



Ministry
of Justice

Response to the consultation on driving offences and penalties relating to causing death or serious injury

October 2017

Cm 9518



Response to the consultation on driving offences and penalties relating to causing death or serious injury

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

October 2017



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ISBN 978-1-5286-0084-2

CCS1017205656 10/17

Printed on paper containing 75% recycled fibre content minimum.

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

Contents

Introduction and contact details	3
Background	4
Summary of responses	6
Responses to specific questions	8
Conclusion and next steps	14
Consultation principles	16
Annex A – List of organisations who responded	17

Response to the consultation on driving offences and penalties relating to causing death or serious injury

Introduction and contact details

This document is the post-consultation report for the consultation paper, “Driving offences and penalties relating to causing death or serious injury”.

It covers:

- the background to the consultation
- a summary of the responses to the consultation
- next steps following this consultation.

Further copies of this report and the consultation paper can be obtained from the address below:

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Telephone: 07896842181

Email: drivingconsultation@justice.gov.uk

This report is also available at <https://consult.justice.gov.uk/digital-communications/driving-offences-causing-death-or-serious-injury/>

Alternative format versions of this publication can be requested by emailing drivingconsultation@justice.gov.uk or by calling 07896842181.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Background

1. This paper sets out the government's response to its consultation 'Driving offences and penalties relating to causing death or serious injury' published on 5 December 2016.¹
2. The consultation paper followed an internal review of driving offences and penalties, concentrating on the serious offences that can result in death or serious injury. This considered a range of concerns raised over recent years by victims of these crimes, members of the public and Parliamentarians. As set out in the consultation, the government concluded that some changes to the law were not necessary or practical but did seek views on some specific offences dealing with causing death or serious injury.
3. The consultation sought views on:
 - a new offence of causing serious injury by careless driving
 - increasing the maximum penalty for the existing offences of causing death by dangerous driving and causing death by careless driving under the influence of drink or drugs from 14 years' imprisonment to life imprisonment
 - introducing a longer minimum period of disqualification for any causing death by driving offence

In addition to these specific proposals the consultation asked for comments or suggestions for alternative or additional changes to driving offences relating to causing death and serious injury.

4. The consultation did not cover other driving or regulatory offences such as speeding or drink drive limits, the basic offences of careless or dangerous driving and driving whilst using a mobile phone. Some of these behaviours are however relevant where they are a factor in the driving that led to a death or serious injury.
5. The government increased the penalties for using a phone while driving to 6 penalty points and a £200 fixed penalty notice – up from the previous 3 points and £100 penalty, in March 2017. To coincide with the increase the government launched a THINK! campaign to warn drivers of the new penalties and the dangers of using mobiles while driving. The imposition of higher penalties has particular consequences for the drivers of large commercial vehicles (HGVs, coaches etc.) as strong action by traffic commissioners, who are responsible for the regulation of vocational drivers, is likely to lead to the suspension of a vocational entitlement for a first offence of using a mobile phone whilst driving such vehicles.
6. The consultation period closed on 1 February 2017. This report summarises the submissions to the consultation and sets out the government's conclusions and next steps.

¹ <https://consult.justice.gov.uk/digital-communications/driving-offences-causing-death-or-serious-injury/>

The Impact Assessment was not commented on substantively by those responding to the consultation, therefore we have not revised the consultation stage Impact Assessment.

A Welsh language response paper can be found at <https://consult.justice.gov.uk/digital-communications/driving-offences-causing-death-or-serious-injury/>

