

A Summary and Next Steps: The Review of Road Traffic Offences involving Bad Driving

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Part One: Executive Summary of Responses to the Consultation Exercise

The following summary attempts to give an overall view of the responses to the consultation exercise on the Review of Road Traffic Offences involving Bad Driving. It includes all individual responses from members of the public, stakeholders and organisations. It does not include responses that formed part of a campaign or petition. These responses have been recorded separately and are listed in Part Three.

The findings of the consultation (as set out in Part Two) have not been based on a pure assessment of those in favour, or those opposed, to a proposal. To do so would be misleading; for example, some respondents to the proposal to create a new offence of causing death by careless driving opposed the creation of the offence as they did not think the proposal went far enough; they thought that this conduct should be treated as manslaughter. Others opposed this offence as they felt it would be unfair to apply a custodial sentence to the unintended consequences of a driver's actions. Therefore, in order to get a full picture of the different views expressed on these proposals, a detailed analysis of responses has been made, as can be seen in Part Three. It is on that analysis that the findings have been based.

Definition of careless driving in statute

Total number of responses received	185
Support	42
Oppose	3
No comments	140

This proposal received broad support from the majority of respondents who commented on this point. Most respondents thought that the definition of careless driving (as falling below the standard expected of a competent and careful driver) is well established in case law but should be defined in statute in order to provide consistency with "dangerous driving" which is defined in statute (as "far below" the standard). Respondents were generally happy with the current definition of "careless" although some argued for an element of recklessness to be incorporated into this offence.

A new offence of causing death by careless driving

Total number of responses received	185
Support	108
Oppose	39
No comments	38

This proposal received strong support from the general public and road safety organisations who felt that this measure would reflect better the impact of the behaviour. However some respondents from road safety groups opposed the measure as they did not think this proposal went far enough. The legal profession were strongly opposed to the creation of such an offence on a number of grounds; their main concern being that they thought this would go against the principle that the criminal law, and custodial sentences in particular, should be reserved for deliberate acts as opposed to unintentional ones. The police and other respondents expressed mixed views although the majority of police forces and organisations favoured the proposed offence.

Availability of non-custodial penalties for careless driving

Total number of responses received	185
Support	42
Oppose	6
No comments	137

This proposal received broad support from the majority of respondents, with road safety groups in particular highlighting the need for education and ways in which to improve driving standards. Some responses queried whether such penalties would be suitable for persistent offenders and some members of the legal profession and the Crown Prosecution Service (CPS) had concerns about applying non-custodial penalties to disqualified drivers.

Ensuring courts take non-fatal injuries into account

Total number of responses received	185
Support	45
Oppose	11
No comments	129

This proposal received some support from road safety organisations but several respondents, and notably the legal profession, thought this unnecessary. The legal profession felt that injury is something they consider when sentencing at present and that there is no need to require it.

Allowing an alternative verdict where manslaughter fails

Total number of responses received	185
Support	43
Oppose	3
No comments	139

This proposal was supported by the majority of respondents. Only one response opposed this suggestion in principle; the other two responses recorded as opposition thought that this was possible already.

Abolition of the offence of wanton and furious driving

Total number of responses received	185
Support	37
Oppose	1
No comments	147

This proposal received some support as it was thought that the penalties for this offence are not appropriate to deal effectively with the behaviour in question, although some members of the legal profession, the police and the CPS emphasised that care should be taken when replacing this offence as it is still used. The strong preference from all respondents who supported it was to replace this offence by extending coverage of the general road traffic offences to apply to private property and non-motorised vehicles.

Whether a custodial sentence should be available where careless driving causes injury

Total number of responses received	185
Support	66
Oppose	14
No comments	105

This proposal received a mixed response. Road safety organisations generally supported the offence. The legal profession opposed it as they thought that the culpability involved would not be sufficient to apply a custodial sentence. The police response was mixed.

Whether there should be an offence where a disqualified or unlicensed driver is involved in a fatal incident

Total number of responses received	185
Support	75
Oppose	14
No comments	96

This proposal received a mixed response. The police supported this offence and a number of responses distinguished their support for this offence from their opposition to an offence of causing death by careless driving as they considered driving whilst disqualified or unlicensed to be more culpable than carelessness might be. Road safety organisations generally supported the offence although some thought this behaviour should be charged as dangerous or careless driving. Of those who were supportive, some were concerned that the offence might apply irrespective of the fault of the driver. The legal profession largely opposed the offence and argued that where the driver is careless or dangerous, other offences would apply. A number of responses suggested that the maximum penalty for driving whilst disqualified be increased.

Whether the principles of restorative justice should apply to suitable cases of bad driving

Total number of responses received	185
Support	37
Oppose	7
No comments	141

This proposal was generally welcomed by all respondents although many emphasised that this should be subject to the wishes of the victim or their family. Some respondents commented that they did not think this would be appropriate in cases where a death has occurred.

Part Two: The Government's Response to the Consultation and Proposals for Next Steps

As the response to this consultation has demonstrated, the issue of road safety is one that arouses much debate and the Government has made it clear that improving safety, and reducing death and injury on the roads is a priority.

The consultation was the subject of 185 responses from individuals and organisations and the two new offences proposed were the subject of 11 petitions. In general, the consultation has been well received with most of the proposals receiving broad support. However the proposals relating to two new offences of causing death by careless driving, and where a disqualified or unlicensed driver is involved in a fatal incident were the subject of much debate.

The Government has considered the views expressed during the consultation carefully and proposes the measures set out below.

Definition of careless driving in statute

This proposal received broad support and as such the Government proposes to define careless driving in statute, to ensure that it covers all driving "below" the standard of a competent driver. This will provide clarity and will ensure consistency with dangerous driving which is further defined in statute as driving that falls "far below" the standard expected of a competent and careful driver.

A new offence of causing death by careless driving

The consultation paper proposed to supplement the current law with a new offence of causing death by careless driving punishable by a maximum penalty of 5 years imprisonment and triable on indictment only.

There were strongly held views both for and against the principle of this offence. The proposal was strongly supported by the general public and road safety organisations, however the legal profession were strongly opposed to the offence in principle.

The Government has carefully considered all the responses to this proposal and has decided to proceed with a new offence of causing death by careless driving. However the Government has given further thought to the proposed maximum penalty and mode of trial. Some respondents suggested lowering the maximum penalty to 2 years imprisonment but on balance we have concluded that a maximum period of imprisonment of 5 years is an appropriate penalty and will give the courts the power to impose this sentence where the circumstances of the case make such a sentence appropriate. A 5 year maximum penalty also reflects the fact that a proportion of cases will be on the borderline between careless and dangerous driving.

The Government has concluded that the offence should be triable either-way. The consultation paper originally proposed that this offence be triable on indictment only, however a small number of responses suggested making the offence triable either-way and having considered the responses on this issue, in particular from Magistrates and legal professionals who deal with such cases, we agree that many cases of this nature will remain suitable for trial in the Magistrates Courts and they should continue to be heard there where appropriate. Of course, where the facts of the case indicate that summary trial is not appropriate, the case would be able to be heard in the Crown Court.

The Government also proposes that anyone found guilty of this offence should be disqualified and that this offence should be available as an alternative verdict where a case of causing death by dangerous driving is unsuccessful.

Availability of non-custodial penalties for careless driving

This proposal was generally supported and the Government believes it is an important part of dealing properly with such conduct. However non-custodial penalties are already available for offences that meet the “serious enough” criteria and so the Government will not need to make any legislative changes to implement this proposal.

Ensuring courts take non-fatal injuries into account

This proposal received some support from road safety organisations but the majority of respondents, and notably the legal profession, thought that it is unnecessary to require the courts to take non-fatal injuries into account since this is already done in practice where injuries are relevant. After careful consideration the Government feels that a better approach is to work with the Sentencing Guidelines Council, and the Sentencing Commission for Scotland, to ensure that it is clear that serious injury and damage can be an aggravating factor.

Allowing an alternative verdict where manslaughter fails

As the consultation process demonstrated, there is some confusion at present as to whether an alternative verdict is available to a jury where a prosecution for manslaughter (or culpable homicide in Scotland) has failed. This proposal was supported by the majority of respondents and as such the Government has decided to clarify that alternative verdicts of causing death by dangerous driving, causing death whilst under the influence of alcohol or drugs, dangerous driving, and wanton and furious driving (in England and Wales) are available where manslaughter has not been proven. This will require legislation.

Abolition of the offence of wanton and furious driving

This proposal received broad support as it was thought that the offence was old and some thought that the penalties for this offence are too low to deal effectively with the behaviour in question, although some members of the legal profession, the police and the CPS emphasised that care should be taken when replacing this offence as it is still used. The strong preference from all respondents was to replace this offence by extending coverage of the general road traffic offences to apply to private property and non-motorised vehicles.

It is clear however that despite support for this proposal, the consultation did not demonstrate widespread concern that the present law is lacking. There was no evidence that there are current instances of bad driving that take place on private land or in non-motorised vehicles that are not adequately dealt with currently under the “wanton and furious” driving offence and it is clear that there are several factors that make treating driving on public roads and on private property the same, very difficult (for example there is no requirement to have a license to drive on private property and there is a much lower risk of harm to others). As such the Government has decided to leave this offence in place but proposes that disqualification and endorsement should apply to this offence where appropriate.

Whether a custodial sentence should be available where careless driving causes injury

This issue was raised in the consultation paper (there is an offence in Northern Ireland of causing serious injury by dangerous driving) but was not put forward as a proposal as the Government favoured instead the proposal to make it a statutory requirement for the courts to take account of consequences when sentencing.

This issue received a mixed response. Road safety organisations and some members of the public supported the offence; the legal profession were overwhelmingly opposed as they did not think that the culpability in this case would be sufficient to warrant the imposition of a custodial sentence and unlike death, you could not argue that this is a special case.

Again, having considered the responses to the consultation, the Government has decided that the best way to ensure consequences are taken into account during sentencing is to work with the Sentencing Guidelines Council and the Sentencing Commission for Scotland. The Government has therefore decided not to make any changes to the law as it relates to injury. The Government feels this is justified since it can be argued that death is a special case and indeed this point was noted by a number of respondents to the consultation.

Whether there should be an offence where a disqualified or unlicensed driver is involved in a fatal incident

The consultation paper also proposed that a new offence apply where a person is driving whilst disqualified or unlicensed and the vehicle is involved in a fatal collision. The paper also asked whether uninsured driving should be covered by this offence. This would apply where the driver is not driving either carelessly or dangerously. The paper proposed a maximum penalty of 5 years imprisonment but did not recommend a mode of trial.

This proposal received a mixed response. The police supported this offence and a number of respondents who opposed the offence of causing death by careless driving supported this offence because they considered driving whilst disqualified or unlicensed to be more culpable than carelessness might be. Road safety organisations generally supported the offence although some thought this behaviour should be charged as dangerous or careless driving. The legal profession largely opposed the offence and argued that where the driver is careless or dangerous, those offences would apply.

