

## Laser Misuse (Vehicles) Bill [HL] HL Bill 75 of 2017–19

### Summary

The [Laser Misuse \(Vehicles\) Bill \[HL\]](#) was introduced in the House of Lords on 19 December 2017, and is scheduled to have its second reading on 9 January 2018. The Bill would introduce an offence of shining or directing a laser beam towards a vehicle which dazzles or distracts, or is likely to dazzle or distract the person with control of the vehicle. The offence would be a strict liability offence, and the Bill would provide persons accused of the offence with a defence that either they had a reasonable excuse for shining the laser beam towards a vehicle, or that they did not intend to shine a laser at a vehicle and exercised all due diligence to avoid doing so. The Bill would extend to England, Wales, Scotland and Northern Ireland.

Figures for 2016, show that the Civil Aviation Authority received reports of 1,258 incidents in which a laser was shone at an aircraft in the UK.<sup>1</sup> Concerns have also been raised about laser attacks on other forms of transport and the ability of some stronger lasers, to cause eye injuries. The Government had initially included provisions relating to the new offence in the Vehicle Technology and Aviation Bill in the 2016–17 session, although the Bill fell after committee stage when a general election was called in April 2017.

Current legislation makes it an offence to direct or shine any light at any aircraft in flight so as to dazzle or distract the pilot of the aircraft. Anyone found guilty of this offence could be liable to a fine, up to a maximum of £2,500. If intent to endanger an aircraft can be proved, a suspect can be tried under the Aviation and Safety Act 1982 for offences against the safety of aircraft, including damaging or endangering the safety of aircraft, which carries a maximum penalty of five years' imprisonment.<sup>2</sup> The Laser Misuse (Vehicles) Bill seeks to extend the offence to other vehicles, such as trains, trams and ships, remove the cap on the amount offenders can be fined, and make it easier to prosecute offenders by removing the need to prove an intention to endanger a vehicle.<sup>3</sup>

In August 2017, the Department for Business, Energy and Industrial Strategy issued a call for evidence on the laser market, and potential uses for laser pointers.<sup>4</sup> The Government outlined potential options under consideration, including licensing of laser pointers, restrictions on advertising and awareness raising. The consultation closed on 6 October 2017; the Department is due to respond formally in 2018.<sup>5</sup>

### Background

Figures for 2016, show that the Civil Aviation Authority received reports of 1,258 incidents in which a laser was shone at an aircraft in the UK. London Heathrow Airport had the most frequent laser incidents, with 27 incidents in September alone.<sup>6</sup> Although the figure is a reduction from the peak of 1,912 incidents in 2011, and lower than for the previous six years, a survey carried out by the British Airline Pilots Association (BALPA) suggested that the number of laser attacks were “drastically underreported”.<sup>7</sup> Richard Moriarty, from the Civil Aviation Authority, has also suggested that the figures

were an underestimate.<sup>8</sup>

A 2016 report from the British Journal of Ophthalmology argued that there was no evidence to suggest that lasers pointed at airplane cockpits damage pilots' eyesight. However, the report noted that were such a distraction to occur at a critical time, such as during landing, the result could be "devastating".<sup>9</sup> In August 2016, Andrew Haines, chief executive of the Civil Aviation Authority, called for new legislation to be introduced to make carrying a laser pointer illegal:

We and Balpa [British Airline Pilots Association], the pilots' trade union, are very keen that the government introduces legislation which means that the mere possession of these high-powered lasers by individuals not licensed for them would be a criminal offence [...] Why does Joe Bloggs walking down the street need a laser that can pop a balloon at 50 miles, that can cause permanent damage to a pilot.<sup>10</sup>

Concerns have also been raised about laser attacks on other forms of transport and the ability of some stronger lasers, to cause eye injuries. Between 1 April 2011 and 31 October 2016, British Transport Police recorded a total of 466 laser incidents targeting the rail network. As offences are not currently recordable as crime, there is speculation that these incidents too may be underreported.<sup>11</sup> In 2016, a survey of 900 UK eye specialists, reportedly showed that more than 150 people have suffered eye injuries caused by handheld lasers in the past five years.<sup>12</sup>

