

ASSAULTS ON EMERGENCY WORKERS (OFFENCES) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Assaults on Emergency Workers (Offences) Bill as introduced in the House of Commons on 19 July 2017 (Bill 7).

- These Explanatory Notes have been prepared by the Ministry of Justice and the Home Office, with the consent of Chris Bryant, in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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These Explanatory Notes relate to the Assaults on Emergency Workers (Offences) Bill as introduced in the House of Commons on 19 July 2017 (Bill 7)

Overview of the Bill

- 1 The Assaults on Emergency Workers (Offences) Bill seeks to improve the protection for our emergency workers. Emergency workers should be able to carry out their duties without fear of assault. The measures in the Bill demonstrate to the public and the Criminal Justice System that assaults on emergency workers must be dealt with seriously.
- 2 In broad terms, the Bill creates a new triable either way offence of assault or battery committed against an emergency worker with increased maximum penalty when tried on indictment, makes certain other offences aggravated when perpetrated against emergency workers, and enables blood samples to be taken, with their consent, from persons suspected of offences against such workers which may pose a risk of the transmission of an infectious disease. It also makes it an offence to, without good cause, refuse to provide such samples, and it extends the existing power to take 'non-intimate' samples (such as saliva) without consent, to circumstances in which the emergency worker has been exposed to the risk of the transmission of an infectious disease during the commission of an offence against them.
- 3 Specifically, the Bill creates a new triable either way offence of assault or battery committed against an emergency worker with increased maximum penalty when tried on indictment. The current offence of assault or battery is an offence triable by summary procedure only with a maximum penalty of 6 months' imprisonment. When committed against an emergency worker in the exercise of their functions the provisions of this Bill will mean the offence will be one triable either way with a maximum penalty on conviction on indictment of 12 months' imprisonment. The Bill also creates a statutory aggravating factor that will apply when other assaults, and related offences, are committed against emergency workers. This will, in effect, replicate the current sentencing practice and guidelines which state that a factor increasing the seriousness of an offence is whether that offence is committed against someone working in the public sector or providing a service to the public. However, this aggravating factor will only apply to emergency workers, as defined, and will be confined to assaults and related offences rather than all offences. The aggravating factor will apply when the emergency worker is acting in the course of their functions as an emergency worker, whether or not that amounts to an emergency situation.
- 4 The Bill also extends existing provisions in the Police and Criminal Evidence Act (PACE) to allow the taking of a blood sample with consent, for the purpose of determining whether a person (who had assaulted an emergency service worker and therefore exposed them to a risk of infection) was carrying an infectious disease. It also creates a new offence of failing to provide this sample without good cause. There are corresponding provisions inserted into the Terrorism Act 2000 to cover the case of persons detained under terrorism powers. The Bill will also enable the taking of a non-intimate sample without consent. This is in line with existing legislation which allows non-intimate samples to be taken without consent for the purpose of producing DNA profiles.

Policy background

Increases the maximum penalties for an aggravated version of assault and a statutory aggravating factor

- 5 The first part of the Bill aims to strengthen the law when certain offences are committed against emergency workers by creating a new triable either way offence of assault or battery committed against an emergency worker with increased maximum penalty when tried on indictment and a

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statutory aggravating factor for other assaults and related offences. At present, there is no statutory protection for “emergency workers”, but there are multiple separate offences and a non-statutory aggravating factor for offences committed against public sector workers.

- 6 The Bill will create a new triable either way offence of assault or battery committed against an emergency worker with increased maximum penalty when tried on indictment. This provision will provide the courts with increased powers to sentence in a way that reflects the seriousness of offences and the need to protect emergency workers from assault when carrying out their functions as emergency workers. Our proposal would also require the court to consider other assault and related offences as aggravated and therefore meriting a more severe sentence, within the maximum penalties available. This applies only to assaults and related offences, on these workers. In effect this replicates current sentencing practice and guidelines which state that an offence committed against someone working in the public sector or providing a service to the public should be treated as an aggravated factor in sentencing.
- 7 However, the new assault or battery offence and the aggravating factor introduced in the Bill will only apply to emergency workers, as defined, and the latter will be confined to assaults and related offences rather than all offences. Further, the new provisions for common assault and battery and the aggravating factor will apply when the emergency worker is acting in, or in connection with, the course of their functions as an emergency worker, whether or not that amounts to an emergency situation.

