



BRIEFING PAPER

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Assaults on Emergency Workers (Offences) Bill 2017-19

By Sally Lipscombe
Grahame Allen

Contents:

1. The current law
2. The scale of the problem
3. Calls for change
4. The Bill



Contents

Summary	3
1. The current law	5
1.1 England and Wales	5
Criminal offences	5
Sentencing practice	5
1.2 Scotland	7
2. The scale of the problem	8
2.1 Police	8
2.2 Prison officers	8
2.3 NHS staff	8
3. Calls for change	10
3.1 Emergency Workers (Obstruction) Act 2006	10
3.2 E-petition and parliamentary debate	10
3.3 “Protect the Protectors”: the Police Federation’s campaign	12
3.4 Crime (Assaults on Emergency Services Staff) Bill 2016-17	13
4. The Bill	14
4.1 The Bill as introduced: clause by clause analysis	14
Criminal offences and sentencing	14
Bodily samples	16
4.2 Second reading	17
4.3 Committee stage	18
Maximum sentences for the clause 1 offence	18
The definition of “emergency workers” in clause 3	18
The bodily samples clauses	19

Summary

The current law and calls for change

In England and Wales there are currently specific offences of assaulting on-duty police officers, prison officers, and immigration officers. Each of these offences is triable only in the magistrates' court and carries a maximum sentence of six months' imprisonment and/or a fine.

These offences are broadly equivalent (in terms of seriousness and injury caused) to the general offence of common assault and battery. Assaults resulting in a more serious level of injury would usually be charged as one of the more serious general offences against the person.

It is not currently a specific offence to assault other emergency workers or NHS staff. Again, such assaults would instead be prosecuted using one of the general criminal offences against the person.

Current [sentencing guidelines](#) set out the general principle that an offence committed against a public servant is an aggravating factor indicating "a more than usually serious degree of harm". The courts should therefore take this into account when sentencing an offender who has assaulted an emergency worker.

There have been a number of calls for change to the law in England and Wales, in particular to introduce specific offences covering other emergency workers and healthcare workers (as is the case in Scotland), to increase the maximum available sentence and to cover more serious types of assault.

The Bill

The [Assaults on Emergency Workers \(Offences\) Bill 2017-19](#) is a Private Member's Bill, introduced by Chris Bryant (who topped the ballot for Private Members' Bills). The Bill had its second reading on 20 October 2017. There was one Public Bill Committee sitting on 15 November 2017. Report and third reading are scheduled for 27 April 2018.

The Bill extends to England and Wales, except for clause 5 (samples under terrorism legislation) which also extends to Scotland and Northern Ireland.

Policing minister Nick Hurd has said that the Government supports the spirit and principle of the Bill, but that "there will be detail to work through".

The Bill would:

- introduce a new triable either way offence of assault or battery committed against an emergency worker, with a maximum penalty of a 12 month prison sentence when tried in the Crown court;
- introduce a statutory aggravating factor for the courts to consider when sentencing certain assaults against emergency workers; and

4 Assaults on Emergency Workers (Offences) Bill 2017-19

- enable bodily samples to be taken from persons suspected of offences against emergency workers which may pose a risk of the transmission of an infectious disease.

At Committee stage the only significant amendments made were to the definition of “emergency workers” in clause 3. The definition was extended to cover non-emergency frontline NHS staff and people providing prisoner escort services.

Chris Bryant has tabled amendments for Report stage that would remove the bodily samples clauses from the Bill altogether. [Press reports](#) suggest that this follows discussion between the Bill’s sponsors and the Government about “practical difficulties” in delivering these clauses.

1. The current law

1.1 England and Wales

Criminal offences

There are specific offences of assaulting on-duty police officers, prison officers, and immigration officers.¹ Each of these offences is summary only (i.e. triable only in the magistrates' court) and carries a maximum sentence of six months' imprisonment and/or a fine.

These offences are broadly equivalent (in terms of seriousness and injury caused) to the general offence of common assault and battery under [s39 of the Criminal Justice Act 1988](#). This is also a summary offence and again carries a maximum sentence of six months' imprisonment and/or a fine.

Assaults on police officers, prison officers or immigration officers resulting in a more serious level of injury would usually be charged as one of the more serious general offences against the person. Crown Prosecution Service (CPS) guidance provides an overview of the general criminal offences against the person, and the specific offences against police, prison and immigration officers. This includes guidance on how to select the appropriate offence when bringing charges.²

It is not currently a specific offence to attack other emergency workers or NHS staff. Such attacks would instead be prosecuted using one of the general criminal offences against the person, such as common assault, assault occasioning actual bodily harm, or inflicting grievous bodily harm.

