

Department for Transport

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

Summary for Devon Countryside Access Forum

Full document: <https://www.gov.uk/government/consultations/new-cycling-offences-causing-death-or-serious-injury-when-cycling>

Closing date: 5th November 2018

“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.”

The Government appointed an independent legal expert, Laura Thomas, to investigate the law and gather evidence. Her 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.”

There are clearly potential difficulties in introducing complete parity. There are no proposals, at this stage, to introduce cycle testing, licensing and insurance or drink limits or drug testing – although it is an offence to cycle while unfit due to drink or drugs. Nor is it intended to introduce penalty points although the consultation does consider whether new cycling offences should carry driving disqualification.

The Government recognises the importance of cycling and walking for health and sustainability and other community and economic benefits. Protecting vulnerable road users is a key commitment.

Offences where drivers or riders cause harm (England and Wales only as different laws apply in Scotland which are identified in the consultation document)

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.

2.5 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.

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

In comparison, there are a wider range of driving offences, which are itemised in the consultation. These are more punitive. A recent review by the Ministry of Justice will introduce additional changes when Parliamentary time allows.

The consultation outlines how the different ‘tests’ are applied when assessing standards of driving/riding and associated offences. “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.”

Section of the consultation for DCAF discussion

Road and public place

From the DCAF's perspective, and remit to advise on the "enjoyment" of public access to land, part of the consultation focuses on 'public place' – areas of land where people may cycle which are not covered under current legislation. As outlined below there is no statutory definition of 'public place' so there may be areas or places which the DCAF considers should be included.

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?

The Devon Countryside Access Forum may particularly wish to consider the following areas:

- Multi-use/cycle and walking trails which are not necessarily 'road' (highway). A public right of way is a highway but some sections of trails may be permissive or under

other agreements yet are part of a continuous trail. Should all parts of trails fall under the legislation? Would any checks and balances need to be put in place to protect landowners?

- Should locations be included where cycling is a legitimate activity in a public place that is not a highway, for example on some towpaths or in a park?
- Land managed by a wide range of organisations may include cycle tracks or land where cycling is permitted, including for example Government departments such as the Forestry Commission; charities such as the National Trust, South West Lakes Trust and Woodland Trust; local authorities (unitary, county and district/borough) and town/parish councils. Does consideration need to be given to including some or all of this type of provision, if the law could be extended to cover such land, and would it impact on the availability of cycling opportunities?

Consultation questions

The full list of questions is below and the DCAF may wish to consider whether it responds to any of the other questions. In terms of 'enjoyment' of access, questions 1-4 are most relevant. It is probably difficult to agree on levels of fines or sentences and members may wish to respond as individuals.

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?