Taking of samples

- 8 At present, in cases of emergency workers being exposed to bodily fluids through spitting or biting, there is no means to compel suspected transferors to provide bodily samples for testing, which could be used to determine whether the suspect carries an infectious disease that may have been transmitted to the emergency worker.
- 9 The Bill extends police powers to take samples of blood in cases of assault against emergency workers where an Inspector has reasonable grounds for believing that the emergency worker has been exposed to a risk of transmission of an infectious disease as a result of that assault. It also makes it an offence to refuse to provide consent for taking of blood samples without good cause. The intended effect of the proposed changes is to reduce the number of occasions on which emergency service workers have to:
 - a. have blood tests themselves to check whether they have contracted infectious diseases as a result of an assault they suffered;
 - b. take prophylactic medicines that are not necessary;
 - c. endure periods of uncertainty about whether they have an infectious disease and could be passing it on to others.
- 10 The Bill extends police powers, in certain circumstances, to take saliva samples without appropriate consent.
- 11 The Bill makes similar provision in respect to persons under suspicion of assaulting an emergency service worker who are detained under section 41 of, or Schedule 7 to, the Terrorism Act 2000 as under sections 62 and 63 of PACE.

Legal background

- 12 Criminal law statute passed by Parliament sets down the framework of sentencing law, and provide for maximum penalties for the offences set down in the Bill.

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- Common Assault, contrary to section 39 Criminal Justice Act 1988, is triable only summary within the magistrates courts. It is punishable by a six month maximum term of imprisonment and or fine.
 - Threats to kill, contrary to section 16 Offences against the Person Act 1861, is a triable either way offence, which carries a maximum penalty of ten years imprisonment.
 - Wounding/causing grievous bodily harm with intent, contrary to section 18 Offences against the Person Act 1861, is an indictable only offence, which carries a maximum penalty of imprisonment for life.
 - Unlawful wounding/inflicting grievous bodily harm, contrary to section 20 of Offence Against the Person Act 1861, is a triable either way offence, which carries a maximum penalty on indictment of five years' imprisonment and/or an unlimited fine. Summarily, the maximum penalty is six months' imprisonment and/or a fine not exceeding the statutory maximum.
 - Administering poison or noxious thing thereby endangering life or inflicting grievous bodily harm, contrary to section 23 Offences against the Person Act 1861, is triable only on indictment, the maximum penalty is ten years' imprisonment.
 - Causing bodily injury by explosives, contrary to section 28 Offences against the Person Act 1861, is triable on indictment only and has a maximum penalty of life imprisonment.
 - Sending, throwing or using explosive or corrosive substance or noxious thing with intent to do grievous bodily harm, contrary to section 29 Offences against the Person Act 1861, is triable only on indictment, with a maximum penalty of life imprisonment.
 - Assault Occasioning Actual Bodily Harm, contrary to section 47 Offences against the Person Act 1861, is a triable either way offence, with a six month maximum term of imprisonment on summary conviction with five years maximum available on indictment.
- 13 Within these maximum penalties outlined above, magistrates and judges can exercise their discretion as what sentences to make. Section 120 of the Coroners and Justice Act 2009 empowers the Sentencing Council, to issue “definitive guidelines” for sentencing of offences. Section 125 of the Coroners and Justice Act 2009 requires a court to follow sentencing guidelines unless the court is satisfied that to do so would be contrary to the interests of justice, and section 174 of the Criminal Justice Act 2003 requires a court to give reasons for and explain the effect of sentence.
- 14 Current sentencing guidelines applicable to public sector workers and those providing a service to the public are covered by the overarching principles which apply to all offences and specified guideline for assault issued by the Sentencing Council. Both guidelines assist judges in categorising the seriousness of an offence by considering aggravating and mitigating factors for passing sentence on offenders.
- 15 Both the overarching principles which apply to all offences and the current sentencing guideline for assault, sections 18, 20 and 47 of the Offences against the Person Act 1861 provide the fact that an offence was committed against a public sector workers or workers providing a service to public will be an aggravating factor for a sentence. Therefore a sentencing judge or magistrate should consider this fact, and the aggravation should result in a severer sentence unless there are circumstances which would make it contrary to the interests of justice.
- 16 There are no specific relevant guidelines for the sentencing of manslaughter or kidnapping both