Sentencing practice

The Sentencing Council (previously the Sentencing Guidelines Council) issues definitive guidelines for the courts to follow when sentencing offenders. The courts have a statutory duty to follow any relevant guidelines unless satisfied that to do so would be contrary to the interests of justice.³

One such definitive guideline sets out guidance on determining the seriousness of an offence. This includes the general principle that an offence committed against a public servant is an aggravating factor indicating "a more than usually serious degree of harm".⁴ The fact that an assault was committed against an emergency worker would fall within this principle and so the courts should usually treat this as an aggravating factor when sentencing.

¹ Assaults on on-duty police officers are covered by [s89 of the Police Act 1996](#); the protections of s89 of the 1996 Act are extended to prison officers by [s8 of the Prison Act 1952](#); and immigration officers are covered by [s22 of the UK Border Act 2007](#)

² CPS website, [Legal guidance: Offences against the Person, incorporating the Charging Standard](#) (accessed 25 April 2018)

³ [s125 of the Coroners and Justice Act 2009](#)

⁴ Sentencing Guidelines Council, [Overarching principle – seriousness: Definitive guideline](#), p7

Away from formal sentencing guidelines, CPS guidance states that “Any assault that is committed on public servants and emergency workers must be treated seriously”, and suggests that “Sentencing practice indicates that custody is the appropriate starting point for a person who assaults a public servant”.⁵

In 2011, the Association of Chief Police Officers (ACPO), the CPS and NHS Protect signed a [Joint Working Agreement](#) to “put in place a broad framework to assist local units of the three national organisations in setting up closer working arrangements to reduce the problem of violence and anti social behaviour affecting the NHS” in England (p.iii). The Joint Working Agreement includes the following comments on “particular aggravating factors” involved in offences against NHS staff or on NHS premises:

13.3. In all cases, the fact that an offence has been committed against a person serving the public will be considered an aggravating factor. There is a strong public interest in maintaining the effective provision of healthcare services and the CPS should always consider whether the individual incident has further aggravating features that may influence a decision on disposal.

13.4. Examples of particular aggravating factors would include:

- the withdrawal from service of an emergency ambulance and the potential for harm this may cause to those in urgent need of this service
- the withdrawal of staff from active duty in accident and emergency units and the resultant reduction in service
- the vulnerability of staff working in the community, particularly those who work alone or in isolated locations
- the potential impact on vulnerable patients in paediatric, mental health and learning disability units and the effects that being exposed to such behaviour may have on them.

13.5. Consideration should also be given to the fact that there are high levels of violence and unacceptable behaviour in the NHS and the following factors from the Code for Crown Prosecutors may be applicable:

- There are grounds for believing that the offence is likely to be continued or repeated – for example, by a history of recurring conduct; or
- The offence, although not serious in itself, is widespread in the area where it was committed.
- A prosecution would have a significant positive impact on maintaining community* confidence.

13.6. *In this context, ‘community’ should also be taken to mean the staff and patients of a hospital, particularly where patients spend lengthy periods there, e.g. mental health, elderly care, etc. It is wrong to assume that, due to the nature of their employment, NHS staff are not ‘members of the public’ or part of the community.

⁵ CPS website, [Legal guidance: Offences against the Person, incorporating the Charging Standard](#) (accessed 25 April 2018)

1.2 Scotland

In Scotland, the relevant legislation is the [Emergency Workers \(Scotland\) Act 2005](#). This sets out the following criminal offences:

- Section 1: assaulting, obstructing or hindering another person who is acting in one of the specified emergency or healthcare roles (specified roles include constables, fire-fighters, ambulance workers, registered medical practitioners, registered nurses and registered midwives);
- Section 2: assaulting, obstructing or hindering another person while that other person is acting in a specified capacity **and** is responding to emergency circumstances (the specified capacities are prison officers, members of HM Coastguard, and crew members of vessels operated by the Royal National Lifeboat Institution or other water rescue services);
- Section 3: assaulting, obstructing or hindering a person who is assisting someone acting in one of the capacities set out in sections 1 or 2 and who is responding to emergency circumstances;
- Section 5: assaulting, obstructing or hindering a person acting in the capacity of a registered medical practitioner, nurse, midwife or ambulance worker while in a hospital or on land adjacent to a hospital.

As originally introduced in 2005, section 1 covered only 'blue light' workers, i.e. police, fire and ambulance workers; section 2 covered a number of other types of workers, including healthcare workers. In 2008, the [Emergency Workers \(Scotland\) Act 2005 \(Modification\) Order 2008](#) moved healthcare workers from section 2 to section 1, meaning that they are now covered by this law whenever they are acting in their professional capacity (and not just in response to emergencies).