The Government has carefully considered all the responses and concluded that a specific offence is justified.

The Government has also considered the views expressed during the consultation regarding the maximum penalty for this offence, the scope of the offence and mode of trial.

With regard to the scope of the offence, the Government believes that both disqualified drivers, and unlicensed drivers be included. Driving whilst disqualified requires both knowledge of illegality and a history of previous bad behaviour on the roads. Unlicensed driving is a hazard to other users; without a license the driver cannot show the required level of competence and there is evidence that unlicensed drivers present a greater threat to road safety than the general driver population.

The consultation paper also looked at the possible inclusion of uninsured drivers in the offence. Driving without insurance is reprehensible and shows clear disregard for the welfare and safety of others. The Government therefore proposes that uninsured drivers should also be included in the offence.

The fault element of this offence would derive from the driver being on the road when he should not have been. The standard of driving could be perfectly acceptable. For example, this offence could bite on a driver who was driving very carefully, but a child ran out into the road and was killed. The offence will apply where 'but for' the defendant's car being on the road the person would not have been killed. For example, if the defendant caused a ten car pile up then he could be charged in relation to the death of a person in the tenth car, even though he might not have made contact with that car. Conversely, if he was unavoidably involved in the pile up but it would have occurred even if he had not been present, then he could not be held responsible for any deaths.

Some respondents suggested that the offence should be triable either-way and should be subject to a lower maximum penalty. Several respondents felt that 5 years would be disproportionate to the relevant offending behaviour and would be used infrequently. The Government has been persuaded by this argument and therefore recommends a lower maximum penalty of 2 years which would recognise the fact that the driver has placed other road users at unacceptable risk but balances this with the recognition of the fact that the standard of driving need not have been at fault.

The Government also proposes that this offence be triable either-way.

The Government recommends that anyone found guilty of this offence should be subject to disqualification, which in the case of those already disqualified is likely to be an increase in the period of disqualification by way of the courts imposing a period of disqualification which will go beyond the existing period.

Restorative justice

This proposal was generally welcomed by all respondents subject to the wishes of the victim or their family, and as such the Government has decided to go ahead with this proposal. This will not require any legislative change.

In addition to the proposals above which were included in the Consultation paper the Government has decided to implement two further proposals which were highlighted in responses to the consultation.

Increasing the penalty for failure to stop when required by a constable

A small number of respondents to the consultation mentioned that they thought that the penalty for failure to stop for a police officer should be increased from a level 3 fine (£1,000) to recognise the serious risks to other road users of trying to evade the police or escape detection (e.g. for driving under the influence). They also recommended that the offence be made arrestable but this will not be necessary following the enactment of the Serious Organised Crime and Police Act 2005.

The Government has considered this and agrees that the penalty should more accurately reflect the offending behaviour, and as such has decided to increase the fine from level 3 to a level 5 fine (£5,000).

Provision to allow a prosecution for causing death whilst under the influence for refusal to give consent to perform a laboratory test on a sample

One respondent to the consultation mentioned that there appears to be a slight loophole in the current law relating to testing blood for alcohol or drugs. Section 56 Police Reform Act 2002 inserted a new section (7A) into the Road Traffic Act which allows the police to take a blood sample from a suspect who is not capable of consenting (e.g. because he is unconscious) however the sample must be kept and can only be tested subsequently with the defendant's consent (when he is later able to). Where that consent is not given there is no provision similar to that in section 3A (1) (c) of the Road Traffic Act that allows a prosecution for causing death whilst under the influence for refusal to give a sample where that refusal (without reasonable excuse) relates to consent to testing. The Government intends to close this loophole.

Next Steps

The proposals to define careless driving in statute, to create two new offences where a death has occurred, to clarify that alternative verdicts should be available where a prosecution for manslaughter is unsuccessful, to ensure endorsement and disqualification are available for the offence of wanton and furious driving, to raise the maximum penalty available for failure to stop for a constable, and to close the loophole regarding testing samples will require primary legislation.

The current Road Safety Bill includes a raft of measures designed to help achieve casualty reduction targets and improve safety on Britain's roads and we propose to bring forward amendments to include these measures in the Road Safety Bill.

The proposals in relation to use of restorative justice, working with the relevant sentencing guidelines authorities in relation to taking injuries into account when sentencing and using non-custodial penalties will not require legislation and the Home Office will work with the relevant bodies to ensure these changes are implemented.

Part Three: Summary of Responses to the Consultation Exercise

The Legal Profession

Responses were received from the following: The Right Honourable The Lord Justice Woolf (Lord Chief Justice of England and Wales), the Criminal Bar Association, the Criminal Sub-Committee of the Council of HM Circuit Judges, the Faculty of Advocates, a separate response from an individual member of the Faculty of Advocates, Greenwoods Solicitors, HH Judge William Barnett QC, JUSTICE, the Justices' Clerks' Society, the Law Society, the Law Society of Scotland, the Magistrates Association, two members of Trinity Chambers (Newcastle), Professor Barry Mitchell of Coventry Business School and Dr Sally Cunningham of the University of Leicester, a prosecutor and a police officer.

A further response was submitted from a legal organisation who asked that this remain confidential.

Definition of "careless driving" in statute (Consultation point 1.19)

The Justices' Clerks' Society, the Magistrates Association, the Law Society and the Law Society of Scotland agreed that careless driving should be defined in statute. The Criminal Bar Association felt that the definition was well settled in case law but that this could be expressed in statute.

The Lord Chief Justice, Lord Woolf, did not think it necessary to define "careless driving" in statute as he thought the definition was well settled. JUSTICE felt that the definition of "careless driving" should be "reformed". They thought that the dividing line between the offences of careless and dangerous driving was unclear but thought this was inevitable unless each were defined subjectively in terms of different mens rea. They felt that the "far below" test was right to assess dangerous driving but that "careless driving" should reflect driving which is "significantly below" the required standard (i.e. so that it would be clear that this should not be charged for very minor breaches). They also commented that it should incorporate an element of obviousness (this is discussed further below under "Other comments")

A new offence of causing death by careless driving (Consultation point 1.19)

Responses to this proposal were almost exclusively opposed to the creation of this offence.

The response from two barristers (and Recorders of the Crown Court) at Trinity Chambers summed up the principal concern of the majority of respondents. They thought that the introduction of such an offence would be contrary to the general principle of criminal law which is that conduct is described as criminal (and therefore worthy of punishment) if there has been a deliberate act. They were concerned that this offence would make accidental conduct seriously criminal and worthy of imprisonment. They thought this might also have implications for other non-intentional homicides and manslaughter. This point was also raised by the Lord Chief Justice, Lord Woolf, and a barrister who wrote in a private capacity.

The respondents from Trinity Chambers also thought that it would be difficult to define causation.

"This will involve imprisoning people who are in no conventional sense criminal...sending them to prison might conceivably improve their overall standard of

driving, but carelessness is not usually eliminated by severe random punishment.”- Trinity Chambers

The Criminal Bar Association had concerns about imposing a prison sentence as a result of this offence and felt that if the proposal progressed, it should be stressed that the appropriate sentence in all cases should be determined by the standard of driving and not just the consequences. This point was also raised by Greenwoods Solicitors.

JUSTICE were unsupportive and also raised the principle that conviction of serious crime should depend on proof of not only the act (or omission) but also that the state of mind of the defendant was culpable. They did however acknowledge that “driving is to some degree a special case, since there is of course, a public policy interest in demanding that all drivers conform to an objective standard”. However, they felt extension of liability for causing death should not extend to a standard of driving lower than dangerous driving. They also commented that in their view an offence based on the current definition of careless driving would lack sufficient legal certainty and have a limited deterrent effect.

“We are strongly opposed to the creation of an imprisonable homicide offence where the standard of culpability is so low. We are not aware of any precedent in English law for a strict liability homicide offence”-JUSTICE

The Law Society also felt this proposal was inconsistent with the Criminal Justice Act 2003 approach to sentencing in which the culpability of the defendant is an important feature in determining sentence. They thought that this might be better dealt with by ensuring that existing offences are prosecuted where appropriate.

The Council of Circuit Judges acknowledged that there is a “stark imbalance” between the sentences available to the court in relation to offences of dangerous and careless driving. However, they did not support the creation of this offence.

“It is our view that a driver who has had the misfortune to be involved in an accident which has caused injury to another through his mere inadvertence should not, by virtue of that fact alone, be at risk of a custodial sentence, however grave the consequential injury may be”-Council of Circuit Judges.

They stated that where a piece of driving that has led to a fatality is objectively considered to be dangerous, a charge of causing death by dangerous driving would be charged and it will be open to the jury (directed by the judge as the (careless driving) offence is triable summarily only) to convict of the alternative verdict of careless driving if this charge is more appropriate. They felt that the introduction of such an offence would result in both categories of offence appearing on the indictment as a direct alternative. They argue this will change prosecutorial practice and shift the responsibility for determining the correct charge from prosecutors, to the jury.

The Council of Circuit Judges also mentioned that juries tend to prefer to convict for lesser offences. They felt that that there would need to be guidelines on sentencing produced by the Sentencing Guidelines Council to fit the new range of penalties into the general framework of sentencing. They also raised concerns that the increase of sentences for such an offence could result in increased sentences for other offences that cause public concern, such as domestic burglary.

Comments were also received from a former prosecutor who felt a custodial penalty would be unfair. He recommended that death should be reflected in a new offence of causing the death of X by careless driving, with a maximum penalty matched to that of careless driving, to ensure that a death is reflected in the charge. The respondent felt this may offer some relief to bereaved families.

A number of responses highlighted the fact that the effect of this offence would be that the same instance of driving might lead to an informal warning on the one hand; and to prosecution and a possible prison sentence if death occurs on the other.

The Justices' Clerks' Society had "grave reservations" about such an offence. They felt that in the vast majority of cases that come before the Magistrates' Court the defendant motorist is traumatised by the consequences of their actions. The Magistrates' Association also raised this concern.

"Members of the Society are unable to cite any cases where a custodial sentence would have been appropriate for the offence/offender or where the court regretted not having this power."-The Justices' Clerks' Society

Despite their reservations about the principle of this offence, the Justices' Clerks' Society recommended that if it were introduced, it should be made an either-way offence and should carry a maximum penalty of 2 years'. A similar point was made in the response from the Faculty of Advocates who felt that this offence could be appropriate but did not think this should be made indictable only. The Law Society also recommended that this should be an either-way offence if the Government proceeded (which it did not think it should).

The lack of a deterrent effect was mentioned by a number of respondents, including the Lord Chief Justice. Comments on this point were also received from Greenwoods Solicitors who stated:

"The Home Office proposal suggests that by increasing sentence for causing death by careless driving will reduce the number of cases. However, the deterrence of the sentence will largely go unnoticed by the majority of drivers... From my experience the majority of motorists will not in any way associate themselves with the possibility that they might cause a fatal accident until such an accident happens."-Greenwoods Solicitors

This was also supported by the response submitted by Dr Sally Cunningham, Lecturer in Law at the University of Leicester who has conducted research on this subject.

