



Department  
for Transport

# Cycling and Walking Investment Strategy safety review: proposals for new cycling offences

**Moving Britain Ahead**

August 2018

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# Foreword



As Roads Minister, making our roads safe for all users is one of my key priorities. Last September, I announced a cycling and walking and safety review and in March published a call for evidence to seek your views on how we can change perceptions to make cycling and walking fun and safe. I have been impressed with the response - over 13,000 replies and 250 people attending four national workshops held in Bristol, London, Birmingham and London. We are clearly a nation that has a passion for cycling and walking.

I have already announced improvements for safety for cyclists on close passing, supporting the police to take action against drivers who do not give enough room to cyclists when overtaking. Ultimately, we must work to make it safer for future generations to cycle or to understand and care for those who do chose to cycle. That is why I also announced funding for cycle training for approved driving instructors as an important first step in ensuring that drivers understand the unique challenges faced by cyclists on our roads. As we consider your views, I hope to make further announcements on the way forward.

But there is another side of road safety which relies on cycling behaviour. Behaving dangerously, whether in a car or on a cycle, risks the lives of other road users and is completely unacceptable. We must prevent those tragic cases where victims have been killed or seriously injured by irresponsible cycling behaviour and the devastating impact it has on their families.

This is why I announced last year a review by an independent legal expert, Laura Thomas, to consider whether there was a gap in the law which adequately punishes cycling behaviour which results in death or serious injury. In March, we published her report (see: <https://www.gov.uk/government/publications/cycle-safety-review> ) which concluded that there was a persuasive case for change.

This consultation document asks your views on how this can be best achieved. Your views are important so that we get the balance right in how we deal with this dangerous behaviour and I hope that you will take time to consider and reply.

**JESSE NORMAN**

# Executive summary

## Introduction

This consultation document is seeking views on whether there should be new offences for cyclists of 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 for cycling currently apply only to the road (which includes the pavement) but not in other public places.

There were 2,491 recorded collisions between cyclists and pedestrians (where no other vehicle was involved) that resulted in a pedestrian casualty between 2011-2016, of which 20 were fatal and 546 resulted in serious injury.

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.

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<sup>1</sup>. Her report considers the case for a new offence and the details of that report were published on 9 March 2018 (see:

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

Evidence was gathered from a range of sources including current statute and common law; charging and sentencing guidelines; extracts from Hansard; STATS19 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.

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. This consultation proposes a change in the legislation to address that.

## Importance of improving safety and perceptions of safety

This 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.

The document also acknowledges the differences in drink and drug driving laws between drivers and cyclists. It is already an offence to cycle while unfit through

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<sup>1</sup> This review did not consider some aspects of Scottish criminal law.

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

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.

On 9 March a separate call for evidence (see:

<https://www.gov.uk/government/consultations/cycling-and-walking-investment-strategy-cwis-safety-review> ) was published.

This sought views to support an open and comprehensive review of how we can address the issues that cyclists and pedestrians face, or perceive, when using our road infrastructure, to maintain the Government's aim of increasing cycling and walking. The consultation closed in June and the responses are currently being analysed.

The Roads Minister has already made announcements which will help improve safety for cyclists regarding close passing - providing training material and support for police forces to make more drivers aware of the need to keep a safe distance when overtaking cyclists; and funding for cycle training for approved driving instructors - for them to gain a better understanding of the needs of, and empathy towards, cyclists. Further announcements are planned in due course.

## Who should read this document?

Consultation responses on this document are requested by 5 November 2018 and following consideration of those, the Government will provide a response on how it intends to proceed within three months.

We welcome any detailed points you wish to make and each section invites you to make further comments on the questions we pose.

We are interested to hear from individuals and organisations, including those that enforce the law. This consultation is mainly looking at the law in relation to whether there should be an offence for cyclists if they kill or injure others, but also seeks views on specific amendments to some existing cycling offences. Comments on other laws which apply to cycling were invited as part of the call for evidence and are being considered separately as part of that comprehensive review.

# How to respond

The easiest way to respond is to use the [online response form](#). This form also allows you to:

- save your progress so you don't need to complete it all at once
- save or print a copy of your response for your records once you have submitted it

The consultation period began on 12 August 2018 and will run until 5 November 2018. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <https://www.gov.uk/dft#consultations> or you can contact the Department if you need alternative formats (Braille, audio CD, etc.).