An offence under the Act carries a penalty of up to 12 months' imprisonment and/or a £10,000 fine.

2. The scale of the problem

2.1 Police

The Home Office has estimated that there were 24,000 assaults on Police Officers in 2016/17 in England and Wales (Home Office, [Statistics on the number of police officers assaulted in 2016 to 2017, England and Wales](#), 20 July 2017).

The Police Federation has also stated that its “latest [welfare survey data](#) suggests there were more than two million unarmed physical assaults on officers over 12 months, and a further 302,842 assaults using a deadly weapon during the same period. These figures estimate that an assault on a police officer happens every four minutes” (Source: Police Federation website: [Assaults: Protect the Protectors](#)).

The Library has been unable to verify these figures from the “latest [welfare survey data](#)” published alongside this statement (see Police Federation, [Officer Demand, Capacity and Welfare Survey Descriptive Statistics Summary Report ACCIDENTS, VIOLENCE AND INJURIES](#), Research and Policy Report R061/2016, January 2017). The Home Office and the Police Federation are currently working to verify these figures.

2.2 Prison officers

Statistics on assaults on Prison Officers or prisoner custody officers are not routinely published.

The latest bulletin from the MoJ on [safety in prisons](#) in England and Wales contains data on assaults on *all* prison staff and suggests:⁶

There were 7,159 assaults on staff [in 2016/17], up 1,750 (32%) from the previous year. Serious assaults on staff have trebled since 2013, reaching 805 in the in the 12 months to March 2017, up 25% on the previous period. Assaults on staff increased by 5% in the latest quarter, reaching a new quarterly record high.

2.3 NHS staff

NHS Protect [collected](#) numbers of reported physical assaults on NHS staff in England. Tables which show the figures broken down by NHS sector and individual health bodies are available for each year from 2004/05 to 2015/16.

Figures for 2011/12 to 2015/16 are in the table below:⁷

	2011/12	2012/13	2013/14	2014/15	2015/16
Total assaults	59,744	63,199	68,683	67,864	70,555
Per 1,000 staff ⁸	47	53	54	52	53

⁶ MoJ, [Safety in custody quarterly bulletin: March 2017](#), 27 July 2017

⁷ It is worth noting that these figures do not show the breakdown by type of NHS worker, i.e. it is unclear how many assaults are on medical staff, as opposed to non-medical

⁸ Based on Health Body declaration of staff

NHS Protect has also [published](#) a five-year analysis of physical assaults against NHS staff in England from 2010-2015, using information from the Security Incident Reporting System (SIRS) and the Reported Physical Assaults data collection exercise (RPA).

NHS Protect’s five-year analysis provides information from the RPA on numbers of assaults which resulted in a criminal sanction being applied.⁹ The RPA is different from the SIRS, which means the total number of assaults recorded on these two systems is not necessarily the same. Additionally, the criminal sanction figures are recorded in the year that a sanction was imposed, not necessarily the year that the assault took place.

However, as an indication of the proportion of physical assaults that result in a criminal sanction, the RPA figures for 2010/11-2014/15 are in the table below:

	2010/11	2011/12	2012/13	2013/14	2014/15
Sanctions applied	1,380	1,249	1,452	1,642	1,250

NHS Protect will no longer be collating and reporting details of assaults centrally. This work will instead be done at a local level:

The figures previously published by NHS Protect were a collation of the numbers of reported assaults provided by individual health bodies. Employers in the NHS are responsible for assessing the circumstances of these reported assaults and addressing the risks identified and this work will continue at a local level where it is best delivered.¹⁰

⁹ See Figure 4, p.66 of NHS Protect, [A Five Year Analysis of Physical Assaults against NHS Staff in England](#)

¹⁰ [Written Question 71145 \(on NHS Protect\)](#), 26 April 2017

3. Calls for change

There have been a number of calls for change to the law in England and Wales, in particular to introduce a specific offence of assaulting NHS workers, to increase the maximum available sentence and to cover more serious types of assault.

3.1 Emergency Workers (Obstruction) Act 2006

The [Emergency Workers \(Obstruction\) Act 2006](#), which came into force on 20th February 2007, introduced a new offence of “obstructing or hindering” an emergency worker responding to emergency circumstances, or any person who is assisting such a worker. This includes ambulance personnel and those transporting organs.

