

PACTS Response to Ministry of Justice consultation on driving offences and penalties relating to causing death or serious injury

Executive summary

- PACTS agrees that there is a gap in the current legislation in relation to justice for victims of careless driving. We believe that a new offence of causing serious injury by careless driving would be appropriate. PACTS supports a 3 year maximum penalty for this new offence based on the penalties available for existing offences.
- PACTS does not believe that there is evidence to show that raising the maximum penalty for causing death by dangerous driving would be effective at either reducing the number of casualties or deterring offenders from dangerous behaviour. We therefore do not support raising the maximum penalty for causing death by dangerous driving from 14 years' imprisonment to life.
- PACTS recommends that no change be made to the maximum penalty (currently 14 years) for causing death by careless driving under the influence of drink or drugs.
- PACTS is in favour of greater use of disqualification orders, in particular ensuring that all mandatory orders are imposed on eligible offenders except in the most exceptional circumstances. We support greater use of the extended driving test in causing death cases.
- PACTS is in favour of a review of the maximum penalties available for "hit and run" offences.

Introduction

PACTS welcomes the Ministry of Justice's consultation on 'Driving offences and penalties relating to causing death or serious injury.'¹ There were 1,730 reported road deaths and 22,144 people seriously injured in reported road traffic accidents in Great Britain in 2015.² PACTS believes that the justice system has an important role to play in reducing this toll and in providing justice for victims of road traffic collisions. PACTS welcomes the endorsement in this consultation of the Government's commitment to reducing the number of road users killed and injured.

The consultation is seeking views on the following possible legislative changes:

¹ Ministry of Justice, Consultation on driving offences and penalties relating to causing death or serious injury. Available here: <https://consult.justice.gov.uk/digital-communications/driving-offences-causing-death-or-serious-injury/>

² Department for Transport, Reported road casualties Great Britain, annual report: 2015. Available here: <https://www.gov.uk/government/statistics/reported-road-casualties-great-britain-annual-report-2015>

- Creating an additional offence of causing serious injury by careless driving;
- Raising the maximum penalty for causing death by dangerous driving from 14 years' imprisonment to life;
- Raising the maximum penalty for causing death by careless driving under the influence of drink or drugs from 14 years' imprisonment to life, and
- Imposing a longer minimum period of disqualification for offenders convicted of any causing death by driving offence.

The Government is considering these changes in order to 'make sure that the options available to the courts to punish drivers who cause death or serious injury on the roads are proportionate and reflect the seriousness of the offences committed.' Furthermore, to 'provide surviving victims and their families with a greater understanding and a sense that justice has been done.'³

PACTS is supportive of the Government consulting on driving offences and penalties in order to provide greater justice. The law and its application are also important elements in managing road safety and reducing road casualties. We therefore believe that it is important to ensure that the penalties available for driving offences give courts the ability to impose appropriate sentences.

PACTS is disappointed that this consultation does not cover non-custodial sentences, charging standards and other elements of the justice system relating to serious driving offences. We would have welcomed a broader review that considered all the offences available, prosecution procedures and whether or not the sentences imposed are working in practice.

PACTS is also disappointed at the lack of evidence provided with this consultation. Neither the main document nor the impact assessment provide any information on the likely effects of these changes, other than in terms of costs to the justice system. Further evidence on the implications for road safety and for justice would have enabled stakeholders to make a better informed judgment on the issues. If the MoJ believes these impacts would be small or too difficult to assess, it would be helpful to know this.

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

Yes. PACTS believes that a new offence of causing serious injury by careless driving should be introduced.

In Great Britain in 2015, 22,144 road users were reported seriously injured.⁴ In cases where serious injury is caused, there are currently two driving offences enforced (as set out in Annex A of Consultation Paper⁵):

- Causing serious injury by dangerous driving, and
- Causing serious injury when disqualified from driving.⁶

There is currently no offence of causing serious injury by careless driving. PACTS agrees that this is a gap in the current legislation which should be filled.

