



Home Office

# Review of Road Traffic Offences *involving* Bad Driving

A Consultation Paper



# Overview

- 1.1** Too many people are killed, injured and disabled on the roads of Great Britain. Too many of these are children. The communities with least advantages suffer most. More than a quarter of child pedestrian casualties happen in the most deprived 10% of wards. Most deaths, injuries and disabilities on our roads, and their associated trauma for relatives and friends, are avoidable. They are usually caused by someone's bad driving. That is why the Government has set targets which, by 2010, would reduce by 40% the number of people killed or seriously injured on the roads, and the number of children killed or seriously injured, by 50%.
- 1.2** The number of people killed or seriously injured in 2003 was 22% below the baseline average for 1994-98; and the number of children killed or seriously injured was 40% below. This is good progress. But 35,000 people are still killed or injured a year on our roads and there is a particular concern that the number of people **killed** in road accidents is not going down in the same way as the less serious injuries and has levelled out at nearly 10 a day, and indeed was slightly up in 2003 (3,508) compared to the previous year. So whilst significant advances have been made, it is clear that road safety and further reductions in the numbers of accidents, injuries and deaths must remain a high priority.
- 1.3** A strategy for road safety needs to cover education (training of drivers, public awareness of risks); engineering (vehicle and road design, use of signs, warnings); and enforcement (penalties for breach of standards, investigation and detection of those breaches). Performance in these areas needs to be evaluated continuously. This paper is primarily about aspects of enforcement. It is about ways in which the criminal law can reinforce standards of good driving by penalizing bad driving, especially when it results in death or injury.
- 1.4** Ever since motor vehicles grew in numbers and importance, the criminal law has been used to set and enforce minimum standards of good driving. The harm that can be caused by bad driving is so great that people have expected the State to use its powers to penalize breaches of good behaviour through criminal sanctions. At the same time huge strides have been made in improving safety through engineering and technical design, and the education and training of drivers has improved beyond recognition. No qualified driver has any excuse or reason for not knowing how to drive well. The right to drive is a privilege, earned by proving competence in safe driving, and withdrawable on proof of incompetence and dangerousness.

- 1.5** Drivers owe a duty of care to other road users, including other drivers; motor cyclists; cyclists; pedestrians; their own and others' passengers. Most drivers, for most of the time, probably want to drive well. Many, in a lifetime of driving, will make occasional mistakes through errors of judgement or loss of attention. Often, those mistakes may have little or no consequences. Sometimes, however, the slightest inadvertence may have tragic results.
- 1.6** Some drivers, however, breach the normal standards of good driving more deliberately and regularly. They may exceed speed limits; overtake in risky situations; accelerate over an amber or red light. Yet most drivers rate their own driving highly. Some may think that their driving is good enough to get them safely out of any potentially dangerous situation, or that their skills are so great that the rules applying to others need not apply to them. In truth, when risks are habitually taken, the chances are that eventually they will materialize, with potentially awful consequences. Good driving is about taking good care, and avoiding risks, at all times. A risk-taking driver is not taking account of the unpredictable event – for example the child running on to the road in a busy street. A driver exceeding the speed limit could kill the child when a safer driver, complying with the limit, could have stopped in time. If any regularly risk-taking drivers can point to a clean driving record, with no collisions or crashes over a long driving career, it is safe to assume that even their risk taking is done with a certain amount of care.
- 1.7** Research has shown that a proportion of those convicted of bad driving have records of previous offences showing their disregard for the criminal law generally, and not just for the road traffic laws. Their anti-social behaviour is not confined to their bad driving. Yet all bad driving, in its effects if not always its intent, is anti-social.
- 1.8** Bad driving may, or may not, be deliberate. A driver may exceed a speed limit deliberately, or inadvertently, for example as a result of failing to see a sign. The law currently treats both cases equally. The fault lies in breaking the speed limit, regardless of the reason or motivation. In common parlance we speak of road "accidents". Yet, we know that in almost every case someone is at fault. The amount of fault, and whether it is shared to any degree, are matters of judgement, but the crash or collision is not "accidental" in the sense that it is "fault free". Crashes and collisions are usually unintentional, but that does not make them entirely "a matter of chance". Chance enters into whether a crash or collision results from a particular piece of bad driving. But taking bad driving as a whole, its consequences in the form of crashes and collisions are predictable.
- 1.9** In much of the criminal law, it is necessary to prove criminal intent on the part of a defendant. The road traffic offences do not contain this burden of proof. It is sufficient to prove that the driving was bad, as judged objectively, regardless of the state of mind of the driver. It is drivers' negligence that is culpable. Although crashes and collisions in this context are not normally deliberate, the bad driving often is (speeding, driving too close, cutting in too quickly, overtaking when unsighted). Sometimes the bad driving may be wholly inadvertent – for example when a car door is opened by a driver who did not look, or looked but did not see an overtaking vehicle. Even such a relatively minor lapse may have dreadful results: the open door could cause a motorcyclist to swerve and be killed or injured by an oncoming vehicle.

**1.10** It is a human instinct to attach more blame to deliberate than to unintended acts. It is also human to be swayed by the consequences of acts, whether deliberate or not – especially when a death or serious injury is caused. Construction of the road traffic offences has long had to grapple with these issues:

- should the driver's state of mind be relevant to his culpability
- should the driver be held to account not only for the badness of the driving but also for the seriousness of its consequences?

**1.11** The present framework of offences is derived from a thoroughgoing Road Traffic Law Review, whose Report (the "North Report"), covering these and many other issues, was published in 1988. The statutes dealing with bad driving offences extend to Scotland as well as England and Wales. The courts in Scotland, however, exercise their own independent jurisprudence, so the interpretation of statute, and adoption of sentencing principles can and do differ between the two jurisdictions. As far as possible, this paper seeks to recognize the differences explicitly. When the text refers to "negligence", however, readers are asked to assume that this also extends to the Scottish concept of "recklessness".

**1.12** Some research has raised questions whether the present law has worked as expected by the authors of the North Report, and has offered suggestions for change (Dangerous Driving and the Law, Road Safety Research Report No.26, published in January 2002). The Government has reviewed road traffic penalties as a whole and published its proposals in July 2002. This current paper results from a more specific review of the offences dealing with bad driving, especially those that cause death or injury. The review's terms of reference are at Annex 3. It has addressed the issues that appear to be causing most current concern:

- how to deal with drivers whose driving is not in the worst category but has fatal or other serious consequences, and
- whether the current offences of bad driving can be improved so as to work more effectively.

**1.13** The Government's aim is that the criminal law should work as effectively as it can in support of good driving and reduction of deaths and injuries, and of the wider road safety strategy. It believes that the criminal law has a useful general deterrent effect on bad driving, but recognizes that deterrence depends heavily on the likelihood of detection, and the quality of investigations. The offences and their penalties need to be commensurate with the gravity and culpability of the underlying behaviour. There is room for argument over the issues of principle as well as the practical issues involved in any reform of the present law. That is why the Government is opening up a consultation process, through this paper, so that its final decisions can take account of a wide spectrum of reactions. Final decisions will also take account of further analysis of the likely costs and benefits of the preferred options. Any change requiring additional expenditure will depend on whether the necessary resources are available.

**1.14** The main statutory offences reviewed in this paper, and their related maximum penalties, are summarized in Annex 1. Specific issues are analysed in the following sections of the paper, taking account of the evidence available. The review has found that the present framework

of offences to deal with bad driving has several strengths. These include the clarity of its basic structure and the robust powers available to the courts to deal with dangerous drivers, and careless drivers under the influence of drink or drugs, who kill. The Government has concluded that it is important not to lose these. The main weaknesses found by the review are as follows.

- i The place of the offence of manslaughter (or culpable homicide in Scotland) as the most serious offence of bad driving causing death is not clear, and there are reasons why it may not be used when it could be.
- ii Although the two general offences of bad driving (dangerous driving, and driving without due care or reasonable consideration) are well defined, the available penalties, and the terms used to describe them, suggest an undesirable gap between the levels of bad driving involved, and it is important that no gap should either exist or seem to exist.
- iii The limited penalties available for the lower level offence (driving without due care or reasonable consideration) make it virtually impossible to take account of the consequences of the bad driving at that level. This problem is at its most severe when bad driving at that lower level has caused death, but it is also present when that level of bad driving causes injury, and when that level of offence is committed persistently by the same driver.

**1.15** These weaknesses and ways of overcoming them are analysed in sections two and three of this paper:

**1.16** Although the main reason for this paper lies in the Government's review of offences of bad driving, Ministers are also concerned about other offences that put road users at risk, especially those offences that involve taking a vehicle on to the road unlawfully. Unlawful driving, in the sense that the vehicle should not be driven on a public road at all, irrespective of the quality of the driving, takes many forms but the Government has given particular consideration to people who:

- drive while disqualified from driving
- drive without an appropriate driving licence
- drive while uninsured.