of which are only tried on indictment. Both these offences are common law offences, where the term of sentence is at large at the discretion of the court. The court may accordingly pass any sentence up to life imprisonment for these offences.

- 17 The Police and Criminal Evidence Act 1984 (PACE) provides the police with core powers to prevent, detect and investigate crime. In particular, it makes provision about: powers of stop and search (Part 1); entry, search and seizure (Part 2); arrest and bail (Part 3); detention (Part 4); interviewing, taking and retention of fingerprints and intimate and non-intimate samples (for example, for the purposes of DNA profiling) (Part 5); and the issuing of Codes of Practice (Part 6). The Codes of Practice made under PACE govern the use of those powers. There are eight such Codes as follows:
- Code A - Exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest and the need for a police officer to make a record of a stop or encounter;
 - Code B - Police powers to search premises and to seize and retain property found on premises and persons;
 - Code C - Requirements for the detention, treatment and questioning of suspects not related to terrorism in police custody by police officers;
 - Code D - Main methods used by the police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records;
 - Code E - Audio recording of interviews with suspects in the police station;
 - Code F - Visual recording with sound of interviews with suspects;
 - Code G - Powers of arrest under section 24 of PACE (which provides the statutory power for a constable to arrest without warrant for all offences);
 - Code H - requirements for the detention, treatment and questioning of suspects related to terrorism in police custody by police officers.
- 18 Section 18 of PACE provides a general power to gather evidence from any premises occupied or controlled by a person who is under arrest for an indictable offence, e.g. blood and saliva found at crime scenes (as opposed to taken from suspects).
- 19 Section 62 of PACE provides for taking an intimate sample (namely, a sample of blood, semen or any other tissue fluid, urine or pubic hair, a dental impression or a swab taken from any part of a person's genitals (including pubic hair) or from a person's body orifice other than the mouth) from a person in police detention if 'appropriate consent' is obtained. Section 65(1)(a) PACE defines 'appropriate consent' in this context to mean, in the case of a person over 17, the consent of that person.
- 20 Sections 63 of PACE provides for the taking of a non-intimate sample from a person in police detention for various specified purposes. Section 65(1) of PACE defines a non-intimate sample as: a sample of hair other than pubic hair, a sample taken from a nail or under the nail, a swab taken from any part of the body except from genitals or a body orifice (excluding the mouth), saliva or a skin impression.
- 21 Subsection (5) of 63R provides that 'samples other than DNA samples' must be destroyed within six months of taking, subject to a power in section 63R(6) to apply to the court for retention for a longer period. This is subject to section 63U which provides that section 63R does not apply to material which is, or may become, disclosable under the Criminal Procedure and Investigations Act 1996.

- 22 The Terrorism Act 2000 (TACT) makes provisions about terrorism and sets out the definition of terrorism for the purpose of the Act (Part 1). In particular, it makes provisions related to proscribed organizations (Part 2); terrorist property (Part 3); terrorist investigations (Part 4), and counter-terrorist powers (Part 5).
- 16 Schedule 8 of the Terrorism Act 2000 (detention powers) provides for the treatment of suspects who are detained and for judicial extension of the initial period of detention.

Territorial extent and application

- 23 Clause 8 sets out the territorial extent of the Bill, that is, the jurisdictions which the provisions of the Bill form part of the law of. The extent of the Bill can be different from its application. Application is about where a provision of a Bill produces a practical effect.
- 24 All the provisions of the Bill apply to England and Wales. In addition, the following provisions extend to Scotland and Northern Ireland (but do not apply there):
- Clause 5 extends to England and Wales, Scotland and Northern Ireland;
 - Clause 8 also extends to England and Wales, Scotland and Northern Ireland (as a result of the fact that Clause 5 so extends).

