



Home Office

BUILDING A SAFE, JUST
AND TOLERANT SOCIETY



ROAD TRAFFIC PENALTIES

A Consultation Paper

December 2000



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1 INTRODUCTION: THE ROAD SAFETY STRATEGY

1.1 Use of the roads, whether for business or private purposes, whether on wheels or on foot, is an integral part of our daily life. Careful and considerate use of the roads has a direct impact on the safety and well-being of us all.

1.2 The road safety strategy set out by the government in "Tomorrow's Roads - safer for everyone"¹ (referred to below as the Road Safety Strategy) identified a series of objectives which could make the roads safer for all users. Achieving these objectives will require the partnership of

- The government, its agencies and the devolved administrations in Scotland and Wales (Northern Ireland will have its own road safety strategy);
- Local authorities;
- Police forces;
- Voluntary groups and road user associations;
- Motor manufacturers; and, above all
- Individual road users - drivers, motorcyclists, cyclists and pedestrians.

1.3 The Road Safety Strategy explains how that programme of work would integrate with other key policies to contribute to the well-being of us all, including people such as the elderly and the young who may be especially vulnerable on our roads, but who are no less entitled to use them. Safer roads, considerate driving and free flowing traffic contribute to an improved environment, cleaner air and better health. The proposals set out within this paper will work towards reaching the new 10 year target of increasing road safety as outlined within the Road Safety Strategy. In comparison with the averages for 1994-98, it aims to achieve a; 40% reduction in the number of people killed or seriously injured, 50%

reduction in the number of children killed or seriously injured and a 10% reduction in the slight casualty rate. By introducing higher penalties for various driving offences and other provisions being made available, such as requirements for drivers to retrain or requalify, the aim is to increase the general level of safety of drivers which will in turn lead to fewer accidents occurring on the road.

1.4 It is important to note that against a background of over 30 million drivers holding full licences, the Driver and Vehicle Licensing Agency are notified of 1.8 million endorsements in any one year. Some 95 per cent of motorists, therefore, get through the year without committing an endorsable offence. This goes a long way in showing how the average motorist does have a generally responsible attitude towards safety on our roads. Improving upon this is the key reason for implementing the Road Safety Strategy.

1.5 To achieve the implementation of the strategy, 10 main themes were identified:-

- Safer for children
- Safer drivers - training and testing
- Safer drivers - drink, drugs and drowsiness
- Safer infrastructure
- Safer speeds
- Safer vehicles
- Safer motorcycling
- Safer pedestrians, cyclists and horse riders
- Better enforcement
- Promoting safer road use.

¹ Published March 2000 by the Department of the Environment, Transport and the Regions. Available from DETR, PO Box 236, Wetherby LS7NB. Tel 0870 1226 236, fax 0870 1226 237

2 ENFORCEMENT: WHOSE RESPONSIBILITY?

2.1 One strand of the strategy is better enforcement. Enforcement, however, comprises a wide range of responsibilities among different people and bodies. This paper is principally concerned with the framework of sanctions which contributes to that enforcement effort. For a wider discussion of enforcement see the Parliamentary Advisory Council for Transport Safety (PACTS) Report² and the Government response to it. The need for enforcement through the courts can be reduced by effective training and testing, and by “social enforcement”. This means not only raising public awareness of the effect which the taking of drink or drugs can have on driving ability, but also changes in public attitudes. The behaviour of drivers and other road users can be altered by decisions on the part of drivers themselves, and by those around them, their families, their friends, and other road users. But the structure of road traffic penalties also has a part to play by signalling what is dangerous, providing incentives for improvement, and by generally encouraging consideration for other road users.

2.2 Equally important are training, and better information about the sort of behaviour which adds to danger on the roads. That applies particularly to offences seen by some as less serious, or involving little risk to others - speeding, or driving while uninsured or unlicensed. We must start to change any perception that those are mere regulatory offences.