Please send consultation responses to:

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

## Privacy Information Notice: Confidentiality and data protection

The Department for Transport is carrying out this consultation on proposals as part of its Cycle Safety Review with regard to proposals to introduce new offences for causing death or serious injury by dangerous or careless cycling. It is being carried out in the public interest to inform the development of policy

As part of this consultation we are asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. You do not have to give us this personal information. If you do provide it, we will use it only

for the purpose of asking follow-up questions. DfT is the controller for this information and we will not share it with any other organisation.

The Department for Transport's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at

<https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter>.

To receive this information by telephone or post, contact us on 0300 330 3000 or write to Data Protection Officer, Department for Transport, Ashdown House, Sedlescombe Road North, St Leonards-on-Sea, TN37 7GA.

Your information will be kept securely and destroyed within 12 months after the consultation has been completed.

## Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

# 1. Introduction

- 1.1 This Government is committed to increasing cycling and walking and making our roads safer for vulnerable users including cyclists and pedestrians. The benefits of cycling and walking are enormous: for people, it means cheaper travel and better health; for businesses, it means increased productivity and increased footfall in shops. And for society as a whole it means lower congestion, better air quality, and vibrant, attractive places and communities.
- 1.2 Like all road users, cyclists have a duty to behave in a safe and responsible manner. The criminal law has an important role in ensuring that road users who do not behave in such a manner and cause serious harm to others as a result, are punished appropriately. In this context, concerns have been raised by campaigners that the range of penalties and sentences available when cyclists harm others is not sufficient.
- 1.3 On 21 September 2017 Ministers announced a Cycling and Walking Safety Review in two phases - Phase 1, analysing the case for new cycling offences equivalent to the driving offences of causing death or serious injury; and Phase 2 consulting on road safety issues relating to cycling and walking including such issues as the rules of the road, public awareness, key safety risks and the guidance and signage for all road users.
- 1.4 Following the announcement, Ministers appointed an independent legal expert to consider the case for new offences. The report concluded that there is a clear 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.

## Scope

- 1.5 This consultation seeks views on creating new offences of causing death or serious injury when cycling, and on the associated penalties. The aim is to achieve parity of sentencing options where the outcome is death or serious injury. Victims who are killed or seriously injured, and their families, suffer the same consequences whether the harm is caused by a cyclist or motorist, and it is appropriate that where such an offence is committed the perpetrator faces the same penalties.
- 1.6 It also seeks views on the scope and penalties of both new and existing offences. Most existing cycling offences currently apply only to the road but not in other public places. The definition of 'road' includes pavements, but 'public place' may also include areas such as car parks used by the general public or pedestrian precincts in a shopping mall. Extending the scope of new cycling offences to include public places other than a road, as with the equivalent driving offences, would ensure that instances where victims have been seriously injured in areas such as shopping

precincts or supermarket car parks are included in any new laws. Extending the scope of existing cycling offences to public places, would also ensure that dangerous and careless cycling in these locations, which does not result in serious injury, can also be prosecuted.

- 1.7 We acknowledge that it is not possible to create total parity. We do not intend to introduce a testing, licensing or insurance regime for cyclists; the costs and complexity of introducing such a system would significantly outweigh the benefits. Nor do we propose to introduce penalty points for cyclists. A system of penalty points for cycling offences would require a record to be held or the creation of a new cycling licence regime. This could inadvertently discourage many people from taking up cycling, and unfairly burden the vast majority of law-abiding cyclists. However, this consultation considers whether any new cycling offences should carry minimum driving disqualification periods.
- 1.8 The Ministry of Justice conducted a review of driving offences and penalties and consulted on the creation of a new offence of causing serious injury by careless driving as well as increasing penalties for some existing offences. The responses to the consultation have demonstrated considerable support for the proposals - notably to increase the maximum prison sentence from 14 years to life for the most serious offences of causing death by dangerous driving, or causing death by careless driving whilst under the influence of drink or drugs. Proposals to make these changes in the law will be brought forward by the Government as soon as Parliamentary time allows.<sup>2</sup> As the changes have not yet been introduced, this consultation document refers to the current sentences which apply.
- 1.9 This consultation focuses on and seeks views on what the outcome of any new offences should be. We have not drafted the precise wording of any change in legislation that might be introduced. There are no proposals to remove any of the existing offences currently used in cases of dangerous cycling behaviour.
- 1.10 To ensure consistency of treatment and approach in different parts of Great Britain, matters relating to road traffic offences and penalties are generally reserved for Scotland and Wales, but devolved in Northern Ireland. Any changes to road traffic offences and penalties resulting from this consultation would therefore apply to England, Wales and Scotland, but not to Northern Ireland. The Department is conducting further work to understand the context of the law in relation to Scotland and will publish this information, including on GOV.UK, before the end of August 2018.