The Act was initially introduced as the [Emergency Workers \(Protection\) Bill 2005](#), a Private Member’s Bill brought forward by the then Swansea West MP Alan Williams. The draft Bill would have introduced an offence of assaulting an emergency worker (or someone assisting such a worker) in addition to that of obstructing or hindering. Following agreement between the then-Government and Mr Williams, however, the Bill was amended in Committee to remove the elements dealing with assault:

...in order to achieve passage of this important Bill, which is much wanted by the fire services especially, I have agreed with the Government to make certain changes. Discussions have enabled us to agree that, as was mentioned on Second Reading, the Bill will focus not on the whole range of assault and impeding offences, as in Scotland, but on the offence of impeding emergency workers who are going about their duties. That has meant that the parts of the Bill dealing with assault have been dropped.

In that respect, the Government anticipated the mood of the House better than I did when I proposed the Bill. The mood of the House is that existing legislation and law can be used, and that the shortcomings are not in the law, but in enforcement. That was the clear mood on both sides of the House on Second Reading, so I had no problem in dropping the provision that related to assault and in focusing on impeding of services. The Bill in its revised format has been welcomed by the fire service.¹¹

3.2 E-petition and parliamentary debate

A petition to [Make it a specific criminal offence to attack any member of NHS Medical Staff](#) was launched on 22nd December 2016 by LBC presenter Nick Ferrari, as part of a ‘Guard Our Emergency Medical Services’ (GEMS) campaign.

The following is the text of the petition as it appeared on the petitions website:

¹¹ [HC Deb Standing Committee C 26 April 2006 cc2-3](#)

There are 193 attacks on NHS staff a day in England. LBC's Nick Ferrari thinks this is unacceptable. Support his 'Guard Our Emergency Medical Services' campaign to better protect our doctors and nurses by making it a specific legal offence to attack them. Figures show that attacks on NHS staff are rising. With stretched resources, higher demand and rising waiting times the NHS can ill afford this violence. For twenty years it has been a specific offence to attack a Police officer conducting their duties. (Section 89(1) of the Police Act 1996) We the undersigned believe it is time to extend this higher legal provision and protection to NHS medical staff and make it a specific offence to assault them.

The petition had reached 118,056 signatures by the time it closed in May 2017 (it closed early due to the general election).

The Government (Ministry of Justice) responded to the petition on 20th February 2017:

Assaults against NHS staff are completely unacceptable. The Government is determined to ensure that all public servants have a safe and secure working environment. Any assault on someone providing a service to the public (including NHS staff) is treated extremely seriously. The fact that the victim is providing a service to the public is listed as an aggravating factor in sentencing guidelines which courts have a statutory duty to follow. As such, offenders who assault someone providing a service to the public may face a higher sentence than that for other assaults.

If NHS staff are attacked, there should be no hesitation in involving the police.

A protocol to tackle violence and anti-social behaviour in the NHS by shared actions between the Police, Crown Prosecution Service and NHS Protect was signed in 2011. It sets out steps to improve the protection of NHS staff, to strengthen the investigation and prosecution process by improving the quality of information exchanged, and to improve victim and witness support. This protocol is currently being updated: the revised version is due to be in place in the coming months.

Further, the Code for Crown Prosecutors states, when considering the Public Interest Stage, "a prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public".

There is already a range of offences which criminalise assault or violent behaviour. These start with common assault, the maximum sentence for which is 6 months imprisonment or a fine or both. (This is the same maximum as for the specific offence of assaulting a constable in the execution of his duty.) Assault occasioning Actual Bodily Harm and Wounding or Inflicting Grievous Bodily Harm (GBH) are more serious offences against the person, both with a maximum custodial sentence of 5 years. The most serious applicable offences, such as wounding or causing GBH with intent, have a maximum sentence of life imprisonment.

All these offences apply whoever is the victim, including of course NHS staff. Employers in the NHS are responsible for assessing and addressing risks to staff, in accordance with detailed guidance.

The petition was debated in Parliament in February 2017.¹² Opening the debate, Oliver Dowden said:

... I understand the Government's point that existing measures already prioritise prosecuting and sentencing assaults on NHS workers. All assaults are unacceptable, but the fact that we have created specific offences for police, immigration and prison officers, but not one for NHS workers, might amount to a discrepancy. It is important that we send the strongest possible signal from this place that such assaults are unacceptable, and creating a specific offence is one way to do that.¹³

Responding for the Government, Justice Minister Sam Gyimah said that "prevention and effective law enforcement, through collaboration between the NHS, the police and the CPS" was the best solution to the problem of attacks on NHS staff. He considered that "given the current offences framework and sentencing guidance, which make provision for an increase in sentence to be considered where an assault victim is a public sector worker", he was not persuaded of the need for a specific offence for NHS staff.¹⁴