² ‘Road Traffic Law and Enforcement: A Driving Force for Casualty Reduction’, Parliamentary Advisory Council for Transport Safety July 1999

3 NEW ENFORCEMENT MEASURES: YOUR VIEWS?

3.1 Enforcement in this sense was the purpose of the review of road traffic penalties announced in paragraph 10.16 of the Road Safety Strategy. This review is not a comprehensive assessment of road traffic law along the lines of the North Report of 1988³. It focuses on the sanctions available to the courts when dealing with road traffic offending and does not address the formulation of offences. This paper sets out the results of the review, and discusses a range of options for changes in the structure of penalties, to provide a mixture of better enforcement measures and better incentives to change behaviour through training and testing.

3.2 Before taking decisions on the changes set out in this paper, the government wants to involve the other parties to the road safety partnership referred to above - government agencies, local authorities, the courts, police forces, voluntary groups and road user associations, motor manufacturers, insurance interests, and above all road users.

3.3 This paper has been drafted with its primary frame of reference being the legislative position in England and Wales. However, it is envisaged that the proposals contained in it would also be applied to Scotland. The position in relation to Scotland is that road traffic law is a reserved subject (in other words, Parliament in Westminster makes decisions about that subject). On the other hand, criminal law and procedure are devolved to the Scottish Parliament. In Scotland the Lord Advocate is the head of the systems of criminal prosecutions and investigations of deaths. Decisions in relation to prosecution matters are taken by the Lord Advocate (or Procurators Fiscal as his local representatives) independently of any other party. From time to time, the Lord Advocate will issue instructions/guidelines to Chief Constables and Scottish Police Forces are statutorily obliged to comply with these (Section 12 of the Criminal Procedure (Scotland) Act 1995). The Lord Advocate's instructions in respect of speeding

thresholds are confidential between the Police and the Prosecution Service. Consequently, any changes to the law in Scotland would need to take account of these arrangements and also how they would be dealt with by the Scottish courts.

3.4 A number of other points about the position in Scottish criminal law are worthy of note and should be borne in mind when reading the remainder of this document:

- the term for the person facing charges is the "accused"; all references to a "defendant" in this paper should be read as applying to an "accused" in the Scottish context.
- driver improvement schemes do not operate presently in Scotland; a pilot had been operating in West Lothian. Thought is being given there to whether such schemes have a diversion from prosecution role but no final decisions have been taken yet.
- the aggravated vehicle offences (10.5 and 10.10) do not extend to Scotland: these offences would most likely be proceeded against under the common law there.
- in Scotland, the Procurator Fiscal has powers to make conditional offers of fixed penalties (sections 75-77 of the Road Traffic Offenders Act 1988).

3.5 Changes to penalties and other sanctions do not, in themselves, have an immediate and directly measurable effect on road accidents. They do, however, provide the framework within which the enforcement agents - police and courts - can undertake their duties more effectively. In the very significant area of speeding, a substantial amount of work has been done on savings to be derived from tighter enforcement. The section of this report which discusses speeding goes into that in more detail. In some cases proposals in the paper give rise to savings because of a redirection of effort, and in others they add to costs, but with an

³ Road Traffic Law Review Report (Department of Transport and Home Office, 1988)

expectation that the contribution to road safety, for which the Government has set targets, will produce cost savings elsewhere which cannot be factored into the resource analysis. Consultees should bear in mind that it is always difficult to know what the costs of any proposal will be because of the impossibility of predicting accurately the behaviour of drivers and the courts. However, the likely costs or savings of each proposal are set out in the section on the relevant proposal. It is believed that to implement the proposals would amount to a significant net cost and consultees should note that implementation of any proposals which are agreed following this consultation will be dependent on the necessary resources being available. The costs used are taken from the CJS flows and costs model. This model includes the costs of buildings etc and thus indicated savings may not be fully realised; nor (by the same token) may indicated costs be fully incurred.

3.6 Responses to the proposals set out in this document should be sent to:

*Jisha Salim,
Sentencing and Offences Unit,
Home Office,
50 Queen Anne's Gate,
LONDON, SW1H 9AT;
fax 020 7273 4345;
e-mail jisha.salim@homeoffice.gsi.gov.uk*

by **9 March 2001**. For analysis purposes, it would be helpful if consultees respond to specific points **using the same numbering as that contained within this paper**. A summary of the proposals and issues upon which we invite views is attached at the end of the document for ease of reference.