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<sup>2</sup> Details of the Ministry of Justice's response can be viewed here at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/651879/consultation-response-on-driving-offences.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/651879/consultation-response-on-driving-offences.pdf)

## 2. Existing Offences

### Offences where drivers or riders cause harm

- 2.1 The offences that currently may be considered for charge in cases where cyclists or drivers cause death or serious injury are as follows:
- 2.2 In England and Wales, causing bodily harm by wanton or furious driving or other misconduct contrary to section 35 of the Offences Against the Person Act 1861. The maximum penalty is 2 years imprisonment and/or an unlimited fine.
- 2.3 In England and Wales, inflicting grievous bodily harm contrary to section 20 of the Offences Against the Person Act 1861. The maximum penalty is 5 years imprisonment.
- 2.4 In Scotland, the offence of culpable and reckless conduct, punishable by a maximum penalty of life imprisonment. This common law offence requires a high level of recklessness from the accused: mere negligence is not sufficient.
- 2.5 In England and Wales, manslaughter, punishable under section 5 of the Offences Against the Person Act 1861 by a maximum penalty of life imprisonment. In order 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 and therefore a crime.
- 2.6 In Scotland, the common law offence of culpable homicide, punishable by a maximum penalty of life imprisonment. This offence also requires a very high standard of recklessness in behaviour - something akin to a complete disregard for any potential dangers which might result.

### Cycling Offences

- 2.7 Currently, a cyclist may be charged with dangerous or careless cycling under the Road Traffic Act 1988, and there is a range of penalties which may apply as follows:
- 2.8 Dangerous cycling contrary to section 28 of the Road Traffic Act 1988, punishable by a maximum penalty of a level 4 fine (£2,500).
- 2.9 Careless and inconsiderate cycling contrary to section 29 of the Road Traffic Act 1988, punishable by a maximum penalty of a level 3 fine (£1,000).
- 2.10 Neither dangerous nor careless cycling are endorsable and so do not attract penalty points.
- 2.11 It is also an offence under Section 30 of the Road Traffic Act 1988 to ride a cycle when unfit to ride through drink or drugs. Unlike other cycling offences in the Road

Traffic Act 1988, this offence can be committed on a road as well as other public place. If found guilty, offenders face a fine of up to £1,000.

- 2.12 Courts already have discretion to apply a driving disqualification for a cycling offence; we are not proposing any change to this but we are seeking views on whether a minimum driving disqualification period should apply to any new offences.

## Driving offences

- 2.13 In comparison, there is a wider range of driving offences, as follows:
- 2.14 Causing death by dangerous driving contrary to section 1 of the Road Traffic Act 1988. The maximum penalty for this offence is 14 years' imprisonment. The court must disqualify the driver from driving for at least 2 years (unless for special reasons it thinks fit to order a shorter, or no, disqualification period). Where no disqualification order is made the court must endorse the driver's licence with 3 - 11 penalty points, unless for special reasons, it thinks it fit not to do so. An extended retest is also mandatory.
- 2.15 Causing serious injury by dangerous driving contrary to section 1A of the Road Traffic Act 1988. The maximum penalty for this offence is 5 years' imprisonment and/or an unlimited fine, with a mandatory disqualification period of at least 2 years (unless for special reasons the court thinks fit to order a shorter, or no, disqualification period). Where no disqualification order is made the court must endorse the driver's licence with 3-11 penalty points unless, for special reasons, it thinks fit not to do so. An extended retest is also mandatory.
- 2.16 Dangerous driving contrary to section 2 of the Road Traffic Act 1988. The maximum penalty for this offence is 2 years' imprisonment and/or an unlimited fine. The court must disqualify the driver from driving for at least a year and order an extended retest (section 36 of the Road Traffic Offenders Act 1988). Where the court considers no disqualification applies the court must endorse the driver's licence with 3-11 penalty points unless there are, again, special reasons for not doing so.
- 2.17 Causing death by careless, or inconsiderate, driving contrary to section 2B of the Road Traffic Act 1988. The maximum penalty for this offence is 5 years' imprisonment and/or an unlimited fine, with a mandatory minimum period of disqualification of twelve months (or 3 -11 points where special reasons are found not to disqualify).
- 2.18 Careless, and inconsiderate, driving contrary to section 3 of the Road Traffic Act 1988. The maximum penalty for this offence is an unlimited fine, and the court has the discretion to disqualify the driver from driving. Where no disqualification order is made the court must endorse the driver's licence with 3-9 penalty points unless for special reasons, it thinks fit not to do so.
- 2.19 Causing death by careless driving under the influence of drink or drugs contrary to section 3A of the Road Traffic Act 1988. The maximum penalty for this offence is 14 years' imprisonment and/or an unlimited fine, The court must disqualify the driver from driving for at least 2 years (3 years if there is another specified drink or drug driving conviction within the previous ten years) unless special reasons are found against disqualification (in which case it must endorse the driver's licence with 3 - 11 penalty points, again, unless there are special reasons not to do so). An extended retest is also mandatory.