All such drivers pose additional threats to the safety of other road users, beyond those of the general driving population. When those threats materialize, in the form of collisions resulting in death or injury, the Government has considered the extent to which the criminal justice system should be able to take account not only of the seriousness of the basic offences but also of the culpability of the driver for the deaths or injuries that resulted from the decision to drive the vehicle unlawfully, even if the standard of driving by the driver was at or above the required standard. Possible ways of achieving this are set out in section four of the paper:

**1.17** The fifth and final section of the paper addresses the possible impact of the Government's preferred options on costs and benefits. **The Government's proposals, upon which it invites comments, are as follows.**

**1.18** First, for offences of bad driving, the Government believes that the following satisfactory features of the present legal framework should be retained:

- There should continue to be a “mix” of general and specific offences to deal with bad driving.
- Two general offences, one more, and the other less, serious, should continue to be used to differentiate between different levels of bad driving.
- The two general offences of bad driving should continue to be defined in terms of an objective test, regardless of the mental state of the driver.
- The current definitions of driving “below” and “far below” the standard of a competent and careful driver should be retained.

**1.19** Second, for offences of bad driving, the Government believes that the following reforms would bring worthwhile benefits:

- The offence of driving without due care or reasonable consideration (“careless driving”) should be defined in statute to ensure that it covers all driving “below” the standard of a competent and careful driver.
- To ensure that the fatal consequences of careless driving are properly taken into account, a new offence of causing death by careless driving, triable on indictment only, and carrying a maximum penalty of 5 years’ imprisonment will allow the courts to impose a custodial sentence where appropriate.
- The penalties available in cases of careless driving should include all non-custodial penalties, in order to deal with the most serious forms of the offence, including those that cause injury, and to deal adequately with the most frequent and persistent offenders (the Criminal Justice Act 2003 already provides for this).
- In order to ensure that non-fatal injuries caused by bad driving are properly taken into account, the law should require Courts to take into account, when sentencing for either of the two general offences, the consequences of the bad driving, including injuries, as revealed by the available evidence – to this end the Government intends to increase the maximum penalty for the offences of dangerous driving and aggravated vehicle taking from 2 to 5 years, as recommended by the Report on the Road Traffic Penalties Review (July 2002).
- When the offence of manslaughter (or in Scotland culpable homicide) is charged in a case of bad driving, provision should be made to allow for alternative verdicts when the principal offence is not proved.
- The outdated offence, in England and Wales, of “wanton and furious driving” in the Offences Against the Person Act 1861 should be replaced by suitable modern provisions.

**1.20** In addition, for offences of bad driving, the Government would welcome views on the following questions:

- When careless driving causes injury, should a custodial sentence be available? If so, how would this best be achieved?
- Is there scope for applying the principles of restorative justice to suitable cases of bad driving, where death or injury have been caused, not so as to avoid prosecution, but as part of the appropriate sentence?

**1.21** To deal more effectively and appropriately with people who drive while unlicensed or disqualified the Government invites views on the following proposals:

- Anyone convicted of driving while disqualified or unlicensed whose vehicle was involved in a collision that resulted in death, should be guilty of a new offence carrying a maximum penalty of 5 years' imprisonment.
- When sentencing anyone convicted of driving while disqualified or unlicensed to drive, whose vehicle was involved in a collision, courts should be required to take into account any injuries that resulted.
- The Government would also welcome views on whether uninsured driving (or any other forms of illegal driving) should be included within the scope of the proposed new offence for disqualified and unlicensed driving.

**1.22** The Government invites views, and evidence, bearing on the impact its proposals are likely to have on the processing and outcome of cases in the criminal justice system and thereby on its resources. Detailed questions are set out in section 5 of the paper and the Government would welcome as much information as respondents are able to provide.

Please send your responses to paragraphs 1.18 to 1.22 to Lyndsay Gittus at Fry Building, 2nd Floor, 2 Marsham Street, London SW1P 4DF by Friday 6th May 2005.

# The issues and the evidence

- 2.1** A list of those who have been consulted as part of the review leading to this paper is at Annex 2. The review identified the following issues of concern to some or all of those who took part. For easy reading, the offences of driving without due care and driving without due consideration are lumped together as “careless driving”.
- i** Although the offence of manslaughter is available in England and Wales (culpable homicide in Scotland) for the most serious forms of bad driving that cause death, its use is severely restricted by the existence of the statutory offence of causing death by dangerous driving, with a maximum penalty that, under the Criminal Justice Act 2003, has been increased to 14 years’ imprisonment. The lack of any available alternative verdict if manslaughter is charged means that manslaughter is an “all or nothing” charge, reducing the likelihood of its being used if a conviction of the causing death offence is more likely to be achievable.
  - ii** In cases where bad driving causes death, the decision whether the driving was “careless” or “dangerous” assumes enormous importance. If dangerous driving can be proved the maximum penalty is 14 years’ imprisonment. If the dangerous driving cannot be proved, and the conviction is for careless driving, the likely penalty will be a relatively small fine. The “gap” between the likely penalties for offenders could hardly be wider. In proceedings for careless driving where a death has been caused, bereaved relatives feel that the fact of the death is given no attention or consideration, leading to a strong sense of injustice.
  - iii** Some perceive a “gap” between the offences of careless and dangerous driving. The reasons for this perception are given closer analysis later in the paper. On the face of it, any “gap” has more to do with the available penalties, and the treatment of fatal cases, than with the basic definitions of bad driving.
  - iv** Some feel that a proportion of cases that could have been proved to be of dangerous driving are unnecessarily charged and convicted as careless driving. In some cases, those concerned believe this results from a willingness on the part of some prosecutors to accept a plea of guilty to careless driving in place of a charge of dangerous driving that should have been proceeded with.

- v There is concern about whether the courts can and do take sufficient account of all the consequences of bad driving. This includes careless driving that causes death, but also any form of bad driving that causes injury.
- vi Some suggest that the threshold for proving dangerous driving is too high. This may be, to some extent, a mirror image of the view that careless driving is pitched too low in the scale of seriousness, or that there is a “gap” between the two general offences of bad driving.
- vii There are general concerns about the ability of the criminal justice system to deal effectively with the most persistent bad drivers.

**2.2** Hard evidence bearing on these issues is not always available or conclusive. Leaving aside matters of judgement, which will be dealt with later, the following evidence is relevant.

### Manslaughter and culpable homicide

**2.3** It is safe to say that relatively few cases of bad driving causing death are charged as manslaughter or culpable homicide, although precise figures are not readily available. The Homicide Index kept by the Home Office for England and Wales shows that 58 cases from 1997-98 to 2000-01 are currently recorded as homicide where the apparent method of killing was “struck by a motor vehicle”. Those killings include cases where the vehicle was used deliberately as a weapon to cause harm, as well as cases of death caused by bad driving. The 58 cases include 4 convictions for murder and 27 for manslaughter. They also include 16 acquittals. The Index category “Reckless act – motor vehicle” is the nearest to homicides in the “bad driving” category. Over the same five year period, the Index records 66 victims in that category, resulting in only 12 convictions for manslaughter. It seems from these figures that prosecutions for “gross negligence” manslaughter as a result of bad driving are relatively few in number – perhaps, on average, only 2 or 3 per year.

**2.4** It is easy to see why prosecutors might be cautious about charging manslaughter in cases of bad driving. The absence of an alternative verdict, the substantial penalties available on conviction of causing death by dangerous driving, and the possibility that conviction of the latter offence may be more likely, could all lead to caution in the use of the manslaughter offence. **The question for this paper is what part manslaughter and culpable homicide should play in the array of offences dealing with bad driving, and this is dealt with later (paragraph 3.26 et seq).**

### Deaths resulting from bad driving

**2.5** The highest figure for convictions for the offence of causing death by dangerous driving in England and Wales occurred in 1992, the year after its introduction, when there were 320. Since then, save for significantly low numbers of convictions in 1999 and 2000, the annual figures have fluctuated within a band of approximately 235–275. There were 273 convictions in 2003<sup>1</sup>. The annual figures for convictions for causing death by careless driving while under the influence of drink or drugs, are of a much lower order than those for the causing death

---

1. All court proceedings and conviction statistics given in this paper for 2003 are provisional.

by dangerous driving offence. They rose between 1992 and 1998, in which year there were 71 convictions, but then declined to 55 in 2001, before rising again. There were 66 convictions in 2003. These figures do not disclose any clear trends. Set against the generality of criminal justice statistics the numbers are relatively small and some random variation is to be expected. The pattern is similar in Scotland. Of course effective prosecution depends on the effectiveness of investigations. The police in England and Wales have taken steps to ensure that investigations meet the highest standards, by issuing a Manual of Guidance describing best practice.