Summary of responses

7. A total of 9,128 responses were received to the consultation. 13 responses were removed from the analysis as only a name or email details were completed but no questions were answered; the online form was totally blank; or the submission was received in duplicate.
8. 9,115 responses to the consultation were reviewed for views on the specific proposals, levels of support for options and any evidence of the impact of the proposals.
9. The consultation allowed submissions to be made online, via email or by post. Online responses proved to be the most popular with 99% of responses being submitted this way.
10. Submissions were received from a range of organisations and individuals, including serving police officers and those working for emergency services, Police and Crime Commissioners (PCCs), criminal justice practitioners, legal professionals, road safety groups, driver representative bodies, driving instructors, motor industry employees including road transport/haulage companies, other professional drivers, and members of the public who identified with no particular group or organisation.
11. A number of responses to the consultation were received as a result of various online petitions and campaigns. Not all of these were identical so they have been treated as individual responses for the purposes of analysis. Some of the points raised in the campaigns relate directly to individual questions in the consultation and the summary of each question includes these comments but the following summarises the main points of each of the campaigns or petitions:
 - A response to the consultation submitted by a member of the public included a petition created on change.org in September 2016. The response has been counted as one submission based on the answers provided to the questions in the consultation. The petition, which had over 3,400 signatures, campaigns for permanent lifetime bans for all drivers convicted of causing death by dangerous driving; a review of the sentencing guidelines to ensure that judges have the power to impose the maximum sentence for causing death by dangerous driving where they see fit; and increased penalties in line with manslaughter. It also calls for stronger penalties for other driving offences such as careless driving, dangerous driving, significant speeding, drink driving, and driving under the influence of drugs, to include lifetime driving bans and longer prison terms for repeat offenders.
 - 29 known submissions to the consultation were received as a result of a petition on the parliamentary website which campaigned for charges of manslaughter to be brought when a death on the road is caused by racing. This petition ran for 6 months and had received over 11,000 responses when it closed on 13 February 2017.
 - A submission received from Johnston Press linked to a media campaign, “*Drive for Justice*”, and an online petition launched on change.org in November 2016. This campaign calls for “*tougher sentences for the worst offenders; have all culpable deaths treated as manslaughter/culpable homicide; have more – and*

longer – driving bans handed out to those who kill or seriously injure on the roads, or whose driving risks injury and death; examine how people are often prosecuted for the lesser charge of death by 'careless' driving rather than death by 'dangerous' driving; close the loopholes that exist as with hit-and-runs; have even tougher sentences for those who offend while drink or drug driving, using excessive speed, are disqualified /unlicensed, or who are using their mobile phones". It also calls for the government to re-work sentencing guidelines and provide specialist training for judges so they can use the full powers that are available to them when deciding sentences for offenders. This ongoing campaign has so far received over 3,000 signatures.

12. Not all respondents answered every question and some respondents opted to submit their response as more general text without direct reference to the consultation questions. In these cases, where comments relate to particular questions in the consultation paper they have been treated as such for the purposes of the analysis that follows.
13. Some respondents expressed views or made suggestions that did not answer the consultation questions or were out of scope of the consultation (as a result percentages may not add up to 100). While the more substantive suggestions which fall outside the scope of the consultation cannot be explored in this consultation response the government will take account of these when considering any future policy development.
14. The Ministry of Justice would like to thank all those who responded to the consultation, particularly those who shared personal experiences of road traffic crime.

Responses to specific questions

Q1. Should there be a new offence of causing serious injury by careless driving?

15. There are currently two driving offences of causing serious injury – causing serious injury by dangerous driving and causing serious injury when driving disqualified. The consultation asked if there was a need to create a new offence of causing serious injury by careless driving to fill a perceived gap in the law.
16. Of the 8,880² responses to this question 90% (7,981) thought that there should be a new offence of causing serious injury by careless driving; 4% (380) disagreed and 6% (499) were not sure.
17. There was therefore very strong support for the creation of a new offence of causing serious injury by careless driving. Respondents noted that these cases often result in permanent injury and can have a devastating impact on the victims. They also pointed out that despite the serious injuries, without an offence of causing serious injury by careless driving, offenders could only be convicted of a careless driving offence that has a maximum penalty of a fine. It was commented that although the culpability of the driver would be considered as low, the harm caused by the offence was high. A new offence would emphasise the responsibility that drivers have to other road users and recognise the harm caused to victims.
18. A small number of respondents, whilst not opposing the creation of the offence, expressed concern that a new offence of causing serious injury by careless driving would become the "*norm*" and the more serious offence of causing serious injury by dangerous driving would no longer be brought in appropriate cases.
19. Some respondents who did not agree with the need for a new offence, or were unsure, were not convinced of the need for a new offence because they did not think that it would necessarily act as a deterrent to bad driving. Others who opposed the change felt that existing offences and penalties were adequate but should be enforced more effectively and attract higher sentences within the maximum penalties already available.

