



Home Office

The Law, Guidance and Training Governing Police Pursuits: Current Position and Proposals for Change

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1. Foreword by the Minister of State for Policing and the Fire Service



I announced in September 2017 that the Home Office would lead a review of the law, guidance and practice surrounding police pursuits. The review has involved the Department for Transport, the Department of Health and Social Care, the Ministry of Justice, the Attorney General's Office, the Crown Prosecution Service and the Independent Office for Police Conduct (formerly the IPCC), as well as relevant National Policing Leads, the Police Federation and groups representing other road users. This document sets out the information gathered during the review, makes proposals for change and seeks views on those proposals.

As I said when I announced the Review, people must be able to go about their daily lives without fear of harassment or attack and criminals must not think they can get away with a crime by riding or driving in a certain way or on a certain type of vehicle. It is clearly vital that we protect public safety and, while police officers must be accountable for their actions, it is also important that skilled officers have the confidence to protect the public by pursuing offenders where it is safe to do so.

We need to make sure that we strike the right balance between enabling the police to keep us all safe on the roads and pavements around the country while effectively holding to account the tiny minority of officers that cross the line. We must also recognise that this is an area where the way incidents are dealt with will turn on the specific facts of those incidents. This will mean inevitably that investigations will always need to take place where deaths or serious injuries arise from incidents involving emergency vehicles. While those investigations should be dealt with as quickly as possible, the need to maintain public confidence in the police may mean some cases taking some time to reach their conclusion.

The proposals set out in this consultation aim to bring greater clarity to the position of the police when they need to drive quickly in the interest of broader public safety. It sets out a proposed package of measures in some detail, as well as some more general questions and I encourage you to respond.

A handwritten signature in blue ink that reads "Nick Hurd". The signature is written in a cursive, flowing style.

Rt Hon Nick Hurd MP
Minister of State for Policing and the Fire Service

2. Executive Summary

The Government is setting out the findings of our review of the legislation, guidance and practice surrounding the police's pursuit of suspected criminals, announced in September 2017, and seeking views on future options in this area. The review has focussed in particular on the issues facing police drivers and whether driving in accordance with their training, experience and exemptions from certain areas of road traffic legislation might leave them facing criminal or disciplinary proceedings.

The review has identified a number of work streams either underway or that should be taken forward irrespective of the outcome of this consultation. These include:

- The police, with the College of Policing, will work to revise and expand the guidance on emergency driving available to police officers, as well as making its application more consistent;
- The Crown Prosecution Service (CPS) will continue to ensure its existing guidance is applied consistently and in accordance with the Code for Crown Prosecutors in cases of driving by the police; and
- The reforms already delivered to turn the IPCC into the IOPC, and the further reforms in the pipeline, should mean that most IOPC investigations of these issues are brought to an earlier conclusion; noting, however, that in the absence of legislation to address the apparent conflict between road traffic legislation exemptions and the test for dangerous driving, they consider that the law requires them to take action (whether to investigate themselves or to get the police to do so) and, where the relevant test is met, pass the matter to the CPS for prosecution or to the force for a misconduct hearing.

Issues set out in this document for consultation and potential future action include:

- Considering whether any legislative change should apply only to police pursuits or to police response driving as well (our preferred option);
- Whether to revise the various exemptions from certain areas of road traffic legislation to make them clearer and more consistent;
- Amending the definitions in the offences of careless and dangerous driving to take account of the training and experience of police drivers; and
- Making clear that a suspect being pursued is responsible for their own decision to drive dangerously and that blame should not be attached to the pursuing police officer.

Subject to the outcome of this consultation and work elsewhere, the Government intends to bring forward comprehensive road safety legislation as soon as Parliamentary time allows.

This consultation is open until 12:00 on Monday 13 August 2018; details of how to respond are set out towards the end of this document.

3. Background

Introduction

The way that the roads are policed is something that affects everyone and has come to particular public attention in the last twelve months for two main but overlapping reasons. Firstly, there has been pressure, from the Police Federation of England and Wales in particular, to change the law relating to the way the offences of careless and dangerous driving are applied to police officers who are using the legal exemptions from speed limits and other road traffic legislation. Secondly, reports about motorcycle-related crime, particularly in Greater London, have seen questions asked about the general position on pursuing motorcycles, as well as the specific issues arising where the rider is not wearing a crash helmet.

That is why, in September 2017, the Minister for Policing and the Fire Service, Rt Hon Nick Hurd MP, commissioned Home Office officials to lead a review of the law, guidance, procedures and processes surrounding police pursuits, with a particular focus on identifying the reasons why the current legal framework is seen as falling short; identifying options for improvement; and developing recommendations. In carrying out this review, we have engaged with the National Police Chiefs' Council Roads Policing Business Area, the Police Federation of England and Wales, the Crown Prosecution Service, the Independent Office for Police Conduct and groups representing road users and those advocating road safety. We have also engaged with those in Government Departments with an interest in these areas, including the Department for Transport, the Ministry of Justice, the Attorney General's Office and the Department of Health and Social Care.

