

Circular 2018/01

TITLE: ASSAULTS ON EMERGENCY WORKERS (OFFENCES) ACT 2018

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For further information contact: Ashir Mir, Sentencing Policy Advisor
Bail, Sentencing and Release Policy
Ashir.Mir@justice.gov.uk
07547 970008

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This circular is for:

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ASSAULTS ON EMERGENCY WORKERS (OFFENCES) ACT 2018

INTRODUCTION

1. The Assaults on Emergency Workers (Offences) Act 2018 received Royal Assent on 13 September 2018 and will come into force on 13 November 2018. The Act is set out in full at Annex A.
2. The Act is a response to the increase, in recent years, in the number of assaults on emergency workers. There were 26,000 assaults on police officers in the past year. 15.2% of NHS staff responding to the NHS staff survey say they have experienced physical violence from patients, relatives or the public in the past year. Assaults on prison officers rose by 70% in the three years to 2017. There were 933 incidents involving an attack on firefighters in 2017/18, the highest recorded figure since data was first collected in 2010/11.
3. The purpose of this circular is to provide guidance on the Act's provisions. The circular is for guidance only and should not be regarded as providing legal advice. Guidance for prosecutors on the new offence of assault on an emergency worker contained in the Act will be made available on the CPS website. The CPS are responsible for advising police for the purposes of criminal proceedings. For other operational advice, police should seek advice from their own legal advisors.

THE ACT'S PROVISIONS

Section 1: Common assault and battery

4. Section 1 of the Bill creates a new triable either way offence of assault or battery committed against an emergency worker as defined in the Act.
5. The maximum penalty for the new offence on summary conviction i.e. in the magistrates' court is 12 months imprisonment, or a fine, or both. Subsection (4) makes it clear that the 12 months' imprisonment should be read as 6 months until such time as section 154(1) of the Criminal Justice Act 2003 comes into force.
6. The maximum penalty for an assault or battery against an emergency worker on conviction on indictment i.e. in the Crown Court is 12 months' imprisonment, or a fine or both. This should be compared with the penalties for the offences of common assault (s.39 of the Criminal Justice Act 1988) and assault on a police constable in the execution of his duty (s.89 of the Police Act 1996) both of which are summary only with a maximum custodial penalty of 6 months.
7. The new offence can apply when an emergency worker is acting in the course of their emergency functions. It can also apply when such a person is not at

work but is carrying out a function that, if carried out during work time, would have been within the functions of an emergency worker. For example, a firefighter who is assaulted when rescuing someone from a burning building while on his or her way home from work.

Section 2: Aggravating factor

8. Section 2 of the Bill creates a statutory aggravating factor. This means that when a specified offence - broadly an assault-related offence or a sexual assault offence - is committed against an emergency worker acting in the exercise of their functions and as defined in the Act, the court should consider the fact that it was so committed as an aggravating factor. This means the offence merits an increased penalty but only within the maximum already set out in statute for that offence. For example, in the case of an individual who has committed the offence of actual bodily harm (s.47 of the Offences against the Person Act 1861) against a police officer, the court must consider the offence to be more serious because the victim is an emergency worker.
9. Subsection (3) lists the offences that the aggravating factor will apply to. These are the following offences under the Offences Against the Person Act 1861:
 - i. section 16 (threats to kill);
 - ii. section 18 (wounding with intent to cause grievous bodily harm);
 - iii. section 20 (malicious wounding);
 - iv. section 23(administering poison etc);
 - v. section 28 (causing bodily injury by gunpowder etc);
 - vi. section 29 (using explosive substances etc with intent to cause grievous bodily harm) and;
 - vii. section 47 (assault occasioning actual bodily harm)
10. Subsection (3) also specifies the common-law offences of:
 - i. an offence under section 3 of the Sexual Offences Act 2003 (sexual assault);
 - ii. manslaughter,
 - iii. kidnapping;
 - iv. ancillary offences in relation to any of the offences listed in subsection (3) included.
11. These are all assault-related offences as the overall focus of the Act is on physical assaults against emergency workers. The offence of common assault is not included as that is the subject of the new offence at section 1.
12. The statutory aggravating factor effectively replicates the Sentencing Council's Definitive Guideline on Assault but for a specified group of offences when committed against a specified group of people. The Guidelines state that any offence that is committed against any public-sector worker or anyone providing a service to the public is a factor affecting its seriousness and may therefore attract a higher penalty within the statutory maximum.

Section 3: Meaning of “emergency worker”

13. Section 3 provides the definition of “emergency worker” for the purposes of sections 1 and 2 of the Act. The categories broadly include police, prison officers, fire and rescue personnel and certain NHS workers who have interaction with the public as part of their work. These occupations and positions have been included on the basis that these are people who may be required, at some point, to deal with emergencies and who are exposed to the risk of assault in the course of their day to day work.
14. It does not matter whether those emergency workers in the list are paid or unpaid. Although they are referred to as emergency workers, there is no requirement in the Bill that they have to be responding to an emergency when the offence in question takes place but they will have to be performing a function as an emergency worker whether or not they are on duty. So, the Act’s provisions would still apply in the case of a police officer who was attacked when responding to a routine call out.

Section 4: Extent, commencement and short title

15. The Act applies to England and Wales only and it will automatically come into force two months after the day on which the Act was passed.