2.20 These driving offences apply to the driving of ‘mechanically propelled vehicles’, so do not apply to pedal bicycles. Dangerous and careless driving offences apply to the road or other public place whereas dangerous or careless cycling cases apply to the road (which includes the pavement) only. In all cases, courts have discretion to decide to apply less than the maximum sentence based on the facts of the case. There are also laws on drink and drug driving and consideration of these is covered in paragraphs 3.3 - 3.8 of this consultation document.

## Perceived gap in the law

- 2.21 The relevant test for dangerous driving is the same as for dangerous cycling: whether the standard of the driving/cycling fell far below what would be expected of a competent and careful driver/cyclist and that it would be obvious to a competent and careful driver/cyclist that driving/riding in that way would be dangerous. The term ‘dangerous’ refers to a danger either of personal injury or of serious damage to property.
- 2.22 For careless or inconsiderate driving/cycling, a person commits an offence if they drive without due care and attention, or without reasonable consideration for other persons using the road or place. The test for driving without due care and attention, is whether the driving/cycling fell below the standard (rather than far below) that would be expected of a competent and careful driver/cyclist; and a person will be regarded as driving/cycling without reasonable consideration for other persons, where those persons are inconvenienced by his driving/cycling.
- 2.23 The offences are absolute in the sense that it is unnecessary to show that the defendant’s mind was conscious of the consequences of their actions; it is only necessary to show that they were conscious of what they were doing.
- 2.24 The common law offence of manslaughter, in England and Wales, and culpable homicide, in Scotland, can be charged in cases where a driver or cyclist, or in fact any road user, causes the death of another (see paragraphs 2.5 and 2.6).
- 2.25 Manslaughter or culpable homicide can also be considered where the driving has occurred ‘off road’ i.e. not on a road or other public place. In these cases the statutory offences such as causing death by dangerous driving or causing death by careless driving do not apply.
- 2.26 The offence of wanton or furious driving (England and Wales only) can only be committed if the driver or cyclist has a degree of subjective recklessness so far as the foreseeability of causing injury is concerned. In other words, he or she must understand that harm was possible or probable as a result of the manner of driving or cycling. This is a quite different test to that of dangerous or careless driving/cycling.
- 2.27 Offences such as manslaughter, grievous bodily harm or wanton or furious driving (England and Wales), culpable and reckless conduct, or culpable homicide (Scotland) are available to the prosecution for cycling behaviour, but are likely to cover only the more extremes of reckless cycling behaviour. In contrast, the offence of dangerous driving is more likely to be available, because the offence will be committed where the standard of driving simply falls far below that expected of a competent and careful driver. This is easier for the prosecution to establish.
- 2.28 **The Government considers that there is a gap in the law<sup>3</sup> and therefore this consultation contains proposals on how we may best address that. We do not**

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<sup>3</sup> We consider the position specifically in relation to the law in Scotland further at paragraph 2.30

**propose amending offences other than those set out in this document. 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.**

2.29 We are seeking your 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.

## The law in relation to Scotland

2.30 We recognise that the report by Laura Thomas published on 9 March considered the criminal law, beyond the Road Traffic Act 1988, only as it applies in England and Wales, and not Scotland.

2.31 The Offences Against the Person Act 1861 does not apply in Scotland. This means that the offences of causing bodily harm by wanton and furious driving (under section 35); inflicting grievous bodily harm (under section 20); and manslaughter (section 5) cannot be charged in relation to conduct in Scotland.

2.32 However, the common law in Scotland may be relevant here. Where the act of striking a person with a bike which the person is cycling is not intentional, but can be shown to be reckless, the common law charge of culpable and reckless conduct may be available. But, for such a charge, the standard of recklessness required is relatively high: mere negligence is not sufficient.