See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill/Act

Part 1: Aggravation

Clause 1: Common assault and battery

- 25 Clause 1 of the Bill creates a new triable either way offence of assault or battery committed against an emergency worker with increased maximum penalty when tried on indictment.
- 26 Subsection (2)(a) provides that the maximum penalty for an assault or battery committed against an emergency worker on summary conviction is 12 months' imprisonment, or a fine, or both. Subsection (4) makes clear that the 12 months' imprisonment should be read as 6 months until such time as section 154(1) of the Criminal Justice Act 2003 comes into force.
- 27 Subsection (2)(b) provides that the maximum penalty for an assault or battery against an emergency worker on conviction on indictment is 12 months' imprisonment, or a fine or both.
- 28 Subsection (3) sets out the circumstances in which an assault or battery under subsection (1) is to be taken as committed against an emergency worker. It makes clear that subsection (1) can apply to a person not at work, but carrying out a function that, if carried out during work time, would have been within the functions of an emergency worker.
- 29 Subsection (5) makes amendments to section 39 of the Criminal Justice Act 1988. Section 39 of the 1988 Act provides for common assault and battery to be summary offences punishable with imprisonment for a term not exceeding 6 months. Subsection (5) has the effect of retaining the existing text of section 39 as section 39 subsection (1) and adds to the section a subsection (2) which makes clear that the designation of assault and battery as summary offences punishable with a maximum penalty of 6 months' imprisonment is subject to the provision in clause 1 of this Bill where higher maximum penalties will apply for the offence of assault or battery committed against an emergency worker.
- 30 Subsection (6) provides that this section of the Bill will only apply to offences committed on or after the section comes into force.

Clause 2: Aggravating factor

- 31 Section 143 of the Criminal Justice Act 2003 imposes a duty on the court to consider an offender's culpability in committing an offence and any harm which that offence caused, was intended to cause or might foreseeably have caused when considering the seriousness of any offence.
- 32 Clause 2 of the Bill creates a statutory aggravating factor on sentencing for a list of specific offences committed against an emergency worker in the exercise of their functions as an emergency worker. The status of the emergency worker must be considered by the court as a factor that increases the seriousness of a specified offence and thus the severity of the resulting sentence.
- 33 Subsections (1)(a) and (b) make it clear that the statutory aggravating factor applies where the court is considering any offence listed within subsection (3) of the Bill and committed against an "emergency worker" acting in the exercise of his or her functions as an emergency worker.
- 34 Subsection (2)(a) makes it clear that the court must treat the circumstances set out in subsection (1) (b) – a specific offence committed against an emergency worker in or in connection with the exercise of their functions - as an aggravating factor.
- 35 Subsection (2)(b) places a duty on the court to state in open court that the offence has been found to be aggravated for this reason.

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- 36 Subsection (3) specifies the offences that the aggravating factor will apply to. These are:
- Offences Against the Person Act 1861:
 - section 16 (threats to kill),
 - section 18 (wounding with intent to cause grievous bodily harm),
 - section 20 (malicious wounding),
 - section 23(administering poison etc),
 - section 28 (causing bodily injury by gunpowder etc),
 - section 29 (using explosive substances etc with intent to cause grievous bodily harm) and
 - section 47 (assault occasioning actual bodily harm)
 - Subsection (3) also specifies the common-law offences of:
 - manslaughter,
 - kidnapping
 - ancillary offences in relation to any of the offences listed in subsection(3) included.
- 37 Subsection (4) sets out the circumstances in which subsection (1) (b) is to be taken as committed against an emergency worker. It makes clear that subsection (1) (b) can apply to person not at work, but carrying out a function that, if carried out during work time, would have been within the functions of an emergency worker.
- 38 Subsection (5) provides definitions for “ancillary offence” and emergency worker for the purposes of clause 2. It makes clear that an ancillary offence refers to the aiding, abetting, counselling or procuring the commission of any of the offences listed in subsection (3) as well as attempts to commit them or conspiracy to commit them.
- 39 Subsection (6) makes clear that nothing in clause 2 of the Bill stops a court from considering as an aggravating factor any offence, that is other than those listed in subsection (3), committed against an emergency worker.
- 40 Subsection (7) provides that the duty on the court created by clause 2 will only apply to offences that are committed on or after the day in which the Bill comes into force.