Q2. If yes, having regard to the maximum penalties for the existing offences of causing serious injury and assault, would either 2 or 3 years be an appropriate and proportionate maximum penalty for the new offence?

20. The consultation asked what the maximum penalty for a new offence of causing serious injury by careless driving should be. The consultation noted the existing maximum penalty of 5 years' imprisonment for causing serious injury by dangerous driving and suggested a maximum for the offence could be set at 2 or 3 years' imprisonment.

² The number of responses to each question is a count of respondents who answered at least one of the components of the question.

21. 8,457 responses were received to this question of which the majority, 73% (6,163), indicated that the maximum penalty should be 3 years' imprisonment or more; 6% (466) thought it should be 2 years' imprisonment.
22. There were a range of views expressed about the maximum penalty for this offence.
23. Some responses expressed the view that 3 years was the minimum that should be considered as the maximum penalty for the offence. Other comments suggested that the harm caused was the same whether the driving was careless or met the more serious test for dangerous driving. The approach, where harm alone determined the sentence, led some respondents to suggest the 5 year maximum available for causing serious injury by dangerous driving should also apply to causing serious injury by careless driving.

Q3. Do you think that the maximum penalty for causing death by dangerous driving adequately reflects the culpability of the offending behaviour or should it be increased from 14 years' imprisonment to life?

24. 70% (5,809) of the 8,305 responses to this question thought that the maximum penalty for the offence of causing death by dangerous driving should be increased to life imprisonment; 15% (1,263) thought that the current 14 years was adequate.
25. Those who agreed with an increase in the maximum penalty commented that it would provide the courts with tougher sentencing powers in the most serious cases. It was also argued that an increased maximum penalty would better reflect the culpability of dangerous driving behaviours and the disregard that some motorists had for other road users.
26. A number of respondents also suggested that deliberate driving actions directed at other road users should be charged as murder or manslaughter. Under the current law the Crown Prosecution Service can and will charge a person with manslaughter where the evidence supports that charge. However, as many of those who did not agree with an increase commented, in many driving cases the offending behaviour, which may be highly irresponsible, does not suggest that the vehicle was intentionally used as a weapon to kill or commit grievous bodily harm so would not amount to a murder or manslaughter offence.
27. It was also suggested that causing death by dangerous driving should attract the same sentences as murder or manslaughter because the harm caused (the death of the victim) is the same in all three offences. Increasing the maximum penalty for this offence would enable the courts to impose a life sentence or any lesser sentence including a determinate sentence of any length. However, increasing a maximum penalty does not guarantee increased sentence length as decisions on sentencing remain with the independent courts and are made on a case by case basis.
28. Comments were also received suggesting that consecutive sentences should be imposed for each death caused. It is an established principle of law that sentences are served concurrently when they relate to the same course of events and consecutively when they relate to separate incidents. However, the court will impose a sentence of a length which reflects the seriousness of all the offending behaviour. Therefore, in circumstances where multiple deaths were the result of a single incident concurrent sentences will be imposed but the court will take account of the number of victims in setting the overall length of the sentence.

29. Those who did not agree with an increase also commented that the current maximum of 14 years was already a severe penalty and, rather than increase the current maximum penalty, there should be greater use by the courts of more severe penalties within the maximum available.
30. Irrespective of whether in favour of increasing the maximum penalty for this offence or not, many comments were received suggesting that offenders convicted of causing death by dangerous driving should serve the entire sentence in custody and not be entitled to early release for “*good behaviour*”. It should be stressed that offenders are not released early for good behaviour. All offenders who receive a standard determinate sentence, for any offence including driving offences, will be released from custody automatically after they have served half of their sentence. This is a statutory requirement set out in the Criminal Justice Act 2003. Offenders are released on licence for the rest of their sentence and may be recalled to custody if they breach the terms of that licence or commit a further offence. It should also be noted that any offender convicted of a driving offence resulting in death is excluded from early release under the home detention curfew (HDC) scheme, unless there are exceptional circumstances justifying the release.

