

Criminal Justice and Courts Bill

Fact sheet: Causing death or serious injury by driving when disqualified

Introduction and current position

1. Victims' families and MPs acting on their behalf have raised concern that the current maximum penalty of two years' imprisonment for causing death by driving when disqualified does not reflect the culpability of the offender or the consequences of the offending.
2. They have also campaigned for the introduction of a new offence of causing serious injury by driving whilst disqualified to reflect the fact that it can be a matter of chance whether the victim lives or dies. Unless the disqualified driver was driving dangerously at the time of the collision¹, the most he or she could be charged with for causing serious injury is driving while disqualified. That offence has a maximum penalty of six months' imprisonment. When permanent or life changing injuries are suffered, the impact this has on the victim and close family and friends can be profound. Campaigners say this justifies a higher penalty.
3. The Government is sympathetic to these concerns and believes legislation is necessary to address them. It believes that disqualified drivers who cause death or serious injury should be punished more severely. It considers that longer prison sentences will better reflect the culpability of the offender and strengthen justice for victims and their families.

What are the proposed changes?

4. The Government therefore intends to make the offence of causing death by driving while disqualified an indictable only offence (under new section 3ZC of the Road Traffic Act 1988) and increase the maximum penalty for such conduct to 10 years' imprisonment.
5. It also plans to create a new offence (new section 3ZD of the Road Traffic Act 1988) of causing serious injury by driving while disqualified. For the purpose of this provision, 'serious injury' means physical harm which amounts to grievous bodily harm². The offence will be triable either way and will have a maximum penalty of 4 years' imprisonment.
6. The meaning of 'causing death by driving' was considered by the Supreme Court in the case of *R v Hughes* in July 2013.³ In that case the court held that a driver cannot be said to have *caused* somebody's death *by driving* whilst disqualified, unlicensed or uninsured unless there was something about the offender's actual standard of driving that was open to proper criticism.

¹ The offence of causing serious injury by dangerous driving was inserted at section 1A of the Road Traffic Act 1988 by section 143 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and has a maximum penalty of five years' imprisonment.

² Grievous bodily harm means really serious harm. Examples of GBH given in CPS guidance include injury resulting in permanent disability, loss of sensory function, broken or displaced limbs or bones, or injuries which cause substantial loss of blood, usually resulting in lengthy treatment or incapacity.

³ *R v Hughes* [2013] UKSC 56, 31 July 2013

7. The fault element need not amount to 'careless' or 'dangerous' driving; it could involve a relatively minor indiscretion such as driving marginally over the speed limit or driving with a deflated tyre which affected stopping distance if this could be shown to have contributed to the death in more than a minimal way. It is not necessary that the act or omission is the principal cause of death, but an illegal driver who was involved in a fatal collision caused wholly by somebody else (e.g. where a dangerous driver crashed into him and died) should not be prosecuted and convicted for causing death by driving. The Government's proposals in relation to disqualified drivers who 'cause' death or serious injury should therefore be read in the light of the judgment in R v Hughes.
8. While the current law under section 3ZB of the Road Traffic Act 1988 applies to disqualified, unlicensed and uninsured drivers who cause death, the Government is only proposing to increase maximum penalties in respect of disqualified drivers who cause death and serious injury. The penalties for uninsured or unlicensed drivers who cause death will remain unchanged. The Government considers that a good case can be made for treating disqualified drivers differently from other illegal drivers. They are arguably more culpable because they have been banned from driving following previous misdemeanours and are blatantly defying the will of the court by continuing to drive.