



POLICE, CRIME, SENTENCING AND COURTS BILL

Commons Committee Stage Briefing on Part 5: Road traffic offences and penalties

INTRODUCTION

The 'core' road traffic offences involving 'careless' and 'dangerous' driving

Part 5 of the Police, Crime, Sentencing and Courts Bill includes three proposed changes to the framework of road traffic offences and penalties:

- 1) It increases the maximum sentence for 'causing death by dangerous driving', from 14 years to a life sentence;
- 2) Similarly, it increases the maximum sentence for 'causing death by careless driving while under the influence of drink or drugs', from 14 years to a life sentence (these two offences have traditionally been seen as equivalent);
- 3) It introduces a new offence of 'causing serious injury by careless driving', with a maximum sentence of 2 years.

Whilst our organisations are cautiously supportive of these proposals, we fear they will do very little to address the many serious problems with the framework of road traffic offences and penalties. The Government promised a [full review of this framework](#) back in 2014, but this has never happened. Instead, the above proposals resulted from a [much more limited consultation in 2017](#). We believe a much wider overhaul of the legal framework is still needed, both to address its many other failings, and to prevent the above proposals from having adverse unintended consequences. For more, see our endnote.

Our primary concern is not the inadequacy of sentencing in a few high-profile but extreme cases, where drivers cause death through exceptionally 'dangerous' driving, or where alcohol or drugs are involved. We are far more concerned about the large numbers of other fatal and serious injury cases that fail to attract headlines, where the legal system (a) is over-reliant on custodial sentencing, and (b) makes far too little use of driving bans.

Driving bans would be far more suitable for large numbers of drivers who have driven 'dangerously' but are not obviously 'dangerous' people. This in turn points to the urgent need to clarify the legal distinction between 'careless' and 'dangerous' driving. In most (through by no means all) fatal and serious injury cases, a driver will have driven in a way that caused 'danger' that should have been 'obvious to a competent and careful driver' (this being part of the legal test for 'dangerous' driving). Yet jurors may well be understandably very reluctant to convict for a 'dangerous' driving offence, possibly fearing that this was likely to result in an inappropriate prison sentence. This hypothesis is impossible to verify, for legal reasons. However it seems very likely that, in such cases, jurors may opt for 'careless' convictions instead, even though this is legally incorrect.

This in turn makes prosecutors wary of even attempting a 'dangerous' prosecution even when it would be legally correct, for fear of failing to secure a conviction.

If anything, we fear that the combination of proposals 1) and 3) above could prove counterproductive. It is likely to create even greater pressures for driving which has caused obviously foreseeable danger (and which ought therefore to be classed as 'dangerous') to be dismissed as merely 'careless' driving, by prosecutors as well as by the courts.

We also fear that the proposed new maximum sentence for 'causing death by dangerous driving' is likely to remain unused, unless similar increases are made to the maximum sentence for 'causing serious injury' by equally bad driving. We suggest increasing this from

5 years to 14 years. Otherwise, the courts will be even more wary of using their new powers to impose life sentences in fatal cases, as they will be mindful of how much more limited their powers would be if the victim had ‘merely’ been maimed by equally bad driving.

Other flaws in the legal system

Other flaws in the legal framework of road traffic offences and penalties include:

- Persistently allowing drivers to avoid driving bans by pleading that this would cause ‘exceptional hardship’. The frequency with which such pleas are granted amounts to a travesty of the term ‘exceptional’. As noted above, the legal framework needs to be much tougher in imposing driving bans on those whose driving poses a threat to others.
- Seriously inadequate sentencing powers for ‘failure to stop or report’ (or ‘hit and run’) offences where the driver left the scene in circumstances where he or she knew, or reasonably ought to have known, that a victim had potentially suffered serious or fatal injuries. A [parliamentary petition](#) calling for tougher laws to cover this situation has attracted over 104,000 signatures.
- The lack of an offence for causing serious injury (rather than death) by driving (whether ‘careless’ or ‘dangerous’) while under the influence of drink or drugs.
- Seriously inadequate sentencing powers for opening vehicle doors in a way that causes death or serious injury.

