

ITEM: CONSULTATION ON NEW CYCLING OFFENCES

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1. Purpose of the Report

1.1 This report summarises the Department for Transport (DfT) consultation¹ which is seeking views on whether or not there should be new offences for causing death or serious injury when cycling, and what the associated penalties might be. The consultation also seeks views on the scope and penalties of existing offences, which currently only apply to cyclists when they are on public roads (including pavements), but not when they are in other public places.

2. Supporting Information

Background

- 2.1 On 21 September 2017 the Government announced a Cycling and Walking Safety Review in two phases: the first, a review of the case for a new offence for cyclists equivalent to causing death or serious injury by driving; and the second, a wider review on road safety issues relating to cycling.
- 2.2 In relation to the first phase, the Government appointed an independent legal expert, Laura Thomas, to determine whether the current applicable law continues to be adequate in these cases. Her report considers the case for a new offence and the details of that report were published on 9 March 2018².
- 2.3 Evidence was gathered from a range of sources including: current statute and common law; charging and sentencing guidelines; extracts from Hansard; police road casualty data; commentary on known cases in the press and other sources; Court of Appeal judgments; sentencing remarks; legislation from other jurisdictions; representations from stakeholders; and interviews with lawyers and police officers.
- 2.4 The report concluded that there is a persuasive case for legislative change to tackle the issue of dangerous and careless cycling that causes serious injury or death, in order to bring cycling offences into line with driving offences.
- 2.5 The consultation document sets out the current law under which cyclists may be prosecuted where they kill or injure others, and asks for views on creating new offences. It recognises the potential difficulties of trying to create complete parity between cyclists and drivers: for example, there are no proposals to introduce a cycling testing, licensing and insurance regime similar to that for drivers.
- 2.6 The consultation document also acknowledges the differences in drink and drug driving laws between drivers and cyclists. It is already an offence to cycle while unfit

¹ <https://www.gov.uk/government/consultations/new-cycling-offences-causing-death-or-serious-injury-when-cycling>

² <https://www.gov.uk/government/publications/cycle-safety-review>

through drink or drugs but there is no proposal to introduce limits and a testing regime for cyclists.

- 2.7 The document considers other aspects of current cycling law as to dangerous and careless (inconsiderate) cycling and invites views on whether there should be changes in penalties for these offences.

Existing Offences

- 2.8 The consultation document provides details of existing offences, including:

- Offences where drivers or riders cause harm
- Cycling offences
- Driving offences

- 2.9 A summary of these is provided in Appendix A of this report.

- 2.10 The Government considers that there is a gap in the law and the consultation contains proposals on how best to address that. It is not proposed to amend offences other than those set out in the consultation document, so there would be no review of existing driving offences, only of those relating to cycling.

- 2.11 The aim of the proposed legislation would be to achieve consistency between cyclists and drivers and parity of sentencing options where the outcome is death or serious injury.

- 2.12 The consultation is seeking views on a change in the law which would result in cyclists who kill or seriously injure others by their dangerous or careless cycling behaviour, facing a prison sentence that is potentially longer than they would be likely to face under the existing law.

- 2.13 Current cycling offences apply to the road and pavements, but unlike driving offences do not extend to public places (apart from the offence of being unfit to ride through drink or drugs). There is no statutory definition of 'public place', but case law indicates that areas such as car parks and shopping precincts would potentially fall within scope of public place where a driving offence has been committed. The Government proposes to extend new cycling offences to include public places.

- 2.14 In creating legislation for new offences of causing death or serious injury by dangerous or careless cycling which cover cycling in a public place, Government believes that they also need to re-frame the current offences of dangerous or careless cycling which currently only apply to cycling on the road.

- 2.15 Drivers who offend face the sanction of penalty points endorsed on their driving licence and the accumulation of points may ultimately result in the driver being disqualified by the courts. It is not proposed to introduce a system of penalty points for cyclists since it could only apply where a record for cyclists was held or through the introduction of a

new regime of licences for cyclists. This could inadvertently discourage many people from taking up cycling, and unfairly burden the vast majority of law-abiding cyclists.

- 2.16 Cyclists are already at risk of driving disqualification for a cycling offence at the discretion of the court under the powers in Section 146 of the Powers of Criminal Courts (Sentencing) Act 2000, and it is not proposed to change this.
- 2.17 Where obligatory disqualification applies for driving offences under the Road Traffic Offenders Act 1988, minimum disqualification periods apply, and no changes to these are proposed. However, the consultation seeks views on whether or not obligatory disqualification from driving for a minimum period should also apply to any new cycling offences.

