



POLICE, CRIME, SENTENCING AND COURTS BILL 2021 Briefing for Lords Report Stage debate on Police &etc Bill Part 5

Introduction

The organisations supporting this briefing represent a wide range of road user groups and road safety interests.

This briefing is based on our shared concern over the persistent weakness of the legal system's response to motoring offences which cause death or serious injury. Several of our organisations have long called for a comprehensive review of road traffic offences and penalties. That call was [supported](#) by the findings of a Commons Transport Committee [inquiry on road traffic law enforcement](#) in 2016, as well as achieving [cross-party consensus](#) in a Westminster Hall [debate on Road Justice in 2018](#), following an [inquiry](#) on the subject by the All Party Parliamentary Group on Cycling and Walking.

We are therefore disappointed that the [Police, Crime, Sentencing and Courts \(PCSC\) Bill](#) puts forward only limited changes to road traffic offences and penalties. The Ministry of Justice [promised a comprehensive review](#) of these back in 2014. Yet it then consulted on a much [more limited set of measures](#) in 2016, which now form the basis of the Bill's proposals.

Several of our organisations proposed a number of amendments which were debated during the Bill's Lords Committee Stage. For the Report Stage debate, we wish to focus on three of these amendments, as well as supporting calls for a lower drink-drive limit.

Our three priority amendments seek to:

- Require the Government to carry out a full review of road traffic offences and penalties within 2 years of the Bill's enactment. Our proposed scope for this review would encompass all of the other amendments we proposed, and indeed several other issues raised by Peers, during the PCSC Bill's Committee Stage debates (*Amendment 65*).
- Increase the [penalties for hit-and-run offences](#) in cases where the driver knew, or reasonably should have known, that the collision had resulted in serious or potentially fatal injuries. This has been debated in the Commons since the Lords Committee Stage debate, having been subject of two [parliamentary petitions](#), which have both attracted over 100,000 signatures, while a [third petition](#) on the issue is still live and has attracted over 24,000 signatures (*Amendment 63*).
- Close the loophole whereby large numbers of [convicted drivers evade driving bans](#) by claiming this would cause 'exceptional hardship'. Recent media reports have highlighted that over 8,600 people are still driving on the UK's roads despite having 12 or more points on their licences. Most (though not all) of them will have been granted an 'exceptional hardship' exemption (*Amendment 64*).

Amendment 65: Review of road traffic offences and penalties

Background

Several of our organisations have been calling for a wider review of road traffic offences and penalties for many years. The Government [promised a “full review of all driving offences and penalties”](#) in 2014, and later added that this would be subject to [full public consultation](#).

This has still not been done, despite having also been called for:

- 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](#); and
- 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.

Instead, Part 5 of the Bill includes three proposed changes to the framework of road traffic offences and penalties, that were subject of a [much more limited consultation in 2017](#):

- 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.

Our organisations are cautiously supportive of the first of these proposals. However we fear that it will make little difference on its own – and that the other proposals could even prove counterproductive – unless other amendments are made as well.

Problems with the legal framework

Our primary concern with the current legal framework – and hence our view that Part 5 of the Bill is insufficiently wide-ranging – 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:

- Dismisses driving which has caused obviously foreseeable danger (including fatal and very serious injuries) as merely 'careless' driving – this is contrary to the original intention of the Road Traffic Act 1991;
- Is over-reliant on custodial sentencing, while making far too little use of driving bans;
- Routinely allows convicted drivers to avoid driving bans by pleading that this would cause 'exceptional hardship', in a way that contradicts the meaning of the word 'exceptional'.
- Seriously limits the maximum sentences for offences involving 'causing serious injury' – compared with those available for 'causing death' by equally bad driving – and fails to include any offence of causing serious injury (rather than death) by either 'careless' or 'dangerous' driving while under the influence of drink or drugs.
- Seriously limits the sentencing powers for opening vehicle doors in a way that causes death or serious injury.

The need to clarify the distinction between 'careless' and 'dangerous' driving, and to strengthen the use of driving bans (rather than being over-reliant on custodial sentences) are closely inter-related. Driving is the one day-to-day activity in which broadly law-abiding citizens can easily kill a fellow human through simple inattention. In many (though not all)

such cases, those who drive ‘dangerously’ are not ‘dangerous’ people who need to be locked up in the interest of public protection; it is much more important to ban them from driving. Yet it seems likely that the legal system’s over-reliance on prison sentences makes jurors understandably reluctant to convict for a ‘dangerous’ driving offence, for fear of imprisoning a fellow driver for an offence they could easily imagine committing themselves. Hence they may opt for ‘careless’ convictions instead, even when this is legally incorrect.