He also queried whether a specific offence along the lines of the Scottish legislation might be more difficult to prosecute:

The Scottish legislation raises a number of other points, some of which I have touched on. Would the offence, as in Scotland, apply only to attacks on NHS staff on hospital premises? There are many other NHS locations. Would it apply to attacks by patients or also to attacks by visitors and family members? How would "NHS staff" be defined? Many people work in the NHS without being employed by it. Would the offence apply only when staff were on duty, or when they had left the premises and were at a bus stop outside the hospital? However those questions were resolved, every specific circumstance applying to a new offence would be an additional element for the prosecution to prove, over and above a charge of common assault.¹⁵

3.3 "Protect the Protectors": the Police Federation's campaign

In February 2017 the Police Federation launched its "Protect the Protectors" campaign, which called for

1. a change in legislation, leading to tougher sentences for those who assault emergency service workers
2. better training and access to equipment – wider roll-out of protection measures, such as [Taser](#), body worn video and spit guards
3. more accurate data on police assaults
4. improved welfare support.¹⁶

¹² For background material please see Commons Library Debate Pack CDP-2017-0050 [Debate on e-petition 176138 relating to attacks on NHS medical staff](#)

¹³ [HC Deb 27 February 2017 c3WH](#)

¹⁴ [HC Deb 27 February 2017 c19WH](#)

¹⁵ [HC Deb 27 February 2017 c20WH](#)

¹⁶ Police Federation news release, [National campaign launches to 'Protect The Protectors'](#), 6 February 2017

Further details are available on the Police Federation website: see [Assaults: Protect the Protectors](#) (accessed 25 April 2018).

As part of the campaign the Police Federation has launched an online petition on the Change.org website: see [Tougher sentences for those who assault emergency service workers](#) (accessed 25 April 2018). The petition, launched in September 2017, currently has in excess of 40,000 signatures.

3.4 Crime (Assaults on Emergency Services Staff) Bill 2016-17

A Private Member's Bill was introduced by Holly Lynch under the Ten Minute Rule, as the [Crime \(Assaults on Emergency Services Staff\) Bill 2016-17](#). It had first reading on 7th February 2017 but made no further progress. The text of the Bill was never published, but the summary of the Bill published on the Parliament website read as follows:

A Bill to make certain offences including malicious wounding, grievous or actual bodily harm and common assault aggravated when perpetrated against a constable, firefighter, doctor, paramedic or nurse in the execution of his or her duty or against a person assisting these persons in the execution of their duty; to make provision to require those suspected of certain assaults that may pose a health risk, including spitting, to be required to undergo blood tests and to make it an offence, without reasonable excuse, to refuse to undergo such tests; to make provision about the sentences for those convicted of the offences; and for connected purposes.

Ms Lynch spoke about her Bill during the e-petition debate referred to in the previous section of this note: see [HC Deb 27 February 2017 c6WH](#) onwards. She said (at cc7-8WH):

My Bill would make offences including malicious wounding, grievous or actual bodily harm and common assault aggravated offences when perpetrated against a police constable, firefighter, doctor, paramedic or nurse in the execution of his or her duty or, significantly, against someone assisting such persons in the execution of their duty. It would therefore cover NHS staff more broadly, which my hon. Friend the Member for Heywood and Middleton (Liz McInnes) mentioned. The Bill would ensure that tougher sentences were available to the judiciary when sentencing someone convicted of assaulting an emergency responder or NHS worker. As I said, the sentences handed down to offenders convicted of such acts must reflect the seriousness of the crime and, more crucially, serve as a tough deterrent to dissuade others from even considering committing such violence towards NHS workers in the first place.

4. The Bill

The [Assaults on Emergency Workers \(Offences\) Bill 2017-19](#) is a Private Member's Bill, introduced by Chris Bryant (who topped the ballot for Private Members' Bills). The Bill had its first reading on 19 July 2017 and its second reading on 20 October 2017. There was one Public Bill Committee sitting on 15 November 2017. Report and third reading are scheduled for 27 April 2018.

Accompanying [Explanatory Notes](#) have also been published.

The Bill (as amended in Committee) extends to England and Wales, except for clause 5 (samples under terrorism legislation) which also extends to Scotland and Northern Ireland.