A small number of responses distinguished their lack of support for this offence, as opposed to their support for causing death by dangerous driving, due to the fact that they considered that the standard of driving with regard to dangerous driving must be culpable. For example, the Criminal Bar Association commented:

"There is clearly a distinction to be drawn between causing death by dangerous driving and death caused as a result of careless driving. Dangerous driving by its definition involves a poor standard of driving that is absent when someone drives carelessly. As such, in cases of dangerous driving, death is more foreseeable."-Criminal Bar Association

In addition, the Magistrates Association stated:

“Dangerous Driving does not involve light inadvertence but careless driving may well do. It is accepted that there is logic in differentiating between different levels of bad driving by having two offences. It should be accepted therefore that sentencing outcomes could differ.”-The Magistrates’ Association

This view was shared by a member of the Faculty of Advocates who stated:

“Dangerous driving is altogether different because it is a serious departure from the standard to be expected of prudent drivers. A separate offence for causing death is thereby appropriate”-Name supplied.

The Magistrates’ Association went on to say that the only justification for such an offence would be if it were felt that the duty of care owed to other road users by drivers needed to be increased such that even minor errors are punished robustly. They thought that legislation and case law did not support this premise currently.

Barry Mitchell, Professor of Criminal Law and Criminal Justice at Coventry Business School, raised concerns about this offence but felt that there could be an argument that, where death results, this could be a special case due to the unique type of harm and the disproportionately devastating impact on victims’ families. He felt however, that the same could not be said where death does not occur.

Dr Sally Cunningham recommended abolishing the “causing death” offences completely and relying instead on manslaughter charges.

A response from a member of the Faculty of Advocates stated that he did not think that a custodial penalty should be available for an isolated offence of careless driving but should be if the defendant is a repeat offender.

Availability of non-custodial penalties for careless driving (Consultation point 1.19)

The Justices’ Clerk’s Society, the Magistrates Association and the Law Society commented that the Criminal Justice Act 2003 already provides a power for Magistrates to impose the full range of community sentences for the most severe case of careless driving offence which meet the “serious enough” criteria. The Justices’ Clerks’ Society and the Lord Chief Justice supported the availability of community sentences for careless driving.

The Justices’ Clerks’ Society felt that negative publicity can arise where a fatality has occurred and a fine is imposed but they did not think that the proposals put forward in the consultation would address this situation and felt that “the Government needs to accept the limitations of the law in this area”. They raised the point that this could raise expectations for victims’ families as they felt it was highly unlikely that the maximum penalty would be imposed. The Magistrates’ Association also made this point as did Dr Sally Cunningham who stated that:

“Even the few drivers who are convicted of manslaughter do not normally receive in excess of ten years imprisonment”-Dr Sally Cunningham

The Justices’ Clerks’ Society felt that anything other than momentary lapses of concentration, errors of judgement or minor risk taking should be regarded as dangerous driving.

The Criminal Bar Association, Greenwoods Solicitors, the Faculty of Advocates and JUSTICE agreed that community penalties should be available for careless driving.

Dr Sally Cunningham thought greater use should be made of the National Driver Improvement Scheme.

Ensuring courts take non-fatal injuries into account (Consultation point 1.19)

The Justices' Clerks Society accepted that the consequences of offences should be taken into account when sentencing and said that this was an established principle in statutory graduations of offences and there is case law to this effect. They mentioned that the Sentencing Guidelines for Magistrates include consequences of the offences as an aggravating feature.

However the Society thought that too much emphasis was placed on consequences and stated that the case law still underlines the fact that the primary task of a judge or bench passing sentence is to assess culpability. This point was also made by the Lord Chief Justice who did not think it necessary to compel the courts to take injuries into account.

The Criminal Bar Association also made this point and commented that:

"In recent years the courts have accepted that whilst culpability must remain the predominant factor for sentencing, the consequences of the driving, particularly when it results in death and serious injury, are also relevant to sentence"-Criminal Bar Association

Greenwoods Solicitors also mentioned the fact that the consequences of an accident are relevant to sentence but again said that consequences take second importance to an assessment of the standard of the driving. Likewise the Magistrates' Association commented that any injuries are taken into account in sentencing and there is no need to compel this.

The Law Society were not supportive of this proposal as they thought it would be disproportionate for cases of negligence.

JUSTICE commented that they thought the level of culpability for careless driving is insufficient to allow consequences to be taken into account in all cases. They would not be opposed to this suggestion if the definition of careless was reformed as suggested below (see "Other Comments").

However, the Faculty of Advocates agreed that the law should require courts to take into account the consequences of bad driving.

Allowing an alternative verdict where manslaughter is charged (Consultation point 1.19)

The Justices' Clerks' Society, the Law Society, the Magistrates' Association and the Criminal Bar Association were in favour of this proposal.

Dr Sally Cunningham commented that while it is correct that if manslaughter is charged alone it is an "all or nothing" charge, it is possible for manslaughter to be charged in addition to causing death by dangerous driving or another traffic offence. She mentioned that the only thing preventing this from happening is a practice rule

from a case¹ in which it was said that alternative charges of causing death by reckless driving and manslaughter should not be brought because the mens rea was the same for both offences. This is no longer the case. The Lord Chief Justice made a similar point in that he did not think the proposal was necessary since he felt there is no statutory provision that would prevent the joinder of lesser offences with manslaughter.

A response from a member of the Faculty of Advocates stated that in Scotland culpable homicide and an alternative verdict of causing death by dangerous driving is regularly charged and the respondent saw no reason why an amendment should not be made to allow this to happen where culpable homicide has been charged alone. This point was also made by the Faculty of Advocates' collective response.

However, JUSTICE were not in favour of such a move. They thought the inclusion of causing death by dangerous driving and manslaughter on the same indictment would be confusing for a jury. They recommended that this should be dealt with by a review of involuntary manslaughter. Dr Sally Cunningham also made this point.

Abolition of the offence of "wanton and furious driving" (Consultation point 1.19)

The Lord Chief Justice, the Justices' Clerks' Society, the Law Society, the Magistrates' Association and the Criminal Bar Association were in favour of this proposal. JUSTICE agreed but felt there would be problems extending the road traffic offences to private property. They thought that the definitions of "dangerous" and "careless" should be formulated for cycling and non-motorised vehicles but thought these offences should not be subject to the same sentencing regime (they argued that non-motorised vehicles are not so intrinsically dangerous). They also commented that causing death by dangerous driving should not be extended to non-motorised vehicles as they thought the availability of manslaughter should be enough.

A former prosecutor felt that it would be logical to update this offence but mentioned that it had proved useful in his experience and quoted a prosecution for this offence in relation to a person riding a jet ski in an irresponsible manner. Situations like this would need to be covered in any provision replacing this offence.

Whether a custodial sentence should be available where careless driving causes injury (Consultation point 1.20)

JUSTICE thought the level of culpability currently required for careless driving is insufficient to make this offence imprisonable. They thought this should be dealt with by disqualification. The Lord Chief Justice, the Law Society, Dr Sally Cunningham and the Magistrates' Association were also unsupportive of this suggestion. The Magistrates' Association thought that injury or damage should be taken into account in sentencing.

Professor Mitchell commented that although there could be a case for an offence of causing death by careless driving (although he thought there should not be) due to the special circumstances of this offence, the same could not be said where death does not result (other than some extreme forms of injury such as persistent vegetative states).

¹ Seymour [1983] 2 AC 493

Whether there should be an offence where a disqualified or unlicensed driver is involved in a fatal incident (Consultation point 1.21)

Professor Mitchell disagreed with the consultation paper assertion that disqualified drivers pose additional threats to the safety of other road users where the standard of driving is of the required standard. If this is not the case, Professor Mitchell argues that the driver could be prosecuted with another offence. The Lord Chief Justice also considered that existing law was sufficient to deal with this behaviour. Dr Sally Cunningham also made this point and stated:

“If they are driving appropriately and safely they are not taking any risks - only the risk of getting caught for disqualified driving. If they drive in a dangerous or careless manner when disqualified there is no doubt that they should be prosecuted for the appropriate offence, but there is no need to create a new offence”-Dr Sally Cunningham

The Criminal Bar Association said that they would not support this offence if the intention is to apply the offence irrespective of fault for the collision and also mentioned that the predominant factor in sentencing must be culpability. Where the collision is the fault of a disqualified driver then the Criminal Bar Association stated that the correct charge would be causing death by dangerous driving, or with the new offence of causing death by careless driving if adopted (providing his standard of driving met the “far below” or “below” tests). Disqualification would then be an aggravating factor.

The Council of Circuit Judges were not in favour of this proposal and felt that the proposal ignores the causative link between the fact of being disqualified and/or unlicensed and the collision.

The response from a member of the Faculty of Advocates and the response from JUSTICE also raised the issue of causation:

“Criminal liability for a certain event should not arise, in general, as a matter of chance, except where the accused’s actions create or increases the risk that said event will occur”-JUSTICE

“Criminal responsibility for death must depend on the culpable manner of driving and not the mere culpable fact of driving”-Name supplied.

JUSTICE also thought this offence would breach the principle of correspondence which provides that the mens rea should relate to the proscribed harm

The Council of Circuit Judges had no objection however to the fact of unlawful driving aggravating the sentence where the collision is objectively the responsibility of the disqualified or unlicensed driver.

The Justices’ Clerks’ Society agreed with this point and commented:

“Applying general sentencing principles, culpability will be higher and penalties more severe when the defendant motorist is disqualified, unlicensed or uninsured. Again the primary emphasis should be on the standard of the defendant’s driving rather than the consequences”-Justices’ Clerks’ Society.

The response from the Faculty of Advocates also opposed the creation of this offence.

They did however think that consideration should be given to increased sentencing powers for defendants who persistently drive while disqualified as at present the statutory limit is 6 months regardless of the number of previous offences or the consequences. This point was also raised by the Law Society who stated:

“The maximum penalty for driving whilst disqualified is six months imprisonment. This is an offence which is repeated time and time again, so this penalty may not be adequate. It is suggested it would be more appropriate to increase the maximum sentence for this offence and make it triable either way. The fact that death or injury resulted from a collision could then be taken into account in sentencing for the driving disqualified offence.” – The Law Society

The Magistrates’ Association and a member of the Faculty of Advocates also raised this point and stated that penalties needed to be more severe:

“Many magistrates feel that their powers are inadequate when dealing with defendants who repeatedly drive whilst disqualified. They would welcome increased sentencing powers for persistent offenders.”-The Magistrates’ Association

They went on to say that unlicensed driving should not have a new maximum in these circumstances.

A former prosecutor stated that uninsured driving should also be included in this offence. The response from a member of the Faculty of Advocates as well as the collective response from the Faculty of Advocates mentioned the fact that those who are driving while unlicensed or disqualified will also be driving without insurance.