Q4. Do you think that the maximum penalty for causing death by careless driving under the influence of drink or drugs should reflect the same culpability (and therefore the same maximum penalty) as causing death by dangerous driving?

31. There were 8,809 responses to this question. The vast majority of respondents to this question thought the offence of causing death by careless driving under the influence should have the same level of culpability and therefore the same maximum penalty as causing death by dangerous driving. In this category there were also respondents who suggested that knowingly driving under the influence of drink or drugs should automatically be considered as dangerous driving.
32. Of those who thought that the maximum penalty for the offence of causing death by careless driving under the influence of drink or drugs should not reflect the same culpability (and therefore the same maximum penalty) as causing death by dangerous driving, some suggested that careless driving under the influence was more serious than dangerous driving and that the penalty for this offence should reflect that a conscious decision had been made to drive whilst under the influence. Some respondents also suggested that knowingly driving under the influence of drink or drugs should automatically amount to dangerous driving. It was also commented that the penalties for these two offences should be different because the level of culpability is less for the causing death by careless driving under the influence offence because although the driver had consumed alcohol or drugs that did not mean they have driven dangerously.

Q5. Should consideration be given to a longer minimum period of disqualification for offenders convicted of any causing death by driving offence and if so what do you think the minimum period should be?

33. When an offender is convicted of a serious driving offence, such as a causing death offence or dangerous driving, they will be subject to an obligatory disqualification unless the court considers there are special reasons such that the offender should be disqualified for a shorter period, or not at all. Obligatory disqualifications should be for no less than 12 months. For causing death by dangerous driving, causing death by careless driving under the influence of drink or drugs or causing serious injury by dangerous driving the obligatory disqualification should be for no less than 2 years.
34. There were 8,795 responses to this question of which the majority, 84% (7,350), thought that consideration should be given to a longer minimum period of disqualification, 11% (926) were not sure and 5% (451) said there should be no increase.
35. Of those in favour of a longer disqualification period, there was a wide range of proposals for the minimum amount. These ranged from small increases from the current 2 years to a mandatory life ban for all offenders convicted of any causing death by driving offence.
36. 4% (368) of respondents to this question also suggested that mandatory retesting should apply in all cases of causing death by driving. Under current law the court must order a compulsory retest when an offender is disqualified for certain offences. These offences include causing death by dangerous driving, causing serious injury by dangerous driving, dangerous driving and causing death by careless driving under the influence of drink or drugs.
37. Many comments were received suggesting that driving disqualifications should only start once an offender had been released from custody and not run concurrently to a prison sentence. The implication here is that the length of a driving ban should not be diminished by the length of time the offender is in prison. A driving disqualification starts from the day it is imposed because if the disqualification was to commence at the normal point of release, that is at the half way point in a sentence, this could lead to situations where the offender could be released earlier than half way (on a temporary release licence) and would be able to drive before the disqualification period came into effect. However, since April 2015 courts are obliged by statute, when imposing a custodial term, to extend the driving disqualification to take account of the period spent in custody.

Q6. Are there any other driving offences relating to causing death or serious injury that you think should be changed? If so, what changes should be made and why?

38. 3,522 respondees to the consultation said there were other changes that they thought should be made to the law. Not all responses however expanded on what changes they proposed. Some suggestions did not relate to driving offences involving causing death or serious injury or to driving offences generally.