During Home Office questions, Chris Bryant asked the Home Secretary to confirm whether the Government would be supporting the Bill at second reading. In response, policing minister Nick Hurd said:

We want to support the Bill because we want to send the strongest possible signal that assaulting emergency workers is intolerable and anyone who does that should feel the full weight of the law. As with all private Members' Bills, there will be detail to work through, but he knows that we support the principle of his Bill, on which we congratulate him.¹⁷

4.1 The Bill as introduced: clause by clause analysis

Clause numbers in this section are taken from the Bill as introduced. This section was last updated on 18 October 2017, and was written to inform the second reading debate.

Criminal offences and sentencing

Clause 1 to 3 of the Bill would introduce a new aggravated offence and new statutory sentencing provisions.

Clause 1 of the Bill would introduce a new aggravated form of common assault or battery committed against "an emergency worker acting in the exercise of functions as such a worker".

The offence would be triable either way and would be punishable with a maximum sentence of:

- a six month prison sentence and/or a fine (in the magistrates' court);¹⁸ or
- a 12 month prison sentence and/or a fine (in the Crown court).

The offence would extend to emergency workers who are not at work but who are carrying out a function that, if carried out during work time, would have been within the functions of an emergency worker.

¹⁷ [HC Deb 16 October 2017 c584](#)

¹⁸ Clause 1(2)(a) provides for a maximum 12 month prison sentence in the magistrates' court; however, under clause 1(4) this is to be read as six months until such time as [section 154\(1\) of the Criminal Justice Act 2003](#) (which deals with increased sentencing powers for magistrates) is brought into force.

Clause 2 of the Bill would introduce a new statutory aggravating factor for the courts to consider when sentencing certain types of assault against emergency workers. The court would be required to treat the fact the offence was committed against an emergency worker acting in the exercise of functions as such a worker as an aggravating factor when passing sentence.

The offences to which the statutory aggravating factor would apply are:

- certain offences under the [Offences Against the Person Act 1861](#), including wounding with intent to cause grievous bodily harm and assault occasioning actual bodily harm;¹⁹
- manslaughter;
- kidnapping;
- ancillary offences relating to any of the preceding offences.²⁰

Clause 2 makes clear that the courts would still be able to use the existing sentencing guidance on offences against public servants when sentencing other types of offence committed against emergency workers.

As with clause 1, the new statutory aggravating factor would also apply to offences committed against emergency workers who are not at work but who are carrying out a function that, if carried out during work time, would have been within the functions of an emergency worker.

Clause 3 of the Bill sets out the definition of “emergency worker” for the purposes of clauses 1 and 2. It lists the following roles:

- a constable;
- 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;
- a National Crime Agency officer;
- a prison officer;
- a person (other than a prison officer) employed or engaged to carry out functions in a custodial institution²¹ of a corresponding kind to those carried out by a prison officer;
- fire services or fire and rescue services personnel;

¹⁹ The following sections of the 1861 Act are specified: s16 (threats to kill), s18 (wounding with intent to cause grievous bodily harm); s20 (malicious wounding); s23 (administering poison); s28 (causing bodily injury by gunpowder); s29 (using explosive substances with intent to cause grievous bodily harm); s47 (assault occasioning actual bodily harm)

²⁰ Ancillary offences are defined as aiding, abetting, counselling or procuring the commission of the offence; an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence; or attempting or conspiring to commit the offence.

²¹ Defined as a prison; a young offender institution, secure training centre, secure college or remand centre; a removal centre, a short-term holding facility or pre-departure accommodation, as defined by s147 of the Immigration and Asylum Act 1999; or services custody premises, as defined by s 300(7) of the Armed Forces Act 2006.

- search and rescue personnel;
- people providing ambulance services, accident and emergency department services or urgent treatment centre services.²²

Non-emergency healthcare workers would not, therefore, be covered by the definition.

Bodily samples

Clauses 4 to 6 of the Bill would introduce new provisions on the taking of intimate and non-intimate bodily samples from people suspected of having assaulted an emergency worker.

Clause 4 would add a new section 62A to the [Police and Criminal Evidence Act 1984](#) (PACE). PACE sets out the rules on when the police can take intimate and non-intimate samples from people suspected of criminal offences.

Under new section 62A, the police would have the power to take a blood sample from a person (whether or not in police detention) where:

- 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;
- a police officer of at least the rank of inspector authorises the sample to be taken; and
- the person has given his consent.²³

The police officer should only authorise the sample to be taken if he has reasonable grounds for believing that:

- the person is aged 14 years or over;
- 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
- 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.

The police would not need to demonstrate any reason to believe that the person from whom the sample is to be taken has any infectious disease.

Clause 4 would also make it an offence for a person to refuse (without good reason) to give his consent to the taking of a sample that has been authorised by the police.