Restorative justice (Consultation point 1.22)

The Council of Circuit Judges felt there was scope for the application of restorative justice to suitable cases of bad driving as part of a series of interventions to prevent repeat offending. They suggested mandatory safe driving courses and opportunities to see the consequences of bad driving (e.g. work in an Accident & Emergency Department).

The Justices’ Clerks’ Society, the Magistrates’ Association, the Law Society and the Criminal Bar Association also thought that restorative justice should be considered in appropriate cases.

JUSTICE supported this proposal subject to the agreement of defendants and victims (or their families).

Other comments

The Council of Circuit Judges thought the proposals would lead to a significant increase in prison population and thought this may impact heavily on elderly people who they suggested might be more likely to commit the offences proposed.

The Justices’ Clerks’ Society thought this would lead to unnecessary committals to the Crown Court and emphasised that this would impact on the legal aid budget as defendants appearing before a Magistrates’ Court would be represented at their own expense.

JUSTICE had serious concerns about the proposals contained in the paper and commented:

“Many of them [the proposals] involve the creation of highly constructive crimes. Many do not even require that the defendant’s act or omission should be the legal cause of the death or injury. The lack of causation requirement is, we believe, contrary to the most basic principles of criminal justice”.-JUSTICE

JUSTICE also commented that they would like to see the definition of dangerous driving and careless driving amended so that it would need to be obvious to a competent and careful driver that driving in that way would present a substantial risk. They also thought this should take account of the defendant’s age and mental capacity in determining whether a defendant would have realised that driving in that way would be dangerous or careless. Failing that, they suggested that the CPS should issue guidance to the effect that prosecution in circumstances where this was not the case, would not be in the public interest. They also thought there was scope for further guidance to jurors/benches on what could constitute the standards of a competent and careful driver.

JUSTICE also recommended the abolition of the offence of aggravated vehicle taking.

The Criminal Bar Association felt that there is no reason to think that pleas to a lesser charge (or causing death by careless driving) would be accepted where they should not be, if this offence were available, provided guidelines about accepting pleas to offences were followed. They also thought that the Courts would be able to deal expeditiously with argument about the scale and extent of injuries but thought this might result in delays in sentencing hearings due to the need to obtain medical evidence.

Greenwoods Solicitors also raised this point and felt that the prosecution rarely charge-bargain if they have the evidence to support the more serious charge of causing death by dangerous driving. They felt that there is not a large gap between the two general offences and stated that “the slightest of evidence” that the accused had taken a risk would result in the more serious charge of causing death by dangerous driving. They thought the introduction of custodial penalties would have serious consequences for the prison population and lead to an increase in not guilty pleas; thereby increasing the workload for the courts and CPS, increasing the burden on the legal aid system and delay. Dr Sally Cunningham also made this point.

Dr Sally Cunningham’s research also indicated that there is no evidence to support the assertion that dangerous driving is frequently undercharged or prosecutors engage in plea-bargaining.

Dr Sally Cunningham also mentioned the fact that the Criminal Justice Act 1991 requires courts to take account of the defendant’s financial circumstances before fixing a fine. Therefore, for cases of careless driving, fines will depend on the defendant’s financial circumstances as much as his culpability. Discounts can also be given for timely guilty pleas.

She also suggested that it should be considered whether deliberate risk-taking should be dealt with separately from inadvertent risk-taking.

Police

Responses were received from the following: the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO), South Yorkshire Police, the Association of Scottish Police Superintendents, Police Federation of England and Wales (E&W), the Scottish Police Federation, the Association of Chief Police Officers in Scotland, Superintendents' Association of Northern Ireland, Cheshire Constabulary, Cambridgeshire Constabulary and Surrey Police.

Definition of careless driving in statute

ACPO and the Scottish Police Federation felt that careless driving should be defined in statute.

A new offence of causing death by careless driving

Responses to this proposal were mixed.

ACPO supported the introduction of such an offence and thought it should not be limited to death; it should also cover serious injury. They felt this should be triable on indictment only and agreed that 5 years would be a suitable penalty. They also recommended that causing death by dangerous driving be extended to incorporate serious injury.

The Police Federation (E&W) stated that in any road traffic collision there will be elements of carelessness or blame but emphasised that the degree of blame or carelessness varies widely from relatively minor to very serious lapses. They also stated that the impact in terms of injury on the victim varies depending on factors such as age and general health. They felt that the fact that a person has died should not be the driving force of any prosecution and that the law should punish the act rather than focus on the consequences of that act. This point was also raised by South Yorkshire Police who felt that it was important to ensure that the standard of driving was assessed, rather than the consequences of the driving.

They concluded that an offence of causing death by careless driving should only be introduced if there is a clear and properly structured definition or guidance as to the level of culpability to be attached to elements of carelessness. They also highlighted concerns that the introduction of such an offence may lead to prosecutors charging this offence as opposed to causing death by dangerous driving where causing death by dangerous driving may be more appropriate. A similar point was raised by the Cheshire Constabulary who felt that:

“There is a real danger that introducing this new offence would attract more plea-bargaining and an overall dumping down of the offences charged and therefore the sentences available, despite having evidence to support a higher charge of Section 1²”-Cheshire Constabulary

The Police Federation (E&W) also felt that the offence of causing death by careless driving should be available to a jury as an alternative to causing death by dangerous driving where that offence has not been proven.

The Scottish Police Federation shared these concerns and felt that imprisonment was not proportionate to carelessness. They compared this to the penalties available

² Causing death by dangerous driving

for speeding offences, which could at worst result in disqualification but where the degree of culpability is greater. They recommended that greater use be made of disqualification to improve driving standards.

The Police Federation (E&W) also proposed a new offence of “motor maiming” that would cover the situation whereby a person intentionally or wilfully uses a vehicle to maim, harm or cause alarm. They proposed a maximum penalty of 5 years’ imprisonment. They argued that this is needed because they do not think the current law is sufficient to deal with those who use a vehicle as a weapon. They accepted that where death or serious injury occurs the law is sufficient but argued that where the injury caused is less serious, or where alarm or distress is caused, the law, and penalties available are inappropriate. They stated that in 2004 the Police Federation recorded around 300 cases where police officers had been injured in motor maiming related incidents.

The Association for Chief Police Officers in Scotland stated that in general they did not see the need for any additional specific offences to deal with bad driving but said there was some support amongst their membership for a death by careless driving offence. They also stated that both custodial and non-custodial penalties should be available for careless driving (see below).

The Association of Scottish Police Superintendents favoured the introduction of such a new offence of causing death by careless driving. The Cambridgeshire Constabulary agreed and felt that a maximum penalty of 5 years was appropriate.

The Cheshire Constabulary felt that very few incidents involving careless driving would warrant or require a custodial sentence and mentioned that typical sentences for the more serious offence of causing death by careless driving are between 1 to 3 years imprisonment.

Availability of non-custodial penalties for careless driving

ACPO and the Association of Chief Police Officers in Scotland agreed that both custodial and non-custodial penalties should be available for careless driving. The Association of Scottish Police Superintendents agreed and stated that:

“By creating a new offence of causing death by careless driving many people will consider that a gaping and unjust loop hole has been closed”. –Association of Scottish Police Superintendents

The Cheshire Constabulary added that in the vast majority of cases, a financial penalty and disqualification will be the most appropriate sentence. They agreed that sentencing options should be expanded and said that this is an area of concern.

Ensuring courts take non-fatal injuries into account

ACPO thought serious injury should be included within the scope of a new causing death by careless driving offence. The Police Federation (E&W) agreed that courts should take injuries into account. The Cheshire Constabulary supported this proposal and felt that the ability for courts to consider the consequences of an action would go a long way towards appeasing bereaved families and reflecting societal views. They stated that:

"We consider that a driver should be held to account for the consequences of his/her actions rather than just reflecting upon the individual's actions"-Cheshire Constabulary

They went on to say that impact assessments are common place in most cases of this nature and would facilitate the court assessment of how to reflect consequences in sentencing.

Allowing an alternative verdict where manslaughter is charged

There was strong support for this proposal. ACPO, the Police Federation (E&W), the Scottish Police Federation, the Association of Chief Police Officers in Scotland and the Association of Scottish Police Superintendents were supportive of the proposal to allow an alternative verdict where the offence of manslaughter by bad driving (or culpable homicide in Scotland) is not proven in court. However the Police Federation (E&W) pointed out that they would expect prosecutions for manslaughter to remain very rare especially since the penalty for causing death by dangerous driving has increased.

The Association of Scottish Police Superintendents and one member of the Association of Chief Police Officers in Scotland also commented that where a motorist is charged with the common law crime of culpable and reckless conduct in connection with bad driving, there should be provision for alternative road traffic charges to be available.

The Cambridgeshire Constabulary agreed that this should be available as an alternative verdict where manslaughter has not been proven.

Abolition of the offence of wanton and furious driving

South Yorkshire Police thought that this offence is useful when dealing with driving that takes place other than on a road. They thought care should be taken when considering replacing this offence.

ACPO thought this should be replaced by a modern provision that would cover non-motorised vehicles.

Whether a custodial sentence should be available where careless driving causes injury

ACPO supported this proposal and thought the maximum penalty should be 5 years' imprisonment. They thought such a sentence might only be appropriate for those who had previous motoring convictions.

The Police Federation (E&W) did not support the view that a custodial sentence should be available where injury is caused by careless driving. They stated if this was pursued then there would need to be a very high degree of carelessness applied to the incident factors that a court must consider and this would need to be carefully set out in guidance. They felt that this may lead to road traffic incidents becoming more technical and bureaucratic to deal with.

The Association of Scottish Police Superintendents' view was that all sentencing options (including custody) should be available for careless driving, regardless of the question of injury.

The Cheshire Constabulary felt strongly that this proposal would be inappropriate for the vast majority of cases and emphasised the fact that custodial sentences should only be used to protect the public from a persistent danger.

The Cambridgeshire Constabulary felt that this would only be achievable by giving the courts the ability to assess all available evidence, to compare the standard of driving with that of a normal person and to assess the substandard driving against a table of injury. They suggested something similar to the charging standards available in relation to common assault, ABH and GBH.

Whether there should be an offence where a disqualified or unlicensed driver is involved in a fatal incident

There was strong support for this proposal from all those who responded from police organisations. The Police Federation (E&W), Scottish Police Federation, Association of Chief Police Officers in Scotland, Association of Scottish Police Superintendents, Cheshire Constabulary and Cambridgeshire Constabulary support the creation of a new offence to deal with those who kill by driving whilst disqualified or without appropriate documentation (licence/insurance) but the Police Federation (E & W) stated this should require knowledge or intention on the part of the defendant.

ACPO thought there should be a new offence of causing death or serious injury whilst driving unlicensed or disqualified with a maximum penalty of 5 years' imprisonment. They also thought that uninsured driving should be included in this offence, and mentioned other offences that could be included such as driving an unregistered or untaxed vehicle or one in a dangerous condition to offences related to drivers hours which they thought was comparable due to the fact this is a "deliberately reckless act."