## Legislation

There is specific legislation prohibiting the use of laser pens against aircraft. Under the Air Navigation Order 2016, it is an offence to direct or shine any light at any aircraft in flight so as to dazzle or distract the pilot of the aircraft. Anyone found guilty of this offence could be liable to a fine, up to a maximum of £2,500. If intent to endanger an aircraft can be proved, a suspect can be tried under the Aviation and Safety Act 1982 for offences against the safety of aircraft, including damaging or endangering the safety of aircraft, which carries a maximum penalty of five years' imprisonment.<sup>13</sup> However, the Government has argued that the legislation "is not an effective tool for the police because in practice, it is very difficult to prove endangerment of an aircraft. This means the powers and penalties this offences comes with are not able to be used".<sup>14</sup>

References to securing the safety of ships and persons travelling on them, danger to road users, and endangering passengers on railways also exist, although these do not explicitly refer to laser pointers and do not have similar penalties.<sup>15</sup> In addition, General Product Safety Regulations (GPSR) state only laser pointers that are considered safe for general use should be made available to the public through general sale. It is an offence for manufacturers to market or supply dangerous products to consumers.

Laser pointers above 1 milliwatt (mW) are generally accepted to have limited specialist uses and can be removed from the market under the GPSR if they are being placed on the market for general (rather than specialist) use. High-powered laser products (above 5 mW) are generally accepted to have limited specialist uses. Class 3B (up to 500 mW) and Class 4 (greater than 500 mW) lasers are not suitable for sale to consumers.<sup>16</sup>

## Vehicle Technology and Aviation Bill 2016–17

In February 2017, the Government announced that new powers would be introduced to make shining a laser at pilots, train or bus drivers punishable through fines or a jail sentence.<sup>17</sup> The measures were included in the Vehicle Technology and Aviation Bill, which was published on 22 February 2017.

Outlining the Government's intentions, during the Bill's second reading, the Secretary of State for Transport, Chris Grayling, noted:

We will create an offence of dazzling or distracting the person in control of a vehicle. It will be triable either way, and will allow police to enter a private property for the purposes of arrest and to search for a laser pointer. It will be a clear deterrent to would-be offenders, with unlimited fines and a potential five-year jail sentence, sending a clear signal that using laser pointers in this manner will not be tolerated.<sup>18</sup>

The clauses relating to laser pointers were welcomed by the then Shadow of Secretary of State for Transport, Andy McDonald, who noted:

It has proved too difficult to enforce the existing offence of endangerment by shining a light, so we support the creation of a new offence for the act of shining a laser beam, which could carry a maximum penalty of a fine and five years' imprisonment. While that is to be welcomed, we encourage the Government to look at the ready availability of such devices and how that might be curtailed.<sup>19</sup>

The measures were also welcomed by the Scottish Nationalist Party.<sup>20</sup> During committee stage the Shadow Secretary of State for Transport, Andy McDonald, proposed an amendment to clause 22, on the misuse of lasers, which sought to ensure that shining a laser was itself an offence (rather than requiring proof that the people in charge of a vehicle were dazzled). The amendment also included changes which would have made the shining of a laser at a fixed installation involved in traffic control an offence. Speaking to his amendment, Mr McDonald noted:

With the reintroduction of the concept of dazzling, we are back in the conundrum that existed in previous legislation, with the concept of endangerment. That was the difficulty; commentators were saying that the offence is committed by simply doing it. To have to establish endangerment is a bar too high, and it removes the very scenario that I am trying to describe. Hence my suggestion of the removal of the concept of dazzling.<sup>21</sup>

The amendment was defeated on division by nine votes to eight.<sup>22</sup> Other amendments discussed, but not moved, included increasing the maximum term for imprisonment from five to ten years for conviction on indictment of the offence of shining or directing a laser at a vehicle; amending the legislation to clarify that shining a laser at a plane while it is being taxied around the airport is covered under the offence; and giving the police the power to stop and search persons who they believe were carrying lasers that have been, or are intended, to be used to commit the offence. In addition, the Minister of State for Transport Legislation and Maritime, John Hayes, confirmed that he would speak to the Secretary of State for Business, Energy and Industrial Strategy, regarding the sale of lasers, following concerns raised in committee regarding the availability of powerful lasers for illegitimate uses.<sup>23</sup>

The Bill progressed to the end of its committee stage in the House of Commons before the Prime Minister called a general election on 18 April 2017. The 2015 Parliament was subsequently dissolved on 3 May 2017 and the Bill fell.