Overview of our proposals

Our amendments therefore have the following aims:

- To clarify the distinction between ‘careless’ and ‘dangerous’ driving. We propose that driving should be ‘careless or inconsiderate’ if it involves a breach of the Highway Code that causes inconvenience, intimidation or danger to another road user. It should be ‘dangerous’ where such a breach would lead to a driver being failed automatically if they drove in that way during a driving test.
- To ensure that the maximum custodial sentences for ‘causing serious injury’ do not fall vastly behind those for ‘causing death’ by equally bad driving, while strengthening the role of driving bans for offenders whose driving has clearly caused ‘danger’ but who are not obviously ‘dangerous’ people who need to be imprisoned to ensure public protection.
- To strengthen the penalties for those who drive having previously been banned.
- To bring the offences and penalties for causing death and causing serious injury while under the influence of drink or drugs into closer alignment with those for causing death and causing serious injury by driving while disqualified. We propose deleting the requirement for driving which causes death while under the influence to be ‘careless’, and to retain the existing 14 year maximum sentence. The proposed new life sentence for causing death by dangerous driving would still be available if the driving was demonstrably ‘dangerous’ (which will normally be the case), however this offence would be available in cases where evidence was lacking about the standard of the driving which preceded the collision. We also propose a new offence for causing serious injury while under the influence, with a maximum sentence of 5 years.
- To introduce a new offence of ‘failure to stop or report accidents’ in cases where “the person knew, or reasonably ought to have known, that the accident had caused personal injury that was likely to be serious or fatal”, with a maximum sentence of 14 years.
- To increase the maximum sentence for opening the doors of vehicles in a manner that results in death or serious injury, to 5 years.
- To strengthen the definition of ‘exceptional hardship’, ensuring that exemptions from the normal rules on driving bans are only made in truly ‘exceptional’ cases.

Proposed changes re maximum custodial and minimum disqualification with driving offences

	Maximum custodial sentences			Minimum driving disqualification		
	Current	Proposed in Bill	Our proposal	Current	Proposed in Bill	Our proposal
Causing death by dangerous driving (RTA s1)	14 yr	Lifetime	(Lifetime)	2 yr	-	5 yr
Causing serious injury by dangerous driving (RTA s1A)	5 yr	-	14 yr	2 yr	-	5 yr
Dangerous driving (RTA s2)	2 yr	-	5 yr	1 yr	-	2 yr
Causing death by careless / inconsiderate driving (RTA s2B)	5 yr	-	2 yr	1 yr	-	5 yr
Causing serious injury by careless / inconsiderate driving (PCSB Clause 64)	n/a	2 yr	6 mo	n/a	1 yr	(1 yr)
Careless / inconsiderate driving (RTA s3)	(Unlimited fine)	-	-	Discretionary	-	-
Causing death by careless driving whilst under the influence (RTA s3A)	14 yr	Lifetime	See next 2 lines	2 yr	-	See next 2 lines
Causing death by driving whilst under the influence	n/a	n/a	14 yr	n/a	n/a	5 yr
Causing serious injury by driving whilst under the influence	n/a	n/a	5 yr	n/a	n/a	5 yr
Drink/drug driving (RTA s4 or s5)	6 mo	-	-	1 yr	-	-
Causing death by driving while disqualified (RTA s3ZC)	10 yr	-	-	2 yr	-	5 yr
Causing serious injury by driving while disqualified (RTA s3ZD)	4 yr	-	-	2 yr	-	5 yr
Driving while disqualified (RTA s103(1)(b))	6 mo	-	3 yr	Discretionary	-	3 yr
Failure to stop or report following fatal or serious collision	n/a	n/a	14 yr	n/a	n/a	5 yr
Failure to stop or report (RTA s170)	6 mo	-	-	Discretionary	-	-
Causing death or serious injury by opening vehicle door	n/a	n/a	5 yr	n/a	n/a	1 yr

*Where mandatory driving ban not given, minimum penalty points to be increased from 3 to 6

The Government's proposals in the Bill shown in **bold**. Our proposals shown in **red**.