Impacts on other areas of legislation

- 2.18 Government considers that it would not be proportionate to change the penalties which are currently a £2,500 fine for dangerous cycling and £1,000 fine for careless cycling, even though this differs from the maximum penalty for dangerous driving which is a two year prison sentence and/or a fine, and for careless driving, which is an unlimited fine.
- 2.19 Drivers and cyclists face the same test for dangerous and careless driving or cycling. However, the difference in current penalties reflects the level of harm that a driver or cyclist is likely to cause. Cyclists already face significant fines for dangerous or careless cycling, and Government considers it to be disproportionate for a cyclist to face imprisonment if, for example, cycling dangerously without causing harm.
- 2.20 It is currently an offence to ride a cycle when unfit to ride through drink or drugs (this applies on a road or other public place). If found guilty offenders face a fine of up to £1,000.
- 2.21 The test for this offence is that the cyclist is 'under the influence of drink or a drug to such an extent as to be incapable of having proper control of the cycle.' The courts rely on a police officer's own testimony as to why they thought the offender was under the influence.
- 2.22 This differs from the laws which apply for drivers under the influence of drink or drugs. Drivers are subject to a regime which gives the police powers to breathalyse or obtain other samples, to test blood alcohol limits or for the presence of specified controlled drugs. However, Government does not propose to introduce the same regime for cyclists.
- 2.23 The offence of causing death by careless driving when under the influence of drink or drugs (section 3A of the Road Traffic Act 1988) requires that the death be caused by a person driving without due care and attention, or without reasonable consideration for other people using the road or place. This is judged against the standard of what would be expected from a careful and competent driver (as set out in Section 3ZA of the Road Traffic Act 1988). The maximum prison sentence is currently 14 years.

- 2.24 It is not proposed to change the unfit to ride a cycle offence or to introduce an offence for cyclists that mirrors causing death by careless driving under the influence of drink or drugs. Government considers that it would be appropriate for drink or drug use to be considered as an aggravating factor when sentencing for causing death or serious injury by cycling.
- 2.25 In order to increase the severity of sentence for cycling while under the influence Government could consider increasing the fine for the offence of riding a cycle when unfit to ride though drink or drugs. There is also the option to make it an offence to attempt to cycle (as well as to actually cycle) when unfit to do so.

Consultation questions and next steps

- 2.26 A list of the consultation questions is provided in Appendix B of this report.
- 2.27 A summary of responses, including the next steps, will be published on the DfT website within three months of the consultation.

3. Recommendations

- 3.1 It is recommended that the Cycle Forum considers the consultation and agrees a response to be submitted by the Chair of the Cycle Forum by the deadline of 5 November 2018.**

APPENDIX A: SUMMARY OF EXISTING OFFENCES

Table A1: Offences where drivers / riders cause harm

Offence	Legislation	Maximum Penalty	Comments
Causing bodily harm by wanton or furious driving or other misconduct	Section 35 of the Offences Against the Person Act 1861	2 years imprisonment and / or an unlimited fine	To convict a cyclist of gross negligence manslaughter it must be shown that there was breach of a duty of care owed by the cyclist to the deceased, that the breach caused (or significantly contributed to) the death and that the breach should be characterised as grossly negligent.
Inflicting grievous bodily harm	Section 20 of the Offences Against the Person Act 1861	5 years imprisonment	
Manslaughter	Section 5 of the Offences Against the Person Act 1861	Life imprisonment	

Table A2: Cycling offences

Offence	Legislation	Maximum Penalty	Comments
Dangerous cycling	Section 28 of the Road Traffic Act 1988	Level 4 fine of up to £2,500 (Not an endorsable offence)	Only riding a cycle when unfit to ride through drink or drugs applies in a public place.
Careless / inconsiderate cycling	Section 29 of the Road Traffic Act 1988	Level 3 fine of up to £1,000 (Not an endorsable offence)	
Riding a cycle when unfit to ride through drink or drugs	Section 29 of the Road Traffic Act 1988	Level 3 fine of up to £1,000 (Not an endorsable offence)	Courts have discretion to apply for a driving disqualification for a cycling offence

Table A3: Driving offences

Offence	Legislation	Maximum Penalty	Comments
Causing death by dangerous driving	Section 1 of the Road Traffic Act 1988	14 years imprisonment plus disqualification from driving for at least 2 years unless there are special reasons for a shorter period or no disqualification.	Where no disqualification order is made the court must endorse the driver's licence with 3 - 11 penalty points, unless for special reasons, it sees fit not to do so. The exception is for careless / inconsiderate driving where the