- 2.6** Figures to show the number of deaths caused by careless driving, when the driver was not impaired, are not available in England and Wales, although they are now being collected in Scotland and will become available there. The Transport Research Laboratory (TRL) Report, *Bad Driving and the Law*, reported that, from a sample of fatal incidents, 30% of drivers were “reported” for bad driving – 20% for careless driving and 10% for dangerous. It is impossible to say what proportion of the drivers reported for careless driving might have been impaired through drink or drugs, and therefore liable to prosecution for the much more serious offence of causing death through careless driving while impaired. Without more evidence it is impossible to say with confidence how many deaths result from careless driving when the driver is not impaired, although the number could be significant and the figures now being collected in Scotland will throw fresh light on the subject. **However many deaths result from careless driving when the driver is not impaired, the key question for this paper is whether the legal framework, of offences and penalties, is appropriate for those that do.**

### Alleged “undercharging”

- 2.7** Much of the “evidence” of undercharging, or over readiness to accept a plea to a lesser charge, is “anecdotal”. Convictions for dangerous driving in England and Wales have declined – but not dramatically – from 6849 in 1992 to 5184 in 2000 before rising again to 6788 in 2003. There is no evidence of a similar decline and rise in Scotland. Convictions for careless driving in England and Wales have declined substantially, from 77828 in 1992 to 31690 in 2003, probably as a result of the more extensive use of alternative methods of enforcement. Putting these two statistics together does not confirm, or rebut, the proposition that some cases capable of being pursued as dangerous driving are resulting in convictions for careless driving. Nor is there any evidence from these figures of any trend. A tendency for cases to slip down the ladder of seriousness could be a constant feature of this area of the criminal law, as it is in others. The key question is whether there is any chronic tendency to settle for convictions below the level that could be sustainable on the available evidence. Any such tendency would be contrary to prosecution policies.
- 2.8** Evidence bearing on this question as it affects England and Wales is available from a Thematic Review of the Advice, Conduct and Prosecution by the Crown Prosecution Service of Road Traffic Offences involving Fatalities, by HM Crown Prosecution Service Inspectorate, whose Report was published in November 2002. The Inspection did not cover decision making in non-fatal cases, about which concerns have also been expressed. Having studied a sample of cases involving deaths, the Inspectorate reported that “casework decision making was generally sound, although there was some evidence of inconsistency of approach particularly

in relation to the level of charge in those cases where there was a prosecution. This related mainly to cases where a lesser charge such as careless driving was preferred rather than causing death by dangerous driving". In 6 out of 99 cases, the Inspectorate found that a charge of careless driving had been inappropriately selected in place of the more serious charge of causing death by dangerous driving, although in one case the decision was corrected after the original charge. Although relatively small in number, if those cases had been charged appropriately from the outset, the number of more serious charges would have increased by 12%, which amounts to a significant variation. That is why the CPS is tackling it through a range of measures derived from the findings and recommendations of the Inspection. The Inspectorate also found that the overall attrition rate in cases that were prosecuted was low.

- 2.9** The TRL Report, *Bad Driving and the Law*, also included findings that bear on the question of "attrition" (the extent to which charges for the more serious offence result in convictions of the less serious offence). The findings are derived from study of a small sample of cases (84) covering Scotland as well as England and Wales and may not be a reliable basis for generalised conclusions. The results are nevertheless interesting as possible pointers. Of 27 cases first charged as causing death by dangerous driving, 16 (59%) resulted in convictions for that offence and 8 (30%) resulted in convictions for careless driving. Of 24 cases first charged as dangerous driving, only 9 (37%) resulted in convictions for that offence while 14 (58%) resulted in convictions for careless driving. These figures suggest possibly high levels of "attrition", but it is safe to say that better information is needed to provide a sufficiently reliable basis for firm conclusions. **The key issue for this paper is whether the legal framework can make any easier than at present, the difficult judgements required when deciding between different levels of bad driving, in fatal and non-fatal cases.**

### Ability to take consequences into account

- 2.10** In recent years, the courts have shown increasing willingness to take the consequences of proven bad driving into account, when passing sentence. Multiple deaths, and injuries, may be taken into account when sentencing for causing death by dangerous driving. Deaths caused by careless driving may also be taken into account when sentencing in England and Wales (but not in Scotland). The sentencing powers available, however, mean that it is difficult for the courts to put this into practice.
- 2.11** The questions for this paper are what principles should govern the relevance of consequences, when dealing with proven bad drivers, and how the courts should be enabled to give them the weight judged to be appropriate.

### The threshold for dangerous driving

- 2.12** The declining number of convictions for dangerous driving, and the related offence of causing death, may have contributed to the feeling that the threshold of seriousness for the offence is too high. Also, it is clear that the authors of the North Report thought that their proposals would increase the number of cases in the more serious category of bad driving, and this has not happened. This result has contributed to a feeling in some quarters that the ambit of dangerous driving is narrower than intended.

**2.13** Defining the difference between dangerous and careless driving has long proved difficult. Even experts have been reduced to declaring that the difference is to be defined by reference to the different penalties available; or that, although a clear line between the offences cannot be drawn, it is possible with confidence to decide on which side of it individual cases fall. Bad driving certainly takes an infinite variety of forms, when all the circumstances of an individual case are taken into account, as they have to be. Following the recommendations of the North Report, the present offences of careless and dangerous driving require no proof of a mental element on the part of the driver. They rest on objective tests of the quality of the driving. The difficulty in differentiating between different levels of bad driving stems from the extent to which the badness of the driving, and therefore the culpability of the driver, depends not only on the specific breaches of the required standards (for example the extent to which a speed limit was exceeded) but also on the circumstances in which the breach occurred (for example whether it took place in a busy street with a lot of pedestrians and parked vehicles or on a clear, open road). Attempts to define careless and dangerous driving, as for example in the CPS charging standard for these offences in England and Wales, or in the advice of the Sentencing Advisory Panel to the Court of Appeal, have wrestled with these difficulties. In the case of sentencing, the problem is compounded by the need to distinguish between conduct that constitutes the offence, and conduct that aggravates it. Some apparently aggravating factors may in fact be necessary to constitute the offence.

**2.14** Putting driving behaviours, like speeding or using a mobile 'phone, into compartments marked "careless" or "dangerous" may not be helpful, unless the importance of surrounding circumstances is fully recognized. The TRL Report, *Dangerous Driving and the Law*, studied a large number of cases and concluded that "what became clear was the uniqueness of each case". Recent trends suggest that the courts may now treat more seriously than they were:

- use of a hand-held mobile 'phone while driving
- falling asleep at the wheel
- what used to be termed "a momentary lapse of concentration".

**The key question for this paper is whether the difficult decisions about levels of seriousness and culpability can be made any easier or more understandable to all those involved in court proceedings.** The fact is that even the slightest carelessness is potentially dangerous. It is also the case, according to anecdotal evidence, that the likelihood of being charged with one of the two general bad driving offences (dangerous or careless driving) depends heavily on whether the driving has resulted in a crash or collision. No figures are available to support this, but those involved say that, in their experience, prosecutions for these offences are rare, in the absence of a collision or crash. Normally, therefore, the difficult judgement about the badness of the driving will be compounded by parallel judgements about the significance of the consequences, including the extent to which the consequences might themselves be evidence of the badness of the driving. At the very outset, the fact that the driving has had consequences determines in most cases that an apparently offending driver will be prosecuted.

## Persistent bad drivers

- 2.15** Research based on a large sample of offenders convicted in 1996 (Home Office Research Study 206, The Criminal Histories of Serious Traffic Offenders, by Gerry Rose) showed that a significant proportion of drivers convicted of dangerous driving (about 15%) were also convicted at the same time of “mainstream offences” such as violence, burglary, robbery and theft. Nearly a further 9% were convicted of other “standard list” offences. Nearly 52% of those convicted of dangerous driving had previous convictions and nearly 70% of those convictions were for “mainstream” or “standard list” offences.
- 2.16** This suggests that a large proportion of convicted dangerous drivers have a greater propensity to commit other crimes than the general population. Bad driving is but one, and by no means the only, example of their criminality. Similar findings were reported in relation to disqualified drivers. The propensity of those convicted of drink/driving to commit other offences was found to be less. **It is important that the legal framework should enable courts to deal adequately with these persistently anti-social offenders.**

## Expectations of the criminal justice system in relation to road safety

- 2.17** A framework of law is needed to support standards of good driving. The framework currently includes a large number of specific offences enabling basic standards to be enforced. These include offences of speeding, disobeying traffic signs, and driving while disqualified, amongst others. A new specific offence of using a hand-held mobile 'phone while driving came into effect on 1 December 2003.
- 2.18** The present framework also includes the two general offences of careless (driving without due care or consideration) and dangerous driving. The bad driving that breaches the specific offences may also be evidence in relation to one or other of the general offences. Police and prosecutors need to decide what action is in the public interest in any individual case. A formal or informal warning may be appropriate, or a fixed penalty. Criminal proceedings will normally be justified when the seriousness justifies prosecution in the public interest, and the evidence is sufficient.
- 2.19** Fear of prosecution, conviction and sentence probably acts as a deterrent for most drivers, although many will want to drive safely and well as a matter of duty to their fellow citizens, regardless of illegality. For the more calculating, the likelihood of detection may have a stronger bearing on deterrence than the detailed legal framework or the possible penalties. Many may be influenced by fear of losing their licence, but some may not. For the general offences of careless or dangerous driving, drivers may be unlikely to weigh up possibilities. The apparently strong correlation between prosecution for these offences and involvement in a crash or collision implies that few drivers will be induced to drive more safely merely by weighing up the likelihood of being charged and convicted of the general offences, since they do not expect to crash in the first place.
- 2.20** The law in this area can and should demonstrate, however, the seriousness with which society takes bad driving and its consequences. There is some evidence that the public is taking a more serious view of these matters. National newspaper campaigns have highlighted

the perceived inadequacies in the law. Such criticism of the current framework has elicited a correspondingly robust Parliamentary response. There have been a number of recent Parliamentary questions and debates. On 13 July last year, for example, Jim Knight MP (South Dorset) introduced a Motor Vehicle Manslaughter private members Bill. Several relatively recent changes in the law have reflected this public and parliamentary concern, notably the increased maximum penalties for causing death by dangerous driving, and by careless driving while impaired by drink or drugs. A recent survey conducted by the AA interestingly found that:

- Most people (63%), and significantly more than in 1986, do not think the courts are too hard on people who break traffic laws.
- A large majority (81%) think that the law is weak on drivers who kill.
- A larger majority (86%) think that the roads would be safer if drivers kept to speed limits.