"ACPO support the Government's view that it is both reasonable and legitimate to penalise a disqualified driver not only for the act of driving whilst disqualified but also the consequences that result from such action. Offenders put others at risk and deserve additional sanctions when such risks materialise."-ACPO

The Cheshire Constabulary felt that the use of custodial sentences in such cases is justified to protect the public from a proven and continuing danger. They also mentioned that they would oppose the introduction of tough non-custodial sentences in such cases as such individuals would have had a number of chances to change their behaviour.

The Cambridgeshire Constabulary felt that there should be higher sentences for these offences than those proposed in the consultation and stated that offences of this nature are often committed by "prolific motor vehicle thieves". South Yorkshire Police also suggested that penalties for these offences should be increased.

"All persons getting into a car knowing they are breaking the law before they turn on the ignition, should be dealt with in a manner that is robust and provides a visible deterrent to all other would be uninsured/disqualified drivers." -Cambridgeshire Constabulary

Restorative justice

The Police Federation (E&W), the Association of Chief Police Officers in Scotland, the Cambridgeshire Constabulary and the Association of Scottish Police Superintendents supported the application of restorative justice in bad driving cases but some

emphasised this would be dependent upon the wishes of the victim or their family. The Scottish Police Federation agreed in principle with this suggestion. ACPO agreed but emphasised that this should only be done as part of court disposal; it should not be an alternative to court.

Other comments

ACPO thought the maximum penalty for dangerous driving, careless driving and aggravated vehicle taking should be increased. They thought the impact of these proposals would be an increased workload for the Crown Court, more custodial sentences and more disqualifications from driving. ACPO would also like to see the introduction of a requirement to carry a driving licence at all times and changes to the Fixed Penalty Notice system whereby a recipient can opt for a court hearing.

The Police Federation (E&W) also commented that the offence of failure to stop for a police officer should have a higher maximum penalty and the police should be able to arrest for such an offence.

The Cambridgeshire Constabulary put forward views on how to tackle uninsured driving including heavy fines for first time offenders where no accident or injury has occurred, imprisonment as an option for repeat offenders and confiscation of vehicles.

The Superintendents' Association of Northern Ireland welcomed the proposals in the consultation and supported similar changes in Northern Ireland.

The Crown Prosecution Service

General Points

The CPS stated that “the current framework of general offences creates a serious disparity in sentencing powers, which is particularly acute in cases involving a fatality”.

The CPS were supportive of the proposition contained in the paper to retain a mix of general and specific offences to deal with bad driving. They felt that to rely exclusively on specific offences would lead to excessively complex prosecutions and to rely exclusively on general offences would be impractical.

They also agreed with the proposal that bad driving should continue to be defined in terms of an objective test, regardless of mens rea and stated that there was no viable alternative to this proposition. They mentioned that “reckless driving” was abandoned due to the difficulty in proving the mens rea and thought any return to this would result in complex trials.

The CPS considered the following options:

- the creation of a single offence of bad driving
- the creation of a third intermediate offence between careless driving and dangerous driving
- the creation of an offence of aggravated careless driving
- raising the threshold for careless driving and making the offence triable either way. They discounted this due to the potential increased workload for the Crown Court.

They concluded that the best option is that set out in the consultation, namely to maintain two general offences, define them properly and ensure the penalties attached to them are adequate. They also agreed with the need to maintain the existing definitions of driving “below” and “far below” the standard of a competent and careful driver. They acknowledged that the distinction can be extremely fine but felt that changing the terminology would not alter the need for the distinction nor ease its making. They also pointed out that a body of authority has built up that assists in making the decision and that changing the terminology would risk causing further confusion.

Definition of careless driving in statute

The CPS supported the statutory definition of driving without due care and attention as that which is “below the standard of a careful and competent driver”. They advised that the definition should not go further than this. However they thought that “driving without reasonable consideration” does require further definition as there is a requirement that another user of the road has been inconvenienced. They suggested the addition of the words “as a result of which another person using the road or place is inconvenienced” to the statutory definition.

A new offence of causing death by careless driving

“It can be difficult in the extreme to identify the fine dividing line between careless and dangerous driving. There will always be cases that fall just either side of that fine

line. The disparity in current sentencing provision only serves to exacerbate that fact"- The Crown Prosecution Service.

The CPS highlighted the fact that relatives of persons killed in road traffic incidents often perceive proceedings against the driver for careless driving as insulting. They felt that the introduction of a new offence of causing death by careless driving would go some way to address this issue. However they also pointed out that since careless driving is an offence of "mere negligence", this would mean that almost uniquely in English law, a person would be liable for imprisonment for mere negligence³. They felt that *"such a penalty for carelessness behind the wheel would compare starkly with the solely civil remedies that are available for carelessness in other, equally risky situations"*.

However they went on to say that the number of fatalities in road traffic collisions and the circumstances of these cases are such that the public has a legitimate concern and they believe that this should be reflected in legislation. As such, they concluded that such an offence should be created.

"The new offence will be valuable in bridging the existing gap between causing death by dangerous driving and careless driving. In the most difficult cases, that fall very close to the line dividing those two offences, it will enable prosecutors to place both offences on the indictment, thus allowing the jury to make their assessment of the facts".

They also gave some consideration as to whether such an offence should be triable "either way" and concluded *"that where a death is an essential element of an offence, even if the conduct is not severely culpable, the Crown Court should determine sentence"*.

The CPS emphasised the need for clear guidance from the Sentencing Guidelines Council and the Court of Appeal. They also stated that they would expect only a small number of custodial sentences for careless drivers and expect that in a large proportion of cases, offenders will continue to receive financial and other non-custodial penalties. They pointed out the fact that the Sentencing Guidelines Council has set out the principle that the culpability of the offender in any case is the initial factor in determining seriousness of an offence. They also quoted the Chairman of the Panel and the Lord Chief Justice who have both set out that the outcome of the offence will be relevant to sentence but that the first consideration will always be the culpability of the offender. They suggested that a custodial penalty would only be used in the most serious cases, where culpability is close to the top of the scale, and therefore would not wish public expectation to be raised by the introduction of this offence.

The CPS also advised that consideration should be given as to whether mandatory disqualification from driving should arise from such a conviction, as it does with other driving offences of which death is an essential element.

They also suggested consideration should be given as to whether to include any or all the proposed new offences within Section 224(1) and Schedule 15 to the Criminal Justice Act 2003 as "specified offences" (in common with the other driving offences of which death is an essential element) for the "dangerous offender" provisions in that Act.

³ The other provisions of this sort are contained in Sections 330 and 331 Proceeds of Crime Act 2002.

Availability of non-custodial penalties for careless driving

The CPS agreed that all non-custodial penalties should be available to deal with the most serious forms of careless driving and persistent offenders.

Ensuring courts take non-fatal injuries into account

The CPS mentioned that the law already allows the courts to take the outcome of an offence into account in cases of causing death by dangerous driving and careless driving while under the influence of drink or drugs. Similarly Magistrates' Courts are able to consider that a fatality has resulted from careless driving albeit their sentencing options are limited. Therefore, they stated that there can be no logical difficulty in extending this principle to include injuries in simple careless driving cases. However they suggested that only serious injury, defined as with grievous bodily harm (GBH), as "really serious harm", be taken into account and questioned whether it is necessary to require the courts to take account of such consequences.

They warned that this could result in longer and more complex court proceedings where the level of injury is disputed or where more than one driver is responsible.

Allowing an alternative verdict where manslaughter is charged

The CPS supported this proposal.

Abolition of the offence of wanton and furious driving

The CPS supported the repeal of this offence provided that the situations where it is currently used would be covered in modern provisions. The offence is currently useful where the driving does not take place on a road or public place and where no "Notice of Intended Prosecution" has been served. They welcomed the proposal to extend to private property, the offences in the Road Traffic Acts.

Whether a custodial sentence should be available where careless driving causes injury

The CPS supported an increase in penalty for careless driving up to a term of 51 weeks in cases where serious injury has been caused. They thought that there should not be a disparity in sentencing powers compared with dangerous driving as any injury could well be the same whether the offence is one of dangerous or careless driving. They thought that this could close the gap between a maximum sentence of 5 years' imprisonment for dangerous driving (once this change has been implemented) and a non-custodial penalty or fine for careless driving.

Whether there should be an offence where a disqualified or unlicensed driver is involved in a fatal incident

The CPS were supportive of this offence and stated that:

"A person who chooses to drive illegally...is taking a conscious risk. The public views drivers in these circumstances as amongst the most culpable because they should not have been on the road"-Crown Prosecution Service.

They felt that care would need to be taken when drafting the offence to ensure that those people whose vehicles were not actually involved in the collision, but who caused it, would not escape prosecution. They also felt the law on proving

disqualification should be revisited and suggested considering requiring the presence of the defendant in all cases where disqualification is imposed.

They also felt that this offence should cover all drivers who fail to comply with the conditions of a provisional driving licence.

Restorative justice

The CPS thought this might be useful in some cases but thought that where death or serious injury had been caused, this is unlikely to be appropriate.

Other comments

The CPS could not provide an estimate of numbers of likely cases arising from the creation of a new offence of causing death by careless driving as official statistics are not available for the number of offences of careless driving where death has been a consequence.

They had reservations about reducing the availability of custodial penalties for driving whilst disqualified.

The Ministry of Defence

A response to a limited number of consultation points was received from the Ministry of Defence (MOD) and is summarised below.

The MOD are currently reviewing service law in relation to the powers of service courts in the UK and overseas to deal with road traffic offences on public and private roads.

The MOD did not comment on proposals generally but supported measures to improve road safety and commented that if a new offence of causing death by careless driving were to be introduced, that driving whilst disqualified or unlicensed, and when uninsured, should have at least the same penalty.

Road Safety Organisations

Replies were received from the AA Motoring Trust, Brake, Camden Cycling Campaign, CTC (the national cyclists' organisation), CTC Right to Ride (Scotland), RoadSafe, RoadPeace, the London Cycling Campaign, the Institute of Advanced Motorists, Learn and Live, the Parliamentary Advisory Council for Transport Safety (PACTS), RAC plc, RAC Foundation for Motoring Ltd, the Royal Society for the Prevention of Accidents (RoSPA), the Scottish Accident Prevention Council (SAPC), Scotland's Campaign Against Irresponsible Drivers (SCID) and Sustrans.

Definition of careless driving in statute

Brake felt that it is essential for the offence of "careless driving" to be appropriately defined in statute. However they had concerns about the definition of careless driving and thought it would be more appropriate to have a charge of "bad driving" defined as any standard of driving that fails to meet the legal requirements applicable to a holder of a driving license, including compliance with the Highway Code.

