



accidents don't have to happen

Response to

Ministry of Justice Consultation Paper

**“Driving Offences and Penalties Relating
to Causing Death or Serious Injury”**

January 2017



Response to Driving Offences and Penalties Relating to Causing Death or Serious Injury

Introduction

This is RoSPA's response to the Ministry of Justice's consultation paper, "Driving Offences and Penalties Relating to Causing Death or Serious Injury". It has been produced following consultation with RoSPA's National Road Safety Committee.

For most serious criminal offences it is necessary to prove criminal intent on the part of the defendant, but this does not apply to specific road traffic offences. Careless or dangerous driving is determined by the nature of the driving, compared to a notional careful and competent driver, not by the driver's state of mind or intentions, which is often difficult to ascertain.

Careless driving, as defined in Section 3ZA of the Road Traffic Act 1988, is driving without due care and attention, if the manner of the driving falls below what would be expected of a competent and careful driver.

Dangerous driving, as defined in Section 2A(1) of the Road Traffic Act 1988, is driving that falls far below what would be expected of a competent and careful driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous.

Driving behaviour that is commonly judged to be dangerous driving includes street racing, excessive speed, driving aggressively for sustained periods, ignoring road signs or warnings from passengers, overtaking dangerously, driving under the influence of drink or drugs and driving knowing that the vehicle has a dangerous fault or an unsafe load.

Driving behaviour that is commonly judged to be careless driving includes overtaking on the inside, driving too close to another vehicle, turning into the path of another vehicle and the driver being avoidably distracted by operating music controls, lighting a cigarette and so on.

The law seeks to sentence drivers who cause death or injury on the road in a way that is appropriate to the degree of blameworthiness of the driver. Sometimes, however, a relatively minor mistake may have very tragic consequences and sometimes thoroughly reckless driving may fortuitously result in little, if any, harm.

The Government is considering proposals to improve the legislative framework that the courts operate within so it reflects the seriousness of offending and the culpability of the offender. It is seeking views on:

- the distinction between 'careless' and 'dangerous' driving
- a perceived 'gap in the law' for causing serious injury by careless driving
- maximum penalties for causing death
- driving disqualifications.



Response to Driving Offences and Penalties Relating to Causing Death or Serious Injury

A new offence of causing serious injury by careless driving

In England and Wales serious injury is defined as physical injury which amounts to grievous bodily harm (GBH) and, in Scotland, as severe physical injury. The maximum penalty for an assault (GBH) or an assault occasioning actual bodily harm (ABH) is 5 years' imprisonment. The two driving offences of causing serious injury are:

- causing serious injury by dangerous driving, which has a maximum penalty of 5 years' imprisonment
- causing serious injury when disqualified from driving, which has a maximum penalty of 4 years' imprisonment.

If a new offence of causing serious injury by careless driving was created the maximum penalty would have to balance the level of harm caused by the driver and the culpability of the driver, which will be lower than in cases of dangerous driving. It will also need to take account of the maximum penalties for other related offences of causing serious injury (GBH and ABH).

Q1. Should there be a new offence of causing serious injury 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?****RoSPA Response**

RoSPA believes that there should be a new offence of causing serious injury by careless driving. These cases often cause permanent injury and have a devastating impact on the lives of victims and their families, even when the culpability of the driver may be low.

Currently, without an offence of causing serious injury by careless driving, offenders in such cases are usually charged with careless driving, the maximum penalty for which is an unlimited fine. This does not reflect the level of harm when a careless driver causes serious, often life-changing, injury.

The maximum penalties for causing serious injury by dangerous driving is 5 years in prison and for causing serious injury when driving while disqualified is 4 years in prison. However, these offences involve a degree of intent by the offender that does not exist for careless driving. Therefore, RoSPA thinks the maximum penalty for the new offence should be lower, and we suggest a maximum sentence of 3 years' imprisonment.