It would be useful to establish how much knowledge respondents had of the questions raised – for example of the penalties already imposed on dangerous drivers who kill, and of the limited powers available in respect of careless drivers who kill.

**2.21 The Government wishes any further reform of law in this area to clarify the seriousness to be attached to bad driving and its consequences, and the penalties that are to be available in relation to different levels of seriousness and culpability.** The outcome should be, at the very least, an improved sense of justice being done, taking account of the impact on victims of bad driving as well as the perpetrators. Further reductions in deaths and injuries caused by bad driving depend above all else on persuading everyone to drive carefully at all times. The attitudes of drivers themselves are crucial. They have a self-interest in safety, as well as a duty to others. In the TRL study quoted above, 40% of the fatalities involved the deaths of the drivers themselves, and in other cases the friends and relatives of the drivers are likely to have been killed. **If changes in the criminal law and its operation can help change the attitudes of the bad drivers who cause death and injury it will have contributed to road safety as well as public confidence in the criminal justice system.**

# Options for change

## Types of offence

- 3.1** As noted already, the present legal framework consists of a “mix” of two general, and several other specific offences. This general approach was endorsed by the North Report, and accepted, and the Government’s latest review has found no grounds to depart from it.
- 3.2** In theory, the framework could consist entirely of specific offences, or entirely of general offences. Neither option has anything to be said for it. Relying exclusively on specific offences would inevitably leave gaps. Relying exclusively on general offences would lose the simplicity and practicality of the specific offences for everyday purposes. The review has found no general level of concern about the present approach, at this strategic level, and the Government proposes to base any changes on an assumption that there should continue to be a “mix” of general and specific offences.
- 3.3** As noted already, the two general offences have rested, since action on the North Report, on objective tests of bad driving, for which any mental element on the part of the driver is irrelevant. This issue is less straightforward. By penalising the bad driving, rather than any intent or recklessness on the part of the driver, the framework risks creating “hard cases”. A relatively minor, unintended, lapse of concentration would generally be considered less blameworthy than a more deliberate piece of bad driving. The Government has found no grounds, however, for departing from the conclusions reached on the North Report in this respect. The objective tests are workable, in relation to the evidence needed to prove the offences, and fair, in that the bad driving itself constitutes the offence, regardless of intent. The culpability lies in the breach of the duty of care to other road users. Any available evidence about the driver’s state of mind can be taken into account when considering aggravating and mitigating circumstances as part of the sentencing process. Requiring the driver’s state of mind to be established in order to prove the offence would unnecessarily and undesirably open up endless scope for argument, without contributing to the justice of the outcome.
- 3.4** It follows from the above that a particular piece of bad driving may be dealt with either as a specific, or as a general offence, depending on the circumstances. Drivers who break specific laws, such as speed limits, need to realize that they are liable not only to the penalties for speeding but also, if the circumstances so justify (for example if they have a crash or collision while speeding), to the penalties for the more general offences, including those of causing

death where that was the result of the driving. **The Government concludes that there should continue to be a “mix” of specific and general offences to deal with bad driving.**

## Number of general offences

- 3.5** The review has found a fairly high level of satisfaction with the proposition that there should continue to be two general offences of bad driving – one at a higher, the other at a lower level. The definition of these offences is dealt with in the next section. A key point for most contributors to the review is that the two levels of bad driving should be contiguous – there should be no “gap”, actual or perceived, between the two levels.
- 3.6** The options for reform, instead of keeping two general offences of bad driving, are to create either
- a single, all-embracing offence of bad driving (effectively rolling into one offence the present offences of careless and dangerous driving) or
  - a third, intermediate, offence, defined so as to deal with bad driving of a type lying between “dangerous” and “careless”.
- 3.7** To review these options it is necessary first to restate how the present general offences are defined. To simplify a little, but not much, dangerous driving is defined as driving “far below” the standard to be expected of a competent and careful driver. Careless driving is defined as driving either without due care and attention, or without reasonable consideration for other road users. In practice, courts in England and Wales have interpreted this as meaning driving “below” the standard to be expected of a competent and careful driver.
- 3.8** The Government attaches great importance to there being no actual or perceived “gap” between the two levels of bad driving offence. If the two offences were, in effect, rolled into one, there would clearly be no such gap. The maximum penalty for such an offence, however, would have to be great enough to allow appropriate sentencing for the worst forms of bad driving. The Government has announced its intention to increase the maximum penalty for dangerous driving to 5 years’ imprisonment, although it has not so far proved possible to put that intention into effect. To create such a maximum penalty for all forms of bad driving including the least serious would place a great burden on the courts in determining the relative seriousness and culpability of convicted offenders. Parliament would in effect be washing its hands of any obligation to “grade” bad driving in terms of relative seriousness. Such a change would be comparable with creating a single offence of assault, embracing common assault, actual bodily harm and grievous bodily harm. All offenders, however low their offences were in the scale of seriousness, would in theory be at risk of the most severe penalties. Even with the best possible sentencing guidelines, which could take some time to emerge, there would be a high risk of variable practice across all courts, and inconsistent outcomes. **In spite of some superficial attraction in a single, all-embracing offence of bad driving, in terms of eliminating any actual or perceived “gap”, the Government does not propose to adopt it.**
- 3.9** The other option, of creating a third, intermediate, offence, seeks to eliminate any “gap” by filling it. Before attempting to fill a gap it is necessary to establish that it exists. Properly

interpreted, the present two general offences do not in the Government's view create or leave any "gap". If the two levels of bad driving are interpreted as driving "below", and "far below" the standard expected of a competent and careful driver; they are obviously contiguous. The Government accepts that there may be two reasons why a gap has been perceived to exist between the two offences. First, the language used to define the present offences may obstruct their interpretation. There is no obvious contiguity between "careless" (whether due care or due consideration") and "dangerous". As already noted, all carelessness is potentially dangerous. Second, there has been such a large gap between the maximum penalties available for the two offences that this might in itself have implied some sort of "gap" between them. Possible ways of removing any perceived "gap" between the two offences are considered in the next section.

- 3.10** Even when a third, intermediate level offence of bad driving is considered on its merits, it is difficult to see how such an offence could be defined so as to sit comfortably, and workably, between two others. Creating three levels of bad driving, such as "Below", "Further below" and "Even further below" the standard expected of a competent driver; would add to, rather than ease, the difficult judgements that have to be made when deciding into which category an individual case falls. One suggestion has been that an intermediate category of "negligent" driving could be created, but it is not clear how "negligent" driving could be defined so as to sit clearly between "careless" and "dangerous" driving. It is not necessary to create a new offence in order to ensure that adequate penalties exist for the existing two levels of bad driving. Nor is a new offence needed in order to fill any actual "gap" between the two existing offences. **The Government has concluded that, in principle, two general offences, properly defined, and with adequate maximum penalties, are more likely to be effective and workable than three, even if the problems of defining a third category could be overcome.**

### Defining the general offences and the penalties available

- 3.11** The advantages of defining the two general offences in terms of driving "below" and "far below" the standard expected of a competent and careful driver have been noted already. The Government proposes that this simple definition should be incorporated in any reforms of the law in this area. The "far below" test already exists in statute. The Government proposes that the "below" test for the less serious offence should be incorporated in statute. Incorporating the "below" test in statute would make clear to all that the two offences were, in effect, two levels of the same offence, of bad driving, and that the two levels ran into each other at the cross-over point. To ensure continuity, the definitions of driving without due care and attention or without reasonable consideration could be kept as examples of driving "below" the expected standard.
- 3.12** The Government has also considered whether it would be helpful if the terms "careless" and "dangerous" were also changed. It may be argued that there is no obvious continuity, or gradation, between "careless" and "dangerous". All carelessness on the road is potentially dangerous. Another problem may result from the present terms. "Careless" may imply "unintentional". Although that is not a proper interpretation of the law, the TRL Report, Bad Driving and the Law, found that significant numbers of practitioners who were surveyed

wrongly believed that some deliberateness or intent had to be proved to substantiate a charge of dangerous driving. The review leading to this paper has come across similar anecdotal evidence. Anyone thinking that “careless” meant “unintentional” might wrongly conclude that “dangerous” must require “intent”. Whether this strand of thinking exists, however, must be speculative, and the Government is conscious that the grounds for changing the present language would need to be strong, bearing in mind the risks of change.

**3.13** The Government has therefore looked at three possible alternatives to the present terms of careless and dangerous driving:

- careless, and grossly careless driving
- negligent and grossly negligent driving
- bad and very bad driving.

Each of these would be underpinned by the fuller definitions of driving “below” and “far below” the standard expected of a competent and careful driver. The new descriptions would therefore be important primarily as “labels”. Many have stressed the importance of “labeling” in this and other aspects of criminal law, and the Government does not underestimate its possible importance, for example to public confidence in the criminal justice system as well as consistent and accurate interpretation. New labeling would have implications for the causing death offences, including the future use of the manslaughter offence. These are dealt with in the next section.