4 HOW CRIMINAL ARE MOTORING OFFENCES?

4.1 Motoring offences range from quite minor offences for which the maximum penalty is a fine at level 1 (maximum £200) (examples include driving on the verge or having dirty windows, for which in practice the police normally issue a warning) to others, such as causing death by dangerous driving, for which the maximum penalty is 10 years imprisonment, an unlimited fine, and disqualification from driving for the rest of the offender's life. In the most serious cases of all, killing someone on the roads could result in a charge of manslaughter, for which the maximum penalty is life imprisonment - the same penalty as for murder.

4.2 The maximum penalty for each offence must give the courts power to deal effectively with the most serious example of that offence which might come before them. It is also important, particularly for more serious offences, that the court should have a range of disposals available, not only of differing severity but also different in kind, so that the penalty awarded can meet public expectations of deterrence and retribution, and can be tailored to the circumstances of the particular offence, and the person who committed it.

4.3 Though often regarded as a separate body of law, road traffic offences, and the penalties available to enforce compliance, are a part of the criminal law. The severity of the penalties available must not only take account of the relative seriousness of the full range of traffic offences (referred to below as "internal relativities"), but must also be consistent with the penalties available in other areas of the criminal law (referred to below as "external relativities"). There are no hard and fast rules for internal and external relativities, and they may change over time, for example in response to changing social conditions and perhaps also in response to new technical opportunities for enforcement. Such changed circumstances may provide both the need and the opportunity for significant changes in the ranking of offences.

5 CHANGING PERCEPTIONS OF SERIOUSNESS

5.1 The most obvious recent example of this is drink-driving where, in a few years, the introduction of the breathalyser, near-mandatory disqualification, and a substantial programme of public information about the risks have transformed social attitudes to this offence. Since the late 1970s, the number of people killed in drink-drive accidents has reduced by two-thirds.

5.2 In reviewing traffic offences, the aim has been to concentrate on those offences where there may be problems with present sentencing powers; and those offences where there is evidence to suggest that improved driver behaviour would have a significant impact on safety. In looking at new traffic penalties, the aim has been to concentrate on those - the carrots as well as the sticks - which seem likely to have the greatest impact on driver behaviour.

6 DIFFERENT PENALTIES FOR DRIVERS?

6.1 The tendency to treat traffic offences as somewhat separate from the rest of the criminal law is well established in the pattern of penalties for some traffic offences. This is seen in the fixed penalty system, which in legal form is an offer of a penalty as an alternative to prosecution; and, in a different sense, in the penalty of disqualification, which is in part a direct punishment, but also a safety measure in that it removes a bad driver from the roads.

6.2 For the more serious examples of traffic offences, the courts will often need to have recourse to the same sort of penalties, such as imprisonment and fines, as are used elsewhere in the criminal law to deal with offences such as those relating to violence and dishonesty. But the great majority of the offenders appearing before the courts for traffic offences are not habitually violent or dishonest, and for them the courts need a wide range of penalties to make the punishment fit the degree of blameworthiness of the offender. The individual offences may each cover a wide span of blameworthiness or irresponsibility. There needs to be scope for a different response to a lapse by a driver with a good record, compared with one whose past behaviour suggests that he has little respect for the law or the safety of other road users.