Clause 4 would also amend section 63 of PACE, which deals with non-intimate samples.²⁴ The amended version of section 63 would enable

²² This is defined to include “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”

²³ If the person is aged 14-17 his parent or guardian’s consent is required as well as his own consent

²⁴ Non-intimate samples are defined in PACE as a hair sample (other than pubic hair), a sample taken from a nail or under a nail, a swab taken from any part of a person’s

the police to take a non-intimate sample from a person without consent where:

- 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
- a police officer of at least the rank of inspector authorises the sample to be taken without the appropriate consent.

Police authorisation should only be given if the officer has reasonable grounds for believing that:

- 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
- 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.

Again, there is no requirement for the police to believe that the person from whom the sample is to be taken has any infectious disease.

Clause 5 of the Bill would amend [Schedule 8 to the Terrorism Act 2000](#) to make equivalent provision for the taking of blood and non-intimate samples from people being detained under section 41 or Schedule 7 of that Act, and for the use and retention of such samples.

Clause 6 of the Bill covers the use and retention of samples taken under clause 4. It would amend PACE to provide that such samples are taken “for the purposes of establishing whether the person from whom the sample was taken has any infectious disease”. The police would only be entitled to retain such samples until this purpose has been fulfilled.

Clause 6 also provides for information derived from such samples to be disclosed to the emergency worker, or to any other person for the purposes of protecting the vital interests of the emergency worker. This would not, however, authorise the making of a disclosure which contravenes the *Data Protection Act 1998*.

4.2 Second reading

The Bill received its second reading on 20 October 2017: see [HC Deb 20 October 2017 c1103](#). There was cross-party support for the Bill, with many Members sharing cases from their constituencies. Justice minister Sam Gyimah welcomed the Bill and said that the Government would continue to work with Chris Bryant, as well as the police and other emergency services, to “ensure that the Bill’s proposals are both practical and affordable”.²⁵

The main themes of the debate were the scope of the definition of “emergency workers”, the maximum sentences available for the new clause 1 offence, the list of offences covered by the enhanced

body (other than an intimate swab from his genitals or a body orifice other than the mouth), saliva and skin impressions.

²⁵ [HC Deb 20 October 2017 c1155](#)

sentencing provisions in clause 2, and concerns that the bodily samples clauses might stigmatise people with HIV.

4.3 Committee stage

There was one Public Bill Committee sitting on [15 November 2017](#).

There were no divisions. The Committee agreed amendments to clause 3, on the definition of emergency workers. The Committee also agreed to remove clause 7, the expenses clause, on the grounds that it was not required.²⁶ No other amendments were made.

The main areas of debate were the maximum sentences for the clause 1 offence, the definition of “emergency workers”, and the potentially stigmatising effect of the bodily samples clauses.

Maximum sentences for the clause 1 offence

During the clause stand part debate on clause 1, Michael Tomlinson pointed out that it was “slightly unusual for an offence on indictment and an offence on summary conviction to have the same sentence”.²⁷ He asked Chris Bryant and Policing Minister Nick Hurd to explain the reasoning behind this.

Chris Bryant explained that he had originally hoped for a two-year maximum sentence for conviction on indictment and six months for summary convictions. However, the Government’s preferred option was 12 months for each. He said that sentencing might be something to return to on Report.

Nick Hurd said that the clause 1 offence was intended to sit alongside the existing general offence of common assault, which is a summary only offence carrying a maximum sentence of six months. The increased 12 month maximum sentence for the clause 1 offence was

... exclusively for the lowest level of assault, which may not involve any injury, and the act constituting the offence can be as little as a push. The offences of actual bodily harm or grievous bodily harm are more likely to be used if the assault is more severe. Both those offences already have a maximum penalty of five years.²⁸

He went on to say that in practice the maximum sentence would be six months on summary conviction and 12 months on indictment. This will remain the case until relevant provisions in the Criminal Justice Act 2003 are commenced.²⁹

The definition of “emergency workers” in clause 3

The Committee agreed several amendments to the definition of “emergency workers” in clause 3.

The definition was extended to cover prisoner custody officers and custody officers who are exercising “escort functions” involving the

²⁶ [PBC Deb 15 November 2017 c4](#)

²⁷ [PBC Deb 15 November 2017 c5](#)

²⁸ [PBC Deb 15 November 2017 c8](#)

²⁹ See footnote 18 above

delivery of prisoners to court and their custody whilst on court premises.³⁰

The definition was also extended to cover a broader range of NHS workers. The new definition agreed by the Committee is:

a person employed for the purposes of providing, or engaged to provide –

- (i) NHS health services, or
- (ii) services in the support of the provision of NHS health services, and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public.