While the existing exemptions apply across the emergency services, the Terms of Reference of this Review do not include considering whether to extend any change to the fire and rescue and ambulance services – or indeed to the broader range of other organisations and purposes that have been granted a degree of exemption under road safety legislation. In addition to the police, the 49 Fire and Rescue Services in Great Britain¹ and the thirteen NHS Ambulance Trusts², this includes the National Crime Agency; non-NHS ambulances; the NHS Blood and Transplant Service; military bomb or explosive disposal and military Special Forces.

Road traffic law generally applies in a uniform way across Great Britain – there is a separate body of legislation applicable to Northern Ireland. While most of the issues raised during the course of this review relate primarily or exclusively to England and Wales, the Home Office will continue to work closely with the Scottish Government, Police Scotland and the other relevant agencies in Scotland to determine whether the reforms set out in this document, if taken forward, should apply across Great Britain or in England and Wales only.

Context

Data provided by the police indicate that the number of pursuits authorised during 2016/17 was approximately 10,000, with around 500,000 police response drives³. By way of further context,

¹ 45 in England, three in Wales and the Scottish Fire and Rescue Service

² Eleven in England and one each in Scotland and Wales

³ Data provided by the Police Federation of England and Wales during the Review

Fire and Rescue Incident Statistics⁴ note that Fire and Rescue Services in England attended 559,463 incidents in 2016/17, while data produced by NHS England⁵ indicates that the eleven NHS Ambulance Trusts in England despatched a face-to-face response to a 999 call 598,512 times in October 2017 alone – if extrapolated to a full year, this would give almost 7.2 million emergency responses per year in England.

By the nature of the work of all the emergency services, they need to respond swiftly to emergency situations every day. To do so, they may need to travel at speed or to disregard road signs and markings to enable them to protect the lives of members of the public when they arrive at the scene of the emergency to which they are responding. To enable them to do this, road traffic legislation has for many years provided them with exemptions from such things as speed limits, traffic signs, signals and markings. The current statutory exemption from speed limits is set out in section 87 of the Road Traffic Regulation Act 1984⁶, while individual exemptions from a range of road signs and markings are set out in the Traffic Signs Regulations and General Directions 2016⁷.

The police are one of the major users of these exemptions in responding to incidents. However, they have a further unique category of emergency, high speed driving beyond responding urgently to an incident some distance away. They are frequently called upon to pursue another vehicle, for example where a suspect is fleeing the scene of a serious crime or otherwise seeking to avoid arrest.

Police drivers, notwithstanding the exemptions described above, are required by their forces and the law to drive safely, not putting other road users at risk. The maxim 'Drive to Arrive' is used in training, i.e. that, while making rapid progress, drivers should always drive in such a way that the likelihood of them reaching the incident to which they have been called remains high. The police are subject to the same offences of careless and dangerous driving as all other drivers; those offences are committed when any person drives in a way that is below (careless) or far below (dangerous) what would be expected of a competent and careful driver.

This consultation document considers the issues that arise in the apparent tension in the law outlined above, sets out options and poses a number of specific questions so that we can take the broadest range of views into account as we move this work forward.

⁴ See table 0201 available here: www.gov.uk/government/statistical-data-sets/fire-statistics-data-tables#incidents-attended

⁵ <https://www.england.nhs.uk/statistics/statistical-work-areas/ambulance-quality-indicators/ambulance-quality-indicators-data-2016-17/>

⁶ Section 87 of the 1984 Act will in due course be substituted by a new version as a result of section 19 of the Road Safety Act 2006, which is not yet in force.

⁷ SI 2016/362.

4. Issues and Options

This chapter sets out in more detail the issues faced by police drivers every day, the current position in law and guidance and the measures we have considered in this review with a view to clarifying the position. As set out in the Terms of Reference to this Review, this section examines the law, guidance, procedures and processes surrounding police pursuits, with a particular focus on identifying the reasons why the current framework is seen as falling short, and identifies options and recommendations for improvement.

4.1 The Law – Exemptions

By the nature of their work, the police need to respond swiftly to emergency situations every day. To do so, they may need to travel at speed or to disregard road signs and markings to enable them to protect the lives of members of the public when they arrive at the scene of the emergency to which they are responding. To enable them to do this, road traffic legislation has for many years provided them with exemptions from such things as speed limits, traffic signs, signals and markings. For example, section 87(1) of the Road Traffic Regulation Act 1984 provides that:

“No statutory provision imposing a speed limit on motor vehicles shall apply to any vehicle on an occasion when it is being used for... police purposes, if the observance of that provision would be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion.”