2.33 The common law charge of culpable homicide may also technically be available where a cycling collision results in a person's death. However, for such a charge, the threshold for culpability would be very high: something akin to a complete disregard for any potential dangers which might result from the behaviour.

2.34 Given the standard of culpability which appears to be required for the common law offences of culpable and reckless conduct, and culpable homicide, and that the Road Traffic Act 1988 currently contains no statutory offences of causing death or serious injury by dangerous or careless cycling, it may be that there is a potential gap in the law in Scotland in relation to cycling which causes death or injury, similar to that identified by Laura Thomas in respect of England and Wales.

2.35 The Department is conducting further work to understand the context of the law in relation to Scotland and will publish this information, including on GOV.UK, before the end of August 2018.

## Questions

### The need for a change in the law

Q1. Our consultation proposes that there should be an offence of causing death by dangerous cycling. Do you agree with this proposal?

Q2. Do you think that there should be an offence of causing death by careless or inconsiderate cycling?

Q3. The consultation also proposes that there should be an offence of causing serious injury by dangerous cycling. Do you agree with this proposal?

Q4. The Ministry of Justice consulted on bringing forward a new offence of causing serious injury by careless driving.<sup>4</sup> This consultation proposes that there should be an offence of causing serious injury by careless or inconsiderate cycling. Do you agree with this proposal?

Q5. 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)

Q6. 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 to others?

Q7. Do you have any comments on any laws not covered in this consultation which could apply when trying to prosecute for this cycling behaviour?

Q8. Do you have any other comments that you wish to make in relation to how existing laws apply in Scotland?

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<sup>4</sup> The Ministry of Justice consulted on bringing forward a new offence for causing serious injury by careless driving and bringing forward proposals when Parliamentary time allows. Further details can be viewed at:

## Road and public place

- 2.36 Current cycling offences apply to the road and pavement 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.
- 2.37 We propose to extend new cycling offences to both the road and public place. While it is already clear that cycling behaviour applies to the road and pavement, there are many other areas where cyclists may ride and therefore where injury to others may be caused.
- 2.38 In creating legislation for new offences of causing death or serious injury by dangerous or careless cycling which cover cycling in a public place, we believe that we also need to re-frame the current offences of dangerous or careless cycling which currently apply to the road only.

### Questions

#### Road and public place

Q9. This consultation proposes that new offences should apply to public places as well as roads. Do you agree with this proposal?

Q10. 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?

Q11. Are there any other comments that you wish to make about where the laws should apply?

## Penalty points and disqualification

- 2.39 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. We do not propose 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.

- 2.40 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<sup>5</sup>, and we do not propose to change this.
- 2.41 Where obligatory disqualification applies for driving offences under the Road Traffic Offenders Act 1988, minimum disqualification periods apply, and we are not making any changes to these. However, we are seeking views on whether obligatory disqualification from driving for a minimum period should also apply to any new cycling offences

## Questions

### Penalty points and disqualification

Q12. 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?

Q13. If not, please explain why? If so, do you have any views on how long the minimum disqualification period should be?

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<sup>5</sup> The equivalent sentencing power in Scotland is found in section 248A of the Criminal Procedure (Scotland) Act 1995.

## 3. Impact on other areas of legislation

### Penalties for dangerous and careless cycling

- 3.1 We consider 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.
- 3.2 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 we consider that it is disproportionate for a cyclist to face imprisonment if, for example, cycling dangerously without causing harm.

#### Questions

##### Dangerous and careless cycling

Q14. 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?

Q15. If not, could you please explain why? Are there any other comments you wish to make on the level of penalty?

### Drink and drug driving and cycling

- 3.3 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.
- 3.4 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.

- 3.5 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, we do not propose to introduce the same regime for cyclists.
- 3.6 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.
- 3.7 We do not propose to change the unfit to ride a cycle offence or to introduce an offence for cyclists which mirrors causing death by careless driving under the influence of drink or drugs. We consider 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.
- 3.8 In order to increase the severity of sentence for cycling while under the influence we could consider increasing the fine for the offence of riding a cycle when unfit to ride through 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.

## Questions

### Drink and drug driving and cycling

Q16. 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?

Q17. 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?

Q18. 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?

Q19. Are there any further comments you wish to make?

# What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation. Paper copies will be available on request.

If you have questions about this consultation please contact:

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Further background information can be found at [web address].

# Annex A: Full list of consultation questions

## Question 1

Our 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?

## Annex B: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles. Further information is available at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

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London SW1P 4DR  
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