Clause 3: Meaning of “emergency worker”

- 41 Clause 3 provides the definition of “emergency worker” for the purposes of clauses 1 and 2 of the Bill.
- 42 Subsections (1)(a) to (h) sets out those positions and occupations which are defined as emergency workers for the purposes of clause 1 of the Bill. The occupations and positions covered by subsection (1) include police, National Crime Agency officers, prison and custody officers, fire, rescue and search personnel, those providing emergency healthcare services, urgent treatment centre services and those transporting organs and blood.
- 43 Subsection (2) makes it clear that it does not matter whether those emergency workers in the list at subsection (1) are paid or unpaid.
- 44 Subsection (3) provides a definition of “custodial institution” (as referred to in subsection (1)(e)).
- 45 Subsection (4) provides that emergency healthcare workers and urgent treatment centre workers under subsection (1) (h) includes those who support the provision of those services and whose general activities, in support, involve interacting with individuals receiving the services or other members of the public services.

Taking of samples

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

- 46 Clause 4 inserts new section 62A into PACE (intimate samples: assaults on emergency workers) so that intimate samples 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 their functions as such a worker;
 - 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
 - d. the appropriate consent is given.
- 47 An Inspector may only give such authorisation under new section 62A(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;
 - b. the emergency worker has been exposed to a risk of transmission of an infectious disease from the person who assaulted them, as a result of that assault; and
 - c. the taking of the sample is necessary for the purposes of establishing whether that person has any infectious disease.
- 48 Subsection (8) of the inserted section 62A makes it an offence to, without good cause, refuse consent to the taking of a sample of blood. A person guilty of an offence under this section would be liable to pay a fine.
- 49 Clause 4, subsection (3) amends section 63 of PACE to enable 'non-intimate samples' (e.g. saliva) to be taken from a person without the appropriate consent for the purpose of producing DNA profiles where:
- a. there are reasonable grounds for suspecting that the person has, or may have, assaulted an emergency service worker acting in, or in connection with, the exercise of their functions as such as worker; and
 - b. a police officer of at least the rank of inspector authorises it to be taken without appropriate consent.
- 50 An Inspector may only give such authorisation under new section 63(3I) if the officer has reasonable grounds for believing that:
- a. the emergency worker has been exposed to a risk of transmission of an infectious disease from the person who assaulted them, as a result of that assault; and
 - b. the taking of the sample is necessary for the purposes of establishing whether that person has any infectious disease.
- 51 This is in line with existing legislation which allows non-intimate samples to be taken without consent.

Clause 5: Taking of samples under the Terrorism Act 2000

- 52 The Bill makes similar provision in respect of persons detained under section 41 of or Schedule 7 to the Terrorism Act 2000 ("TACT"). Clause 5 amends Part 1 of Schedule 8 (treatment of detained persons) so that an officer can give an authorisation for:
- a. the taking of a non-intimate sample; and

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- b. the taking of an intimate sample, so far as that sample is blood;
 - c. where there are reasonable grounds to believe that the person has, or may have, assaulted an emergency worker and the emergency worker has, as a result, been exposed to a risk of disease.
- 53 However, the officer may only authorise such samples to be taken if there are reasonable grounds for believing that:
- a. the emergency worker has been exposed to a risk of transmission of an infectious disease from the person who assaulted them, as a result of that assault;
 - b. the taking of the sample is necessary for the purposes of establishing whether that person has any infectious disease; and
 - c. in the case of the taking of a sample of blood, the person from whom the sample is to be taken is aged 14 years or over;
- 54 The material would be taken for the purposes of establishing whether the person from whom the sample was taken has any infectious disease. Taking blood samples would require a parent's or guardian's consent to be given if the person is aged 14 years of over, but under the age of 18.
- 55 Clause 5, subsection (3) requires that, before consent is requested to the taking of a sample of blood, the individual (and if applicable, the parents or guardians) must be informed that refusal to give that consent without good cause may mean they are liable to prosecution for an offence.
- 56 Clause 5, subsection (4) (amendment to paragraph 13) makes it an offence to, without a reasonable excuse, refuse consent for the taking of an intimate sample. A person guilty of an offence under this section would be liable to pay a fine.