Learn and Live agreed that the term "careless driving" should be defined in statute but also had concerns about use of the word "careless", which they thought was subjective and "widely disputed". They felt the term "careless" gives the wrong impression; implying that "this could happen to anyone and is just bad luck".

RoadPeace felt that the concept of careless driving, and particularly the treatment in law of careless driving, trivialise death and serious injuries on the road. They felt that the penalties for these offences, and the labels, are objectionable.

CTC favoured a single bad driving offence defined as "driving which shows disregard for the safety of other road users". They felt that if two offences were retained, the second should be defined as "driving which shows serious disregard for the safety of other road users."

The Camden Cycling Campaign felt bad or negligent driving should be defined by the standards of the driving test, and that the RTA 1988 should be amended to give the Highway Code statutory footing

SCID, RoSPA, SAPC, IAM, RAC plc and the AA Motoring Trust all agreed with this proposal. The London Cycling Campaign did not.

A new offence of causing death by careless driving

Brake thought the new offence of causing death by careless driving will not be successful because it would retain the premise of "carelessness". They thought a better solution would be to have a charge of "aggravated bad driving" where death or grievous bodily harm are classed as aggravating features, and where the terms "aggravated" and "bad" are objectively provable.

PACTS supported a new offence of causing death by careless driving but welcomed further consideration of operational issues.

SAPC and RoSPA strongly supported the creation of a new offence of causing death by careless driving. They thought that the culpability of the driver and the nature of their driving (i.e. the extent of their carelessness) should be the prime consideration when charging and sentencing.

The AA agreed with the new offence of causing death by careless driving but wanted to ensure that courts would take into account the circumstances (e.g. vulnerability of the victim due to age and safety level of the car) when sentencing.

RoadPeace welcomed the proposal to make this offence indictable only and therefore heard in a Crown Court. RoadPeace felt however that because the charge of causing death by dangerous driving will be seen as much more serious than the charge of causing death by careless driving there will be a downgrading to the lesser charge. They stated that the fact that death has resulted must be seen as the central issue; not the level of driving. They felt that the proper charge following culpable road death is a manslaughter charge.

London Cycling Campaign were not in favour of this proposal and suggested as an alternative their own proposal of causing death by negligent driving. Similarly, Camden Cycling Campaign did not like the term “careless” and preferred a charge of “causing death by bad or negligent driving”.

CTC were in favour of a single offence but argued that if the distinction of two levels of bad driving was to be retained, they would be supportive of a new offence of causing death by careless driving.

CTC Right to Ride (Scotland) supported a charge of causing death by bad driving.

RAC plc supported this proposal and believed that where a period of disqualification is incurred, the offender should be subject to automatic re-training and re-testing upon release.

SCID supported this proposal and felt that it should be amended to include serious injury.

Sustrans supported this proposal but also asked that consideration be given to other charges for death and injury to give judges a sufficient range of sentencing options according to the drivers level of culpability

Camden Cycling Campaign, IAM, Learn and Live, and the RAC Foundation for Motoring Ltd, all supported the creation of this offence.

Availability of non-custodial penalties for careless driving

Brake supported the use of non-custodial penalties for careless driving but did not think they were appropriate for frequent and persistent offenders. Brake also felt the availability of non-custodial penalties should not prevent the courts from imposing tougher penalties where someone has been killed or injured as a result of a driver's actions.

PACTS agreed with the proposal and supported the use of speed awareness and driver improvement courses to reduce re-offending. However they noted that the Probation Service may need extra resources to manage traffic offenders given a non-custodial sentence.

SCID also agreed and suggested options for non-custodial penalties might include a mandatory period of disqualification from driving and a compulsory order to re-sit the driving test. SAPC and RoSPA also raised this point and mentioned that they would like to see greater use of re-training and re-testing options in sentences.

RAC plc thought that for non-custodial sentences to be truly effective they must focus on improving driver behaviour and attitudes and did not think this would be appropriate where the offender had already had training in the previous 12 months.

RoadPeace felt that the use of non-custodial penalties would not adequately deal with most serious forms of careless driving, including serious injury. They felt the system used by Magistrates to calculate fines resulted in fines that were too low. They also felt that few Magistrates used their powers to issue driving bans.

IAM, RAC Foundation for Motoring Ltd, Learn and Live, London Cycling Campaign, CTC, and the AA Motoring Trust were all in favour of this proposal

Ensuring courts take non-fatal injuries into account

Brake felt that courts should take account of non-fatal injuries when sentencing and put forward their suggestion for a new offence of aggravated bad driving as a solution.

The AA Motoring Trust agreed but again stressed that circumstances (e.g. vulnerability of the victim due to age/safety level of car/ vulnerability of victims) should be taken into account.

RoadPeace felt that there should be a separate offence to cover injury on the roads. They would like to see injury on the road brought within the law applicable to other types of injury, and therefore suggested that common law charges are applied for injuries caused by culpable driving, such as causing ABH or GBH.

London Cycling Campaign felt injury should not be an aggravating factor but should be charged as a specific offence. Likewise, CTC Right to Ride (Scotland) supported an offence of “causing injury by bad driving” The Camden Cycling Campaign also raised this point. They felt that this proposal was not adequate and serious injury should be taken into account with a special charge.

CTC were supportive of this offence but believed that sentencing should relate much more closely to the potential (rather than the actual) outcomes of bad driving acts.

Learn and Live, SCID, SAPC, RoSPA, IAM, RAC plc, and Sustrans all agreed with this proposal.

Allowing an alternative verdict where manslaughter is charged

Brake felt that alternative verdicts should be available if the offence of manslaughter is not proven. They also proposed a new charge of ‘motor manslaughter’ for a driver who has killed or seriously injured having taken a risk where it was obvious that death or serious bodily injury was the likely outcome.

IAM, RoSPA, SAPC, RAC Foundation for Motoring Ltd, RAC plc, Camden Cycling Campaign, London Cycling Campaign, RoadPeace, Sustrans, CTC, and the AA Motoring Trust all agreed provision should be made to allow an alternative verdict if the principal offence of manslaughter is not proven.

Abolition of the offence of “wanton and furious” driving

Brake suggested the use of motor manslaughter and aggravated bad driving are both suitable charges that would encompass behaviour falling within the current “wanton and furious driving” charge.

IAM, Learn and Live, Camden Cycling Campaign, SAPC, RoSPA, RAC plc, and the AA Motoring Trust all supported this proposal. The RAC Foundation for Motoring Ltd also agreed and thought the scope of “dangerous driving” should be extended to cover all types of vehicle and to apply to private, as well as public, property.

CTC were in favour of abolishing the offence of wanton and furious driving but wanted any new provision to include the offence of ‘wilful misuse of a vehicle to cause injury’ (including psychological injury).

RoadPeace supported this proposal but thought that a new charge should cover off-road driving and driving experimental and home made vehicles.

Whether a custodial sentence should be available where careless driving causes injury

Brake thought it is crucial that a custodial sentence should be available where careless driving causes injury and suggested a solution is their proposed offence of “aggravated bad driving”.

SCID, RoadPeace, RAC plc, Learn and Live, CTC, RoSPA and Sustrans agreed with the proposal. The AA Motoring Trust also supported a custodial penalty provided circumstances are taken into account (e.g. vulnerability of the victim due to age and safety level of car) when sentencing.

SAPC supported this proposal, especially where there is evidence of persistent careless driving by the driver and evidence of repeat offending.

FACTS thought the use of custodial sentences should be available, and that non-custodial community penalties may be more productive in reducing re-offending than a short term prison sentence for cases tried summarily.

Camden Cycling Campaign felt that this proposal was not adequate and serious injury should be taken into account with a special charge.

Whether there should be an offence where a disqualified or unlicensed driver is involved in a fatal incident

Brake thought that it is vital to tackle the problem of illegal drivers who cause death and proposed that an offence of ‘aggravated bad driving’ should cover this.

Learn and Live stated that all drivers driving whilst disqualified or unlicensed should be automatically charged with dangerous driving.

RoSPA supported this proposal but felt it needed clarification in order to ensure it would only catch those who had caused the accident, rather than any vehicle that was merely involved.

RoadPeace also made this point. They thought that there would have to be a causal link between the death or injury and the uninsured etc driver. They would object on grounds of justice to making an offence more serious if the offender was not responsible for the death. Roadpeace felt there should be some thought given to

dealing adequately with persistent offenders who continue to drive whilst banned, uninsured, or unqualified. They suggested the forfeiture of vehicles and technology to identify these offenders.

The London Cycling Campaign felt that driving whilst unlicensed or without insurance should be relevant only as an aggravated factor for sentencing.

CTC supported an offence of causing death by driving whilst disqualified or unlicensed with a maximum penalty of 5 years imprisonment. They also felt the maximum sentence for any bad driving offence committed whilst disqualified or unlicensed should attract higher sentences.

RAC plc supported this proposal and believed that where a period of disqualification is incurred, the offender should be subject to automatic re-training and re-testing upon release.

SCID, SAPC, RAC Foundation for Motoring Ltd, the AA Motoring Trust, Camden Cycling Campaign PACTS, and Sustrans all supported this proposal.

Restorative justice

Brake welcomed the use of restorative justice, but on the condition that it is only used for first time offenders, where the victim consents and with the option of reconsidering the sentence if the victim felt this process had not been helpful. They felt that restorative justice should not replace an appropriate jail sentence but, with the victim's consent, could be a factor for reducing the length of time served.

RoSPA and SAPC supported this proposal and felt that it could form an effective part of sentences.

The AA Motoring Trust agreed with this proposal but suggested that it might not be appropriate in cases of careless drivers who cause death or serious injury and are seriously affected by the consequences of their actions.

RoadPeace felt that the decision to use restorative justice must be left to victims but the process should be treated with caution and should only be applied in addition to other charges.

Learn and Live supported this proposal provided that victims' views were paramount. Sustrans, the London Cycling Campaign, RoadSafe, and CTC, all agreed with this proposal.

Other Comments

London Cycling Campaign felt the current charge of careless driving should be changed to a new offence of "driving without reasonable consideration for other road users", and that the charge of dangerous driving should be replaced with a charge of "endangering road users". They also suggested two new charges of "causing injury by negligent driving", and "causing death by negligent driving"

London Cycling Campaign felt there should be greater intervention for persistent bad driving offenders, as a repeat offence may prove fatal.

RoadSafe thought that penalties must be seen as an opportunity for education, and even in the most serious cases where prison sentences are appropriate, to provide corrective education.

CTC Right to Ride Scotland felt the difference between “careless” and “dangerous” seemed to be based more on the kind of penalty available. They felt that there should be two charges of “causing death by bad driving” and “causing injury by bad driving.”

The London Cycling Campaign suggested a tailor made anti-social behaviour order (ASBO) to restrict an offender driving at the weekend while still allowing them to drive to work or to take children to school.

