

LASER MISUSE (VEHICLES) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Laser Misuse (Vehicles) Bill [HL] as brought from the House of Lords on 7 March 2018 (Bill 177).

- These Explanatory Notes have been prepared by the Department for Transport 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 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. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	2
Purpose of the Bill	2
Legal background	2
Territorial extent and application	2
Commentary on provisions of Bill	4
Clause 1: Offence of shining or directing a laser beam towards a vehicle	4
Clause 2: Offences relating to air traffic services	5
Clause 3: Interpretation	5
Clause 4: Extent, commencement and short title	5
Commencement	5
Financial implications of the Bill	5
Compatibility with the European Convention on Human Rights	6
Annex A - Territorial extent and application	7

Overview of the Bill

The Bill comprises four clauses.

- Clause 1 creates an offence of the misuse of lasers in relation to vehicles.
- Clause 2 creates an offence of the misuse of lasers in relation to air traffic services.
- Clause 3 defines terms included in Clauses 1 and 2.
- Clause 4 makes general provision in respect of the Bill.

Policy background

- 1 There have been increasing incidents of lasers being shone at commercial aircraft. Since 2010, there have been around 1,500 laser incidents reported each year in the UK, up from 6 in 2004. These incidents predominantly occur during critical phases of flight such as take-off and landing. There have also been reported incidents for other modes of transport such as shipping and rail and for air traffic control. It is an offence under Article 225 of the Air Navigation Order 2016 to shine or direct a light at an aircraft which dazzles or distracts the pilot of the aircraft; the penalty for that offence is a fine of up to £2,500 and the offence does not apply to other modes of transport.

Purpose of the Bill

- 2 If agreed, this Bill would create an offence of shining or directing laser beams towards aircraft and other modes of transport and other offences of shining or directing laser beams towards air traffic control. The creation of these new offences are intended to capture the use of laser pens and pointers, and other means of producing a laser beam, in a way which dazzles or distracts, or is likely to dazzle or distract, a person when driving, or otherwise in control of, a vehicle on a journey or a person providing air traffic services. The first offence would apply in relation to a "vehicle", which is defined as any vehicle which is used for travel by land, water or air. The second offence would apply to an air traffic facility, or a person providing air traffic services. An "air traffic facility" is defined as any building, structure, vehicle or other place from which air traffic services are provided and "air traffic services" has the meaning given by section 98(1) of the Transport Act 2000.
- 3 The new offence would be a strict liability offence.

Legal background

- 4 The relevant legal background is explained (where relevant) in the policy background section of these Notes and in the commentary relating to the provisions of the Bill.

Territorial extent and application

- 5 Clause 4 makes provision for extent. The Bill will extend to England and Wales, Scotland

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and Northern Ireland. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

- 6 Insofar as the Bill relates to vehicles in Northern Ireland other than aircraft, vessels, hovercraft and submarines, a legislative consent motion would be needed from the Northern Ireland Assembly in relation to such forms of transport in Northern Ireland. A legislative consent motion would also be needed from the Scottish Parliament for vehicles in relation to which regulation is devolved in Scotland, including vehicles which are off-road, animal drawn vehicles and pleasure vessels.

Commentary on provisions of Bill

Clause 1: Offence of shining or directing a laser beam towards a vehicle

- 7 Subsection (1) would make it an offence to direct or shine a laser beam towards a vehicle in such a way as to dazzle or distract, or be likely to dazzle or distract, the person driving, piloting, navigating or otherwise in control of that vehicle when it is moving or is ready to move. “Moving or ready to move” is intended to capture any journey made by an aircraft, vessel or other vehicle, including land-based journeys and taxiing by aircraft and both voyages and short journeys made by vessels. It would also cover when a vehicle is about to move, and a temporary stop, such as a car stopped at traffic lights or a train stopping at a station. Subsection (6) states that a mechanically propelled vehicle which is not moving or ready to move but whose engine or motor is running, is to be treated for the purposes of Subsection (1)(a) as ready to move.
- 8 Subsection (2) provides that it would be a defence for a person charged with the offence under subsection (1) to show either that they had a reasonable excuse for shining or directing a laser beam towards a vehicle, or did not intend to shine or direct a laser beam towards a vehicle, and that they exercised all due diligence and took all reasonable precautions to avoid shining or directing the laser beam towards a vehicle. The person charged would have to adduce sufficient evidence that the defence referred to in subsection (2) applied to raise an issue with respect to it (subsection (3)). The intention of subsection (2) is to provide a defence which can be relied on by persons who, for example, when in distress shine or direct a laser beam at a rescue vehicle to obtain its attention, or who accidentally shine or direct a laser beam towards a vehicle when using a laser for a legitimate reason.
- 9 Subsection (4) makes provision for penalties for a person convicted of an offence under subsection (1) on either summary conviction or on indictment. A person convicted of the offence on indictment could face imprisonment up to 5 years, an unlimited fine, or both.
- 10 Subsections (7) and (8) make provision for what “a person with control of the vehicle” means in relation to aircraft and vessels respectively.