**3.14** The Government is not attracted by the terms “bad” and “very bad” driving, because they lack precision. The concept of negligence has some attractions. It conveys just as well as carelessness the nature of the criminality – breach of a duty of care – while perhaps conveying a more appropriate degree of culpability. “Carelessness” in common usage can imply a minor slip, like dropping a piece of china – “the sort of thing that can happen to anyone”. In relation to the care required while operating a potentially lethal vehicle, it may sound quite trivial. Although the Government notes that “gross carelessness” is the language used by the Law Commission in its reform of the law on involuntary manslaughter (Legislating the Criminal Code: Involuntary Manslaughter, Law Com No 237). Nonetheless truly trivial cases of carelessness while driving, with no or negligible consequences, should not reach the criminal courts. They will be dealt with, at most, through informal or formal warnings, or fixed penalties. The public interest test for prosecution should ensure that only reasonably serious cases reach the courts.

**3.15** Another possibility would be to define the offences so as to require the court to address the culpability of the driver, so that the offences would be in terms of “culpably careless or dangerous driving”. The Government would be apprehensive about such a change, because of the risk that it would reintroduce a need to establish the driver’s state of mind, as well as the badness of the driving.

**3.16** The Government has concluded that it would be helpful if the two general offences of bad driving were defined in statute in terms of driving “below” and “far below” the standard expected of a competent and careful driver, but that the present language of “dangerous driving” and “driving without due care or consideration” should be retained.

Defining the two offences in terms of negligence/gross negligence or carelessness/gross carelessness would in the Government's view create too much uncertainty in interpretation, for too little potential gain.

**3.17** The most important additional change that can be made, in the Government's view, in order to demonstrate the contiguity of the two general offences, is to ensure that a wide enough range of penalties is available for the less serious offence of careless driving, so as to eliminate the very large gap that has existed between the penalties available for the two general offences. In its Report on the Review of Road Traffic Penalties, published in July 2002, the Government said it would defer decisions on a number of proposals for widening the penalties available for careless driving, pending this review of the offence itself. Since then, the Criminal Justice Act 2003 has made important changes in this area. In effect, the Act has made the full range of community penalties available in cases of careless driving, when the offence is serious enough to cross the threshold for the new "generic" community sentence. It has also made such a sentence available for offenders who have been fined three times previously, even if the current offence is not serious enough to cross the "serious enough" threshold. These changes deal with the Government's belief that restricting the penalties for careless driving to a fine or community rehabilitation order is no longer appropriate. In a great many cases a fine will continue to be sufficient. Wider powers are needed, however, to deal with the most serious forms of the lower level offence, including their consequences (as proposed in the following section). Wider powers are also needed to deal with persistent offenders, including those for whom a further fine would be inappropriate.

**3.18** The Government has concluded, in principle, that the full range of community penalties should be available in relation to those convicted of careless driving, as has been provided through the Criminal Justice Act 2003, and that the maximum fine should be level 5 (£5,000), as proposed previously, instead of the present level 4 (£2,500). The increase in penalty for this offence has been included in the Road Safety Bill currently before Parliament.

## Taking the consequences of bad driving into account

### (i) *General Principles*

**3.19** The extent to which the consequences of bad driving – death, injury or damage – should affect the nature of the offence, and the penalties available for the offender, raises important questions of principle. Parliament has clearly indicated that it expects dangerous driving to be dealt with much more severely when it causes death than when it does not. In England and Wales, the Court of Appeal, and the Sentencing Advisory Panel in its advice to the Court on sentencing for causing death by dangerous driving, have acted on that expectation, while holding to the line that "culpability must be the dominant factor when assessing as precisely as possible just where in the level of serious crimes the particular offence comes" (Court of Appeal (Criminal Division) Judgement on Attorney General's Reference No 152 of 2002, heard on 31 March 2003). It is clear from the Sentencing Advisory Panel's advice that in this context "culpability" relates to the quality of the driving rather than its outcome, although the advice goes on to say that "the outcome should have some effect".

**3.20** The weight to be given to a death caused by dangerous driving is in practice influenced by the length of the sentences available. Although the Government has announced its intention to ask Parliament to raise the maximum sentence for dangerous driving from 2 to 5 years' imprisonment, that has not so far proved possible. For the time being the maximum penalty for dangerous driving remains at 2 years. The Criminal Justice Act 2003 has increased the maximum penalty for causing death by dangerous driving to 14 years' imprisonment. A gap of 12 years between the maxima for these two offences clearly indicates a great deal of weight being put on the fatal consequences of the driving, rather than the quality of the driving itself. The Sentencing Advisory Panel, and the Court of Appeal, have so far, for understandable reasons, acted on an assumption that the gap would be much smaller – 5 years for dangerous driving and 10 for the causing death offence. A gap between 2 years for the basic offence, and 14 for the fatal consequences, puts potentially unbearable strain on the desire of the courts to treat the badness of the driving, rather than its consequences, as the dominant factor.

**3.21** So far, only death caused by dangerous driving has been indicated by Parliament as a consequence to which weight must be given in bad driving cases. Successive changes have substantially increased that weight, both absolutely, and in relation to the underlying offence of dangerous driving. The courts have, however, indicated that courts can take other consequences of dangerous driving into account. Also, in England and Wales, the courts have indicated that deaths caused by careless driving should be taken into account (Simmonds 1999 RTR 257), although the powers available for doing so are very limited. The question for this review is whether, and if so how, the statutory framework should be altered to clarify the extent to which the consequences of bad driving, as distinct from the quality of the driving itself, should affect the sentences passed. So far, many have taken the view espoused by the North Report, that the lower level offence of bad driving (driving without due care or reasonable consideration) is not serious enough for it to be fair to give much weight to its consequences. That view needs to be re-examined.

**3.22** In principle, there seems to be little if any objection to the proposition that consequences should be taken into account in cases of dangerous driving. For England and Wales, the Sentencing Advisory Panel and the Court of Appeal have agreed that multiple deaths and serious injuries in addition to any death should be aggravating factors when sentencing for causing death by dangerous driving. It seems reasonable to conclude that serious injuries should also be aggravating factors when sentencing for dangerous driving.

**3.23** The Government does not see why the same principle should not apply to the lower level offence of careless driving (driving without due care or reasonable consideration). The Courts in England and Wales, but not in Scotland, seem to be applying that principle (see the reference to the case of Simmonds, above). The problem at present is that the sentencing powers available for careless driving simply do not allow meaningful account to be taken of consequences. Simply to increase a fine, to take account of a death, would appear to many to be grossly inadequate.

**3.24** Why should the culpability of bad drivers extend to the consequences of their bad driving, as well as the bad driving itself? For the following reasons. All bad driving involves the taking

of risks. Drivers either know, or should know, that they are taking those risks. The culpability lies in the risk taking. The driver who overtakes on a blind bend and manages to avoid a collision is as culpable as the driver who does the same, collides with an oncoming vehicle, and kills its driver. Chance has entered into which driver killed, but it was predictable that, if the manoeuvre were repeated often enough, disaster would result. It is not “bad luck” for the driver who killed. The driver who did not kill was simply fortunate. In practice, it would be neither right nor practical to deal equally severely with both drivers. The full weight of the law must be reserved for those whose risk taking has its predictable results. Many factors will bear on the outcome of a piece of bad driving. Whether an injured victim dies may turn on how soon the emergency services are able to arrive, or the age and health of the victim. The severity of the injuries, and the likelihood of death, may turn on the age of the vehicle and its safety devices. It is impossible to legislate for all eventualities. The broad framework of the law can justifiably hold drivers to account for the consequences of their actions, however, as well as the criminality of the actions themselves, and fatal consequences are uniquely dreadful.

**3.25** Some may argue that since bad driving offences differ from other crimes, in not requiring proof of intent, it is unfair or unjust to penalise drivers for the consequences of their offences. It is reasonable to assume, however, that drivers are aware – or should be aware – of the danger they present to others when they drive badly enough to break the law. The information available to drivers through their initial training, and publicity, should ensure that they have the necessary knowledge. The real difficulties arise, when judging culpability, from the human instinct to deal more severely with a deliberate act than an unintentional one. Anyone guilty of assault can be assumed to have intended to cause some harm. Drivers do not normally intend to cause harm, and they may not even intend to drive badly. The driver who misjudges the speed of an approaching vehicle, or who “looks but does not see”, is not intending even to drive badly. Statute law can only provide a broad framework in which the courts can exercise their judgement. The relative culpability of offending drivers can only be assessed by the courts that have heard all the evidence. Where the evidence shows deliberateness – for example when a bad driver’s passengers have urged greater care – the courts can take it into account. **In principle, however, the Government believes it would be helpful to clarify through statute that the courts should take the consequences of bad driving into account when sentencing, even when the consequences flow from unintended negligence or carelessness.**

(ii) *When the consequences are fatal*

**3.26** At the highest level of seriousness, a charge of manslaughter or culpable homicide, on the grounds of gross negligence, is available in cases of bad driving causing death. Two problems have been identified here:

- the absence of an alternative verdict
- some lack of clarity in what should distinguish a case of manslaughter/culpable homicide from one of causing death by dangerous driving.

Also, some feel that the term “manslaughter” should apply to all cases of bad driving causing death, because of the importance of labeling.