Similar provision is made in the Traffic Signs Regulations and General Directions 2016⁸ in respect of certain road signs and markings, as well as red traffic lights. The exemptions do not cover all signs and markings (for example, there is no provision for an emergency driver to cross a solid white line in the middle of the road to overtake a moving vehicle) and some are subject to further restrictions: for example, in the case of a red traffic light, a police “...vehicle must not proceed beyond the stop line in such a manner or at such a time as to be likely to endanger any person or to cause the driver of another vehicle to change its speed or course in order to avoid an accident.”⁹ During the Review, concern has been expressed to us that this particular phrase has been interpreted as removing the exemption in any case where a member of the public pulls over to allow a police vehicle to pass.

As set out in the previous paragraph, the exemptions are set out in different terms and in different places, and there are no exemptions in respect of certain signs or markings (such as double white lines in the centre of the road). This can increase the pressure on police drivers to make swift decisions that require them to differentiate between the exemptions, with potentially far-reaching consequences should they act in error at a time when they are already under significant stress. As such, we have had it suggested to us that the exemptions themselves should be reviewed so that they are, as far as possible, set out consistently, including any restrictions. We would be grateful for respondents’ views on this.

⁸ SI 2016/362

⁹ *Ibid*, Schedule 14, Part 1, paragraph 5(5)88

Question

Q1: To what extent do you agree or disagree that the emergency service exemptions from certain aspects of road traffic law (including any restrictions to the exemptions) should be reviewed and, where necessary, amended so that they are set out in similar terms?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

4.2 The Law – Dangerous and Careless Driving

As set out by the Court of Appeal in 2009 in the leading case of *R v Bannister*¹⁰, the tests set out in the Road Traffic Act 1988¹¹ for the offences of careless and dangerous driving apply to police drivers in exactly the same way as any other driver, taking no account of the various exemptions described in the previous section. Those offences are committed when a person drives in a way that is below (careless) or far below (dangerous) what would be expected of a competent and careful driver, i.e. a member of the public. The tests are known as the ‘competent and careful motorist’ test for obvious reasons.

In 2012, the then Director of Public Prosecutions issued guidance to CPS Prosecutors¹² which states that:

“In the course of their duties, police officers... may need to drive a vehicle in response to an emergency in a manner which would otherwise be considered unacceptable. Our starting point is that it is very unlikely to be appropriate to proceed with a prosecution on public interest grounds if a police officer... commits a driving offence while responding to an emergency call.”

Concern has been expressed to us that the CPS are, in some circumstances, not following that guidance. For example, a note was published on the Sussex Police Federation website¹³, written by the barrister who defended two police officers who had:

“...engaged in a pursuit of a man suspected of a series of residential burglaries in a car taken from such a burglary just a few hours before. The burglar had 145 previous convictions, was on bail for burglary and was a disqualified driver. The officers pursued him for 4 minutes, at which point they terminated the pursuit due to the offender's manner of driving. No other vehicle or member of the public was struck nor was any complaint received.”

The officers – who were driver and observer in the same marked police car – were prosecuted for dangerous driving; both were subsequently acquitted. The note goes on to say that:

“In that case, the prosecution argued that a police driver is criminally liable for the danger caused by the subject vehicle [i.e. the vehicle being pursued] because, by pursuing or

¹⁰ *R v Bannister*, [2009] EWCA Crim 1571.

¹¹ Sections 2A and 3ZA of the Road Traffic Act 1988, inserted by section 1 of the Road Traffic Act 1991 and section 30 of the Road Safety Act 2006 respectively.

¹² <https://www.cps.gov.uk/legal-guidance/road-traffic-offences-guidance-charging-offences-arising-driving-incidents>

¹³ <http://www.sussexpolfed.org/members/pursuits1.pdf>

continuing to pursue, the police driver has caused the dangerous driving of the subject vehicle. Technically this is a valid argument. However, if this approach is taken, it means police are responsible for the subject driver's driving and the likelihood of a police officer attracting criminal liability for dangerous driving is increased.”

The Government considers that it is, in general, not in the interest of the general public to hold a police officer liable for the standard of driving of a suspected criminal who is attempting to avoid arrest by driving in a dangerous manner. Doing so risks sending a message to criminals that all they have to do is drive recklessly at speed and they will be able to get away with their crimes. We have seen how criminals’ perception of well-intentioned local guidance around pursuing motorcycle riders not wearing crash helmets has contributed to an increase in motorcycle-related crime, particularly in London. We are minded to legislate to make clear that the police are not responsible for the standard of driving of a suspect being pursued, but we would welcome your views on this.

Question

Q2: To what extent do you agree or disagree that a police officer should be accountable for the standard of driving of a suspected criminal who is attempting to avoid arrest by driving in a dangerous manner?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

More generally, we are concerned that the way that the law is currently set out presents a conflict between the exemptions described in the previous section and the tests set out in the Road Traffic Act 1988¹⁴ for the offences of careless and dangerous driving. The effect of this conflict seems to be to render the exemptions developed over many years as ineffective, which cannot have been Parliament’s intention in providing those exemptions.