³ Ministry of Justice, Impact Assessment, Consultation on Driving Offences and penalties relating to causing death or serious injury.

⁴ Department for Transport, 'Reported Road Casualties Great Britain: 2015 Annual Report' Sept 2016

⁵ Ministry of Justice, Consultation on Driving Offences and penalties relating to causing death or serious injury. Available here: <https://consult.justice.gov.uk/digital-communications/driving-offences-causing-death-or-serious-injury/>

⁶ The definitive guidance on offences of causing death by driving are covered within the Sentencing Council's guidelines, 'Causing Death by Driving.' Available here: http://www.sentencingcouncil.org.uk/wp-content/uploads/web_causing_death_by_driving_definitive_guideline.pdf

When an offender causes serious injury by careless driving, they may be charged with the offence of careless driving. The maximum penalty for careless driving is a £5,000 fine (Level 5 fine on the standard scale⁷) and between 3-9 penalty points. There is no additional offence for causing serious injury by careless driving.

The Department for Transport's 'Reported Road Casualties Great Britain' illustrates that some form of careless driving is a contributory factor in a large number of reported accidents. In 2015, there were 19,608 accidents (all severities) in Great Britain in which drivers or riders were judged to have displayed careless, reckless or hurried behaviour.⁸ 24,722 accidents were caused by 'injudicious behaviour' such as travelling too fast for conditions and following too closely. A number of these accidents resulted in serious injuries, eg. 1,380 serious injuries involved the driver travelling too fast for conditions. This additional offence could address these types of incidents, which are not appropriately covered by existing offences.

The culpability of the driver is deemed to be low in cases of careless driving. Most drivers are not deliberately careless. However, driving is a task that requires responsibility as it may cause injury that can be potentially life-changing. A specific offence with a higher penalty would emphasise that drivers have the important responsibility not to endanger other road users through their carelessness.

PACTS would not, however, wish to see the availability of this offence reduce the readiness of the CPS (and police) to bring charges for the offence of causing serious injury by dangerous driving. Numbers charged for causing death by dangerous driving fell considerably for a number of years following the introduction of causing death by careless driving.

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?

PACTS supports a 3 year maximum penalty for the new offence based on the penalties available for existing offences.

The maximum penalty would have to be between the penalties for careless driving (a fine and penalty points) and causing death by careless driving (up to 5 years' imprisonment, minimum disqualification of 12 months,⁹ discretionary re-test.¹⁰) No evidence is provided in the consultation to favour either 2 or 3 years' imprisonment. However, as the maximum penalty for Assault Occasioning Actual Bodily Harm (AOABH) is 5 years' imprisonment,¹¹ a 3 year maximum penalty would seem to be more appropriate than two years.

The consultation document does not state the number of penalty points or disqualification period that would be attributed to this new offence. We recommend that the statutory penalties show equal regard for existing offences.

⁷ Criminal Justice Act 1982, The standard scale of fines for summary offences.

<http://www.legislation.gov.uk/ukpga/1982/48/part/III/crossheading/introduction-of-standard-scale-of-fines>

⁸ Department for Transport, Reported Road Casualties Great Britain: 2015 Annual Report. RAS50001 Contributory factors in reported accidents by severity, Great Britain, 2015. Available here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/568484/rrcgb-2015.pdf

⁹ The offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification.

¹⁰ There is a discretionary power to order an extended driving test for this offence. Road Traffic Offenders Act 1988, s.36(4)

¹¹ CPS, Offences Against the Person. Available: http://www.cps.gov.uk/legal/l_to_o/offences_against_the_person/

Definitions of serious injury

The consultation defines serious injury as ‘physical injury which amount to grievous bodily harm (GBH) for the purposes of the Offences Against the Person Act 1861’ in England and Wales and Scotland. This is not equivalent to the definition of serious injury as used by the police.