The Automated and Electric Vehicles Bill, announced in the June 2017 Queen's Speech and published on 18 October 2017, did not include clauses on the misuse of lasers. The omission of laser pointer offences from the Government's legislative plans was criticised by the British Airline Pilots Association who called the decision "infuriating", commenting "the proposed tougher laws received cross-party support so it's baffling that they have been dropped".<sup>24</sup>

Responding to a written question in November 2017, the Minister of State for Transport Legislation and Maritime, John Hayes, noted:

After considerable work with the UK Laser working group and across Whitehall, the Vehicle Technology and Aviation Bill contained clauses making it an offence to shine or direct a laser at a vehicle, designed to strengthen existing legislation to address the risk of lasers being used maliciously against aircraft and other vehicles. Unfortunately the Vehicle Technology and Aviation Bill fell upon prorogation. To provide further certainty to pilots and the wider public, the Department for Transport is continuing to look at other legislative vehicles to strengthen existing legislation.<sup>25</sup>

## Consultation

In August 2017, the Department for Business, Energy and Industrial Strategy (BEIS) issued a call for evidence on the market, and potential uses for laser pointers.<sup>26</sup> The paper differentiated between different strengths of laser pointers, and sought further information on the possible “legitimate” uses for high-powered laser pointers and the size of the market for laser pointers, for example target market and the strength of laser pointers made/sold.

The Government outlined potential options under consideration, including licensing, restrictions on advertising and awareness raising. The consultation closed on 6 October 2017; the Department is due to respond formally in the 2018.<sup>27</sup>

## Laser Misuse (Vehicles) Bill [HL] 2017–19

The Laser Misuse (Vehicles) Bill [HL] was introduced in the House of Lords on 19 December 2019. Announcing the Bill, the Department for Transport noted:

People who target transport operators with laser devices could be jailed for up to 5 years under new laws designed to protect the public. The Laser Misuse (Vehicles) Bill, which was published today (20 December 2017), will also expand the list of vehicles, beyond just planes, which it is an offence to target with lasers. Drivers of trains and buses, captains of boats and even pilots of hovercraft will be among those protected by the new legislation. The Bill will make it easier to prosecute offenders by removing the need to prove an intention to endanger a vehicle.

And it will remove the cap on the amount offenders can be fined—which is currently limited to £2,500—paving the way for substantial sanctions. Fines could be issued in isolation or alongside a prison sentence. The police will also be given additional powers to catch those responsible for the misuse of lasers.<sup>28</sup>

The Bill includes two clauses. Clause 1, if passed, 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 to be likely to dazzle or distract, the person with control of the vehicle.<sup>29</sup> The wording of the clause is similar to that originally contained in clause 22 of the Vehicle Technology and Aviation Bill introduced in the 2016–17 session, although this stated “the laser beam dazzles or distracts a person with control of the vehicle” and did not include the offence of being “likely” to dazzle or distract.<sup>30</sup> The use of the word vehicle within the offence is intended to give wide meaning to the offence, and include aircraft, road vehicles, trains, trams, ships and other vessels, hovercraft, submarines, invalid carriages, and pedal cycles.<sup>31</sup>

Clause 1 would provide for a defence for a person charged with the offence to be made to show that they had a reasonable excuse for shining or directing a laser beam towards a vehicle (for example when in distress and directing a laser beam at a rescue vehicle to obtain its attention). Alternatively, the clause would provide for a defence that the person charged with the offence did not intend to shine or direct the laser beam towards the vehicle and exercised all due diligence and took all reasonable precautions to avoid doing so.

The offence would be a strict liability offence, meaning that the prosecution would not be required to prove the defendant intended the consequences of his actions or even foresaw them. The Explanatory Notes argue, “The Government considers that the Laser Misuse (Vehicles) Bill is compatible with the European Convention on Human Rights (ECHR)”. While highlighting that clause 1 “raises issues in relation to article 6 (2) ECHR and the presumption of innocence in criminal proceedings”, it goes on to note:

The European Court of Human Rights and the United Kingdom’s domestic courts have considered whether offences of strict liability violated article 6 (2) and have decided that they do not, provided that the prosecution retains the burden of proving that the offence was committed [...] Under clause 1 (1), it would be for the prosecution to provide the element 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. Under clause 1, 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).<sup>32</sup>

Subsections 4 and 5 of clause 1 of the Bill would make provision for penalties for those convicted of an offence, on either summary conviction or on conviction on indictment. The Bill would allow for those convicted on indictment to face up to five years’ imprisonment, and unlimited fine, or both.

Clause 2 provides for the extent of the Bill and its commencement. The Bill would extend to England, Wales, Scotland and Northern Ireland. A legislative consent motion would be needed from the Northern Ireland Assembly where the Bill would relate to motor vehicles, pedal cycles and trains in Northern Ireland.

