which an assault takes place against a person acting in the exercise of functions as an emergency worker include circumstances where the assault takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker. 20 25
- (6F) For the purposes of sub-paragraph (6D)(a), it does not matter whether or not there is reason to believe that the person from whom the sample is to be taken has any infectious disease.”
- (3) In paragraph 11—
- (a) after sub-paragraph (2) insert— 30
- “(2A) Where an authorisation for the taking of an intimate sample from a person is given under paragraph 10(5)(c) by virtue of paragraph 10(6C), the information mentioned in sub-paragraph (2B) must also be given to—
- (a) the person, and 35
- (b) if the person is under the age of 18, his or her parent or guardian.
- (2B) The information is that a person requested to provide the appropriate consent to the taking of the sample may be liable to prosecution for an offence if he or she refuses to give that consent without good cause.”; 40
- (b) in sub-paragraph (3)(a), for “and (2)” substitute “, (2) and (2A)”.
- (4) In paragraph 12, after sub-paragraph (3) insert—
- “(4) Paragraphs 10(6C) and 13A also apply in relation to the taking of an intimate sample under this paragraph from a person in England or Wales.” 45

- (5) After paragraph 13 insert –
- “13A(1) A person commits an offence under the law of England and Wales if, without good cause, the person refuses to give the appropriate consent to the taking of an intimate sample that has been authorised under paragraph 10(5)(c) by virtue of paragraph 10(6C). 5
- (2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine.”
- (6) In paragraph 15 –
- (a) in sub-paragraph (1), for “13” substitute “13A”;
- (b) after sub-paragraph (1A) insert – 10
- “(1B) In the application of paragraph 10 in relation to a person detained in England and Wales, “emergency worker” has the meaning given by section 3 of the Assaults on Emergency Workers (Offences) Act 2017.”
- (7) After paragraph 20D insert – 15
- “20DA(1) This paragraph applies to paragraph 20A material consisting of a DNA profile derived from a DNA sample taken under paragraph 10 by virtue of an authorisation given under paragraph 10(6C).
- (2) Material to which this paragraph applies may be retained until it has fulfilled the purpose for which it was taken.” 20
- (8) In paragraph 20H –
- (a) in sub-paragraph (1) –
- (i) omit “or” at the end of paragraph (c), and
- (ii) after paragraph (d) insert “, or
- (e) in the case of material consisting of a sample taken under paragraph 10 by virtue of sub-paragraph (6C) of that paragraph, for the purposes of establishing whether the person from whom the sample was taken has any infectious disease.”; 25
- (b) after sub-paragraph (2) insert – 30
- “(2A) Where a sample is taken under paragraph 10 by virtue of sub-paragraph (6C) of that paragraph as a result of a suspected assault on an emergency worker (as defined by paragraph 15(1B)), information derived from the sample may be disclosed – 35
- (a) to the emergency worker, or
- (b) to any other person for the purposes of protecting the vital interests of the emergency worker.
- (2B) Nothing in sub-paragraph (2A) authorises the making of a disclosure which contravenes the Data Protection Act 1998.” 40

6 Taking of samples: related amendments

- (1) The Police and Criminal Evidence Act 1984 is amended as set out in subsections (2) to (7).

- (2) In section 62 (intimate samples), in subsection (1) for “section 63B” substitute “sections 62A and 63B”.
- (3) In section 63 (other samples), in subsection (5) after “(3)” insert “or (3I)”.
- (4) After section 63L insert –
- “63LA Retention of section 63D material in connection with assault on emergency worker** 5
- (1) This section applies to section 63D material consisting of a DNA profile derived from a DNA sample taken under section 62A(1) or 63(3I).
- (2) Material to which this section applies may be retained until it has fulfilled the purpose for which it was taken.” 10
- (5) In section 63T (use of retained material) –
- (a) in subsection (1) –
- (i) omit “or” at the end of paragraph (c), and
- (ii) at the end of paragraph (d) insert “, or
- (e) in the case of a sample taken under section 15
- 62A(1) or 63(3I), for the purposes of establishing whether the person from whom the sample was taken has any infectious disease.”;
- (b) after subsection (1) insert –
- “(1A) Where a sample is taken under section 62A(1) or 63(3I) as a result of a suspected assault on an emergency worker, information derived from the sample may be disclosed – 20
- (a) to the emergency worker, or
- (b) to any other person for the purposes of protecting the vital interests of the emergency worker. 25
- (1B) Nothing in subsection (1A) authorises the making of a disclosure which contravenes the Data Protection Act 1998.”
- (6) In section 65 (Part 5: supplementary), in subsection (1) after the definition of “DNA sample” insert –
- ““emergency worker” has the meaning given by section 3 of the Assaults on Emergency Workers (Offences) Act 2017.” 30
- (7) In Schedule 2A (fingerprints and samples: power to require attendance at a police station) –
- (a) in Part 2 (intimate samples), after paragraph 8 insert –
- “Persons suspected of assaulting an emergency worker* 35
- 8A A constable may require a person to attend a police station for the purposes of taking a sample from the person under section 62A(1).”;
- (b) in Part 3 (non-intimate samples), after paragraph 13 insert –
- “Persons suspected of assaulting an emergency worker* 40
- 13A A constable may require a person to attend a police station for the purpose of taking a non-intimate sample from the person under section 63(3I).”

- (8) After section 39 of the Human Tissue Act 2004 (exceptions for criminal justice purposes) insert –

“39A Health protection purposes following assault on emergency worker

- (1) Nothing in section 14(1) or 16(2) applies to anything done under or in connection with a power to take an intimate sample or a non-intimate sample under –
- (a) section 62A(1) or 63(3I) of the Police and Criminal Evidence Act 1984 (which confer power to take samples from persons suspected of assaulting an emergency worker, except in the case of persons detained under terrorism-related provisions), or
 - (b) sub-paragraph (4)(a) or (5)(c) of paragraph 10 of Schedule 8 to the Terrorism Act 2000 by virtue of an authorisation given under sub-paragraph (6C) of that paragraph (which confer power to take samples from persons suspected of such assaults who are detained under terrorism-related provisions).
- (2) In this section “intimate sample” and “non-intimate sample” have the meanings given by section 65 of the Police and Criminal Evidence Act 1984 (Part 5 definitions).”

General

7 Financial provision 20

The following are to be paid out of money provided by Parliament –

- (a) *any expenditure incurred under or by virtue of this Act by the Secretary of State, and*
- (b) *any increases attributable to this Act in the sums payable under any other Act out of money so provided.*

8 Extent, commencement and short title

- (1) This Act extends to England and Wales only, except for this section and section 5 which extend to England and Wales, Scotland and Northern Ireland.
- (2) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.
- (3) This Act may be cited as the Assaults on Emergency Workers (Offences) Act 2017.

Assaults on Emergency Workers (Offences) Bill

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To make provision about offences when perpetrated against emergency workers, and persons assisting such workers; to make certain offences aggravated when perpetrated against such workers in the exercise of their duty; to require persons suspected of certain assaults against such workers which may pose a health risk to provide intimate samples and to make it an offence, without reasonable excuse, to refuse to provide such samples; and for connected purposes.

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