OUR AMENDMENTS IN DETAIL

In this section:

- “RTA” means the Road Traffic Act 1988. This includes definitions of the ‘core’ road traffic offences, including ‘dangerous driving’, ‘careless or inconsiderate driving’, the corresponding offences involving ‘causing death’ or ‘causing serious injury’, and offences involving driving (or causing death or serious injury by driving while unlicensed or uninsured, while disqualified, or while under the influence of drink or drugs
- “RTOA” means the Road Traffic Offenders Act 1988. This includes rules setting the maximum penalties and, where relevant, disqualification and endorsement requirements for road traffic offences, including those under RTA.

Definitions of dangerous and careless or inconsiderate driving

This amendment creates new definitions for the offences of ‘dangerous’ and ‘careless, or inconsiderate’ driving (RTA [s2](#) and [s3](#), as currently defined in RTA [s2A](#) and [s3ZA](#) respectively).

Under this amendment, driving would be ‘careless, or inconsiderate’ if it involves a breach of the Highway Code that results in inconvenience, intimidation or danger to one or more other road users. Such a breach would however amount to ‘dangerous’ driving if it is sufficiently serious that it would lead to automatic failure if it were committed during a driving test.

These amended definitions would also apply for offences involving ‘causing death’ and ‘causing serious injury’ by ‘dangerous’ or by ‘careless, or inconsiderate’ driving respectively (RTA sections [1](#), [1A](#) and [2B](#)).

The amended definition of ‘careless driving’ would also apply to the Bill’s proposed new offence of ‘causing serious injury by careless driving’ (clause 64 of the Bill) and, unless our next amendment is also passed, to the existing offence of ‘causing death by careless driving when under influence of drink or drugs’ (RTA [s3A](#)).

* * *

New Clause – to be inserted in Part 5 of the Bill, before clause 64.

Definitions of dangerous and careless or inconsiderate driving

(1) The Road Traffic Act 1988 is amended as follows.

(2) In [section 2A](#) (meaning of dangerous driving) –

(a) for subsections (1)(a) and (b), substitute “he commits a breach of one or more rules of the Highway Code in a way that causes inconvenience, intimidation or danger to one or more other road users that is sufficiently serious that it would result in a person being disqualified automatically if the person drove in that way during a driving test”.

(b) omit subsection (3).

(3) In [section 3ZA](#) (meaning of careless, or inconsiderate, driving) –

(a) in subsection (2), for “the way he drives falls below what would be expected of a competent and careful driver”, substitute “he commits a breach of one or more rules of the Highway Code that causes inconvenience or intimidation to one or more other road users but which is not so serious as to amount to dangerous driving as defined in subsection 2A(1)”.

(b) omit subsection (3).

Causing death or serious injury by driving when under influence of drink or drugs

This amendment:

- deletes the word ‘careless’ from the existing offence of ‘causing death by careless driving while under influence of drink or drugs’ ([RTA s3A](#));
- creates a new offence of ‘causing serious injury by driving when under influence of drink or drugs’;
- Sets the maximum penalty for the ‘causing death’ offence at 14 years, and for the causing serious injury’ offence at 5 years.

The definitions of the resulting offences are thus in line with the offences of causing death and causing serious injury by driving while disqualified (RTA sections [3ZC](#) and [3ZD](#) respectively - these have maximum sentences of 10 years and 4 years respectively).

* * *

Proposed amendment to clause 64.

(1) Insert the following subclauses at the beginning of clause 64 (before subclause (1)), with the subsequent subclauses being renumbered accordingly:

“(1) In the Road Traffic Act 1988, section 3A is amended as follows:

- (i) In the heading, after “causing death”, for the words “by careless”, substitute “or serious injury by”
- (ii) In subclause 1, delete “without due care and attention, or without reasonable consideration for other persons using the road or place,”
- (iii) After subclause (1) insert –

“(1A) If a person causes serious injury to another person by driving a mechanically propelled vehicle on a road or other public place, and the conditions in subclauses (1)(a) to (1)(d) are also met, he is guilty of an offence.”