Chris Bryant said that the new definition would “extend the definition of emergency worker to include all those providing NHS health services”. Nick Hurd said that the Government accepted the new definition, and commented that it was “only right that all those working on the NHS frontline are afforded the greater protections provided by the Bill.

There was some discussion as to whether St John Ambulance volunteers would be covered by the Bill. Nick Hurd said that this would depend on the context in which the volunteer was acting at the time of the assault:

Our view is that staff and volunteers who selflessly give up their time should be protected by the Bill if they are assaulted while providing a service under contract to the NHS. They may also fall within the scope of the Bill if the assault occurs while carrying out an activity that can be classed as a rescue. Those are the circumstances that currently we envisage as enabling those staff and volunteers to be protected by the Bill, but I am sure that there will be views expressed on that as it proceeds.³¹

He went on to say that the Government considered that the new expanded definition in clause 3 struck “the right balance”, but that the Government would consider any further proposals put forward by Chris Bryant.

Chris Bryant said that he had resisted calls from other Members for the Bill to extend to public sector workers more generally (e.g. refuse collectors and housing officers) as the Bill was designed to address a specific problem relating to emergency workers. He did not want to “water down” the provision in the Bill.³²

The bodily samples clauses

During the clause stand part debate on clauses 4 to 6, Chris Bryant said that the intention of the clauses was to prevent emergency workers who have been spat at from having to go through “precautionary medical interventions that they would not otherwise have had to go through”.³³

³⁰ As defined in [s80\(1\) of the Criminal Justice Act 1991](#) and [paragraph 1 of Schedule 1 to the Criminal Justice and Public Order Act 1994](#)

³¹ [PBC Deb 15 November 2017 cc13-14](#)

³² [PBC Deb 15 November 2017 c11](#)

³³ [PBC Deb 15 November 2017 c15](#)

However, he stressed that he did not believe that spitting had “anything to do with HIV”, and said that he would be “distraught beyond belief” if he thought that the Bill would add to the stigmatisation of people with HIV.

He said that he was keen for clauses 4 to 6 to remain in the Bill, but that he was

...open to suggestions about whether there should be specific provision in the Bill to require NHS England or the authorities in Wales to make clear what is appropriate in relation to specific communicable diseases.³⁴

Nick Hurd said that the Government supported the aim of protecting emergency workers from “the worries of unnecessary medication that may result from exposure to infectious disease”.³⁵ However, he said that the Government wanted to work with bodies such as the National AIDS Trust and the Terrence Higgins Trust to address their concerns about the provisions.³⁶ He said that he joined Chris Bryant in making it clear that the Bill should not “propagate stigma associated with HIV”, and noted that there was what he described as “a very low risk of contracting HIV through biting or spitting blood”.

He also said that continued work was needed with the police and other emergency services “to ensure that the Bill’s proposals are practical and affordable”.

In post-Committee developments, Chris Bryant has tabled amendments for Report which would remove clauses 4 to 6 from the Bill altogether. Speaking to the Yorkshire Post, Holly Lynch said that this decision followed discussion with the Government about the effectiveness of the clauses:

“We’ve been made aware that there would be practical difficulties delivering some of the clauses around spitting, and that testing requirements wouldn’t be as accurate as we thought they were.”

It had been hoped that introducing the spitting clause would help to allay the fears of those who are spat at in their jobs. It is currently an offence to spit at someone but police can only ask perpetrators if they have any communicable diseases or to voluntarily provide a sample. If they refuse, victims can face a six month wait for test results to see if they have caught anything, and months of “potentially avoidable” treatment.

Ms Lynch said the Government was advised by the NHS that tests presently do not have the scientific backing required for the Bill, but she said, blue light workers who have been spat at were still a priority.

She went on:

³⁴ [PBC Deb 15 November 2017 c16](#)

³⁵ [PBC Deb 15 November 2017 c17](#)

³⁶ See for example the National AIDS Trust press release “[Testing perpetrators of assault for diseases like HIV is pointless and harmful](#)”, issued on 2 February 2018, in which it said that the bodily samples provisions in the Bill “validates myths, fear and anxiety”.

“We are working with the Government to provide an alternative package of measures to offer emergency service workers so that they receive the very best advice across the board if the legislative proposals cannot work as we thought,” she said. “It is regrettable, but I do understand, and if it is not going to work in practice then we do need to find a workable solution.”³⁷

³⁷ [“MP’s ‘crisis talks’ with Government to ensure bill to protect emergency workers has teeth”](#), Yorkshire Post, 23 April 2018

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