The Police Federation have told us of cases where this conflict has resulted in lengthy investigations and suspensions for police drivers, even where no sanction is ultimately imposed. For example, a police driver might proceed at 15 miles per hour above the speed limit and pass through a red traffic light, fully in accordance with their training and the exemptions described in the previous section. Equally, a police driver carrying out a pursuit might well need to break the speed limit and drive on the wrong side of the road to pass traffic before passing through a red traffic light in order to keep up with the vehicle being pursued. However, given that it would be likely that any member of the public doing this would certainly fall well below the standard expected of a careful and competent motorist¹⁵, such driving would be likely to constitute dangerous driving under the Road Traffic Act 1988 as it currently stands.

Another issue that is particular to police driving, either as part of a pursuit or to prevent one, is what is known as ‘tactical contact’ or TPAC¹⁶, where a suitably trained and experienced driver

¹⁴ Sections 2A and 3ZA of the Road Traffic Act 1988, inserted by section 1 of the Road Traffic Act 1991 and section 30 of the Road Safety Act 2006 respectively.

¹⁵ i.e. the test for dangerous driving described at the start of this section.

¹⁶ Tactical Pursuit And Containment.

can be authorised by a senior officer to make contact with a suspect vehicle to make what is known as a 'hard stop'. Again, if a member of the public were to deliberately make contact with another vehicle, it is likely that they would be investigated on suspicion of dangerous driving.

As set out by the Court of Appeal in 2009 in *R v Bannister*, the same standard applies to the police, and therefore they are left relying on the discretion of the CPS and IOPC (see the extract from the CPS guidance in section 4.5 below) not to be facing either criminal or gross misconduct charges. While it is of course right that police drivers are held effectively to account where they objectively drive in a careless or dangerous manner, in the light of the information set out in this section, the Government believes that it is not appropriate to hold them to the same standard as any other motorist and would appreciate respondents' views on this.

Question

Q3: To what extent do you agree or disagree that a police officer in pursuit or responding to an emergency should be held to the driving standard of a 'careful and competent' motorist (i.e. a member of the public), despite the various exemptions to road traffic law?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Following discussion and consideration of these issues with stakeholders and across Government, we have concluded that, rather than seeking to amend the 'careful and competent' test, which is well understood by those involved in administering it – especially juries – we should seek to apply an entirely separate test for police drivers. The new test could:

- Require a police officer in pursuit or responding to an emergency to drive to the standard of a careful and competent police driver of a similar level of training and skill; and
- Require that the driving tactics employed, including the use of any exemptions or contact, are authorised appropriately and are both necessary and proportionate to the circumstances.

This standard would allow investigators, prosecutors and the courts to take account of the driver's level of training and skill, not only to make allowance for driving beyond that expected from the public but also if manoeuvres or tactics are employed that the driver is not trained or authorised to carry out. The requirements of necessity and proportionality, enshrined in a variety of police powers such as arrest and surveillance, would provide the important safeguard that, in any event, police drivers would only be employing tactics that are required in the specific circumstances and are proportionate to the apparent level of threat.

In considering whether to bring a charge, or in court in the event a prosecution were brought, it is likely that expert evidence would be required as to the level of training the driver had received, the guidance given to them by the APP and the appropriate course of action in the circumstances that prevailed. Such evidence would enable a court to weigh up the standard of driving against the new standard and provide clear evidence as to whether the driver was acting in accordance with their guidance and training (see section 4.5 below for further detail in this area). It is likely that the only source of such expert testimony would be police driving

instructors, which could be a cause for concern. However, we understand that such individuals have given evidence in many cases over the years without any conflict of interest arising.

We would be grateful for respondents' views on this proposal.

| Question |
|---|
| <p>Q4: To what extent do you agree or disagree that a police officer in pursuit or responding to an emergency should be compared to the driving standard of a careful and competent <u>police</u> driver of a similar level of training and skill?</p> <p><i>Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree</i></p> |
| <p>Q5: To what extent do you agree or disagree that a police officer in pursuit or responding to an emergency should be required to drive in such a way that is both necessary and proportionate to the circumstances?</p> <p><i>Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree</i></p> |

4.3 Police Guidance and Training

Guidance on the application of the law and in best operational practice and policy in this area, as for many others, is set out in Authorised Professional Practice (APP), which is developed on the basis of the available evidence and owned and published by the College of Policing as the professional body for policing. APP is the official and most up-to-date source of policing practice in a broad range of priority policing activities, streamlining previous knowledge products and guidance into a consolidated online format, available on the College of Policing website at www.app.college.police.uk. The APP for Roads Policing is available [here](#) and details of the process followed by the College in determining the content of APP are available [here](#).

The APP on Roads Policing – Pursuits is underpinned by the 2011 Code of Practice on the Management of Police Pursuits, made by the Home Secretary under the Police Act 1996.