39. Of these the most common comments, 26% (899), related to changes to the way the law or the courts should treat specific circumstances relating to the offence. A number of respondents for example suggested that evidence of excessive speed, or alcohol or drug consumption should mean that an offender is deemed to have been driving carelessly or dangerously irrespective of the standard of their driving or that higher sentences should be given if mobile phone use was an element in a causing death or serious injury offence.
40. 589 responses to the consultation identified with an online campaign "*Justice4George*" which proposes changes to the law relating to drink driving. The campaign argues that carelessness starts from the time a driver over the drink drive limit makes the decision to drive. This would mean that any driver involved in a fatal collision and found to be driving over the drink drive limit would, as a minimum, be charged with the offence of causing death by careless driving while under the influence of drink or drugs, regardless of the standard of driving.
41. 3% (105) of comments related to failure to stop offences, in particular expanding the scope and increasing the maximum penalty for the offence. 2% (62) commented that a death resulting from a driving offence should be treated as seriously as any other offence that involves causing a death, for example, manslaughter.
42. Some comments were received proposing increased penalties for all driving offences involving the use of a mobile phone and 4% (134) of responses to this question suggested that there should be a specific offence of causing death or serious injury whilst using a mobile phone.
43. More generally it was commented that raising maximum penalties, or creating a new offence, will not increase road safety, deter careless or dangerous driving, or guarantee an increase in sentence lengths. Some respondents argued that more consistent enforcement and driver education would be more effective in deterring bad driving and improving road safety.
44. The distinction between careless and dangerous driving was also raised as a concern by some respondents. A number of submissions to the consultation reiterated the concern that the use of the word "*careless*" in relation to driving offences trivialises the nature of the offence and is insulting to bereaved families. It has been suggested that the term "*careless*" should not appear in law, and the manner of driving should be referred to as either legal or illegal. Similarly, some respondents suggested replacing the distinction with a single 'bad driving' offence. It was also submitted that there should be a general review of the distinction between careless and dangerous driving offences.
45. In contrast, there were submissions which supported the government's view, set out in the consultation document, that it was not desirable to amend the established law concerning the distinction between careless and dangerous driving or to create a single 'bad driving' offence.
46. The majority of respondents to this question did not specify what other further changes should be made to driving offences. Where specific proposals were made, they fell into two broad categories; comments on the less serious driving offences and comments that would apply to offences other than driving.

Q7. Does the equalities statement correctly identify the extent of the impacts of the proposed options for reform set out in this consultation paper? Please give reasons and supply evidence as appropriate.

47. In accordance with the Equality Act 2010³ there is a duty to consider the potential effects of any proposals according to protected characteristics. The government fulfilled this duty in the consultation.
48. 78% (6,608) of the 8,464 responses to this question were not sure if the equalities statement correctly identified the extent of the proposed options, 17% (1,481) of the responses agreed that it did and 4% (319) said the equalities statement did not correctly identify the impacts of the proposals.
49. Overall, many of the comments received from the 4% who disagreed with our equalities statement were not relevant to the question asked. Suggestions were made that the equalities statement needed to reflect the impact of the loss of the person on family, work, friends, and the wider community; that victims and their needs should be addressed; and it was also commented that everyone should be treated the same in these matters.
50. The government's assessment, following the consultation, is that the policy is not directly discriminatory within the meaning of the Equality Act as it applies equally to all persons affected by the proposed options for reform set out in the consultation paper; we do not consider that the proposed options would result in people being treated less favourably because of a relevant protected characteristic.
51. In view of several respondents commenting that they did not see or understand the Equality Statement, we wish to restate that the proposals consulted on are not indirectly discriminatory as we believe they do not put people with protected characteristics at a particular disadvantage when compared to others who do not share those characteristics.

³ Section 149 of the Equality Act 2010 ("the EA Act") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the EA Act;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying 'due regard' needs to be considered against the nine "protected characteristics" under the EA Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity

Conclusion and next steps

52. The responses to the consultation demonstrate considerable support for the government's proposals to create a new offence of causing serious injury by careless driving and to increase the maximum penalties for the offences of causing death by dangerous driving and causing death by careless driving under the influence of drink or drugs from 14 years' imprisonment to life.
53. Substantive views or suggestions which fell outside the scope of the consultation but were relevant to driving offences and penalties more generally have been considered and will inform future policy development.