RoSPA believes that the consultation should have included an overall review of all bad driving offences, including the charging process when the decision is made about which charge(s) to apply, as well as the penalties. We do not think that this new offence on its own will be effective in improving road safety or deterring careless driving. We do not believe that drivers who make mistakes, or who are not paying sufficient attention to their driving consider the possibility that they may cause a serious crash and face the penalties. Stronger and more consistent enforcement and driver education of poor driving (such as close following, speeding, using a mobile phone) before it causes a crash would help to improve driving standards.

In our view, the main benefit of a new offence of causing serious injury by careless driving will be to provide a stronger sense of fairness and justice for victims and their families. It would also send a clear message that society does not accept the level of harm caused by careless drivers who cause serious injury.



Response to Driving Offences and Penalties Relating to Causing Death or Serious Injury

The maximum penalties for offences causing death by careless or dangerous driving

The three offences of causing death by careless or dangerous driving are:

- (i) causing death by careless driving, with a maximum sentence of 5 years' imprisonment
- (ii) causing death by dangerous driving, with a maximum sentence of 14 years' imprisonment
- (iii) causing death by careless driving under the influence of drink or drugs, with a maximum sentence of 14 years' imprisonment

Increasing the maximum penalty for causing death by dangerous driving to life in prison would mean the offence had the same maximum penalty as manslaughter. This would enable the courts to impose a life sentence or any length of determinate sentence. If the court imposed a life sentence the offender would serve a minimum period of custody (or tariff) before being considered for release by the Parole Board. If released the offender would be subject to a life licence. An offender receiving a determinate sentence would be released at the half way point in their sentence and subject to licence supervision in the community for the remainder of their sentence.

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?**RoSPA Response**

When a driver has been convicted of causing death by dangerous driving, both the harm caused by the driver, and the culpability of their driving, were very high, which arguably justifies lengthy prison sentences. However, we are not convinced that increasing the maximum sentence to life imprisonment would actually increase the length of prison sentences imposed.

The average length of custodial sentences for causing death by dangerous driving is increasing. However, despite sentencing guidelines that require courts to take aggravating factors into account when determining the seriousness of the offence and the sentence, data provided in the consultation paper shows that the current maximum sentences are rarely, if ever, imposed. Increasing the maximum penalty would not guarantee increased sentence lengths as decisions on sentences are made by the court on a case by case basis in light of the circumstances of the individual case.

The number of offenders sentenced for causing death by dangerous driving changed very little between 2011 and 2015, ranging from 96% to 93% of cases, and the average custodial sentence length increased steadily between 2011 and 2014 from 48.7 months to 61.5 months, but fell slightly in 2015 to 57.1 months.

A more recent illustration of the fact that existing maximum sentences are not imposed is the case of the driver who killed a mother and three children when he was distracted by using a mobile phone while driving and crashed into the rear of other vehicles. He was sentenced to 10 years in prison, even though the maximum sentence could have been 14 years.

RoSPA does not think that increasing the maximum penalty to life in prison on its own would improve road safety by deterring dangerous driving. Drivers who drive dangerously do not consider the possibility that they may cause a fatal crash and face the penalties. If they did consider this, then surely the possibility of 14 years in prison would act as a deterrent.



Response to Driving Offences and Penalties Relating to Causing Death or Serious Injury

The main justification for increasing the penalty for causing death by dangerous driving from 14 years to life in prison would be to provide a stronger sense of fairness and justice for the bereaved families. It would also send a clear message that society regards death caused by dangerous drivers as seriously as manslaughter.

As with the proposal to introduce a new offence of causing serious injury by careless driving, stronger and more consistent enforcement and driver education of poor driving (such as close following, speeding, using a mobile phone) before it causes a crash would help to deter bad driving and so improve road safety.

The maximum penalty for causing death by careless driving under the influence of drink or drugs

The maximum penalty for causing death by careless driving under the influence of drink or drugs is 14 years in prison, which is the same as for causing death by dangerous driving. If the maximum penalty for causing death by dangerous driving is increased to life imprisonment it raises the question of whether the maximum penalty for the causing death by careless driving under the influence should also be increased, otherwise it would imply a difference in the level of culpability of the driver between the offences.

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?