6.3 For example, many drivers break the speed limit from time to time. Observation of vehicle speeds in Great Britain in 1998 showed that 69% of cars exceeded the 30mph limit and 29% exceeded the 40mph limit in free flowing traffic. Any speeding is a serious matter as it is a risk to safety, but excessive speeding poses the greatest risks. We are particularly concerned to deal with the problem of those who drive at speeds some way above the relevant legal speed limits, thus creating the greatest risks to other road users. Speed is a major contributory factor in about one-third of all road accidents with a strong link being demonstrated between vehicle speeds and the risk and severity of collisions. Small increases in impact speed significantly increase the likelihood of causing serious injury, where a pedestrian is hit

by a moving car. For example, where the speed of impact in a collision is 25mph, the likelihood of a fatality occurring is 20%. Where the speed of impact is 45mph, the likelihood of a fatality is 95%. Where the speeding is so excessive that it is in particular circumstances dangerous, drivers can be charged with dangerous driving as opposed to speeding. In addition, where such speeding results in a person's death, it is often possible for the driver to be charged with a more serious offence.

7 PROBLEMS FOR THE COURTS

7.1 There are two particular problems which the review has considered important. One particular difficulty with traffic offences is that, although the defendant's misbehaviour may not in itself be blameworthy to the same degree as found in other criminal offences, the consequences of the defendant's misbehaviour, while in control of a motor vehicle, may be out of all proportion to his offence. This is a source of distress to the families of victims, and difficulties for the courts, in cases of careless driving where a death has occurred. The courts must sentence in relation to the seriousness of the carelessness or lack of consideration which constituted the offence. At the upper end of the scale, a serious penalty may be needed. But the factors which distinguish this offence from the greater degree of culpability apparent in dangerous driving have always led successive governments to make imprisonment available for dangerous driving, but not for careless driving. This review is not looking specifically at the issue of whether there should be an additional offence of causing death by careless driving. However the Government intends to consider it in more detail once the research by the Transport Research Laboratory into how bad driving offences are dealt with is complete.⁴ The review has concluded that additional severe penalties need to be available for the offence of careless driving but we are not persuaded that it would be appropriate to make it imprisonable at this stage. New penalties for this offence, with minimum penalties for repeat offenders in this or more serious categories, are set out at paragraph 10.26 below.

7.2 The courts face other difficulties where the level of fines which they can impose is constrained by the means of the offender, so that the penalty imposed may sometimes be regarded by the public as insufficient recognition of the seriousness of the offence. A similar complaint is frequently raised about such offences as driving while uninsured. The court may strongly suspect that the driver has been driving uninsured for a significant period of time. But they can only deal

with the particular instance which was detected, and the sentence may accordingly be a fine which is less than the driver would have had to pay for insurance during the full period of uninsured driving. These are examples where the court needs a wider range of penalties than purely financial ones to reflect the circumstances of the offence and the offender, but where few would argue that imprisonment is an appropriate - or economically justifiable - response.

⁴ Early in 2001 DETR expect to publish the results of research commissioned from the Transport Research Laboratory (TRL). This research, entitled Evaluation of the Working of the 1991 Road Traffic Act, is to determine the effect of the Act on the procedures that identify, convict and sentence those guilty of serious driving offences. The Act sought to clarify the definition of the most serious offences and therefore make it easier to prosecute offenders. The research seeks to ascertain what is leading prosecutors to select one charge rather than another, and why the courts choose one penalty rather than another.

8 WHAT INFLUENCES DRIVER BEHAVIOUR?

8.1 The most severe penalties such as imprisonment, available to the courts only for the most serious traffic offences, influence the behaviour of drivers very directly: they are removed from circulation. Such penalties are often accompanied by a prolonged period of disqualification. These severe penalties are clearly needed, in the interest of us all, for those drivers who behave with gross irresponsibility towards the safety of other road users. Severe penalties may also be needed for those whose use of a vehicle is an inherent part of their criminal activity (statistical evidence suggests a strong link between serious road traffic offending and mainstream crime, see the Home Office Research Study No.206 'The Criminal Histories of Serious Traffic Offenders'). These are people whose manner of driving may be persistently irresponsible, who ignore penalties such as disqualification if they can, and who, in consequence, are too often unlicensed and uninsured.

8.2 But those recklessly bad drivers, and those who ignore the law in a vehicle as much as in the rest of their activities, are a small minority. The overwhelming majority of traffic offences are committed by decent, responsible and basically law abiding people, in circumstances where tiredness, impatience, a moment's carelessness or haste can have serious consequences for the safety of themselves and others.