One [recent case](#) highlights the problems (n.b. our organisations can point to many others like it). 66 year old pedestrian Charles Roberts was crossing a 30mph road at Hyde Park Corner when a businessman from a foreign royal family crashed into him in his newly-imported high-performance car. Just before the crash, the driver had accelerated hard when the lights went green, reaching about 54mph in a few seconds. By the time he noticed Mr Roberts crossing the road in front of him, it was too late to brake. Yet last month, he was allowed to plead guilty to causing death by merely ‘careless’ driving and escape jail, receiving just an 8 month suspended sentence and a short driving ban.

This type of leniency causes huge additional distress to those who are already the victims of serious injury or bereavement – and can also have appalling consequences. In February 2017, driver [Abdul Sujac](#) caused serious injury to a pedestrian outside the Westfield Shopping Centre in East London, but received just 9 points on his licence after pleading guilty to ‘careless’ driving. Soon afterwards, he posted a WhatsApp video of himself back at the wheel, bragging that “Nine points ain’t stopping me from driving”. Nine months later he was driving at 68mph on a 30mph street in south London, swerving in and out of traffic, when he hit and killed student Laura Ann Keyes, who was crossing the road. Police found videos on his phone in which he evidently revelled in driving dangerously and illegally, including one captioned “ABDUL ripping the road 146mph”. If he had been convicted and banned for ‘dangerous driving’ the first time, Miss Keyes would doubtless still be here today.

Cycling UK’s report [‘Failure to see what is there to be seen’](#) has highlighted the huge inconsistencies in the use of ‘careless’ and ‘dangerous’ prosecutions and convictions. Clearly, if prosecutors fear that it may be difficult to persuade a jury to convict for dangerous driving, they may well simply opt for a ‘careless’ prosecution instead, or accept a ‘plea bargain’ where the accused pleads guilty to a ‘careless’ charge in return for not facing a ‘dangerous’ prosecution. Yet such undercharging or downgrading often causes serious grief to families who have already suffered bereavement or life-changing injuries.

Recent movement from Government

There has recently been renewed pressure for a review of road traffic offences and penalties, both during the PCSC Bill’s Lords Committee Stage and, a week later, during a Commons debate on [“Road traffic offences for fatal collisions”](#). While the Government resisted these calls during the Lords debate, transport minister Andrew Stephenson MP conceded during the Commons debate that *“The Department [for Transport] is considering a call for evidence on parts of the Road Traffic Act.”*

This development, though long overdue, is very welcome. Our organisations are now keen to ensure there is clarity on both the timing and the scope of this review, as set out in our proposed amendment.

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Amendment 65: Insert the following new Clause --

“Review of road traffic offences and penalties

- (1) The Secretary of State must carry out a review of road traffic offences and penalties within two years of the day on which this Act is passed.

- (2) In conducting the review the Secretary of State must include consideration of --
- (a) The need to clarify the definitions of road traffic offences and hence the consistency of how they are applied by prosecutors and the courts;
 - (b) The need to ensure greater alignment between the penalties for offences which involve causing death and those for offences of equivalent seriousness which involve causing serious injury;
 - (c) Sentencing which ensures public protection, particularly the role of driving bans, mandatory driver retraining courses, vehicle confiscation, restorative justice and other non-custodial sentences in appropriate cases;
 - (d) Strengthening the penalties for offences committed by offenders who have previously been disqualified from driving;
 - (e) The prescribed limits for alcohol and drugs for the purposes of the Road Traffic Act 1988;
 - (f) The role of alcohol interlocks and other technologies to prevent reoffending.”

Amendment 63: Failure to stop and report collisions involving actual or potential serious and fatal injuries

Background

If a driver is involved in a collision which results in injury or property damage, they are legally required to [stop and exchange details](#) or, failing that, to report the incident to the police as soon as practicable and within a maximum of 24 hours.

However the maximum penalties for failing to do so – 6 months’ custody plus a fine, at least 5 points on the driver’s licence and possible disqualification – make the assumption that the offence only involves failing to stop after a collision involving fairly minor damage.

