

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 brought from the House of Commons on 30 April (HL Bill 99).

- These Explanatory Notes have been prepared by the Ministry of Justice and the Home Office with the consent of Baroness Donaghy 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.

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Overview of the Bill

- 1 The Assaults on Emergency Workers (Offences) Bill seeks to improve the protection for emergency workers. The measures in the Bill create a new offence and provide a statutory footing for considering certain offences against emergency workers as an aggravating factor in determining the severity of a sentence.

Policy background

- 2 In broad terms, the Bill creates a new triable either way offence of assault or battery committed against an emergency worker with an 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 would mean the offence would be triable either way with a maximum penalty on conviction on indictment of 12 months' imprisonment.
- 3 The Bill also creates a statutory aggravating factor that would apply when other assaults, including sexual assault, and assault-related offences, were committed against emergency workers. This replicates the current sentencing practice and guidelines which state that a factor which increases the seriousness of an offence is whether that offence was committed against someone working in the public sector or providing a service to the public. However, the aggravating factor under this Bill would only apply to emergency workers, as defined in the Bill, and would be confined to assaults, including sexual assault, and assault-related offences rather than all offences.
- 4 The new offence and the aggravating factor would apply to an emergency worker when they were acting in the course of their functions as an emergency worker, whether or not that amounted to an emergency situation.

Legal background

- 5 Statutes on criminal law passed by Parliament set out the framework for sentencing law and provide for maximum penalties for the offences set out in the Bill.
 - Common assault, under section 39 Criminal Justice Act 1988, is triable only summarily within the magistrates' courts. It is punishable by a six-month maximum term of imprisonment and/or fine.
 - Threats to kill, under section 16 of the Offences against the Person Act 1861, is a triable either way offence, which carries a maximum penalty of ten years' imprisonment.
 - Wounding and/or causing grievous bodily harm with intent, under section 18 of the Offences Against the Person Act 1861, is an indictable only offence, which carries a maximum penalty of imprisonment for life.
 - Unlawful wounding and/or inflicting grievous bodily harm, under section 20 of the Offences 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, under section 23 of the Offences against the Person Act 1861, is triable only on indictment, the maximum penalty is ten years' imprisonment.
 - Causing bodily injury by explosives, under section 28 of the 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, under section 29 of the Offences against the Person Act 1861, is triable only on indictment, with a maximum penalty of life imprisonment.
 - Assault Occasioning Actual Bodily Harm, under section 47 of the 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.
 - Sexual assault under section 3 of the Sexual Offences Act 2003 is a triable either way offence, with a six-month maximum term of imprisonment on summary conviction and a 10 year maximum term of imprisonment on indictment.
- 6 Within the maximum penalties outlined above, magistrates and judges can exercise their discretion as to what sentences to make. Section 120 of the Coroners and Justice Act 2009 (the "2009 Act") empowers the Sentencing Council to issue "definitive guidelines" for sentencing of offences. Section 125 of the 2009 Act 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, the sentence.
- 7 Current sentencing guidelines applicable in relation to public sector workers and those providing a service to the public are covered by the overarching principles which apply to all offences and the specified guidelines for assault issued by the Sentencing Council. Both the principles and guidelines assist judges in categorising the seriousness of an offence by considering aggravating and mitigating factors for passing sentences on offenders.
- 8 Both the overarching principles which apply to all offences and the current sentencing guidelines for assault, in relation to sections 18, 20 and 47 of the Offences against the Person Act 1861, provide for the fact that an offence was committed against a public sector worker, or a worker providing a service to the public, to be an aggravating factor for a sentence. Therefore a sentencing judge or magistrate should consider this fact and the aggravation should result in a more severe sentence unless there are circumstances which would make it contrary to the interests of justice.
- 9 There are no specific relevant guidelines for the sentencing of manslaughter or kidnapping both of which are only tried on indictment. Both of these offences are common law offences, where the term of a sentence is largely at the discretion of the court. The court may accordingly pass any sentence up to life imprisonment for these offences.

Territorial extent and application

- 10 Clause 4 sets out the territorial extent of the Bill, that is, the jurisdictions in which the provisions of the Bill form part of the law. The extent of the Bill can be different from its application. Application is about where a provision of a Bill produces a practical effect.
- 11 All the provisions of the Bill apply to England and Wales only. 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

Part 1: Aggravation

Clause 1: Common assault and battery

- 12 Clause 1 creates a new triable either way offence of assault or battery committed against an emergency worker with an increased maximum penalty when tried on indictment. The offence in Clause 1 can be committed in a variety of ways. For example, spitting at an emergency worker acting in the exercise of their functions could, depending on the circumstances of the case, amount to an offence under this clause.
- 13 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 (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. Subsection (4) makes clear that "12 months' imprisonment" should be read as "six months" until such time as section 154(1) of the Criminal Justice Act 2003 comes into force. The Ministry of Justice keeps the commencement of the provisions of this section under review.
- 14 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) may 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.
- 15 Subsection (5) amends section 39 of the Criminal Justice Act 1988 (the "1988 Act"). 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) retains the existing text of section 39 and adds 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 provisions under Clause 1 of this Bill where higher maximum penalties apply to offences of assault or battery committed against an emergency worker.
- 16 Subsection (6) provides that this Clause only applies to offences committed on or after the day on which this Clause comes into force.

Clause 2: Aggravating factor

- 17 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.