(2) In subclause (1), delete “Part 1 of Schedule 2 to”

(3) For subclauses (2) and (3), substitute

“(2) In Part 1 of Schedule 2:

- (i) In the entry relating to section 1 of the Road Traffic Act 1988 (causing death by dangerous driving), in column (4) (punishment), for “14 years”, substitute “Imprisonment for life”.

- (ii) For the entry relating to section 3A of the Road Traffic Act 1988, substitute:

RTA section 3A(1)	Causing death by driving while under the influence of drink or drugs	On indictment	14 years or a fine or both	Obligatory	Obligatory	6-11
RTA section 3A(1A)	Causing serious injury by driving while under the influence of drink or drugs	(a) Summarily	(a) on conviction in England and Wales: 12 months, or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both. (b) 5 years or a fine or both.	Obligatory	Obligatory	6-11

“(3) For subsection 34(4)(a)(iii), substitute

- (iii) “An offence under subsections 3A(1) (causing death by driving while under the influence of drink or drugs) or 3A(1A) (causing serious injury by driving while under the influence of drink or drugs) of that Act.””

Sentencing for offences involving dangerous, careless or inconsiderate driving

This amendment:

- Increases the maximum penalty for the existing offences of ‘causing serious injury by dangerous driving’ (from 5 years to 14 years) and ‘dangerous driving’ (from 2 years to 5 years on indictment).
- Reduces the maximum penalty for the existing offence of causing death by careless driving (from 5 years to 2 years) and for the proposed new offence of causing serious injury by careless driving (from 2 years to 6 months). If driving is merely ‘careless’ as per our definition (see 1st amendment above), it should not normally merit a custodial sentence when it happens to result in death or serious injury. Such cases should in any case be very rare and will almost inevitably have involved either significant fault on the part of someone other than the driver, or an ‘act of God’. Without either of these elements, it is hard to see how driving could cause death or serious injury if it would not result in automatic failure if carried out in a driving test.
- Increases the mandatory minimum disqualification period from 3 years to 10 years for various ‘impairment’ offences (as listed in [RTOA ss34\(3\)](#)) which involve driving or attempting to drive while under the influence, or failure to provide or authorise specimens, where the offender had previously committed any of these ‘impairment’ offences during the preceding 10 years.

- Increases the mandatory minimum disqualification period from 2 years to 5 years for the serious driving offences listed in RTOA ss34(4)(a), i.e. manslaughter or culpable homicide in Scotland; causing death or causing serious injury by dangerous driving; or causing death or causing serious injury by driving while disqualified; or causing death by careless driving while under the influence [*n.b. if our previous amendment is passed, this will instead apply to our proposed offences of causing death or causing serious injury by driving while under the influence*].
- Increasing the minimum number of penalty points, from 3 points to 6 points, for causing serious injury by dangerous driving, dangerous driving and causing death by careless driving while under the influence [*n.b. as above, if our previous amendment is passed, this will instead apply to our proposed offences of causing death or causing serious injury by driving while under the influence*].

* * *

New Clause – to be inserted in Part 5 of the Bill, after section 65.

(1) The [Road Traffic Offenders Act 1988](#) is amended as follows.

(2) In [section 34](#) (disqualification for certain offences) –

(a) At the end of subsection (3), for “three years” substitute “ten years”

(b) In subsection (4) –

- (i) after the words “a reference to”, omit the words “two years”
- (ii) at the start of paragraph (a), insert “five years” before “in relation to”
- (iii) at the start of paragraph (b), insert “two years” before “in relation to”
- (iv) after paragraph (b) insert –

“(c) two years in relation to a person convicted of an offence under section 2 of the Road Traffic Act 1988 (dangerous driving).”