Clause 2: Offences relating to air traffic services

- 11 Subsection (1) creates two offences, making it an offence either to direct or shine a laser beam towards a an air traffic facility, or to direct or shine a laser beam towards a person providing air traffic services, in both cases in such a way as to dazzle or distract, or be likely to dazzle or distract a person providing air traffic services.
- 12 Subsection (2) provides that it would be a defence for a person charged with the offence under subsection (1) to show either that they had a reasonable excuse for shining or directing a laser beam towards an air traffic facility or a person providing air traffic services, or did not intend to shine or direct a laser beam towards the facility or person, and that they exercised all due diligence and took all reasonable precautions to avoid shining or directing the laser beam towards the facility or person. The person charged would have to adduce sufficient evidence that the defence referred to in subsection (2) applied to raise an issue with respect to it (subsection (3)).
- 13 Subsection (4) makes provision for penalties for a person convicted of an offence under subsection (1) on either summary conviction or on indictment. A person convicted of the offence on indictment could face imprisonment up to 5 years, an unlimited fine, or both.
- 14 Subsection (6) makes provision for the interpretation of terms in this clause.

Clause 3: Interpretation

- 15 Clause 3 makes provision for the interpretation of terms contained in Clauses 1 and 2.

Laser beam is defined as a 'beam of coherent light produced by a device of any kind'. This wide definition is intended to cover all types of lasers including laser pointers and pens, as well as devices which produce laser beams of short duration (or "pulses") and light that is both visible and invisible.

Vehicle is defined as any vehicle which is used for travel by land, water or air. It would apply to all forms of vehicles, including aircraft, road vehicles, trains, trams, ships, hovercrafts, invalid carriages, and cycles.

Clause 4: Extent, commencement and short title

- 16 Clause 4 provides for the extent and commencement of the provisions in the Bill.

Commencement

- 17 Clause 4 provides for commencement of the provisions in the Bill. The provisions of this Bill come into force, for England and Wales and Scotland, at the end the period of two months beginning with the day on which the Act is passed. Subsection (4) provides that insofar as this Bill extends to Northern Ireland, the provisions of the Bill would come into force at the end of the period of two months, beginning with the day on which the Act is passed, for aircraft, vessels, hovercraft and submarines. In relation to other vehicles in Northern Ireland, the Bill would be commenced on the days appointed by the Secretary of State by regulations.

Financial implications of the Bill

- 18 The Bill does not authorise any new expenditure or taxation (or similar charge). Therefore no money resolution or ways and means resolution is required.

Compatibility with the European Convention on Human Rights

- 19 The Government considers that the Laser Misuse (Vehicles) Bill is compatible with the European Convention on Human Rights ("ECHR"). Accordingly, Chris Grayling, the Secretary of State for Transport, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect. Further explanation of key human rights issues is provided below. References to articles are to articles of the ECHR.
- 20 Clauses 1 and 2, which would make provision for new offences in relation to the misuse of lasers, raises issues in relation to article 6(2) ECHR and the presumption of innocence in criminal proceedings. Subsection (1) of each of these clauses would create new strict liability offences and, once the elements of any of the offences are shown to have occurred, subsections (2) and (3) would provide for the person charged to show the elements of a defence that would apply.
- 21 The European Court of Human Rights and the United Kingdom's domestic courts have considered whether offences of strict liability violate article 6(2) and have decided that they do not, provided that the prosecution retains the burden of proving that the offence was committed (see *Salabiaku v. France* (1991) 13 E.H.R.R. 379). Under clauses 1(1) and 2(1), it would be for the prosecution to prove the elements of the new offence, i.e. those making up the *actus reus*, beyond reasonable doubt and therefore there would not be an interference with the presumption of innocence.
- 22 Under clauses 1 and 2, once the prosecution have proved the elements of the new offence, the burden of proof would shift to the defendant to establish the elements of a defence provided by subsection (2). This shift of the burden of proof once the elements of the offence have been proved has also been held by the European Court of Human Rights not to infringe article 6(2) ECHR (see *G. v. U.K.* (2011) 53 E.H.R.R. SE25 at [26]). In the case of clauses 1(2) and 2(2), it would impose an evidential burden only on the person charged with the offence under subsection (1) of those clauses and it would therefore be compatible with Article 6(2) ECHR (see, for example, *R. v. Carass* [2002] 1 W.L.R. 1714, CA).
- 23 In *G. v. U.K.* (at [27]) the European Court of Human Rights also stated that it "is not the Court's role under article 6(1) or (2) to dictate the content of domestic criminal law, including whether or not a blameworthy state of mind should be one of the elements of the offence or whether there should be any particular defence available to the accused".

Annex A - Territorial extent and application

All clauses in the Bill will extend and apply to England and Wales, Scotland and Northern Ireland.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Northern Ireland?	Extends and applies to Scotland?	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?
Clause 1	Yes	Yes	Yes	Yes	n/a	n/a	n/a	Yes (S & NI)
Clause 2	Yes	Yes	Yes	Yes	n/a	n/a	n/a	No
Clause 3	Yes	Yes	Yes	Yes	n/a	n/a	n/a	Yes (S & NI)
Clause 4	Yes	Yes	Yes	Yes	n/a	n/a	n/a	Yes (S & NI)

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Ordered by the House of Commons to be printed, 7 March 2018

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