- 18 Clause 2 creates a statutory aggravating factor on sentencing for a list of specific offences committed against an emergency worker in the exercise of their functions. 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.
- 19 Subsection (1)(a) and (b) makes clear that the statutory aggravating factor applies where the court is considering any offence listed within subsection (3) and committed against an “emergency worker” acting in the exercise of his or her functions as an emergency worker.
- 20 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.
- 21 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.
- 22 Subsection (3) specifies the offences that the aggravating factor would apply to. These are:
- a. under the Offences Against the Person Act 1861:
 - section 16 (threats to kill),
 - section 18 (shooting or attempting to shoot, or wounding with intent to do grievous bodily harm or to resist apprehension),
 - section 20 (inflicting bodily injury, with or without a weapon - also known as malicious wounding),
 - section 23 (maliciously administering poison etc),
 - section 28 (causing bodily injury by gunpowder etc),
 - section 29 (causing gunpowder to explode, or sending to any person an explosive substance etc), and
 - section 47 (assault occasioning actual bodily harm); and
 - b. under the Sexual Offences Act 2003:
 - section 3 (sexual assault).
- 23 Subsection (3) also specifies the common-law offences of:
- (a) manslaughter,
 - (b) kidnapping, and
 - (c) ancillary offences in relation to any of the offences already listed under subsection (3).
- 24 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) may 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.
- 25 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 conspiring to commit them.

- 26 Subsection (6) makes clear that nothing in Clause 2 prevents a court from considering as an aggravating factor for any offence, that is other than those listed in subsection (3), the fact that the offence was committed against an emergency worker.
- 27 Subsection (7) provides that the duty on the court created by Clause 2 would only apply to offences that were committed on or after the day on which the Bill comes into force.

Clause 3: Meaning of "emergency worker"

- 28 Clause 3 provides a definition of "emergency worker" for the purposes of the Bill.
- 29 Subsection (1)(a) to (h) sets out those positions and occupations which are defined as emergency workers for the purposes of the Bill. The occupations and positions covered by subsection (1) include police constables, National Crime Agency officers, prison and custody officers, fire, rescue and search personnel and those providing NHS healthcare services who have face to face interaction with patients or other members of the public. Subsection (2) makes it clear that it does not matter whether the emergency workers listed in subsection (1) are paid or unpaid.
- 30 Subsection (3) provides a definition of "custodial institution" (as referred to in subsection (1)(e)).

Part 2: General

Clause 4: Extent, commencement and short title

- 31 Subsection (1) states that the Bill applies to England and Wales only.
- 32 Subsection (2) provides for the Bill to come into force after the period of two months beginning with the day on which the Bill is passed.
- 33 Subsection (3) provides for the short title of the Bill and is self-explanatory.

Commencement

- 34 The provisions of the Bill will come into force after the period of two months beginning with the day on which the Bill is passed.

Financial implications of the Bill

- 35 The Ministry of Justice is conducting an analysis to estimate the impact of the maximum penalties for the new offence of assault or battery on emergency workers and the statutory aggravating factor. This analysis will consider costs to the criminal justice system and the impact on the prison population.

Parliamentary approval for financial costs or for charges imposed

- 36 The Bill does not have a money resolution as there is no requirement for authority for any increased public expenditure as a result of the Bill.

Compatibility with the European Convention on Human Rights

- 37 The creation of a triable either way offence of assault or battery committed against an emergency worker with an 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 under Clause 1 only applies in relation to offences committed on or after the day on which the provisions come into force.
- 38 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.
- 39 Clause 2 does not provide for higher maximum sentences against offenders, but would 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) explicitly states that its provisions would only have effect in relation to offences committed on or after the day on which the provisions come into force. These provisions are therefore compliant with Article 7 of the ECHR.

Annex A – Territorial extent and application

The provisions of the Bill extend to England and Wales.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
1 Aggravation							
Clause 1	Yes	Yes	Yes	No	No	No	No
Clause 2	Yes	Yes	Yes	No	No	No	No
Clause 3	Yes	Yes	Yes	No	No	No	No
2 General							
Clause 4	Yes	Yes	Yes	No	No	No	No

Subject matter and legislative competence of devolved legislatures

- 40 The provisions in the Bill deal with the protection of emergency workers.
- 41 The Act applies and extends to England and Wales only.
- 42 On the offence (Clause 1 and definition of “emergency worker” in Clause 3), where the worker works in a non-devolved area (e.g. police, National Crime Agency, prisons), this would not relate to a devolved subject so is unlikely to be in the National Assembly for Wales’ legislative competence. But, where it related to a worker in a devolved area (e.g. NHS), then the National Assembly for Wales are able to create new offences or modify existing offences where this “relates to a reserved subject” i.e. it is required to give effect to Welsh legislation which has a devolved purpose. Where the subject of the Bill could fall within the legislative competence of the National Assembly of Wales, the National Assembly for Wales passed a [legislative consent motion](#) in relation to this Bill in December 2017.
- 43 Clause 2 on sentencing sets out the statutory aggravating factor in respect of the sentence to be imposed in respect of the offence committed against an emergency worker. This is outside National Assembly for Wales’ legislative competence because it is substantively about sentencing which is not a devolved issue. Under the Government of Wales Act 2006 (as amended by the Wales Act 2017) sentencing is expressly reserved under paragraph 8(1)(c) of Schedule 7A. Furthermore, paragraph 4(3)(d) of Schedule 7B expressly prohibits an Act of the Assembly from modifying the law in relation to sentences.

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