**3.27** Several options can be considered. One suggestion, that there should be a new offence of causing death by driving, would not be acceptable or workable, because there must be an element of fault to justify a criminal charge. Other possibilities include:

- **Create a new offence of causing death by any level of bad driving.** This would in effect create an offence of causing death by dangerous or careless driving. The maximum penalty would have to be at least 14 years' imprisonment. This option is open to the same objections as those that led the Government to rule out a single offence of bad driving (see paragraph 3.8 above). It would mean that Parliament had opted out of indicating to courts how it expected them to distinguish between the culpability of the whole range of bad drivers who cause death. The number of careless drivers who cause death cannot be stated with certainty, but it is certain that some do. A single “causing death by bad driving” offence would convey to courts an intention that all those convicted were liable to any sentence up to the maximum. This would place undue weight on the need for sentencing guidelines, and create a high risk of inconsistency. The Government believes that the culpability of the driver for the badness of the driving should continue to be weighed alongside culpability for the consequences. A single “causing death by bad driving” offence would not achieve this.
- **Abolish the two existing “causing death” offences and rely on manslaughter/culpable homicide.** This would be very risky if no statutory provisions were substituted for the existing offences, since the results would be unpredictable. The statutory offences originate from evidence some time ago that juries were reluctant to convict bad drivers of manslaughter. Public opinion, and the attitudes of juries, may or may not have changed. The uncertainty is such that the Government would not wish the statute book to become blank in relation to matters of such great public importance.
- **Increase the maximum penalty for causing death by dangerous driving to life imprisonment.** This would acknowledge, and attempt to eliminate, the overlap between the common law and statutory offences. The aim would be to remove the need for any manslaughter or culpable homicide prosecutions in cases of bad driving. The maximum penalty for causing death by careless driving while impaired would remain at 14 years' imprisonment. The Government is not attracted to an option that would again be of uncertain effect.

**3.28** The Government believes that if manslaughter or culpable homicide is charged in cases of bad driving, there should be alternative verdicts available. If juries believe that the evidence is insufficient to convict of manslaughter/culpable homicide, they should be able to convict of causing death by dangerous driving, or of causing death by careless driving while impaired, or of careless driving. Such a range of possibilities is less than ideal, because it leaves a good deal of uncertainty, on the part of the defendant, about the offence charged, but would be preferable to the present “all or nothing” nature of the manslaughter/culpable homicide offences.

**3.29** Another possibility would exist if “careless” and “dangerous” driving were renamed as “negligent” and “grossly negligent” driving, or “careless” and “grossly careless” driving

(see paragraphs 3.13 and 3.14 above). In those circumstances, the maximum penalty for “causing death by grossly negligent (or grossly careless) driving” could more readily be increased to life imprisonment, since the concept of gross negligence (or gross carelessness) would so clearly eliminate the need and justification for any use of the common law offence of manslaughter in bad driving cases. Also, the alternative verdicts already available for bad driving cases would apply, without the complications highlighted in paragraph 3.28. This option would not satisfy those who want to see the term “manslaughter” applied explicitly to these cases, but it would have the same effect. **Nevertheless, the Government is not persuaded that the possible advantages in fatal cases justify the potentially far reaching and unpredictable consequences of changing the existing terminology of “dangerous” and “careless” driving.**

**3.30** How should the fatal consequences of careless driving, when the driver is not impaired by drink or drugs, be dealt with? This paper has argued (paragraphs 3.23 to 3.25) that, in principle, consequences are as relevant to the culpability of careless drivers as they are to drivers guilty of dangerous driving. It has also argued that the penalties available in relation to careless driving should be wide enough to enable the courts to deal with the most serious cases (taking account of consequences, and the offending history of the offender) (see paragraphs 3.17 to 3.18). Wider powers will do more than anything to eliminate any grounds for perceiving a “gap” between the two general offences of bad driving.

**3.31** Within that framework, two options present themselves:

- leave courts to determine, within wider sentencing powers, the weight to be placed on the consequences of the careless driving, including death, injury and damage
- create a new separate offence of causing death by careless driving.

In either option it would be necessary to decide the maximum penalty to be made available, bearing in mind the need to allow for the worst possible consequences (as well as the most careless driving and the worst offending history). The Government does not believe it would be right to make all unimpaired careless drivers liable to imprisonment, irrespective of the consequences of their bad driving. When careless driving results in death, however, the Government believes that a custodial sentence should be available. To achieve this, it proposes that there should be a new offence of causing death by careless driving, with a maximum penalty of five years’ imprisonment, triable on indictment only. **The Government has concluded that there should be a new offence of causing death by careless driving, for which a prison sentence of up to five years should be available, although it would not necessarily be used in every case. The courts would weigh the culpability of the driver for the bad driving in the balance alongside its effects.**

*(iii) Taking account of non-fatal consequences*

**3.32** Should statute law require courts to take account of non-fatal, as well as fatal consequences of criminally bad driving? Some have argued that there should be new specific offences of causing serious injury. There does not appear to be parallel concern about causing damage and the Government does not propose to make any changes in that regard.

**3.33** Options for taking account of injuries include the following.

- **Add “or serious injury” to the “causing death” offences.** The case put forward for this is that whether death results can be a matter of chance. Although this is true, it is also true that chance plays a large part in all cases of bad driving. The question is whether the same maximum penalties should be available when serious injury results as when death is caused. That would make all dangerous drivers who cause serious injury liable to prison sentences of up to 14 years, instead of (at present) 2 years. When the Government implements its intention to raise the maximum penalty for dangerous driving to 5 years' imprisonment, the gap would be smaller, but also the room for the courts to take account of serious injuries within the 5 year maximum would be greater.
- **Create new offences of causing serious injury by dangerous and careless driving, with maximum penalties between the basic offences and the “causing death” offences.** The maximum penalty for causing serious injury by dangerous driving could be 7 years (allowing for the Government's intention to raise the maximum for dangerous driving to 5 years). For causing serious injury by careless driving, if the new offence of causing death by careless driving carried a maximum sentence of 5 years' imprisonment, a “causing serious injury” offence could carry a maximum of two years.
- **Create a new general requirement that the courts, when sentencing, should take into account the consequences of the bad driving, including injuries, as well as the badness of the driving itself.**

**3.34** How to define “serious injury” must be addressed in these options. Some fear that the problem of definition would be difficult to overcome – others are more sanguine, pointing to the existing and comparable need for courts to interpret “actual bodily harm” and “grievous bodily harm” in offences against the person. Another concern is that, ideally, courts should address the long term, rather than the short term, effects of injury. Lasting damage and disability may be more “serious” than fairly major physical damage from which a full recovery is made. There is also the question whether mental as well as physical harm should be covered.

**3.35** The Government is attracted by the option of creating a general requirement to take consequences, including injuries, into account when sentencing. The North Report recommended a general provision to that effect, which has not so far been accepted or implemented. **The Government's general view on the importance of consequences, and the correctness of taking them into account, leads it to propose that there should be a general statutory provision requiring courts to take the consequences of bad driving offences into account when sentencing.** It would do so on the basis of the evidence available to it. The proposed new offences and maximum sentences, as described in this paper, would make such a general requirement practicable. For example, injuries caused by careless driving could be taken into account within the wider range of non-custodial penalties for that offence when no death had been caused, or within the greater penalties proposed for the new offence of causing death. The maximum penalty for dangerous driving, when increased to 5 years' imprisonment, will be adequate to take account of any injuries that occur in addition to the fatality, and the maxima for the offences of causing death by

dangerous driving, or causing death by careless driving while impaired, at 14 years' imprisonment, already allow ample scope for taking account of any injuries that occur in addition to the fatality. In cases of careless driving where no death has been caused, the Government would like to know whether respondents believe that the full range of community penalties would be sufficient to allow courts to take account of injuries caused by careless driving. The alternative would be to raise the maximum penalty for careless driving to one of imprisonment. Unless custody was reserved for cases in which injury had been caused, this would put all careless drivers at risk of imprisonment. **The Government would welcome views on the possibility of making a prison sentence available in cases of careless driving that cause injury, and on how that might best be achieved.**

## Scope of the offences

### (i) *Private property*

**3.36** The existing bad driving offences of dangerous and careless driving, and their associated causing death offences, apply to public, but not private places. The offences of manslaughter and culpable homicide may be committed anywhere. In England and Wales, so may another offence, of "wanton and furious driving", in section 35 of the Offences Against the Person Act 1861. This offence, which is a relic from a bygone era, also applies to driving of non-motorised vehicles. The offence may be tried only on indictment and carries a maximum penalty of 2 years' imprisonment. It is still used. According to Home Office statistics, proceedings were instituted in 55 instances in England and Wales in 2003, although 28 proceedings were discontinued, withdrawn or dismissed. There were 25 committals for trial. In the same year the Crown Court tried 21 cases. It is not clear why the number of trials was smaller than the number of committals. In 9 of the 21 trials the defendant was acquitted or the trial was not concluded. In the 12 cases of conviction, 8 custodial and 4 non-custodial sentences were passed. In Scotland, similar conduct may amount to the common law offence of culpable and reckless conduct.