In addition to the guidance provided by APP, individual forces determine their policy and issue guidance and instructions to their officers and staff; the national agreement is that such documents should reflect the APP unless there is a specific need to depart from the APP to reflect local circumstances or arrangements.

However, concern has been expressed to us that the Roads Policing APP is significantly less comprehensive than that available in other areas, potentially leaving areas of uncertainty for operational officers engaged in such duties. There is also considerable variation nationally from the standards prescribed in the APP, again potentially leaving officers in an uncertain position where they are operating outside their own force, e.g. as part of a multi-force collaboration. **We have therefore agreed with the National Policing Lead for Roads Policing that he will work with the College of Policing to review and potentially expand the content of the roads policing APP to make it more comprehensive and universally applied.**

Table 1: Training Standards¹⁷

The National Roads Policing and Police Driving Learning Programme (RPPDLP) sets out national learning standards for police driving. It consists of a framework of integrated modules and units that together represent a whole programme. The required national driving skills and competencies are applicable consistently across forces.

There are three levels of police driver/rider¹⁸:

- Basic;
- Standard/Response; and
- Advanced.

In addition to these, there are also specialist police vehicles and roles that are set out in the Roads Policing and Police Driving Learning Programme.

Basic – for officers and staff with full DVLA driving licence with a need to drive official vehicles not requiring the use of legal exemptions; one-day assessment.

Where a basic driver is required to drive other categories of vehicles, e.g. commercial vehicles, and holds the requisite licence, the force must provide the relevant induction and familiarisation to ensure that the health and safety requirements for driving at work are met. The use of emergency equipment [e.g. warning lights and sirens] to facilitate progress through a traffic holdup is deemed to be response driving and outside the scope of a basic driver.

Standard/Response – driver trained to a standard to enable them to respond safely to incidents requiring the use of legal exemptions; two to four-week course¹⁹ and assessment.

A standard/response driver:

- must have a full DVLA licence as a prerequisite;
- is permitted to drive low to intermediate performance vehicles; but
- is not expected to use unmarked police vehicles to ‘respond’ in a pursuit situation – if this is permitted by a force, an appropriate risk assessment must be in place and a suitable level of training provided commensurate with operational requirements.

Advanced – driver trained to a higher level than Standard/Response, enabling them to drive high performance vehicles operationally; further four-week course and assessment.

The focus for advanced police driving is to develop existing competencies and skills to a higher level than that expected in the Standard/Response module. Advanced drivers/riders

¹⁷ Taken from the Police Driving APP, section 4: Police driving training (<https://www.app.college.police.uk/app-content/road-policing-2/police-driving/#police-driving-training>)

¹⁸ In this document, motorcycle riders and car drivers are treated the same unless stated otherwise.

¹⁹ Course lengths vary from force to force, depending on the conditions likely to be encountered in that area.

are predominantly deployed in a roads policing patrol vehicle, an armed response vehicle or unmarked police vehicles used by surveillance officers.

Training to the Advanced standard will normally only be undertaken following a period of practical consolidation of the Standard/Response training.

Table 2: Authorisation

In addition to having received the necessary training and accreditation to drive at the Standard/Response or Advanced level, the APP requires all police drivers to ensure they have authority from their force, by whatever local procedure applies, to drive that vehicle. In addition, where an authorised driver is required to conduct a pursuit, the APP requires officers to seek authorisation for their decision to engage in a pursuit from designated control/communications room staff²⁰. The APP recognises that, in such circumstances, the time available between recognising the need for action and the deadline for taking action may be too short to acquire the control/communications room authorisation, in which case officers may self-authorise and justify the decision at a later time in line with the National Decision Model (NDM)²¹.

4.4 Scope – Police Pursuits or Response?

We also need to resolve the scope of any potential change – should it apply only to the particular style and type of driving involved in a pursuit, or should it extend to all response driving? One position presented to us is that the current position in respect of response driving is acceptable, but that a change needs to be made in respect of pursuits because i) by being authorised by a senior officer to carry out a pursuit, in particular, the officer is tasked to drive in accordance with the law and their training and experience in order to secure the stopping of the suspect vehicle and that they should be protected by the law in doing so; and ii) as set out in the previous section, these are the most highly-trained drivers.

The Police Federation of England and Wales considers that it is necessary to address these issues for both pursuit and response driving. They point out that exactly the same issues arise in respect of response drives as pursuits – the need to pass through red traffic lights being a particular issue, but also passing streams of traffic etc. The Federation also point out that a response drive may relate to a more serious offence than a pursuit, e.g. a response drive may be providing back-up to an immediate threat to life or terrorist incident, while a pursuit may be of a speeding motorist.