A new offence of causing serious injury by careless driving

54. The majority of responses to this question were in favour of a new offence. They felt it would better reflect the harm caused to victims and would close a clear gap in the law. Having considered the responses to the consultation, and the range of views expressed about the maximum penalty for this offence, the government intends to give further consideration to the maximum penalty and to bring forward proposals to create the new offence when parliamentary time allows.

Maximum penalties for causing death offences

55. The majority of respondents to the consultation who thought that the existing maximum penalty for the offence of causing death by dangerous driving did not reflect the culpability of the offender agreed that the maximum penalty should be increased to life imprisonment.
56. Consultation responses also indicated that the maximum penalty for the offence of causing death by careless driving under the influence of drink or drugs should reflect the same culpability as causing death by dangerous driving and therefore the maximum penalty for both offences should be increased.
57. In the light of the consultation responses the government intends to bring forward proposals, when parliamentary time allows, to raise the maximum penalty for both causing death by dangerous driving and causing death by careless driving under the influence of drink or drugs to life imprisonment.

Minimum disqualification periods

58. Submissions to the consultation demonstrated support for increasing the minimum period of disqualification for drivers convicted of any causing death by driving offence. Consultation responses were less clear on what the minimum disqualification period should be (ranging from a small increase from the current 2 years to a mandatory life ban), how it should be applied and how effective it may be as a deterrent. A number of respondents made the point that disqualification periods were more important as a deterrent in response to less serious driving offences, before a driver went on to commit more serious offences that could lead to death or serious injury.

59. In the light of these responses the government intends to give this proposal further consideration, to take account of disqualification for all offences and any emerging evidence on the effectiveness of disqualification and retesting requirements before proposing further changes to the law.

Other issues

60. The government recognises the concern that some respondents have for both the test of what amounts to careless or dangerous driving and the terminology used in the law. The consultation paper set out the government's view that the objective test for careless and dangerous driving is an important and practical way to assess the degree of culpability of an offender. Having considered all responses to the consultation, the government remains of the view that the objective test relating to the standard of driving is the most effective way to secure convictions and to define offences and penalties that reflect both the harm caused by the offence and the culpability of the offender. The government will however give further consideration to how the legal test and decisions made under it can be more transparent and better understood by victims and the public. We will work with criminal justice practitioners and victims' groups to examine ways to improve information available throughout the criminal justice process.
61. The government keeps under review both the offences and the penalties available for all offences and will continue to do so to ensure that the courts have the full range of powers they need to deal with driving offences. Many of those comments that would have wider implications for all offences dealt with the arrangements for the release of offenders. Again, the government keeps the law and practice relating to the release of offenders under review and will continue to consider the most effective way to punish offenders, protect the public whilst ensuring offenders can be rehabilitated in the community.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Annex A – List of organisations who responded

In addition to responses from private individuals, responses were received from:

Alliance of British Drivers
Approved Driving Instructors (ADI) National Joint Council
BLM Law
Bradford Telegraph & Argus
Brake
British Cycling
Council of HM Circuit Judges – Criminal sub-committee
County Durham and Darlington Road Safety Partnership
Criminal Law Solicitors Association
Criminal Justice Alliance
Crown Prosecution Service
Cycle Sheffield
Cycling UK
Driving Instructors Association
Greater Manchester Cycling Campaign
Healthier Futures CIC
IAM RoadSmart
Institute of Alcohol Studies
Institute of Master Tutors of Driving (IMTD)
Johnston Press plc
Law Society of Scotland
London Criminal Courts Solicitors' Association
Metropolitan Police Service
Office of the Police and Crime Commissioner for Durham
Parliamentary Advisory Council for Transport Safety (PACTS)
Police and Crime Commissioner for Surrey
Police and Crime Commissioner for Greater Manchester
Prison Reform Trust
RAC Foundation
RoadPeace
South East London Bench
South Yorkshire Safer Roads Partnership
The Law Society of England and Wales
The Royal Society for the Prevention of Accidents (RoSPA)
Transport for London

CCS1017205656

978-1-5286-0084-2