

Response ID ANON-CDS6-FT82-M

Submitted to **Driving offences and penalties relating to causing death or serious injury**
Submitted on **2017-02-01 11:58:58**

About you

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Criminal Law Societies Association

Questions

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

No

Please type your response in the text box:

There is no need for a new offence of causing serious injury by careless driving, although we understand that victim and the families of victims may well take the contrary view. By definition, the mens rea involved in the offence of careless driving, or driving without due care and attention, is at the bottom of the scale of culpability. The offence requires no more than a momentary lapse of attention which may then constitute falling below the standard of the competent and careful driver.

The sentence for careless driving is limited to a financial penalty and penalty points or a discretionary disqualification. The court is able to mark the harm factor (for example, serious injury) within the band of available sentences for the existing offence. We note, of course, that there are separate offences of causing death by careless driving, causing death by careless driving whilst under the influence of drink or drugs and causing serious injury when driving whilst disqualified. The court is already able to mark offending behaviour of the latter two types - where the culpability is much greater - appropriately. For the former offence, as a matter of degree of harm and policy it is probably right to mark the loss of a life as a result of any departure from the normal standard of driving behaviour by a separate offence and sentencing options.

Driving is an inherently risky occupation. We already criminalise a minimal departure from the standard of the competent and careful driver. The key to this question is the level of culpability and that is properly marked within the current sentencing band for the offence of careless driving or driving without due care and attention.

2 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?

Not Answered

Please type your response in the text box:

We have answered in the negative. It is not necessary for us to consider whether a sentence of two or three years would be appropriate for this hypothetical offence.

3 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?

Please type your response in the text box:

We believe that the maximum penalty for causing death by dangerous driving adequately reflects the culpability of the offending behaviour. As a matter of policy life sentences should be reserved for the most serious of offences. As a matter of definition, the offence is not one which is targeted at an individual. If it was the proper charge would be homicide, not a driving offence.

4 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

Please type your response in the text box:

For similar reasons, we believe that the maximum penalty for causing death by careless driving under the influence of drink or drugs is appropriately set at the

same level as causing death by dangerous driving. Taking into account the comparable natures of culpability for these two offences it is appropriate that the sentences should be comparable also.

5 Should consideration be given to a longer minimum period of disqualification for offenders convicted of any causing death by driving offence?

Yes

Please type your response in the text box:

Policy considerations dictate that there should be mandatory periods of disqualification where a fatality occurs as a result of a driving offence. Offenders would expect no less and the public would certainly demand it. We propose that the following periods of disqualification would be appropriate:

- Causing death by careless driving – mandatory minimum 12 months
- Causing death by careless driving under the influence of drink or drugs – mandatory minimum 36 months
- Causing death by dangerous driving - mandatory minimum 36 months

6 Are there any other driving offences relating to causing death or serious injury that you think should be changed?

No

Please type your response in the text box:

It is our view that the raft of available criminal offences which have as their central feature driving behaviour is adequately covered. There are other offences which are more appropriate where, for instance, a vehicle is used as a weapon (when the focus of the mens rea outweighs the fact that a vehicle has been used to perpetrate the offence).

7 Does the equalities statement correctly identify the extent of the impacts of the proposed options for reform set out in this consultation paper?

Yes

Please type your response in the text box:

We do not take issue with the Equality Statement. We note the observations in the section on Indirect Discrimination concerning the importance of balancing level of blame and level of harm in driving offences.

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