This is clearly an inadequate deterrent: [research](#) found that there were over 28,000 ‘hit-and-run’ collisions in 2017, a figure which had increased by 43% since 2013. Nor does it come close to reflecting the gravity of offences where the driver flees the scene of a potentially fatal collision – often to avoid being caught driving while drunk or on drugs, or while uninsured, unlicensed or disqualified – rather than calling the emergency services, and thus potentially saving the life of their victim.

Concern over the inadequacy of this maximum sentence has prompted three parliamentary petitions. [The first](#) was tabled by the families of [Mathew Smyth](#) and his close friend [Paul Wood](#), who were both killed while riding their motorbikes in Cambridgeshire, within 9 months of one another. A [second](#) was tabled by the family of [Ryan Saltern](#) and, like the first, has attracted over 100,000 signatures. The [third](#) (which is still live), tabled by the bereaved family of [Shakeel Sheikh](#), has gained over 30,000 signatures.

Parliamentary debates

The first two of these petitions led to the aforementioned [Commons debate on Road Traffic Offences for Fatal Collisions](#). This took place on 15th November 2021, a week after the issue was [considered during the PCSC Bill’s Lords Committee stage](#).

During that debate, MPs heard [harrowing accounts](#) not only of the circumstances of their deaths but also the appallingly lenient sentences that often result from this offence.

Other horrific cases that we are aware of – either from media reports or through contact with the victims – include those of pedestrians [Sean Morley](#) and [Ben Regan](#), teenage moped rider [Alfie O’Keefe Hedges](#), teenage cyclists [Oscar Seaman](#) and [Kyle Coen](#), and adult cyclists [Scott Walker](#) and Peter Dowd MP’s daughter [Jennie Dowd](#). These and other cases like it, are documented in Cycling UK’s report [“No compassion or humanity: the toll of ‘hit-and-run’ drivers”](#).

Outline of amendment

Amendment 63 seeks to introduce a 14-year maximum penalty for drivers or riders of motorised vehicles who fail to stop and report collisions where they knew, or reasonably ought to have known, that a victim had been (or might have been) seriously or fatally injured.

It also replaces the word “accident” to describe such “collisions” – the current wording causes serious offence to victims who say it belittles the seriousness of such incidents.

Thirdly, it requires those involved not only to stop but also to report the collision to the police while at the scene, given that mobile phones are now widespread (they were virtually non-existent at the time this law was drafted). It is common for drivers to stop but then leave the scene, and later claim that they complied with the law by stopping. Failing that, it requires them to report the collision to the police within 2 hours of the collision, rather than 24 hours as at present. This would prevent impaired drivers from delaying handing themselves in until they feel they can pass a drink or drugs test (as appears to have been the motive in the cases of [Connor Marsden](#), [Connor Emms](#), [Gary Smith](#) and [Gemma Clout](#), all of whom were convicted of ‘causing death’ and ‘failure to stop’ offences).

Ministerial response

During the Commons petition debate, our proposed solution to this issue was advocated by [Ben Bradshaw MP](#) (he had also previously done so during the [PCSC Bill’s Report Stage debate](#)), with support from [Jim Shannon MP](#) (DUP), [Chris Stephens MP](#) (SNP), [Ruth Cadbury MP](#) (Lab, co-chair of the All Party Parliamentary Group on Cycling and Walking) and [Kerry McCarthy MP](#) (Lab transport spokesperson).

It had also been supported the previous week in the Lords by [Lord Paddick](#) (LD), [Lord Berkeley](#) (Lab) and [Baroness Jones of Moulsecoomb](#) (Green).

In response, Transport Minister Andrew Stephenson MP initially argued against our own and the petitioners’ proposals. Whilst [recognising](#) that “*something is perhaps not working with the law*”, he cautioned against making “*any rash decisions that could ultimately make things worse, or create other unforeseen effects, in a rush to resolve problems with the way in which the law currently operates*”.

He added that “*It is only in an extremely small number of cases that there may not be any other evidence to connect the death or serious harm with the driver who failed to stop*”, a view we strongly dispute.

He felt that “*Increasing the maximum sentence for failing to stop and report ... cuts across the basis for that offence*”, adding that “*the offence of stop and report is designed to deal with the behaviour relating to the failure to stop: it is not provided as an alternative route to punish an offender for a more serious but unproven offence.*”

However our proposed amendment does not do this. Instead, it treats the failure to stop and report a collision involving (potentially) serious or fatal injury as a serious offence in its own right, regardless of who or what had caused the collision in the first place.