8.3 We therefore need to provide effective enforcement, and severe penalties, for that small minority of really bad, dangerously irresponsible drivers. But at the same time we must recognise that a significant overall impact on road safety can be achieved if we can bring about quite small changes in behaviour on the part of the large number of ordinary drivers who, at worst, risk conviction for only minor offences.

8.4 For this basically law abiding majority, the present penalty structure revolves round fines and penalty points on the licence which may ultimately lead to disqualification by "totting up". For most people, though a fine may be painful, disqualification is the penalty that matters.

8.5 The belief that disqualification is the key penalty is central to this review. If, as seems likely, it is the most potent incentive for change, it must be used effectively. Disqualification is currently discretionary or mandatory. Even where it is mandatory, however, the courts can find that there are "special reasons not to disqualify". It is important that this discretion is exercised consistently and the courts are assisted by a substantial body of case law on the nature and effect of "special reasons". Any attempt to constrain this discretion in conjunction with a widening of the use of disqualification, will need to pay particular attention to the mobility circumstances of disabled drivers for who disqualification could be seen as an exceptionally severe penalty. Disabled drivers are, of course, subject to the law and if they drive badly they may endanger both themselves and other road users. Accordingly, they should, be subject to the same sanctions and deterrents as other motorists. Nevertheless, judicial discretion is fundamental to sentencing practice and the wider range of disposals which this review proposes should help. Courts should take full account of the potential consequences of a disqualification (as they would, for example, for imprisonment) when imposing a sentence on a disabled driver. The remedy in some cases may be not to demur from disqualifying a driver, but to ensure that arrangements could be put in place to overcome the most severe consequences of restricting mobility.

8.6 For the great majority of drivers, the threat of disqualification will often be sufficient to encourage compliance with the law and, accordingly, more effective use of that penalty should not in their case mean actual disqualification: it means reminding them more frequently that the risk of disqualification is there. It also means making remedial training available, sometimes in exchange for remission of some of the penalty for an offence, so that those willing to work to improve their driving may improve their chances of avoiding future penalties. There is growing evidence that the remedial approach works. Research during the experimental phase of the Drink Drive

Rehabilitation scheme found that offenders who went on courses were less likely to re-offend than those who did not. The current police Driver Improvement Schemes are being monitored so that their impact can also be gauged. This review proposes that such an approach should be expanded, and research into the results of that approach should chart the way forward, including the way in which other measures discussed below should be brought into effect.

8.7 Possible changes in the structure of offences and penalties are outlined in the rest of this consultation document. The underlying themes related to influencing driver behaviour, which characterise the proposals, are:-

- A quicker route to totting up disqualification for those who fail to heed the warning implicit in the first offence
- Retraining or rehabilitation schemes to be available for those approaching the risk of disqualification. Successful completion of training would result in remission of points.
- Possible use of short term disqualification by the courts, so that those for whom unchanged driving behaviour would result in a long period of disqualification can have a taste of the serious personal inconvenience which it would cause
- For those awarded a medium length disqualification, the opportunity to obtain some remission of the period of disqualification by successful attendance at a driver retraining and improvement programme
- For those awarded a long period of disqualification, the certainty that before being allowed back on the roads, they would have to undertake the full process of re-qualifying, (including, in some cases, an extended version of the driving test).

9 POSSIBLE NEW PENALTIES

9.1 To meet the need for new penalties for the wide range of traffic offences, the measures set out below have been identified. Later sections of this paper will illustrate how they can be applied, especially by sending a strong message to those who do not change their behaviour after initial warnings and opportunities for retraining, and who offend again.

9.2 The new penalties might be as follows:-

a. Driver retraining and improvement programmes should form a constructive part of the 'penalty' in a wide range of cases.