The police record data within STATS19 at the scene of an accident. An injury is recorded as either slight or serious by the police at the scene on the basis of information available within a short time of the accident. The two definitions as provided by the Consultation and by the Department for Transport’s data collection for police forces and local authorities are not identical.¹²

It would be helpful to clarify if the different definitions have any implications for application of the law or for recording of road casualties.

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?

PACTS’ view is that the current maximum penalty of 14 years’ imprisonment is broadly in line with the sentences available for other very serious offences which involve a similar level of culpability and harm.

The current maximum penalty for causing death by dangerous driving is 14 years’ imprisonment. The offences of causing death by driving which carry this maximum sentence are:

- Causing death by dangerous driving (a maximum of 14 years’ imprisonment can be imposed),
- Causing death by careless driving under the influence of drink or drugs (a maximum of 14 years’ imprisonment can be imposed).

(There is also an offence of causing death by careless driving [a maximum of 5 years’ imprisonment can be imposed]).

The definition of dangerous driving is set out in the section 2A of the Road Traffic Act 1988.¹³ According to the consultation, behaviours which may constitute dangerous driving include ‘street racing; excessive speed and driving aggressively for sustained periods; ignoring road signs or warnings from other passengers; overtaking dangerously’.¹⁴ The offence of dangerous driving involves a high level of driver culpability and therefore lengthier prison terms and stricter penalties are often deemed to be justified.

The consultation does not state the likely impact of the adjustment.

PACTS believes that 14 years’ imprisonment is already a deterrent to dangerous driving. We are not aware of evidence that shows that increasing the maximum penalty for this offence would deter drivers any further from driving dangerously. The current maximum penalty of 14 years’ imprisonment is broadly in line with the sentences available for other very serious offences.

Some would argue that causing death by dangerous driving is equivalent to manslaughter and should carry the same maximum penalty. Manslaughter usually involves intent or a high degree of

¹² STATS20 Department for Transport, Instructions for the Completion of Road Accident Reports from non-CRASH Sources. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230596/stats20-2011.pdf

¹³ Road Traffic Act 1988 <http://www.legislation.gov.uk/ukpga/1988/52/section/2A>

¹⁴ Ministry of Justice, Consultation on Driving Offences and penalties relating to causing death or serious injury. Available here: <https://consult.justice.gov.uk/digital-communications/driving-offences-causing-death-or-serious-injury/>

responsibility (particularly professional). This does not normally apply to driving. If a case of dangerous driving involves some form of deliberately harmful or seriously negligent behaviour, then the offender should be prosecuted for murder or manslaughter, as appropriate.

PACTS recognises that this is a sensitive issue. Increasing the maximum penalty could potentially provide a stronger sense of fairness and justice for victims and their families. However, while there is sometimes a tendency to demand longer sentences, it is not clear if any sentence (even life) would adequately compensate for bereavement or life-changing injuries.

The consultation makes clear that courts will not be required to impose the maximum penalty for this offence. Whilst the average length of custodial sentences for causing death by dangerous driving is increasing, statistical evidence shows that maximum penalties are rarely imposed. We do not believe that raising the maximum penalty would necessarily raise the penalties awarded by the Courts. In our view, judges would be unlikely to impose life imprisonment. Longer maximum sentences such as life could potentially deter juries from convicting through concern that a conviction would result in a life sentence.

PACTS does not believe there is evidence to show that raising the maximum penalty for causing death by dangerous driving would be effective at either reducing the number of casualties or deterring offenders from this dangerous behaviour. The maximum penalty for this offence should remain consistent with other offences of this nature.

PACTS therefore believes that a lower penalty is appropriate for causing death by dangerous driving.

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?

Yes, PACTS recommends that no change be made to the maximum penalty for causing death by careless driving under the influence of drink or drugs.

The current maximum penalty for causing death by careless driving under the influence of drink or drugs is 14 years' imprisonment. This is the same as the maximum penalty for causing death by dangerous driving.