If we were to adopt the new test described in section 4.2 above, investigators, prosecutors and the courts would be required to assess a police driver's actions against those of any officer of a

²⁰ <https://www.app.college.police.uk/app-content/road-policing-2/police-pursuits/#authorisation>

²¹ The NDM is used by decision makers in policing to structure a rationale of what they did during an incident and why. Managers and others can use it to review decisions and actions, and promote learning. See: <https://www.app.college.police.uk/app-content/national-decision-model/the-national-decision-model/>

similar level of training, skill and experience, whether at the Standard/Response or Advanced standard.

Question

Q6: To what purposes do you consider that the reforms proposed in this document should apply?

Police pursuits / Police pursuits and response / No changes are necessary

The Terms of Reference of this Review do not extend to considering whether to extend any change to the fire and rescue and ambulance services – or indeed to the broader range of other organisations and purposes that have been granted a degree of exemption under road safety legislation. In addition to the police, the 49 Fire and Rescue Services in Great Britain²² and the thirteen NHS Ambulance Trusts²³, this includes the National Crime Agency; non-NHS ambulances; the NHS Blood and Transplant Service; military bomb or explosive disposal and military Special Forces.

4.5 The IOPC and the CPS

The Independent Office for Police Conduct (IOPC)²⁴ and the Crown Prosecution Service (CPS) are key bodies in investigating and deciding whether to take action against police drivers. They are both operationally independent, with Ministers playing no part in their decision-making processes.

As set out in section 4.2 above, the then Director of Public Prosecutions issued guidance to CPS Prosecutors in 2012²⁵ which states that:

“In the course of their duties, police officers... may need to drive a vehicle in response to an emergency in a manner which would otherwise be considered unacceptable. Our starting point is that it is very unlikely to be appropriate to proceed with a prosecution on public interest grounds if a police officer... commits a driving offence while responding to an emergency call.”

The relevant section of the guidance is reproduced in full at Annex A to this document.

However, and as set out in section 4.2 above, the Police Federation in particular have expressed concern to us that investigations by the former IPCC (now IOPC) into road traffic incidents involving police emergency drives frequently led to referrals to the CPS. The IOPC is required to refer such matters where i) there is an indication that a criminal offence may have been committed and ii) they consider it appropriate to refer it to the CPS. Where the CPS has decided against charging, the Federation have told us that the IPCC tended to recommend a disciplinary hearing for gross misconduct or misconduct²⁶. Frequently, the Federation tells us that such hearings result in a finding of no misconduct.

²² 45 in England, three in Wales and the Scottish Fire and Rescue Service

²³ Eleven in England and one each in Scotland and Wales

²⁴ Formerly the Independent Police Complaints Commission (IPCC) until 8 January 2018

²⁵ <https://www.cps.gov.uk/legal-guidance/road-traffic-offences-guidance-charging-offences-arising-driving-incidents>

²⁶ Gross misconduct is defined as misconduct (i.e. a breach of the Standards of Professional Behaviour set out in Schedule 2 to The Police (Conduct) Regulations 2012) that is so serious that dismissal would be justified.

The Federation is also concerned about the length of time that such investigations take. The average length of all IPCC (now IOPC) investigations was 11 months in 2016/17 – 3 months shorter than IPCC’s 2013 average. While many delays to IOPC investigations are outside their control, the Government’s reforms to the organisation’s governance and its new structure under a single head of investigations, the Director General (DG) of the IOPC, should streamline and speed up decision-making; the new IOPC DG is committed to shortening investigation times further. Other planned reforms should also help, such as amending the case to answer decision process and clarifying the IOPC’s powers to reopen closed cases. In addition, the Government has listened to concerns from the police and others that the threshold for the case to answer decision may be too low and we are exploring whether we can legislate to clarify and improve on this test.

4.6 Wider Road Safety-Related Work

This is not the only work going on within Government to enhance road safety in Great Britain. While the UK has one of the best road safety records in the world, deaths or serious injuries on the roads cause devastation to victims and their families, for whom the sentence of the court can never adequately reflect the loss of a loved one. The Government is committed to ensuring that deaths or serious injuries continue to fall, and that where they are the result of criminal behaviour, the right tools are available to deliver justice.

The Ministry of Justice consulted in December 2016 on “Driving offences and penalties relating to causing death or serious injury”²⁷. The consultation included proposals to:

- Create a new offence of causing serious injury by careless driving;
- Increase the maximum penalty for causing death by dangerous driving from 14 years’ imprisonment to life;
- Increase the maximum penalty for causing death by careless driving under the influence of drink or drugs to the same level as causing death by dangerous driving;
- Mandating a longer minimum period of disqualification for offenders convicted of any causing death by driving offence; and
- Making changes to other driving offences relating to causing death or serious injury.

The Government’s response to the consultation, published on 16 October 2017²⁸, sets out an intention to:

- Create a new offence of causing serious injury by careless driving;
- Increase the maximum penalties for causing death by dangerous driving and causing death by careless driving under the influence of drink or drugs to life imprisonment; and
- Consider further whether to mandate a longer minimum period of disqualification in such cases.