**3.37** The North Report recommended abolishing this old offence, by replacing it with suitable modern provisions. The options are to create new, specific, offences of bad driving to apply to private property, or to extend to private property the offences that apply in public places. The Government prefers, in principle, the second of these and would welcome views on this and the alternative. **In any reform of the law in this area, the Government would wish to repeal the 1861 Act offence, while making sure that suitable offences and penalties existed to deal with bad driving and its consequences in private places, and by non-motorised vehicles.**

### (ii) *Defective vehicles*

**3.38** The offence of dangerous driving can be committed if it would be obvious to a careful and competent driver that driving the vehicle in its current state would be dangerous. Data are not readily available to show how often this provision is used, although it is clearly useful, for example in the case of dangerous loads.

**3.39** The Government has considered whether there might be a case for a similar provision in relation to the lower level offence of bad driving. Clearly, there are cases where a driver's

negligence, for example over the state of tyres or brakes, could amount to driving without due care or reasonable consideration. Driving without a valid MOT Test Certificate could also be regarded, in theory at least, as evidence of careless driving.

**3.40** The Government believes that it would be reasonable to retain a reasonably high threshold for defining the bad driving offences to include the defective state of the vehicle. Defects are punishable in their own right. Where they are truly and obviously dangerous they are already covered by the dangerous driving offence. The Government sees no obvious need, and likely disadvantages, in extending the scope of the lower level offence to cover the state of the vehicle. For example, to do so would open up scope for extra debate over whether the state of the vehicle amounted to carelessness or dangerousness. Also, mere carelessness can be adequately dealt with through the penalties already available for the relevant specific offences.

## Other Sentencing Issues

### (i) *Persistent Offenders*

**3.41** The Government believes that the powers available to the courts, if the proposals in this paper were implemented, should be sufficient to deal with persistent offenders, bearing in mind the changes being brought about through the Criminal Justice Act 2003.

### (ii) *Restorative Justice*

**3.42** The principles of restorative justice may have useful application in road traffic offences where death or injury is caused. **The Government would welcome views on whether and if so how the development of restorative justice schemes could apply in such cases – not as an alternative to prosecution, but as part of the sentencing process.**

## Impact on other offences

**3.43** The Government has considered whether changes in the law dealing with bad driving, especially when death or injury are caused, need affect the offence of aggravated vehicle taking, under the Theft Act 1968 (as amended) (which does not extend to Scotland). That offence penalises drivers and their passengers who take vehicles and cause death, injury or damage. There is no requirement for the vehicle to be driven badly. The offence is aimed at preventing and punishing people who take vehicles without authority. The Government has decided that the maximum penalty for the offence, when a death results from the driving, should be the same as for the offences of causing death by dangerous driving, and causing death by careless driving while impaired. Some of the proposals in this paper would affect the position. For example, if the maximum penalty for causing death by dangerous driving were raised to life imprisonment (see paragraphs 3.27 to 3.29), the maximum penalties for the aggravated vehicle taking offence, and the offence of causing death by careless driving while impaired, would remain at 14 years.

# Taking a vehicle unlawfully on to the road

**4.1** This paper has dealt so far with offences of bad driving. The Government is also concerned about other ways in which drivers may put road users at risk through their irresponsible and unlawful behaviour, regardless of their standard of driving. There are many circumstances that may render a vehicle's presence on the road illegal but the Government believes that there are three unlawful activities that cause particular concern:

- driving while disqualified;
- driving without an appropriate driving licence; and
- driving while uninsured.

The first two of these have a direct bearing on the safety of road users. Driving while uninsured has a less direct bearing, as will be shown below. Whilst this paper focuses on these three forms of illegal driving that currently cause most concern the Government would welcome views on whether other forms of illegal driving ought to be considered in this context.

## Driving while disqualified

**4.2** People who have been disqualified by a court from driving have already shown, through previous driving offences, that they are a threat to the safety of others. To flout a ban on driving is serious not only in itself but also because it is safe to assume that the disqualified driver is more of a threat to the safety of other road users than the general run of qualified drivers. A disqualified driver should be well aware of this. The mere act of taking a vehicle on to the road when disqualified is, in the Government's view, as negligent of the safety of others as is any example of driving below the standard expected of a competent driver, even if the disqualified driver, at a particular time, is driving at an acceptable standard.

**4.3** The law, and the courts, already take a serious view of driving while disqualified. The maximum penalty is 6 months' imprisonment or a level 5 fine (£5000). In 2002 nearly half of the 30415 people convicted of this offence were sent to prison. A large proportion of these received sentences of between 3 and 6 months. In spite of the serious view taken by magistrates of this offence, there is a high rate of reoffending. Of a sample of 6537 offenders studied in 1996, 34% of disqualified drivers had previous convictions for that offence in a recent ten month period.

**4.4** The law does not – however – make any provision for the consequences that may result from the offence of driving while disqualified. If the driver is involved in a collision and was driving carelessly or dangerously, the offences of careless and dangerous driving (and potentially of manslaughter) will apply, as would the Government's proposals for reform of those offences in the earlier sections of this paper. If, however, the disqualified driver was driving appropriately, and was not under the influence of drink or drugs, no account can be taken of the deaths or injuries that may have resulted from the mere fact of having taken the vehicle unlawfully on to the road.

**4.5** The Government believes it is both reasonable and legitimate to penalize a disqualified driver not only for the act of driving while disqualified but also for the consequences that result from that act. Just as all careless and dangerous drivers are culpable for the risks they take, whether those risks materialize in a given instance or not, so all disqualified drivers are culpable for putting other road users at additional risk, and deserve additional sanctions when those risks materialize.

*(ii) Driving without an appropriate driving licence*

**4.6** The maximum penalty for driving without an appropriate driving licence is a level 3 fine (£3000). In 2002 there were 170645 findings of guilt for this offence. By far the most common sentence was a fine and the average fine imposed was £64. A significant number of other non-custodial sentences were passed including 243 curfew orders; 1690 community rehabilitation or supervision orders; 10 community punishment orders and 15 drug treatment and testing orders.

**4.7** Unlicensed driving is a hazard to other road users. Without a licence, the driver cannot show the required level of competence. There is evidence that unlicensed drivers present a greater threat to road safety than the general driver population. Research suggests that 6300 casualties, or more, result annually from crashes involving an unlicensed driver. Of the 6300, 900 were killed or seriously injured. The risk of an unlicensed driver being involved in a crash is thought to be between 2.7 and 9 times higher than for all drivers. (Road Safety Research Report No 48, November 2003). These figures, however, include incidents where an unlicensed driver has driven carelessly or dangerously and which therefore would be caught by bad driving offences. Moreover, unlicensed driving can be committed by design or accident and may also be technical in nature. On balance however, the Government is satisfied that unlicensed driving, irrespective of the standard of driving, does involve the same level of culpability as disqualified driving and believes, accordingly, that it would be reasonable to take account of any untoward consequences in addition to the seriousness of the offence itself.

*(iii) Driving while uninsured*

**4.8** Uninsured drivers add to the costs of other road users, because the costs of covering claims involving them inflates insurance premiums for everyone, but uninsured driving is less obviously a threat to the safety of other road users, although there are grounds for believing that uninsured drivers are more likely to be involved in collisions, and to disregard road traffic requirements and obligations, than the general driver population.

- 4.9** The maximum penalty for driving while uninsured is a level 5 fine (£5000). In 2002 there were 286688 findings of guilt for this offence. The most common sentence, by far, was a fine (in 166632 cases), at an average level of £152. Also, 811 curfew orders were made; 5614 community rehabilitation or supervision orders; 13 community punishment orders, and 120 drug treatment and testing orders.
- 4.10** Recognising the seriousness of uninsured driving, the Government commissioned a review of the issues by Professor David Greenaway, who reported last year. The report's recommendations cover the development of a long term compliance plan, measures to enable effective enforcement and sanctions, improvements in awareness and industry action to improve insurance take-up. The Government has announced its broad acceptance of these recommendations and established a Motor Insurance Compliance Action Board to forward their implementation. The problem of uninsured driving is, therefore, being addressed by measures across a broad range. This is important work to which the Government attaches a high priority. As regards the specific issue addressed by the current review, however, the Government, having considered the available evidence, is not entirely convinced that it would, on balance, be reasonable to hold uninsured drivers to account for the consequences of their decision to drive unlawfully, as well as for the unlawful decision itself. **The Government would be interested to receive views on the broader issues but in particular would welcome views on whether there should be a provision providing for enhanced penalties where untoward consequences occur as a result of uninsured driving (or other forms of illegal driving) (see below).**

*(iv) General principles and proposals*

- 4.11** Regardless of the standard of the driving itself at any particular moment, the basic offence of driving whilst disqualified creates additional risks for other road users. The decision to drive is therefore analogous, in its capacity to create risk and endanger others, with an act of careless or dangerous driving. Almost invariably, the driver who decides to drive will create those risks knowingly. Had the driver in these cases complied with the law (the Courts' decision to disqualify the driver), the vehicle driven could not have been in a collision or caused any death or injury. The mere act of non-compliance culpably adds to the risks faced by other road users, for the reasons which justified the decision to make the driving unlawful in the first place, regardless of the standard of driving shown by the person driving unlawfully at the time of any incident.
- 4.12** In these cases of taking a vehicle on to the road whilst disqualified, therefore, drivers are all culpable for creating risks beyond those presented by the general population of drivers. They – potentially – are at greater risk of being involved in a collision, in which someone may be injured or killed. The Government has considered how the criminal justice system might best reflect the culpability of drivers who drive whilst disqualified not only for their actions in driving at all, but also for the results that can and do happen.
- 4.13** In general, the Government believes that it is right to take a serious view of this offence. It is not inclined to alter the maximum penalty available. It does believe, however, that there are grounds for taking a more discriminating approach to the use of custodial sentences in

respect of people who drive while disqualified. It sees scope for greater use of non-custodial penalties, at least in respect of drivers convicted of the offence for the first or second time, provided that they were not involved in a collision causing injury or death. Non-custodial penalties can amount to substantial deprivation of liberty (for example through curfews enforced by electronic monitoring) and substantial punishment (through enforced work). The high re-offending rates for this offence suggest that short prison sentences are of very limited effect and afford little protection to road users. The most substantial deprivation of liberty, through imprisonment, should, in the Government's view, be reserved for the worst cases i.e. the most persistent offenders and those who have been involved in collisions causing death or injury.