Police forces in some parts of the country have had considerable success with driver improvement programmes, which have been offered to drivers as an alternative to prosecution. Those schemes are now becoming more widely available, and the present review welcomes that. But in addition, it seems possible that schemes on those lines could be a useful component of the sentence of the court in some cases.

b. At the moment some drivers believe that they have a certain number of 'graces' before they will be disqualified. We want to discourage this view. One way of achieving this is to **revalue the penalty points system**. This will give the courts greater scope and flexibility in determining the number of points awarded according to the seriousness of the offence as there will be a larger number of points available to them for individual offences. Under this new system, **20 points** (in place of 12 as now) **would result in totting up disqualification. New drivers' licences should be subject to revocation at 10 points, instead of 6 as at present.** It is important to note that this proposal will not mean that an offender (whether a new driver or otherwise) will be able to commit more offences before being disqualified than under the existing system. The other purpose of this change is to facilitate the new fixed penalty regime for speeding offences, described at paragraph 10.32 below. Existing points will be scaled up to ensure that those who already have points on their licences do not receive extra 'graces'.

c. Move to a situation where any driver disqualified for more than 56 days but not more than 12 months, or any driver receiving points on his licence which take him up to 10 or more (half way to "totting up" under the new points values) should be offered the opportunity to undergo a driver retraining and improvement programme. Successful completion of the scheme, for which the driver would pay, would earn 20% remission of the period of disqualification, or a remission of 5 points at the new value described above. It should not be available to a driver more frequently than once in two years - if he did not learn from the experience, on a second occasion he could not expect mitigation of the points penalty or disqualification.

d. To avoid troubling the courts in cases where drivers acknowledge guilt, **it should be made possible for drivers to accept a fixed penalty which takes them up to or over the "totting up" level, or to plead guilty by post in a case which has that effect, and in such a case to receive an automatic disqualification of 6 months.** Provided he had not already attended a driver retraining and improvement programme in the preceding two years, the driver might be able to earn some remission of this penalty under the arrangements outlined immediately above.

e. To ensure thorough retraining for drivers whose behaviour results in a substantial period of disqualification, such drivers should as a general rule have to pass a driving test again. It is suggested that **retesting should be an automatic consequence of a substantial period of disqualification, in addition to any other penalty.** We welcome views as to what the length of this period should be. Mandatory re-testing currently applies only to the dangerous driving offences and manslaughter (or culpable homicide). When it was introduced it was decided that it should not apply to the drink-drive offences because the then Government considered that those offenders were more likely to benefit from the rehabilitation courses designed to

influence their attitude towards alcohol and driving. On the other hand, the requirement to pass a test could be seen as an appropriate punishment for such offending and might be extremely beneficial where the driver has been disqualified for a lengthy period. We would welcome comments on the relative merits of these two views. It is envisaged that the only licence available for issue from the Driver and Vehicle Licensing Agency after such a period of disqualification would be a provisional licence. The driver would need to be accompanied while driving on L-plates and would need to pass both the theory and practical elements of the driving test before obtaining a full licence.

f. A disqualified driver previously qualified to drive several types of vehicle and who is required to undergo a retest, whether an extended or ordinary test, would not be allowed to resume driving large goods vehicles or passenger carrying vehicles without retaking a test for such categories, even if his offence had been committed in a smaller vehicle such as a motor car.

g. An extended retest should be a mandatory element of the penalty for those offences to which it already applies, and in additional cases set out below. Where such a retest is mandatory, it should not depend on whether the sentencing court specifically drew attention to this requirement: it should be notified to the offender automatically by the DVLA at the time of the disqualification.

h. Current court practice does not favour disqualifying offenders for short periods. It may be, however, that use of **short term disqualifications**, even for periods as short as a fortnight or a month, could give a sharp warning to drivers whose behaviour, if it did not change, would be likely to result in a much more serious penalty including a prolonged disqualification. The principal focus of short term disqualifications are those road traffic offenders who are otherwise generally law abiding and whose behaviour may therefore be more readily influenced by such a disposal than the more typical persistent offender. Comments on this suggestion are broadly welcome.

i. For a period of three years after resuming driving following disqualification for more than 56 days, any fresh penalty points or endorsements awarded as a result of further offences or fixed

penalties would remain on the licence for six years, not three. This would mean that those whose driving behaviour was bad enough to result in such a period of disqualification would return to driving 'on probation'.