Separately, the Department for Transport have issued a call for evidence to consider safety measures that will bring cycling and walking closer together as part of our overall ambition to increase active travel²⁹.

²⁷ <https://consult.justice.gov.uk/digital-communications/driving-offences-causing-death-or-serious-injury/>

²⁸ <https://www.gov.uk/government/consultations/driving-offences-and-penalties-relating-to-causing-death-or-serious-injury>

²⁹ <https://www.gov.uk/government/consultations/cycling-and-walking-investment-strategy-cwis-safety-review>

5. Impact of Proposals

5.1 Impact Assessment

In accordance with the Better Regulation Framework Manual issued by the Department for Business, Energy and Industrial Strategy (BEIS)³⁰, an initial assessment of the impact of these proposals has been carried out and no material financial impact on business, charities or voluntary bodies is envisaged. Impact on the public sector, such as the police and the Crown Prosecution Service, is expected to be relatively minor.

5.2 Equalities Statement

Section 149 of the Equality Act 2010 places a duty on Ministers and Departments, when exercising their functions, to have 'due regard' to the need to eliminate conduct which is unlawful under the 2010 Act, advance equality of opportunity between different groups and foster good relationships between different groups.

In accordance with these duties, we have considered the impact of the proposed changes on those sharing protected characteristics in order to give due regard to the matters mentioned above.

5.2.1 Eliminating unlawful discrimination

We do not consider that these proposals would have any particular impact on the achievement of this objective.

5.2.2 Advancing equality of opportunity between different groups

We do not consider that these proposals would have any particular impact on the achievement of this objective.

5.2.3 Fostering good relationships between different groups

We do not consider that these proposals would have any particular impact on the achievement of this objective.

³⁰ See: <https://www.gov.uk/government/publications/better-regulation-framework-manual>

6. Consultation Questions

Q1. To what extent do you agree or disagree that the emergency services' exemptions from certain aspects of road traffic law (including any restrictions to the exemptions) should be reviewed and, where necessary, amended so that they are set out in similar terms?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q2. To what extent do you agree or disagree that a police officer should be accountable for the standard of driving of a suspected criminal who is attempting to avoid arrest by driving in a dangerous manner?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q3. To what extent do you agree or disagree that a police officer in pursuit or responding to an emergency should be held to the driving standard of a 'careful and competent' motorist (i.e. a member of the public), despite the various exemptions to roads traffic law?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q4. To what extent do you agree or disagree that a police officer in pursuit or responding to an emergency should be compared to the driving standard of a careful and competent police driver of a similar level of training and skill?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q5. To what extent do you agree or disagree that a police officer in pursuit or responding to an emergency should be required to drive in such a way that is both necessary and proportionate to the circumstances?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q6. To what purposes do you consider that the reforms proposed in this document should apply?

Police pursuits / Police pursuits and response / No changes are necessary

About You:

**Which of the following best describes your organisation or the professional interest?
Please select one option:**

- a. Police force
- b. Police and Crime Commissioner (PCC)
- c. Victims' group
- d. Voluntary sector / community organisation
- e. Government department or agency (including Devolved Administration)
- f. Academic institution or think tank
- g. Representative body
- h. None – I am responding as a member of the public
- i. Prefer not to say
- j. Other (please specify)

Which organisation do you represent?

.....

In which of the following areas are you based? Please select one option:

- a. East Midlands
- b. East of England
- c. Greater London
- d. North East England
- e. North West England
- f. South East England
- g. South West England
- h. Wales
- i. West Midlands
- j. Yorkshire and the Humber
- k. Scotland
- l. Nationally based
- m. Prefer not to say
- n. Other (please specify)

7. How to Respond

The Home Office would welcome any comments on the policies proposed in this document. If you have any further suggestions or proposals for consideration, please outline them in your response.

You can download further copies of this consultation and a suggested response form online at the following link:

<http://tinyurl.com/hocons>

You can e-mail your response to the following e-mail address:

roadtraffic@homeoffice.gsi.gov.uk

Or send it by post to:

Police Pursuits Review
Police Powers Unit
6th Floor NW, Fry Building
Home Office
2 Marsham Street
LONDON
SW1P 4DF

If you have any queries regarding the consultation or your proposed response, please contact the Police Powers Unit at the e-mail address above.

Comments must be received by 12:00 on Monday 13 August 2018; we cannot undertake to consider any responses received after that time.

Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, other Government departments and related agencies for use in connection with this consultation.

In case we would like to follow up on any of the issues or ideas you have raised, it would be very helpful if you are able to provide your contact details below.

Providing your personal information is voluntary; if you do provide personal information it will:

- Only be used to contact you for further analysis of your response;
- Be kept for a maximum of up to 1 year from the closing date of this survey and then securely destroyed;
- Not be shared with any other third parties; and
- Be stored on a secure Government IT system.