**4.14** The Government has considered whether to propose a statutory restriction on the use of imprisonment for driving while disqualified, so that a prison sentence would be available only on a second conviction for the offence, or if a collision involving the vehicle had resulted in death or injury. Bearing in mind the reference in the future work plan of the Sentencing Guidelines Council to a revision of the existing Magistrate's Courts Sentencing Guidelines, which cover the offence of driving while disqualified, and to road traffic offences generally, which will take account of any changes arising from this paper, the Government would prefer not to go down this route and proposes that the use of custody for this offence should be covered as soon as practicable through new sentencing guidelines.

**4.15** The question remains whether, and if so how, to take account of the consequences of decisions to take a vehicle on to the road by a disqualified or unlicensed driver. The public are outraged – rightly in the Government's view – when such a driver is involved in a collision that results in death or serious injury. The criminal justice system, in the Government's view, should be able to take account of the culpability of the driver for such outcomes, even when the driver was driving acceptably at the time. The level of culpability, in the Government's view, is about the same as someone whose careless driving results in death or injury.

**4.16** The Government invites views on the following proposals:

- a** Anyone driving while disqualified or unlicensed whose vehicle was involved in a collision that resulted in death should be guilty of a new offence carrying a maximum penalty of 5 years' imprisonment.
- b** When sentencing anyone convicted of driving while disqualified or unlicensed whose vehicle has been involved in a collision, courts should be required to take into account any injuries that resulted.
- c** The Government would also welcome views on measures to deal with uninsured driving and in particular whether uninsured driving (or other forms of illegal driving) should be included within the scope of the offence at a).

# The possible impacts of change on costs and benefits

- 5.1** The Government believes that the proposals canvassed in this paper would improve the quality of justice dispensed through the courts in road traffic cases, and increase public confidence in the criminal justice system, including its contribution to road safety. Government Departments have done some preliminary work on the possible costs of the proposals, including their impact on the size of the prison population. This preliminary work suggests that the proposals in respect of offences of bad driving could create an additional demand for about 800 prison places. The great bulk of these would result from increasing the maximum penalty for dangerous driving from 2 to 5 years' imprisonment, to which the Government is already committed, when resources are available. The proposed new offence of causing death by careless driving would probably also create additional demand, although much would depend on how it was used by prosecutors and courts – especially whether its availability led to any reduction in cases of causing death by dangerous driving. The Government wants this consultation exercise to improve its ability to estimate the likely costs and benefits of its preferred reforms in this area. As part of the consultation process, it would welcome respondents' own estimates and forecasts of how the preferred changes would be most likely to work in practice.
- 5.2** In relation to the proposals for reform in paragraph 1.19, the Government would welcome views on the following issues.
- i What would be the likely effects of creating a new, imprisonable, offence of causing death by careless driving?** How many cases of careless driving currently result in death and would thereby fall within the new offence? In what proportion of these might a custodial sentence be appropriate, and of what average length? Might juries be too ready to convict of this offence, as an available alternative, when a conviction for the more serious offence of causing death by dangerous driving would have been justified? Would the likelihood of accepting a plea to the lesser charge, when the greater could be proved, be increased? What impact might such an offence have on justifiable claims for legal aid? Would pleas of not guilty to careless driving increase in number?
  - ii What will be the likely effects of making all non-custodial penalties available for sentencing careless drivers? Will the number of not guilty pleas increase?** In what proportion of cases is a financial penalty likely to continue to be appropriate?

**iii Would a statutory requirement to take the consequences of bad driving into account have any significant effects, bearing in mind the extent to which consequences are already taken into account?** Are the effects most likely to be evident in careless driving cases, because of the proposal to make all non-custodial penalties available? Which non-custodial penalties are most likely to be used for careless drivers, whether because of fatal or non-fatal consequences, or a need to take account of multiple offences or previous convictions? Will courts be able to deal expeditiously with argument about the scale and extent of injuries, and the weight to be given to them when sentencing?

**5.3** In relation to the supplementary questions in paragraph 1.20, **the Government would welcome views on the likely impact of making a custodial sentence available when injury is caused by careless driving.** In how many cases of careless driving at present are injuries thought to have been caused? In what proportion of such cases might a custodial sentence be appropriate, and of what average length? What might be the effects on numbers of pleas of not guilty, and justifiable claims for legal aid?

**5.4** In relation to the proposals in paragraph 1.21, the Government would welcome views on:

- i** The scope for a more discriminating use of custodial sentences in respect of those convicted of driving while disqualified, including the extent to which suitably tough non-custodial sentences, instead of imprisonment, might be appropriate for first and second time offenders whose vehicles had not been involved in collisions resulting in death or injury.
- ii** The number of cases in which a new “causing death” offence might be appropriate in cases of driving while disqualified when a charge of causing death by careless or dangerous driving, or causing death while driving under the influence of drink or drugs, could not be supported by the evidence.

**5.5** The Government appreciates the difficulty that respondents are likely to have in answering these questions with any certainty. Any well informed estimates based on practical experience will be welcome. Respondents may also want to suggest how the reliability of any estimates could be tested, for example through “mock hearings” applying the new options in illustrative cases. Any views on this possibility, or others, will be welcome.

# Current framework of offences and maximum penalties for bad driving offences

Offence	Provision	Mode of prosecution	Maximum sentence in the magistrates court	Maximum sentence in the crown court
Careless driving	Section 3, Road Traffic Act 1988	Summary only	£2,500 fine and discretionary disqualification	N/A
Dangerous driving	Section 2, Road Traffic Act 1988	Triable either way	6 months imprisonment or £5,000 fine, or both. Mandatory disqualification.	2 years imprisonment or an unlimited fine, or both. Mandatory disqualification.
Causing death by careless driving whilst under the influence of alcohol or drugs	Section 3A, Road Traffic Act 1988	Indictable only	N/A	14 years imprisonment (raised from 10 years imprisonment by the Criminal Justice Act 2003) or an unlimited fine, or both. Mandatory disqualification.
Causing death by dangerous driving	Section 1, Road Traffic Act 1988	Indictable only	N/A	14 years imprisonment (raised from 10 years imprisonment by the Criminal Justice Act 2003) or an unlimited fine, or both. Mandatory disqualification.
Aggravated vehicle taking	Section 12A, Theft Act 1968	Triable either way	6 months imprisonment or £5,000 fine, or both. Mandatory disqualification.	2 years imprisonment or an unlimited fine, or both. Mandatory disqualification. The maximum is increased to 14 years if a death occurs. (raised from 5 years imprisonment by the Criminal Justice Act 2003.)
Causing injury by furious driving	Section 35, Offences against the Person Act 1861	Indictable only	N/A	2 years imprisonment or an unlimited fine, or both. Disqualification is not available for this offence.

# Persons and bodies consulted during the course of the review

Adrian Walsh – Roadsafe

Sarah Mercer – Roadsafe

Judge Samuels – Council of Circuit Judges

Kevin Clinton – Royal Society for the Prevention of Accidents

Mike Cornish and Margaret Ayres – (Research, Development and Statistics, Home Office)

The Honourable Mr Justice Toulson, Chairman – Law Commission

David Hughes – Law Commission

Lorna Pearce – Transport Research Laboratory Ltd

Robert Gifford – Parliamentary Advisory Council for Transport Safety

Peter Wallis – General Editor, Wilkinson's Road Traffic Offences

Christopher Woolley – Chief Crown Prosecutor for Gwent

Tony Seculer – Justices' Clerks' Society

Richard Brunstrom – Association of Chief Police Officers

Brigitte Chaudhry – RoadPeace

Zoe Stow – RoadPeace

Margaret Dekker – Scottish Campaign against Irresponsible Drivers

Andrew Howard – The AA

Cathy Keeler – Brake

Ruth Harper – Brake

Dafydd Enoch – Bar Council

Mark Lewcroft – Criminal Bar Association

Lord Justice Judge

# Review of road traffic offences involving bad driving

## Terms of reference

To review the existing framework of criminal law concerning bad driving, particularly where death or injury results, in order to ensure that appropriate offences and penalties are put in place.

The scope of the review is to include the following offences:

**Road Traffic Act 1988** – careless driving, dangerous driving, causing death by careless driving whilst under the influence of alcohol or drugs and causing death by dangerous driving;

**Theft Act 1968** – aggravated vehicle taking, including the offence where a death occurs; and

**Offences Against the Person Act 1861** – causing injury by furious driving.

And will include consideration of the role of manslaughter in dealing with serious cases of bad driving that result in death, with due regard to any Government proposals for changes to the law on corporate manslaughter.