Clause 6: Taking of samples: related amendments

- 57 Clause 6 makes consequential amendments to sections 62, 63 and 63T of PACE. The amendment to section 63 T (use of retained material) is to establish that samples are taken for the purposes of establishing whether the person from whom the sample was taken has any infectious disease.
- 58 It also makes provision that information derived from samples taken under these circumstances may be disclosed:
- a. to the emergency worker, or
 - b. to any other person for the purposes of protecting the vital interests of the emergency worker.
- 59 It provides further that nothing in this (a) and (b) above authorises the making of a disclosure which contravenes the Data Protection Act 1998.
- 60 Clause 6(8) makes amendments to the Human Tissue Act 2004 to exempt blood and non-intimate samples from the controls in that Act, just as the intimate and non-intimate samples taken for purposes related to the prevention or detection of crime or the carrying out of a prosecution are exempted.

General

Clause 7: Financial provision

61 Clause 7 authorises out of money provided by Parliament any expenditure incurred by the Secretary of State under the Act and any increases in expenditure attributable to the Act in sums payable under any other Act.

Clause 8: Extent, commencement and short title

62 Clause 8, subsection (1) provides the Act applies to England and Wales only except for clause 8 and clause 5 which extend to England and Wales, Scotland and Northern Ireland.

63 Clause 8, subsection (2), provides that the Act comes into force two months after the day on which the Act is passed.

Commencement

- 64 Clause 8 provides for the provisions of the Act to come into force 2 months after the day on which the Act is passed.

Financial implications of the Bill

- 65 In relation to Part 1 of the Bill, the Ministry of Justice is conducting analysis to estimate the impact of the maximum penalties for a new assault or battery on emergency workers offence and the statutory aggravating factor. This analysis will consider costs to the criminal justice system and the impact on the prison population.
- 66 In relation to Clauses 4 to 6, the Home Office is urgently conducting analysis to estimate the impact of testing offenders who spit at or bite emergency workers. This analysis is considering costs including police resources and time, ensuring legislative familiarisation and preventative treatments.

Parliamentary approval for financial costs or for charges imposed

- 67 If any additional expenditure arising from the Bill is subject to a Money Resolution, the House of Commons will be asked to agree that any expenditure arising out of the Bill that is incurred by the Government will be taken out of the money provided by Parliament.

Compatibility with the European Convention on Human Rights

- 68 The creation of a triable either way offence of assault or battery committed against an emergency worker with increased maximum penalty when tried on indictment is a proportionate response to a matter of public concern. Article 7(1) of the ECHR prohibits the application of retrospective increases to penalties for criminal offences and clause 1(6) makes clear that the increased maximum penalty in clause 1 of the Bill only applies in relation to offences committed on or after the day the provisions come into force.
- 69 The statutory aggravating factor for certain offences committed against emergency workers is to a limited extent a reflection of current sentencing practice for assault and other violent offences against the person.
- 70 Article 7(1) of the ECHR prohibits the application of retrospective increases to penalties for criminal offences. Clause 2 does not provide for higher maximum sentences against offenders, but will aggravate the seriousness of a specified offence within the current statutory maximum penalty available for that particular offence so that those penalties remain unchanged for the purpose of this Bill. Clause 2(7) of the Bill explicitly states that the provisions will only have effect in relation to offences committed on or after the day the provisions come into force. These provisions are therefore compliant with Article 7 of the ECHR.
- 71 The power to take a blood sample (with consent) and a non-intimate sample (without consent) for the purposes of checking for infectious diseases, and the storing of any subsequent data about what diseases were found will be an interference with the article 8 rights (of the European Convention on Human Rights) of the offender. This interference will be justified as a necessary

means of achieving a legitimate aim because it will be necessary for the purposes of the protection of health and morals, and for the prevention and detection of crime.