RoadPeace also questioned why the consultation paper did not contain any proposals to deal with hit and run offences. They felt the penalties for hit and run should be reviewed, and that the proper charge for such an offence should be manslaughter. RoSPA were also concerned that the review did not include a proposal to review the penalties for failing to stop after an accident had resulted in death or serious injury

RAC plc reiterated their call for more traffic police. They also felt that any changes in penalty for road traffic offences as a result of this review should be widely publicised to act as an effective deterrent to bad driving.

Other stakeholders with an interest in road safety issues

Replies were received from the British Vehicle Rental and Leasing Association, the Road Haulage Association, Industrial Health Control Ltd and the Institution of Occupational Safety and Health.

Definition of careless driving in statute

The Road Haulage Association supported the proposal of defining careless driving in statute, on the condition that the definition of competent and careless should be specific and unambiguous.

The Institution of Occupational Safety and Health believed that it would be beneficial to have the two levels of bad driving defined in statute. They felt however that careless could be thought to imply “unintentional” and dangerous “intentional” so were in favour of replacing the two terms with “negligent” and “grossly negligent driving.”

A new offence of causing death by careless driving

Industrial Health Control Ltd did not support this new offence. They felt the gravity of the offence relates to the quality of the driving, not the consequences. They also felt the new offence will not have a deterrent effect because people generally do not think they will drive badly and kill someone.

The Institution of Occupational Safety and Health supported this proposal.

Availability of non-custodial penalties for careless driving

Industrial Health Control Ltd and the Institution of Occupational Safety and Health supported the use of non-custodial penalties.

Ensuring courts take non-fatal injuries into account

Industrial Health Control Ltd did not feel that careless driving, as opposed to dangerous driving, warranted a custodial sentence whatever the injuries or death caused.

The Road Haulage Association and the Institution of Occupational Safety and Health both supported this proposal.

Allowing an alternative verdict where manslaughter is charged

The Institution of Occupational Safety and Health supported this proposal.

Abolition of the offence of wanton and furious driving

No comments were received on this point.

Whether a custodial sentence should be available where careless driving causes injury

Industrial Health Control Ltd did not feel that careless driving, as opposed to dangerous driving, warranted a custodial sentence whatever the injuries or death caused.

The Institution of Occupational Safety and Health supported this proposal but thought that the courts would need guidance to enable a consistent sentencing approach.

Whether there should be an offence where a disqualified or unlicensed driver is involved in a fatal incident

Industrial Health Control Ltd felt driving whilst disqualified or unlicensed is normally premeditated and should be treated more seriously. They also thought uninsured driving should be treated in the same way. However they felt that this should be independent of the consequences of any particular case.

The Road Haulage Association felt that increased levels of enforcement are necessary to ensure that disqualified/unlicensed drivers are deterred from driving, but would support tougher penalties.

The British Vehicle Rental and Leasing Association and the Institution of Occupational Safety and Health both supported this proposal.

Restorative justice

The Road Haulage Association felt it was not appropriate to impose restorative justice as part of a sentence relating to a road traffic offence.

The Institution of Occupational Safety and Health supported this proposal and also suggested offenders could be required to do compulsory “road safety awareness” and “safe driver” training in addition to their sentence, where appropriate.

Other comments

Industrial Health Control Ltd felt that if the government was serious about saving lives on the roads, it should look for strategies for improving driving behaviour.

Insurers

Replies were received from the Association of British Insurers (ABI), Norwich Union, and esure. The responses were limited to only some of the questions posed by the consultation paper.

Whether there should be an offence of causing death by driving whilst disqualified or unlicensed

Norwich Union and the Association of British Insurers both supported this proposal although the ABI wanted more information about the likely consequences of taking into account any injuries resulting from the offence of driving whilst disqualified or unlicensed.

Norwich Union also thought that the degree of bad driving, and the vulnerability of the injured persons needed to be taken into consideration together with safety features of the vehicle(s) involved and contributory negligence.

Norwich Union felt it would be inappropriate to include uninsured drivers within the scope of this offence.

The Association of British Insurers supported the proposal to include uninsured drivers and stated their own research indicates that uninsured drivers represent a significantly greater threat to public safety on the roads.

esure supported the proposed changes and also thought that uninsured driving should be covered by this offence. They argued that those who drive deliberately without insurance are also more likely to drive dangerously and commit road traffic offences (they cited research in the Greenway Review of Uninsured Driving 2004)

esure felt that the current financial penalties for driving uninsured are usually less than the cost of buying the policy in the first place and therefore represent little financial deterrence among those committing this offence. They supported impounding or destroying the cars of persistent offenders, which they felt would be a greater deterrent, since the cost of purchasing another vehicle was likely to be prohibitive.

County Councils and the Association of London Government

Replies were received from the Association of London Government (ALG), East Sussex County Council, Buckinghamshire County Council, Surrey County Council, and the road safety team manager at West Sussex County Council.

Definition of careless driving in statute

The Association of London Government supported this proposal.

A new offence of causing death by careless driving

The ALG supported this proposal as they thought it would enable flexibility to be maintained within the penalty structure to distinguish between a fatality that is the result of an act of deliberate recklessness and one that is the result of a momentary lapse of concentration.

Buckinghamshire County Council felt that the new offence should carry a maximum penalty of 10 years.

East Sussex County Council thought that a statutory requirement to take the consequences of bad driving into account would have a significant effect. They felt that making drivers responsible for the consequences of their actions would send a strong message and encourage safer driving.

Surrey County Council were concerned about the proposal to link consequences to sentence where the driving is “careless” as opposed to “dangerous” or “reckless”. They felt it was not fair to treat those who are careless because of unforeseen circumstances in the same way as those who are careless because they are, for example, using a mobile phone, or who fall asleep at the wheel through lack of rest. Instead, Surrey County Council proposed three categories of bad driving offences defined around intent, risk to other road users and consequences.

Availability of non-custodial penalties for careless driving

Surrey County Council had concerns about the impact this proposal would have on the probation service and youth offending teams.

Ensuring courts take non-fatal injuries into account

The ALG thought this proposal might be useful as they argued that many injuries resulting from road traffic collisions are hugely debilitating and have a marked impact on quality of life. The acknowledged however that there could be difficulties caused by sentencing according to the severity of the injury which could lead to inconsistencies in sentencing and the potential for appeals.

As above, Essex County Council thought this would be a useful way to encourage safer driving.

Allowing an alternative verdict where manslaughter is charged

Surrey County Council agreed with this proposal.

Abolition of the offence of wanton and furious driving

The ALG felt that it was important to replace the offence of wanton and furious driving with modern provision to allow suitable penalties to be imposed on bad driving in private places and also where non-motorised vehicles are involved. They also supported the suggestion to extend to private property the offences that apply in public places.

Surrey County Council agreed with this proposal.

Whether a custodial sentence should be available where careless driving causes injury

East Sussex County Council supported this proposal as they felt it would help victims, relatives and the public see that the offender is punished appropriately and could also encourage safer driving attitudes and behaviour. They also supported the use of remedial driver improvement courses, which they felt would be more constructive than a 6-12 month custodial sentence.

Buckinghamshire County Council supported this proposal and felt that this could be achieved by introducing a new offence of causing serious injury by careless driving.

Surrey County Council on the other hand, raised concerns about adding to the prison population.

Whether there should be an offence where a disqualified or unlicensed driver is involved in a fatal incident

East Sussex County Council supported this proposal. They thought that driving while disqualified or unlicensed is a serious offence and courts should have the option to impose custodial sentences of 6 months for a first time offender and 12 months for a second time offender in appropriate cases.

Surrey County Council felt driving whilst disqualified, or without a valid licence was a distinct behaviour and should be classed as dangerous driving.

The member of West Sussex County Council supported this proposal, and felt the maximum penalty could be higher than the suggested 5 years imprisonment.

Restorative justice

Buckinghamshire County Council felt the concepts of restorative justice should be part of the process of re-educating errant drivers.

Other comments

The ALG response was based on the premise that the new offences suggested in the consultation paper are only introduced when extensive research suggests that their introduction will have demonstrable road safety benefits. They felt that while criminal offences can act as a valuable deterrent, the effectiveness of such measures depended on the likelihood of detection and quality of investigation, and so supported the use of greater resources to carry out this work by the police (but not at the expense of front line services).

The ALG thought that there should be tougher penalties for the offence of failing to stop as they thought that the introduction of tougher penalties for other offences may lead to more drivers failing to stop.

The ALG also thought that driving whilst disqualified put other road users at risk and felt there should be stronger penalties for those who commit this offence.

Buckinghamshire County Council supported all the proposals in the consultation paper.

Other responses received

Replies were also received from Stewart Stevenson, MSP for Banff & Buchan, the National Council of Women of Great Britain, RNIB, rethink, and the Scottish Parliament, who wrote in support of SCID's response to the consultation. These responses did not comment on all of the proposals contained in the consultation. Those points that received comments are summarised below.

A new offence of causing death by careless driving

The RNIB supported this proposal but would welcome further clarification on operational aspects.

Availability of non-custodial penalties for careless driving

The RNIB agreed with the proposal but thought this had resources implications for the Probation Service.

Whether a custodial sentence should be available where careless driving causes injury

RNIB thought that the use of custodial sentences should be available, and that non-custodial community penalties may be more productive in reducing re-offending than a short term prison sentence for cases tried summarily.

The National Council of Women felt that a custodial sentence should be available in cases of serious permanent injury, but that a community sentence should be available for less serious injuries.

Whether there should be an offence where a disqualified or unlicensed driver is involved in a fatal incident

RNIB supported the proposal of a new offence of causing death by driving whilst disqualified or unlicensed.

The National Council of Women felt that the fact that a driver was uninsured, unlicensed, or particularly, disqualified should be taken into account when sentencing. They felt that uninsured driving should be treated in the same way as unlicensed driving. They felt that a custodial sentence was appropriate for disqualified drivers who, they argued, are deliberately flouting the law.

Restorative justice

The National Council of Women did not think that restorative justice schemes should be part of the sentencing. They felt that community sentences should be adequate as a form of recompense.

Other comments

RNIB supported a new offence of using a hand held or hands free mobile phone while driving. They felt that visually impaired pedestrians have even less of a chance of avoiding a driver who wasn't fully concentrating when driving.

RNIB thought that bad driving had a particularly negative effect on blind or partially sighted people and commented that almost two thirds of older and partially sighted

people and a large proportion of younger blind and partially sighted people never go out alone because of obstacles in the pedestrian environment - one of which is bad driving.

The National Council of Women of Great Britain felt that some drivers appear to be habitual risk takers. They would welcome consideration of a short information notice regarding changes in the law governing individual standards of driving as an additional note to accompany the routine DVLA papers sent on an annual basis.

Stewart Stevenson, MSP for Banff & Buchan, supported the response submitted by SCID and suggested that where points are added to a driving licence, the license holder should be required to re-sit a driving test and pass within a year or be disqualified.

Petitions

In addition to the responses summarised in this Part, a number of petitions were received. These are summarised below.