RoSPA Response

RoSPA believes that the maximum penalty for causing death by careless driving under the influence of drink or drugs should be the same as for causing death by dangerous driving. Therefore, if the maximum penalty for causing death by dangerous driving is increased to life in prison, the maximum penalty for causing death by careless driving under the influence of drink or drugs should also be increased to life in prison.

Although the nature of the driving in these cases may not be as bad as dangerous driving, the fact that the offender was driving while under the influence of drink or drugs, tips the driver's culpability into the dangerous category. A person's driving may be careless, but deciding to drive after consuming alcohol or drugs is much more than careless; it is deliberate, dangerous behaviour.

Disqualifications

Sentences for some offenders with a bad driving record and for more serious offences (including causing death by dangerous driving, causing death by careless driving under the influence of drink or drugs, and causing serious injury by dangerous driving) include an obligatory disqualification of no less than 2 years. For repeat offenders within a 10 year period, the disqualification should be no less than 3 years.

Since April 2015 when imposing a prison sentence, courts have been required to extend driving disqualifications to take account of the period spent in custody to ensure that the driving ban does not end, or be significantly reduced, while the offender is in custody.



Response to Driving Offences and Penalties Relating to Causing Death or Serious Injury

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?

RoSPA Response

RoSPA believes that offenders convicted of any causing death by driving offence should be subject to an obligatory disqualification from driving, and the period of the disqualification should extend well beyond any period of imprisonment. As a rule, the minimum disqualification period for offenders who cause death or serious should be longer than for those who do not. Drivers who have served a prison sentence, and a subsequent driving ban, will not have driven for some years. Therefore, they should be required to pass a driving test at the end of their disqualification before gaining their driving licence back.

Other issues

The consultation sets out the consideration given by the Government to a number of areas of the law relating to causing death or serious injury. The Government has concluded that some changes to the law were not necessary or practical but have issued the consultation to seek views on the offences dealing with, or relating to, causing death or serious injury.

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

RoSPA Response

RoSPA does not agree with the suggestion that the maximum penalty should always be imposed on offenders who have been convicted of causing death by dangerous driving. It should continue to be a matter for the court to decide the sentence, taking account of all the circumstances of the offence(s) and the offender, and any mitigating and aggravating factors, such as excessive speeding, using a mobile device, presence of vulnerable road users, as required by the sentencing guidelines. Another approach would be to set minimum sentences for people convicted of causing death or serious injury by careless or dangerous driving. However, this would need careful consideration of whether such an approach might actually have the unintended consequences of reducing the severity of sentences imposed.

We do not agree that where an offender has caused more than one death, the maximum penalty should be imposed for each death with the sentences served consecutively (one after the other) rather than concurrently (at the same time). The sentencing guidelines already require the sentence to treat cases where there was more than one victim as an aggravating factor, meriting a longer sentence. Imposing a series of long consecutive sentences irrespective of the culpability of the offender would restrict the ability of judges to exercise their discretion to impose a just and proportionate sentence in individual cases. Imposing the statutory maximum penalty in all cases would also conflict with the position in relation to other offences resulting in death, such as manslaughter.

RoSPA thanks the Ministry of Justice for the opportunity to comment on the proposals. We have no objection to our response being reproduced or attributed.





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RoSPA Head Office

28 Calthorpe Road
Birmingham
B15 1RP

 +44 (0)121 248 2000

RoSPA Scotland

43 Discovery Terrace
Livingstone House
Heriot-Watt University Research Park

Edinburgh
EH14 4AP

 +44 (0)131 449 9378/79

RoSPA Wales

2nd Floor
2 Cwrt-y-Parc
Parc Ty Glas
Cardiff Business Park
Llanishen
Cardiff
CF14 5GH


 +44 (0)2920 250600


RoSPA Northern Ireland

3 Orchard Close
Newpark Industrials Estate
BT41 5GH

 +44 (0)28 9050 1160

General Enquiries

 +44 (0)121 248 2000

 +44 (0)121 248 2001

 help@rospa.com

 twitter.com/rospa

 facebook.com/rospa

 linkedin.com/rospa

www.rospa.com

Registered Charity No. 207823
VAT Registration No. 655 131649