- 72 It will be necessary for the protection of health and morals because it will mean that emergency workers who are assaulted in such a way that could lead to the transmission of an infectious disease will be able to find out, with a high degree of certainty, if they are at risk of contracting such a disease because a blood test could be carried out on the offender to determine what serious infectious diseases were present in their blood. Results can be forthcoming within 24 hours in a best case scenario, depending on the type of test used, and the availability of laboratory time. If serious infectious diseases are present, emergency workers will know what diseases they may have been exposed to, and so will be able to take appropriate medication to deal with it, and will not have to take unnecessary medication on a prophylactic basis. Some of these medicines have common serious side effects such as nausea, vomiting, diarrhea, headaches, dizziness, etc. They will also be able to take appropriate steps to avoid infecting their friends and family, and so their friends' and families' health will be better protected. Without a power to take blood samples from relevant offenders, emergency workers face having to wait for between 3 weeks and 6 months to find out whether they have been infected as a result of the assault by the offender (depending on the type of test used).
- 73 The powers to take blood samples will be necessary for the prevention and detection of crime because it will reduce the likelihood of offenders spitting at emergency workers with the intention of causing them worry and distress since there will be a power to take blood samples from them to test for the presence of infectious diseases, and so their capacity to cause the emergency worker distress and worry will be much reduced.
- 74 The power to take non-intimate samples without consent (which is in line with current equivalent legislation) will allow for saliva testing for certain diseases, if necessary, and may provide for easier and less invasive testing for more diseases as the reliability of saliva testing methods increases in the future, although at present blood tests provide significantly greater certainty.
- 75 There are various safeguards built into the provisions, such as that there must be reasonable grounds for suspecting there has been an assault on an emergency worker, reasonable grounds for believing the emergency worker has been exposed to a risk of transmission of an infectious disease, the offender must be aged 14 or over, the taking of the sample is necessary for determining whether the offender has an infectious disease, and consent is required in relation to blood samples.
- 76 There is also a precedent power to take blood samples with consent. This precedent is in section 7 of the Road Traffic Act 1988 which allows a constable to require a person to provide a specimen of blood subject to various conditions such as only requiring blood if breath or urine are not appropriate. Section 7(5A) enables the arrest of anyone refusing a sample and section 7(6) states that failure to provide one is an offence punishable by a fine and imprisonable (up to 6 months in certain circumstances; 3 months in others). It also carries a mandatory disqualification from driving. The taking of a blood sample will be necessary as part of the evidence for proving a driving offence (and if no sample is taken soon after the offence, that particular type of evidence will disappear), and so the lack of consent would be punishable by a fine or prison or disqualification from driving, which is justifiable given the need to minimise the risks to others that drink-drivers create. Similarly, the taking of a blood sample with consent from those who assault emergency workers is necessary to minimise the risks posed to those emergency workers from the potential transmission of infectious diseases, whether from the diseases themselves, or from the potential harmful side effects of prophylactic medication.

Annex A - Territorial extent and application in the United Kingdom

The provisions of the Bill extend to England and Wales.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Aggravation of offences								
Clause 1	Yes	Yes	No	No	N/A	Yes	Yes	No
Clause 2	Yes	Yes	No	No	N/A	Yes	Yes	No
Clause 3	Yes	Yes	No	No	N/A	Yes	Yes	No
Taking of Samples								
Clause 4	Yes	Yes	No	No	N/A	Yes	Yes	LCM (W)
Clause 5	Yes	Yes	Extends only	Extends only	N/A	Yes	Yes	LCM (W)
Clause 6	Yes	Yes	No	No	N/A	Yes	Yes	LCM (W)

Subject matter and legislative competence of devolved legislatures

The provisions in the Bill deal with the health and protection of emergency workers.

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

ASSAULTS ON EMERGENCY WORKERS (OFFENCES)

EXPLANATORY NOTES

These Explanatory Notes relate to the Assaults on Emergency Workers (Offences) as introduced in the House of Commons on 19 July 2017 (Bill 7).

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