



## **COMBINED FIRE AUTHORITY**

**18 DECEMBER 2018**

## **ASSAULTS ON EMERGENCY WORKERS (OFFENCES) ACT 2018**

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### **REPORT OF CHIEF FIRE OFFICER**

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#### **PURPOSE OF REPORT**

1. The purpose of this report is to make members aware of the Assaults on Emergency Workers (Offences) Act 2018 (the Act) which received Royal Assent on 13 September 2018 and came into force on 13 November 2018.

#### **BACKGROUND**

2. The Government have introduced the Act in response to the increase, in recent years, in the number of assaults on emergency workers. The Act applies to England and Wales only.
3. 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 and assaults on prison officers rose by 70% in the three years to 2017.
4. Nationally there were 933 incidents involving an attack on firefighters in 2017/18, the highest recorded figure since data was first collected in 2010/11. Members have previously received reports on the number and impact of such incidents locally.

#### **PROVISIONS OF THE ACT**

##### **Section 1: Common assault and battery**

5. Section 1 of the Act creates a new triable either way offence of assault or battery committed against an emergency worker as defined in the Act. 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 their 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 Act 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:
- section 16 (threats to kill);
  - section 18 (wounding with intent to cause grievous bodily harm);
  - section 20 (malicious wounding);
  - section 23 (administering poison etc);
  - section 28 (causing bodily injury by gunpowder etc);
  - section 29 (using explosive substances etc with intent to cause grievous bodily harm) and;
  - section 47 (assault occasioning actual bodily harm)
10. Subsection (3) also specifies the common-law offences of:
- an offence under section 3 of the Sexual Offences Act 2003 (sexual assault);
  - manslaughter;
  - kidnapping;
  - 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 Act 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. Therefore, the Act’s provisions would still apply in the case of a police officer who was attacked when responding to a routine call out.

### **IMPLICATIONS FOR THE AUTHORITY**

15. The Act should be welcomed by the Authority and hopefully will be an additional deterrent to people from carrying out assaults on all emergency workers. Where an attack on staff occurs, the perpetrators, can receive greater sentencing from the courts.
16. Attacks on staff from County Durham and Darlington Fire and Rescue Service are fortunately quite a rare occurrence. Last year we experienced 14 incidents although the vast majority were incidents of verbal abuse rather than physical violence. Each event is reported on the Service’s electronic health and safety reporting system - OSHENS and investigated. Performance in this area is monitored through the Service’s Joint Health and Safety Committee which includes the trade unions, officers and the Authority’s Member Champion for Health and Safety, Cllr Carr. Whilst the number of incidents is relatively low the Service treat any incident as a serious occurrence and welcomes any measure that discourages this kind of behaviour.

### **RECOMMENDATIONS**

17. The Authority is requested to:
  - (a) **note** the contents of the report and the introduction of Assaults on Emergency Workers (Offences) Act 2018.

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