(3) In [part 1 of Schedule 2](#) (prosecution and punishment of offences: offences under the Traffic Acts), for the entries relating to offences under RTA sections 1A, 2 and 2B, substitute the following [*n.b. red text highlights changes*]:

RTA section 1A	Causing serious injury by dangerous driving	On indictment	14 years	Obligatory	Obligatory	6-11
RTA section 2	Dangerous driving	(a) summarily	(a) 12 months or the statutory maximum or both.	(i) Obligatory	Obligatory	(i) 3-11
		(b) On indictment	(b) 5 years or a fine or both	(ii) Obligatory		(ii) 6-11
RTA section 2B	Causing death by careless, or inconsiderate, driving	(a) summarily	(a) 12 months (in England and Wales) or 6 months (in Scotland) or the	Obligatory	Obligatory	(i) 3-11

		(b) On indictment	statutory maximum or both. (b) 2 years or a fine or both			(ii) 6-11
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Penalties for driving while disqualified

This amendment:

- Increases the maximum sentence for driving while disqualified from 6 months to 3 years; and
- Introduces a 3 year minimum driving ban for this offence, or 10 years where the offender had previously committed this offence or any offence listed in RTOA [s34](#) subsection 3 (various impairment offences) or subsection (4)(a) (i.e. manslaughter or culpable homicide in Scotland; causing death or causing serious injury by dangerous driving; or causing death or causing serious injury by driving while disqualified; or causing death by careless driving while under the influence [*n.b. if our earlier amendment on causing death or serious injury by driving while under the influence of drink or drugs is passed, this amendment will instead apply to these new offences*]).

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New Clause – to be inserted in Part 5 of the Bill, after section 65.

(1) The [Road Traffic Offenders Act 1988](#) is amended as follows.

(2) In [section 34](#) (disqualification for certain offences) –

(a) After subclause (3)(d), insert –

“(e) section 103(1)(b)”

(b) After subclause (3), insert –

“(3A) Where a person is convicted under section 103(1), subsection (3) shall also apply if he has within 10 years immediately preceding the commission of the offence been convicted of any of the offences mentioned in subsection (4) below.”

(3) In [part 1 of Schedule 2](#) (prosecution and punishment of offences: offences under the Traffic Acts), for the entry relating to offences under RTA section 103(1)(b), substitute the following [*n.b. red text highlights changes*]:

RTA section 103(1)(b)	Driving while disqualified	On indictment	3 years	Obligatory	Obligatory	6-11
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Failure to stop or report accidents involving actual or potential serious or fatal injury

This amendment creates a new offence of failure to stop or report accidents where the driver knew that the accident had caused serious or fatal injury, or where he ought reasonably to have realised that it might have done so. It has a maximum sentence of 14 years custody.

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New clause, to be inserted after Clause 65

(1) After subsection 170(4) of the Road Traffic Act 1988, insert –

“(4A) A person who fails to comply with subsections 170(2) or 170(3) when he knew that the accident had caused serious or fatal personal injury, or where he ought reasonably to have realised that it might have done so, is guilty of an offence.

(2) [Part 1 of Schedule 2 of the Road Traffic Offenders Act 1988](#) (prosecution and punishment of offences: offences under the Traffic Acts) is amended as follows –

(a) in the entry relating to an offence under RTA subsection 170(4), for “failing” substitute “failure”

(b) following the entry relating to an offence under RTA subsection 170(4), insert the following –

RTA section 170(4A)	Failure to stop and give particulars after accident involving actual or potential serious or fatal injury or to report accident.	On indictment	14 years	Obligatory	Obligatory	6-11
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(3) After [subsection 34\(3\)\(d\) of the Road Traffic Offenders Act 1988](#), insert –

“(e) section 4A (failure to stop and give particulars after accident involving actual or potential serious or fatal injury or to report accident)”

Opening of vehicle doors

This amendment creates a new offence of opening the door of a vehicle in a manner that results in death or serious injury. It carries a maximum sentence of 6 months in the magistrates’ court or 5 years in the crown court.

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New Clause, to be inserted after Clause 65.

Opening of vehicle doors

(1) In the Road Traffic Act 1988, after [section 41D](#) insert –

“41E Breach of requirement as to opening of doors

A person who contravenes [regulation 105 of the Road Vehicles \(Construction and Use\) Regulations 1986](#) (opening of doors) in a manner that results in death or serious injury is guilty of an offence.”

