



Law Society
of Scotland

Consultation Response

Driving offences and penalties relating to causing
death or serious injury – Ministry of Justice
Consultation

February 2017



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Criminal Law Committee welcomes the opportunity to consider and respond to the Ministry of Justice consultation: "Driving offences and penalties relating to causing death or serious injury". The Committee has the following comments to put forward for consideration.

Specific Comments in response to the consultation questions

We have not responded to all of the questions included in the consultation but should like to make the following specific comments.

Q1. Should there be a new offence of causing serious injury by careless driving?

We note that there already exist two driving offences of causing serious injury. The consultation document states¹ that offences and penalties need to be proportionate to the gravity and culpability of the underlying behaviour.

The decision to legislate to create a new offence of careless driving to serious injury is a matter for Parliament.

The Committee notes that an offence of careless driving to serious injury offence proposes to criminalise in one offence both the degree of carelessness and the consequences of carelessness. Historically the approach of the courts has been to impose a sentence based upon the level of carelessness rather than the consequences of the carelessness. Careful consideration is required where criminal courts are

¹ Paragraph 4, page 4 of the [Ministry of Justice Consultation on Driving offences and penalties relating to causing death or serious injury](#)

considering incidents where there may be a momentary lapse of judgement on the part of a driver, which results in life changing consequences for a person injured in an accident.

If Parliament does legislate, any new offence and definitions ought to reflect the concepts which are familiar to the respective jurisdictions. For example, we note that the Road Traffic Act 1988 created an offence of causing serious injury by dangerous driving². Section 1A (2) defines “serious injury” both for the purposes of England and Wales and in Scotland. In England and Wales, “serious injury” is defined as meaning physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861. In Scotland, “serious injury” is defined as meaning “severe physical injury”.

In terms of substantive criminal law we recognise, the need for certainty in the law. It has long been a guiding principle of criminal law that no one should be punished under a law unless it is sufficiently clear and certain to enable him or her to know what conduct is forbidden before he or she does it. An offence must be clearly defined in law (*SW and CR v United Kingdom* (1995) 21 EHRR 363, para 35/33), and a statement of principle cannot be regarded as a law unless it is formulated with sufficient precision to enable the citizen to foresee, if need be with appropriate advice, the consequences which may arise from his or her behaviour (*Sunday Times v United Kingdom* (1979) 2 EHRR 245, para 49; *G v Federal Republic of Germany* (1989) 60 DR 256, 261, para 1; *SW and CR v United Kingdom*, para 34/32).

Question 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?

The consultation document notes³ that offences and penalties need to be proportionate to the gravity and culpability of the underlying behaviour.

In respect of Questions 2 to 5 we should like to draw your attention to the Scottish Sentencing Council (SSC)⁴ which was established by virtue of the Criminal Justice and Licensing (Scotland) Act 2010⁵. The SSC, in carrying out its functions, seek to promote consistency in sentencing practice, assist the development of policy in relation to sentencing, and promote greater awareness and understanding of sentencing policy and practice.

² Section 1A of the Road Traffic Act 1988.

³ Paragraph 4, page 4 of the [Ministry of Justice Consultation on Driving offences and penalties relating to causing death or serious injury](#)

⁴ <https://www.scottishsentencingcouncil.org.uk/>

⁵ [Part I of the Criminal Justice and Licensing \(Scotland\) Act 2010](#)

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

We refer to our response at Question 1.

Any review or proposed changes to road traffic legislation ought to consider the impact of any advances in automated vehicle technology. Further evaluation which considers the impact of the increased use of technology, along with the proportionality of the intervention of the criminal justice system in such matters could help to future proof legislation.



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