The maximum penalty for these two offences is currently equal in order to reflect the serious consequence of the crime and the culpability of the driver in both cases. Although the driving in question may not be as dangerous in the case of careless driving whilst under the influence, the driver's culpability lies at the same level as those drivers who drive dangerously whilst sober.

Deciding to drive whilst under the influence of drugs or alcohol is deliberately dangerous behaviour. 14 years' imprisonment reflects the seriousness of the consequences of this offence and the culpability of the driver.

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?

PACTS is in favour of greater use of disqualification to remove drivers proven to be dangerous or careless from the roads for a fixed period of time. We are in favour of ensuring that all mandatory orders are imposed on eligible offenders except in exceptional circumstances.

The minimum period of disqualification for serious driving offences are structured as followed:

- Causing death by careless or inconsiderate driving: minimum disqualification of 12 months, discretionary re-test,
- Causing death by driving: unlicensed, disqualified or uninsured drivers: minimum disqualification of 12 months, discretionary re-test,
- Causing death by careless driving when under the influence of drink or drugs or having failed either to provide a specimen for analysis or to permit analysis of a blood sample: minimum disqualification of 2 years with compulsory extended re-test,
- Causing death by dangerous driving: minimum disqualification of 2 years with compulsory extended re-test.¹⁵

As of April 2015 Courts are obliged by statute to extend driving disqualifications to take into account any period of time spent in custody.¹⁶ This means that driving disqualifications are no longer reduced by custodial time. PACTS is supportive of the length of a disqualification at least equating with the length of the custodial term imposed or minimum statutory length, in the likely event that the offender is released at the halfway point of their sentence.

PACTS favours greater use of disqualification to remove drivers proven to be dangerous or careless from the roads for a fixed period of time. We favour ensuring that all mandatory orders are imposed on eligible offenders except in exceptional circumstances. Unlike prison sentences, periods of disqualification are fixed and the option to impose a driving ban allows Courts the opportunity to give a penalty that will not be subject to change.

International research suggests it is better to keep drivers within formal licensing control systems to avoid their marginalisation, for their own and society's good. PACTS supports greater use of the extended driving test in causing death cases where there is a discretionary charge available. This would potentially improve poor driving skills before or after disqualification for more drivers and prevent repeat offending.¹⁷

PACTS believes that excessively long disqualification may have negative consequences, including unlicensed driving. The prospect of regaining a licence (under strict conditions) should remain, except perhaps in extreme cases.

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?

PACTS believes that the Ministry of Justice should review the maximum penalties available for hit and run offences.

In 2014, 10% of accidents involving an injury involved a 'hit and run' driver. This is a significant issue and numbers of hit and run cases have risen in the last two years.¹⁸

Drivers who hit and run can face 5-10 penalty points, disqualification, fines of up to £5000 or six months imprisonment. The current offences for failing to stop after an accident ("hit and run") are

¹⁵ Sentencing Council: Causing Death by Driving Definitive Guidelines. https://www.sentencingcouncil.org.uk/wp-content/uploads/web_causing_death_by_driving_definitive_guideline.pdf

¹⁶ Sentencing Council: Explanatory Notes. Available here: <https://www.sentencingcouncil.org.uk/explanatory-material/item/road-traffic-offences-disqualification/9-extension-of-disqualification-from-driving-where-custodial-sentence-also-imposed/>

¹⁷ PACTS submission, Transport Select Committee Inquiry: Road Traffic Law Enforcement, October 2015. Available here: <http://www.pacts.org.uk/wp-content/uploads/sites/2/PACTS-Transport-Select-Committee-Inquiry-Evidence-Final.pdf>

¹⁸ Motor Insurance Bureau research. Available here: <https://www.mib.org.uk/media-centre/news/2016/april/new-research-shows-why-drivers-hit-and-run/>

out of alignment with other careless and dangerous driving offences. This disparity may encourage drivers involved in an accident not to stop.