The Bill was welcomed by Brian Strutton, General Secretary of the British Association of Airline Pilots, who noted “this is good news for transport safety. BALPA pilots and other transport workers have raised the growing threat of laser attacks for some time [...] BALPA also welcomes the BEIS consultation on restrictions to the supply of certain lasers which we hope will move forward quickly”.

The National Police Chiefs’ Council Lead for Lasers, Commander Simon Bray, commented:

These new and robust measures send a clear message to perpetrators: laser attacks are a crime and serious consequences will follow from committing this offence. It is essential that the police have the powers required to support these measures and we will continue to work with the government to ensure that these powers are in place.<sup>33</sup>

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- <sup>1</sup> Civil Aviation Authority, [Mandatory Occurrence Reports: Laser Incidents—2016](#), 27 January 2017.
- <sup>2</sup> Department for Business, Energy and Industrial Strategy, [‘Government Crackdown on Misuse of Laser Pointers’](#), 12 August 2017.
- <sup>3</sup> Department for Transport, [‘Tough New Penalties for Misuse of Lasers’](#), 20 December 2017.
- <sup>4</sup> Department for Business, Energy and Industrial Strategy, [Call for Evidence: Laser Pointers](#), August 2017.
- <sup>5</sup> Department for Transport, [‘Tough New Penalties for Misuse of Lasers’](#), 20 December 2017.
- <sup>6</sup> Civil Aviation Authority, [Mandatory Occurrence Reports: Laser Incidents—2016](#), 27 January 2017
- <sup>7</sup> [Public Bill Committee, Vehicle and Technology Bill, 14 March 2017, session 2016–17, 2nd sitting, col 36.](#)
- <sup>8</sup> *ibid*, col 37.
- <sup>9</sup> *British Medical Journal*, [‘British Journal of Ophthalmology: No Evidence to Suggest Lasers Pointed at Cockpits Damage Pilots’ Eyes](#), 20 April 2016.
- <sup>10</sup> BBC News, [‘UK Aviation Chief urges Arrest of Laser Pointer Owners’](#), 24 August 2016.
- <sup>11</sup> Department for Business, Energy and Industrial Strategy, [‘Government Crackdown on Misuse of Laser Pointers’](#), 12 August 2017.
- <sup>12</sup> Mark Hookham, [‘Hand Lasers Cause 150 Eye Injuries’](#), *Times* (£), 16 February 2016.
- <sup>13</sup> House of Commons, [‘Written Question: Transport: Lasers’](#), 29 June 2017, 1035.
- <sup>14</sup> Department for Business, Energy and Industrial Strategy, [Call for Evidence: Laser Pointers](#), August 2017, p 15.
- <sup>15</sup> *ibid*.
- <sup>16</sup> *ibid*, p 14.
- <sup>17</sup> Department for Transport, [‘New Powers to Crack Down on Laser Attacks’](#), 5 February 2017.
- <sup>18</sup> [HC Hansard, 6 March 2017, col 600.](#)
- <sup>19</sup> [ibid, col 606.](#)
- <sup>20</sup> [ibid, col 613.](#)
- <sup>21</sup> [Public Bill Committee, Vehicle and Technology Bill, 21 March 2017, session 2016–17, 6th sitting, col 22.](#)
- <sup>22</sup> *ibid*, col 26.
- <sup>23</sup> *ibid*, cols 17 and 25.
- <sup>24</sup> Neil Lancefield, [‘Pilots Furious After Government Ditches Crackdown on Aircraft Laser Attacks’](#), *Independent*, 22 June 2017.
- <sup>25</sup> House of Commons, [‘Written Question: Aviation: Lasers’](#), 7 November 2017, 111000.
- <sup>26</sup> Department for Business, Energy and Industrial Strategy, [Call for Evidence: Laser Pointers](#), August 2017.
- <sup>27</sup> Department for Transport, [‘Tough New Penalties for Misuse of Lasers’](#), 20 December 2017.
- <sup>28</sup> *ibid*.
- <sup>29</sup> [Explanatory Notes](#), p 4.
- <sup>30</sup> [Vehicle Technology and Aviation Bill, Bill 43 of session 2016–17, clause 22.](#)
- <sup>31</sup> [Explanatory Notes](#), p 2.
- <sup>32</sup> *ibid*, p 4.
- <sup>33</sup> Department for Transport, [‘Tough New Penalties for Misuse of Lasers’](#), 20 December 2017.

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