(2) In [Part 1 of Schedule 2 of the Road Traffic Offenders Act 1988](#) (prosecution and punishment of offences: offences under the Traffic Acts), after the entry for an offence under the Road Traffic Act 1988 section 41D, insert –

RTA section 41E	Breach of requirement as to opening of doors in a manner that results in death or serious injury	(a) Summarily (b) On indictment	(a) 6 months or a fine or both (b) 5 years	Obligatory	Obligatory	3-11
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Definition of ‘exceptional hardship’

When an offender faces a driving ban – either having been convicted for an offence for which the sentence includes a mandatory driving ban, or having accumulated 12 penalty points on their licence – the court can exempt them from the ban, or shorten it, if it accepts a plea from the offender that this would cause them ‘exceptional hardship’. However ‘exceptional hardship’ pleas are accepted so often that the word ‘exceptional’ has fallen into disrepute.

This amendment provides a definition of ‘exceptional hardship’. It requires that a court should only regard hardship as ‘exceptional’ if and only if it is significantly greater than the hardship that would arise if the same disqualification were imposed on a large majority of other drivers.

It also identifies examples of circumstances that the court may take into account in deciding whether the hardship resulting from a disqualification would be genuinely exceptional, including:

- (a) any circumstances relating to the offender’s economic circumstances or location of residence that would make it exceptionally hard for him to access key services such as grocery shops and postal, banking and healthcare facilities; or
- (b) any hardship that would be incurred by offender’s family or others who are disabled and who depend on the offender to provide care for them.

* * *

New Clause, to be inserted after Clause 65.

Definition of “exceptional hardship”

In the Road Traffic Offenders Act 1988, after [subsection 35\(4\)](#), insert –

“(4A) (a) In subsection (4)(b) above, the hardship that would be caused by a defender’s disqualification should be regarded as exceptional if and only if it is significantly greater than the hardship that would arise if the same disqualification were imposed on a large majority of other drivers.

(b) In assessing whether the hardship arising from the offender’s disqualification would be exceptional, a court may take account of –

- (i) any circumstances relating to the offender’s economic circumstances or location of residence that would make it exceptionally hard for him to access key services such as grocery shops and postal, banking and healthcare facilities

- (ii) any hardship that would be incurred by offender's family or others who are disabled and who depend on the offender to provide care for them
- (iii) any other circumstance which it believes would make the hardship genuinely exceptional."

ENDNOTE

In our introduction, we noted that the Government promised in 2014 to carry out a full review of road traffic offences and sentencing, as our organisations had long called for. That call has since been echoed:

- By the Commons Transport Committee, in the report of its 2015-16 [inquiry on Road Traffic Law Enforcement](#)
- By the All Party Parliamentary Group on Cycling and Walking (formerly the All Party Parliamentary Cycling Group), in the report of its 2017 [inquiry on Cycling and the Justice System](#)
- In a [2018 parliamentary debate on Road Justice and the Legal Framework](#), which revealed a cross-party consensus on the need for wide-ranging reforms.

A number of other road safety organisations have voiced support for our call for a wider review of road traffic offences and penalties, even though they have not felt able to decide whether to support our specific legislative amendments.

Had the Government's promised review of road traffic offences and penalties taken place, this would have allowed road safety and road user groups, the police, prosecutors, magistrates and judges to put forward and consider each other's proposals, and hence perhaps to forge a consensus on how best to overhaul road traffic law and to overcome the difficulties that have beset past attempts at reform.

In the absence of such a dialogue among relevant stakeholders, we recognise that our own proposals will inevitably face the criticism that they have not been subject to consultation or consideration of alternative options.

Despite this, we have drafted our amendments in a way that we hope Parliament will feel it can consider adopting during the passage of this Bill. In short, they are not intended merely as 'probing amendments'. Nonetheless, if the upshot of this briefing is simply that the Government makes a parliamentary commitment to carry out the full review of road traffic offences and sentences that it promised in 2014, that would be a positive outcome.

May 2021