Still, he [acknowledged](#) that Road Safety Minister Baroness Vere is considering the possibility of a new charge of failing to stop following a fatal or serious injury, among other options, while continuing to caution against hasty change, arguing that *“this is a very complex area”*.

Lords Minister Baroness Williams had [made similar points](#) when the issue was debated in the Lords the previous week.

We believe that this issue, and our proposed solution, are a lot less complex than the issues addressed by the Government’s own proposals in Part 5 of the Bill, and that it is far less likely to have unintended consequences. We therefore urge its immediate adoption while the PCSC Bill is before Parliament, rather than potentially waiting several more years for a future review of road traffic offences and penalties.

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Amendment 63: Insert the following new Clause --

“Failure to stop and report collisions involving actual or potential serious or fatal injury

- (1) [Section 170](#) of the Road Traffic Act 1988 is amended in accordance with subsections (2) to (7).
- (2) For “accident”, in each place it occurs, substitute “collision”.
- (3) In subsection (2), after “stop” insert “, report the collision to the police”.
- (4) In subsection (3), for “, he must report the accident” substitute “while at the scene of the collision, he must report the collision to a constable or at a police station as soon as is reasonably practical and, in any case, within two hours of the occurrence of the collision.”
- (5) After subsection (4), insert --

“(4A) A person who fails to comply with subsections (2) or (3) when he knew that the collision 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.”
- (6) In subsection (5), after “evidence” insert “at a police station as soon as is reasonably practical and, in any case, within two hours of the occurrence of the collision.”
- (7) Omit subsection (6).
- (8) 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 relating to an offence under RTA subsection 170(4) insert -

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

“(e) section 170(4A) (failure to stop, report and give particulars after collision involving actual or potential serious or fatal injury).”

Amendment 64: Definition of exceptional hardship

Background

When an offender faces a driving ban after accumulating 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'. Recent figures suggest that [8,632 motorists are still permitted to drive](#) despite having 12 or more points on their licence. Most (though not all) of these will have been granted 'Exceptional hardship' exemptions.

Cycling UK's ['Exceptional hardship?' report](#) demonstrates the kinds of hardship that are too readily accepted as 'exceptional'. One driver was [recently exempted](#) from a ban as this would allegedly prevent him from walking his dog, as the nearest park was a mile from his home. This case, and several others identified in the 'Exceptional hardship?' report, have occurred since the Sentencing Council's [guidelines on 'totting up' disqualifications](#) were [updated in October 2020](#), following concerns that 'Exceptional hardship' exemptions were being granted too frequently. This suggests that the changes have not had the desired effect.

The consequences of this leniency can be lethal. When [Christopher Gard](#) hit and killed cyclist Lee Martin in 2015, it was the 9th time since 2009 that he had been caught using a mobile phone while driving. Twice previously he had been sent on a driver retraining course, and he had been convicted and fined on 6 other occasions. Yet magistrates had repeatedly accepted his plea that a driving ban would cause him 'exceptional hardship'.

Similarly, motorcyclist Louis McGovern was killed when [Kurt Sammon](#) crashed into him, having jumped a red light while distracted by his hands-free mobile phone. Sammon had a record of motoring offences dating back to 2002 including driving while disqualified. He had previously left a 13 year old boy to die in a hit and run collision. Yet he too had twice avoided driving bans following subsequent convictions for mobile phone offences, by pleading 'exceptional hardship'.

Outline of amendment

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 arising from a disqualification would be truly 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.

Ministerial response

During the Bill's Committee stage, Government minister Baroness Williams of Trafford argued that this amendment was "*unnecessary, detrimental to judicial discretion and of questionable utility in assisting a court in applying the "exceptional hardship" test. It would introduce a narrow definition that would not be able to account for all circumstances that were presented to the courts and would remove the courts' freedom to use their experience to reach decisions accordingly.*"

We dispute this. Subclause (c) below avoids any limitation on the circumstances that a court could consider. However the need for a definition of 'exceptional' is clear from the unexceptional frequency with which 'exceptional hardship' pleas are currently granted.

* * *

Amendment 64: Insert the following new Clause --

"Definition of "exceptional hardship"

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

- "(4A) 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 for a large majority of other drivers if it were imposed on them.
- (4B) In assessing whether the hardship arising from the offender's disqualification would be exceptional, a court may take account of --
- (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,
 - (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, and
 - (c) any other circumstance which it believes would make the hardship genuinely exceptional."