Name	Cause	Number of signatures received
Paul Stinchcombe MP	A campaign to introduce a new offence of causing death by careless driving following the death of Alexine Melnik in a road traffic accident	1477 (+65 letters sent separately referring to Alexine's law or the Paul Stinchcombe campaign)
Justice for Road Victims	A campaign to introduce a new offence of causing death by careless driving	1513
Motor Cycle News	A campaign to support the availability of a custodial sentence where careless driving causes injury	126
Michael Owens petition	A campaign for a change in the law to act as a greater deterrent and punishment for drivers with a provisional licence who kill whilst driving outside the limitations of their licence	1081
"Change the law"	A web based campaign to support the new offence of causing death by careless driving.	1004
"Justice for Jamie"	A campaign calling for an increase in penalties for those who kill on the road.	32902
Roadpeace	A campaign for a manslaughter charge to replace 'driving without due care and attention' on the road following a culpable death on the road	83
A standard campaign letter	A campaign supporting the government's proposals in the consultation paper and in particular: a new offence of causing death by careless driving; a new offence for anyone convicted of driving while disqualified or unlicensed whose vehicle was involved in a collision that resulted in death and a requirement for the courts to take serious injuries into account when sentencing	567
Petition to the Scottish Parliament from the Curran family.	To ask the Scottish Parliament to urge the Scottish Executive to amend the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to make provision for a mandatory inquiry in the case of a road death caused by careless drivers.	11132 signatures and the support of Scotland's Campaign against Irresponsible Drivers (SCID)
Petition from residents of Hodge Hill, Birmingham and surrounding areas to the House of Commons	<p>Petitioners</p> <ul style="list-style-type: none"> • Declare their concern that current road safety laws do not sufficiently punish the offence of death or injury by dangerous driving. • Request the House of Commons to pass legislation that would update the current road safety laws to include tougher sentencing for dangerous drivers 	Received in House of Commons 3.2.2005
Petition from	Petitioners	Received in the

residents of Coatbridge and Chryston to the House of Commons	<ul style="list-style-type: none"> • Support campaigns for justice on behalf of victims of road accidents and their families and friends • Declare strong support for campaigns to highlight the difficulties in defining words such as 'dangerous', 'careless' and 'negligent' in the context of motoring offences, and call for new terms which reflect the seriousness of such offences • Request that the House of Commons pass legislation to provide for the new motoring offences of motor vehicle manslaughter and aggravated motor vehicle manslaughter 	House of Commons 15.9.2004
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Part Four: Conduct of the Consultation Exercise

This chapter explains how the consultation exercise on the Review of Road Traffic Offences involving Bad Driving has been conducted in accordance with the six criteria set out in the Cabinet Office Code of Practice on consultation exercises.

Criterion 1- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation exercises at least once during the development of policy.

Early consultation

The issue of road traffic offences and penalties has been the subject of a number of reviews including the 1999 Road Traffic Law and Enforcement Parliamentary Advisory Council for Transport Safety (PACTS) report, which itself examined progress since the North Report and resulting legislation in 1988.

Since that time, the Government has published its strategy for improving road safety during the period 2000 – 2010 (including targets to reduce the number of road deaths and serious injuries by 40% (and child deaths and serious injuries by 50%)).

This was followed by a Home Office Review of Road Traffic Penalties from 2000-2002, produced in conjunction with the former Department for Transport, Local Government and the Regions (DTLR) and the former Lord Chancellor's Department which considered whether the available penalties for road traffic offences were appropriate.

In 2003, the former Home Secretary commissioned this Review to examine the existing framework of criminal law concerning bad driving, particularly where death or injury results, and to produce the consultation paper "A Review of Road Traffic Offences involving Bad Driving" (which was published on 3rd February 2005) to which this summary relates.

John Halliday was chosen to lead the review and was supported by a cross-government steering group set up by the Home Office. The role of the steering group was to liaise with John Halliday to provide policy advice and administrative assistance and give overall consideration to the findings of the review.

The steering group comprised representatives from the Department for Transport, the Department for Constitutional Affairs, the Crown Prosecution Service, the Scottish Executive, the Crown Office and the Northern Ireland Office.

During the course of the review John Halliday met a range of interested parties including the police, judges and road safety groups. These organisations were listed in the consultation paper.

The steering group had an active role during the course of the review. In July 2003 the steering group met with John Halliday to discuss the terms of reference, the membership of the steering group, and the project methodology. Later that month they met to discuss the project plan and a list of interviewees and interviewee programme. In October 2003 they met to discuss progress and emerging conclusions. In November 2004 they met to discuss a first draft of the consultation paper. The Steering Group also approved the paper prior to publication.

Relevant Parts of the UK

Road traffic is a reserved matter and any changes to legislation would apply to Scotland.

A small number of responses to the consultation paper expressed concern that they did not think Scotland had been adequately consulted prior to publication of the consultation paper.

Representatives from the Scottish Executive and the Crown Office sat on the steering group and played an active role in steering and supporting John Halliday during the consultation with respect to the Scottish position on policy issues.

The Scottish Campaign against Irresponsible Drivers (SCID) were also consulted during the course of the review

During the consultation period the paper was sent to a number of Scottish stakeholders. Responses were received from 12 Scottish organisations.

The proposals contained in the consultation paper would not directly affect Northern Ireland although changes to legislation are often reflected in Northern Ireland. A representative from the Northern Ireland Office sat on the Steering Group and copies of the paper were sent to Northern Ireland.

Timing

The consultation exercise was launched on 3rd February 2005 with the publication of the Review of Road Traffic Offences involving Bad Driving. The consultation period ended on 6th May 2005. All requests for an extension to the deadline were considered on their merits; all were agreed. Responses received after the deadline were recorded and are included in this summary.

Criterion 2- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescales for responses.

Consultation points

The proposals and consultation points were summarised in paras 1.17-1.21 of the consultation paper. The proposals did not raise any specific issues for any particular sector although we ensured copies of the paper were sent to organisations representing young people due to the potential of young people to be both victims and offenders in road traffic collisions. A copy of the paper was also sent to the Commission for Racial Equality.

Deadlines

The consultation paper, and the Home Office website, included the closing date for responses and this was repeated in all correspondence. All requests for extensions were granted.

Criterion 3- Ensure that your consultation is clear, concise and widely accessible.

Key questions

The consultation paper included a summary of consultation points and proposals.

Accessibility

The consultation paper was provided free of charge to all those who had made contact with the Home Office on this issue prior to publication of the paper, and to any person on request. The paper and details of how to respond to the consultation were also placed on the Home Office website and the Department for Transport's website.

Criterion 4- Give feedback regarding the responses received and how the consultation process influenced the policy.

The consultation received 185 responses from individuals and organisations. All responses were recorded on a database and were analysed carefully. The consultation was also the subject of 11 petitions. A summary of the responses (including the petitions received) is included in Part Three of this document.

Part Four of this document sets out the Government's response to this consultation and proposals for action.

A number of changes to the proposals were made as a result of the consultation exercise.

Firstly, the Government has taken account of concerns expressed in relation to the two new offences and proposes that a flexible mode of trial should apply to the new offence of causing death by careless driving and the new offence that would apply where a driver who is driving uninsured, unlicensed or disqualified is involved in a fatal incident. The Government also considered the issue of appropriate penalty and has decided that a maximum penalty of 2 years imprisonment should be available for the latter offence, but concluded that 5 years is an appropriate penalty in relation to the new offence of causing death by careless driving as it will ensure that this offence is considered on a par with "dangerous driving" (once the penalty for dangerous driving is increased which is also part of these proposals) and will give the courts the power to impose this sentence where appropriate. A 5 year maximum also reflects the fact that a proportion of cases will be on the borderline between careless and dangerous driving

The consultation exercise also found that the majority of respondents, particularly those from members of the legal profession, did not consider a need for a statutory obligation to take non-fatal injuries into account when sentencing. The Government accepts this and has considered other ways to ensure that the courts are aware that non-fatal injuries should be taken into account in sentencing. We will work with the Sentencing Guidelines Council and the Sentencing Commission in Scotland to ensure that it is clear that serious injury and damage can be an aggravating factor in cases of bad driving.

The consultation also asked whether a custodial penalty should be available where careless driving causes injury. This issue received a mixed response. Road safety organisations and some members of the public supported the offence but the legal profession were overwhelmingly opposed as they did not think that the culpability in this case would be sufficient to warrant the imposition of a custodial sentence and unlike death, it could not be argued that this is a special case.

Again, having considered the responses to the consultation, the Government has decided that the best way to ensure consequences are taken into account during sentencing is to work with the Sentencing Guidelines Council and the Sentencing Commission for Scotland.

The Government has thought carefully about the offence of wanton and furious driving, weighing up the need to penalise bad driving wherever it occurs with the fact that driving on land to which the public does not generally have access, obviously poses much lower risks. We have concluded that the offence of wanton and furious driving should be left in place but that there are a few simple measures that would make this offence more effective in practice. We recommend that a court should be able to endorse and/or disqualify for this offence where it is appropriate to do so (e.g. where a license exists) and where the offence involves a mechanically propelled vehicle (so that you could not disqualify someone from driving a car due to the fact that they had been found guilty of wanton and furious driving of a horse and cart).

The Government is also proposing to make changes in two areas that were not included as proposals in the consultation but have been considered as a result of responses to the consultation.

A small number of respondents to the consultation mentioned that they thought that the penalty for failure to stop for a police officer should be increased from a level 3 fine (£1,000) to recognise the serious risks to other road users of trying to evade the police or escape detection (e.g. for driving under the influence). They also recommended that the offence be made arrestable but this will not be necessary following the enactment of the Serious Organised Crime and Police Act 2005.

The Government has considered this and agrees that the penalty should more accurately reflect the offending behaviour. We will increase this penalty to a level 5 fine (£5,000).

Another respondent mentioned that there appears to be a loophole in the current law relating to testing blood for alcohol or drugs. Section 56 Police Reform Act 2002 inserted a new section (7A) into the Road Traffic Act which allows the police to take a blood sample from a suspect who is not capable of consenting (e.g. because he is unconscious) however the sample must be kept and can only be tested subsequently with the defendant's consent. Where that consent is not given there is no provision similar to that in section 3A (1) (c) of the Road Traffic Act that allows a prosecution for causing death whilst under the influence for refusal to give a sample where that refusal (without reasonable excuse) relates to consent to testing. We agree that this loophole should be closed.

Criterion 5- Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.

A small team was established to conduct the consultation exercise. An independent designated consultation co-ordinator was allocated at the outset and her details were included on the Home Office website. The co-ordinator will ensure that lessons learned are disseminated.

Criterion 6- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The consultation paper included a chapter on the possible impact of the proposals and asked specific questions relating to costs and benefits. Unfortunately the majority of respondents were unable to comment on these questions.

The proposals do not impact on businesses, charities or the voluntary sector however there will be cost implications to the public sector and a full Regulatory Impact Assessment on costs to the public sector has been produced.