Offence	Legislation	Maximum Penalty	Comments
Causing serious injury by dangerous driving	Section 1A of the Road Traffic Act 1988	5 years imprisonment and/or an unlimited fine, plus disqualification from driving for at least 2 years unless there are special reasons for a shorter period or no disqualification.	court must endorse the driver's licence with 3 – 9 penalty points if a driving disqualification is not imposed.
Dangerous driving	Section 2 of the Road Traffic Act 1988	2 years' imprisonment and/or an unlimited fine, plus disqualification from driving for at least 1 year unless there are special reasons for a shorter period or no disqualification.	An extended retest is also mandatory for all dangerous driving offences and for causing death by careless driving while under the influence of drink or drugs.
Causing death by careless / inconsiderate driving	Section 2B of the Road Traffic Act 1988	5 years imprisonment and/or an unlimited fine, plus disqualification from driving for at least 2 years unless there are special reasons for a shorter period or no disqualification.	Dangerous and careless driving offences apply to the road or other public place
Careless / inconsiderate driving	Section 3 of the Road Traffic Act 1988	An unlimited fine plus the court has the discretion to disqualify the driver from driving.	
Causing death by careless driving while under the influence of drink / drugs	Section 3A of the Road Traffic Act 1988	14 years imprisonment and/or an unlimited fine, plus disqualification from driving for at least 2 years (3 years if there is another drink / drug driving conviction in the previous 10 years) unless there are special reasons for a shorter period or no disqualification.	

APPENDIX B: CONSULTATION QUESTIONS

Question 1: The consultation proposes that there should be an offence of causing death by dangerous cycling. Do you agree with this proposal?

Question 2: Do you think that there should be an offence of causing death by careless or inconsiderate cycling?

Question 3: The consultation also proposes that there should be an offence of causing serious injury by dangerous cycling. Do you agree with this proposal?

Question 4: The Ministry of Justice consulted on bringing forward a new offence of causing serious injury by careless driving. This consultation proposes that there should be an offence of causing serious injury by careless or inconsiderate cycling. Do you agree with this proposal?

Question 5: If there were a new offence of dangerous or careless cycling, do you think the sentences should match the sentences for dangerous or careless driving (current driving sentences shown in brackets)?

- a. causing death by dangerous cycling (currently 14 years for driving)
- b. causing death by careless cycling (currently 5 years for driving)

- c. causing serious injury by dangerous cycling (currently 5 years for driving)

Question 6: The report from the independent expert concluded that there is a gap in the law regarding dangerous or careless cycling. Do you feel that existing laws adequately cover circumstances where a person's cycling causes harm or injury others?

Question 7: Do you have any comments on any laws not covered in this consultation which could apply when trying to prosecute for this cycling behaviour?

Question 8: Do you have any other comments that you wish to make in relation to how existing laws apply in Scotland?

Question 9: This consultation proposes that new offences should apply to public places as well as roads. Do you agree with this proposal?

Question 10: The current offences of dangerous or careless cycling apply to a road. This consultation proposes that it should also extend to a public place. Do you agree with this proposal?

Question 11: Are there any other comments that you wish to make about where the laws should apply?

Question 12: Drivers may be banned from driving for committing a current cycling offence. Minimum driving disqualification periods currently apply under the Road Traffic Offenders Act 1988. For drivers this is currently 2 years for causing death or serious injury, 1 year for causing death by careless driving. Do you think this should also apply to any of the new offences proposed in this consultation?

Question 13: If not please explain why? If so, do you have any views on how long the minimum disqualification period should be?

Question 14: There is currently an offence of dangerous cycling (with a fine of up to £2,500) and for careless cycling (with a fine of up to £1,000). This consultation proposes that the penalties for these offences should remain unchanged. Do you agree with the proposal?

Question 15: If not, please explain why. Are there any other comments you wish to make on the level of penalty?

Question 16: This consultation proposes that there should not be a new offence of causing death by careless cycling when under the influence of drink or drugs. Do you agree with the proposal?

Question 17: The current fine for riding a cycle when unfit to ride through drink or drugs is £1,000. Do you think we should consider increasing the fine?

Question 18: Do you think we should consider making it an offence to attempt to cycle (as well as actually cycling) when unfit to do so through drink or drugs?

Question 19: Are there any further comments you wish to make?