If you want certain information you provide as part of your response to be treated as confidential, please be aware that, under the Freedom of Information Act 2000 (FOIA), there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this you should explain to us why you regard any information you have provided as confidential. If we receive a request for disclosure of the information we will take due account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

8. Glossary

8.1 Acronyms

| | |
|-------------|--|
| APP | Authorised Professional Practice |
| CPS | Crown Prosecution Service |
| IOPC | Independent Office for Police Conduct – formerly the Independent Police Complaints Commission (IPCC) |
| RTA | Road Traffic Act 1988 |
| TPAC | Tactical Pursuit And Containment – a suite of police tactics for managing and terminating a pursuit, including rolling roadblocks, use of ‘stinger’ strips to deflate tyres or using multiple police vehicles to ‘box and stop’ a suspect vehicle. |

8.2 Terms

| | |
|----------------------------------|--|
| “competent & careful” | At the heart of the offences of careless and dangerous driving is the “competent and careful driver” test. Driving that is either careless or dangerous is defined as that which falls below (careless driving) or far below (dangerous driving) what would be expected of a competent and careful driver – see sections 3ZA and 2A of the RTA respectively. |
| Indictable Offences | Indictable offences are those which can be tried in the Crown Court. They are subdivided into two groups; either-way offences, which can be tried in either magistrates’ courts or the Crown Court, and indictable-only offences, which are the most serious and can only be tried in the Crown Court. See also <i>summary offences</i> below. |
| Summary offences | Summary offences, also referred to as summary-only offences, are those which can <u>only</u> be tried in magistrates’ courts. See also <i>indictable offences</i> above. |

Annex A: DPP's Guidance to Crown Prosecutors

Road Traffic Offences – Guidance on Charging Offences arising from Driving Incidents – Drivers of emergency service vehicles

In the course of their duties, police officers, ambulance staff and fire-fighters may need to drive a vehicle in response to an emergency in a manner which would otherwise be considered unacceptable. Our starting point is that it is very unlikely to be appropriate to proceed with a prosecution on public interest grounds if a police officer, member of ambulance staff or fire-fighter commits a driving offence while responding to an emergency call.

However, every individual case must be considered on its own facts and merits, and when considering whether it is in the public interest to proceed with the case, prosecutors should have regard to the following factors:

- The nature of the emergency known to or reasonably perceived by the driver. For example, whether the driver was responding to a 999 call in compliance with the agreed operating practice in that service;
- The level of culpability of the driver (including the nature of the driving); and
- Whether there is evidence the driver may be a continuing danger to others. For example, such evidence may include relevant convictions or internal disciplinary proceedings against the driver.

In all cases involving emergency vehicles or drivers in emergencies which are referred by the investigator to the CPS for a prosecution decision, prosecutors will need to check that the following is provided by the investigator:

- evidence in the form of any police collision reports;
- advice provided by the ACPO pursuits lead³¹ where applicable;
- statements regarding the manner of the driving.

It is essential that the investigator provides these items when referring the case to the CPS for review or to make a charging decision and they should be requested if they are not provided.

When considering the standard of driving in any particular case and potential defences that might arise, prosecutors should be aware of the case of *R v Bannister [2009] EWCA Crim 1571*³². The basic facts in this case were that a police officer drove in the dark with no road lighting, in conditions of torrential rain with a lot of surface water on the motorway at speeds of up to 120mph, and the police officer's car spun out of control and crashed. The police officer was prosecuted, and in his defence it was argued that as the officer had successfully completed an advanced training course he was able to drive safely at very high speeds. It was contended that the training had enabled him, because of that special skill, to drive at speeds in adverse road and weather conditions safely, even if that would not be the case for the ordinary competent and careful driver. The police officer was convicted and appealed the decision.

³¹ Now the Authorised Professional Practice on Roads Policing – Pursuits, published by the College of Policing at: <https://www.app.college.police.uk/app-content/road-policing-2/police-pursuits/>

³² <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Crim/2009/1571.html>

The Court of Appeal in its judgment in the appeal against conviction held that special skill (or lack of skill) of a driver is irrelevant when considering whether driving is dangerous. The test to be applied is the objective test of the competent and careful driver as set out in statute.

The Court of Appeal also stated clearly that police officers were not entitled to drive dangerously when on duty or responding to an emergency. It is therefore apparent from the *Bannister* case that members of the emergency services when responding to emergency calls owe the same duty of care to other road users as ordinary members of the general public. This is relevant to the evidential stage of the Full Code Test. Public interest considerations with regards to emergency vehicle drivers are set out earlier.



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This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at roadtraffic@homeoffice.gsi.gov.uk or write to the Police Pursuits Review, Police Powers Unit, 6th Floor NW, Fry Building, Home Office, 2 Marsham Street, LONDON SW1P 4DF.

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