

Introduction

This is a project for the modernisation and restatement of the main offences of violence. These are:

- (a) the offences contained in the Offences Against the Person Act 1861 (“the 1861 Act”),
- (b) the offences of assault and battery, which are common law offences, and
- (c) assault on a constable, which is an offence under the Police Act 1989.

The purpose of the project is to replace all these offences with a single modern and easily understandable statutory code. We recommend that this should be based on a draft Bill published by the Home Office in 1998, with some changes and updating.

The need for reform

Most of the law concerning offences of violence is set out in the 1861 Act. This is in very old-fashioned language and hard to understand. Particular points are as follows:

- the grading of the offences is not clear and is not always reflected in sentencing powers; for example, the offence under s 20 (“GBH”) is meant to be more serious than that under s 47 (“ABH”), but both have the same maximum sentence, 5 years;
- there are too many narrowly specialised offences, involving factual scenarios described in great detail; some of these are of rare occurrence and almost all are covered by more general offences in any case;
- the same section often describes many alternative ways of committing an offence, and it is not clear whether these are meant to be one offence or several;
- there are references to concepts that no longer exist, such as “felony” and “penal servitude”, and some of the offences do not even state the penalty for the offence.

Outline of the reforms

The proposed changes are set out in brief in the following table. In this table “D” means the person said to have committed an offence and “V” means the person said to have been harmed.

Current offence	Replaced by
Wounding or causing grievous bodily harm, with intent to do grievous bodily harm (life)	Intentionally causing serious injury (life)
Malicious wounding or causing grievous bodily harm (GBH): D must intend or foresee a risk of some harm, not necessarily grievous (5 years)	Recklessly causing serious injury: D must foresee a risk of <i>serious</i> injury (7 years)
Assault occasioning actual bodily harm (ABH): D need not intend or foresee any harm at all (5 years)	1. Intentionally or recklessly causing injury, not necessarily by assault: D must foresee a risk of some injury (5 years) 2. Aggravated assault, meaning assault causing injury: no need to foresee risk of injury (12 months)
Assault and battery, sometimes collectively called “common assault” (6 months)	1. Physical assault (6 months) 2. Threatened assault (6 months)

Assaulting police: D need not know or suspect that V is a police officer (6 months)	Assaulting police: D must know or be reckless about whether V is a police officer (12 months)
Assaulting clergy (2 years); assaulting magistrate preserving wrecks (7 years)	Abolished
Grievous bodily harm with intent to resist arrest (life); assault with intent to resist arrest (2 years)	Causing serious injury with intent to resist arrest (sentence not decided, but should be more than 7 years and less than life); assault with intent to resist arrest (2 years)
Various offences of causing injury or danger by means of poisons or explosives or on railways	Replaced by fewer and simpler offences of causing danger (causing actual injury is covered by the main injury offences)
Soliciting murder (life)	Encouraging murder (life)
Threats to kill (10 years)	Threats to kill, cause serious injury or rape (10 years)
Attempting to choke, preventing escape from a shipwreck, failing to feed servants and apprentices	Abolished
Exposing children to danger, setting man-traps, causing harm by furious driving	Left in 1861 Act

A more detailed table is attached both to the full summary and to the full report.

### The main changes

The most important offences as recommended by us are about causing injury. This can mean injury of any kind (including disease), caused by any means. In general, when an offence in the draft Bill consists of causing “serious injury” or “injury”, D must also intend or foresee serious injury or injury, as the case may be. This is significantly different from the present law, where there is often a mismatch between what must happen and what must be foreseen by D.

The new offence of “aggravated assault” is intended to bridge the gap between the existing offences of common assault and ABH. There are many cases involving low level injuries which do not fit conveniently into either offence:

- If charged as ABH, they may be tried in the Crown Court and receive a sentence of up to 5 years. In practice, however, over a third of all sentences passed by the Crown Court for this offence are for 6 months or less. We believe that the Crown Court should not be dealing with cases of this kind.
- If charged as common assault, these cases remain in the magistrates’ court and the maximum sentence is 6 months. Victims will rightly feel aggrieved that their injuries are not reflected in the charge.

The new offence of aggravated assault is designed to cover these low level injury cases, in a way that reflects and acknowledges the fact that an injury has been caused. At the same time, these cases will remain in the magistrates’ court and the sentence is limited to 12 months. This ensures that cases are tried in a court of the appropriate level, and avoids incurring the expensive and time-consuming procedures of the Crown Court when they are not necessary.