j. For all offences capable of being dealt with by way of fixed penalty (including the new regime for fixed penalty speeding offences described at paragraph 10.32 below) **a mandatory minimum penalty for such offences when dealt with in court should be set, at the same level of endorsement points and financial penalty as would apply if the offence were dealt with by way of fixed penalty.** This would be intended to deter those receiving a fixed penalty notice from opting for trial unless they believed that they had grounds for pleading not guilty. They would know that, in the event of a finding of guilt, they would certainly receive a penalty no lower than the fixed penalty - and it might be higher, and might include costs (although this last point does not apply in Scotland, where costs are not awarded at first instance).

k. Until now, certain community penalties have been available only where imprisonment can be imposed. In future, for some traffic offences, it might be possible to empower **the courts to use community sentences in cases where imprisonment is not available.** This new penalty is referred to below as "decoupled" community sentences. The review is proposing that community penalties should be available for a wide range of offences. Given the range of traffic offences for which these new penalties could be available, the government will welcome comments on this suggestion and on the form which constructive penalties of this sort might take. It is popularly thought, for example, that those guilty of bad driving, particularly causing an accident, might perform service in the accident and emergency department of a hospital.

l. Forfeiture of the vehicle is a little used, and little known, existing penalty for the more serious offences. The courts often find it unsuitable where, for example, the driver is not the owner of the vehicle, or its loss would inflict unjustifiable hardship on others guilty of no offence. Those problems are likely to remain, and permanent forfeiture is unlikely to be used very frequently. But the courts might be a little better able to use the power if the procedures were modified. At present the police are responsible

for impounding and storing the vehicle. A better alternative might be to take enforcement of such a penalty out of the hands of the police, and arrange for it to be carried out on a contractual basis by vehicle-removal companies. Costs would be defrayed out of the sale of the vehicle, with any sums over going first to pay unpaid fines, and then to the exchequer. Forfeiture of the vehicle is a serious penalty, the impact of which varies with the value of the vehicle. Its value would be something to be taken into account by the court in deciding whether to impose that sentence, and whether any other sentences should be imposed at the same time. It could be useful in the case of offenders where past experience showed a reluctance (as distinct from an inability) to pay fines.

m. A quite new and more useful penalty might be **temporary forfeiture of the vehicle**, perhaps by its immobilisation as is already done for some parking and vehicle excise duty offences. This might be used by the courts as a stand-alone penalty, or perhaps more often as a reinforcement of another penalty, such as disqualification. Immobilisation might be at the defendant's home or other suitable place nominated by him. The defendant would be responsible for any administrative or storage charges.

9.3 Many items in the list of new or adapted penalties in paragraph 9.2 above are referred to below in the context of the particular offences where they might be used, on which comments are invited. But some of those items are of general application, and are not separately considered below. They are summarised here in order that those who wish to do so may comment on them.

Proposal 1 Revaluation of points

To provide greater flexibility to the courts in awarding points related to the seriousness of the offence, and also for purposes connected with a new structure of fixed penalty speeding offences, penalty points and endorsements on licences should be revalued. The basic tariff for a low-level fixed penalty would be 5 points, instead of the present 3. Totting up would arise at 20 points, in place of 12 (and revocation of licence for new drivers would be at 10 points instead of 6).

Resource implications of proposal 1: The proposed revaluation of the points system in itself does not have any effect on the workload of the Criminal Justice system.

Proposal 2 Retraining

It is our intention that those receiving an endorsement or penalty points which take their points total up to or beyond 10 points - half way to totting up - should ideally be offered automatically the opportunity to attend, at their own expense, a driver retraining and improvement programme. This practice would inevitably entail gradual implementation. Successful completion of the course would earn remission of 5 points.

Those disqualified for a period of over 56 days up to and including 12 months should be automatically offered the opportunity to attend, at their own expense, a driver retraining and improvement programme. Successful completion of the programme would earn remission of 20% of the period of disqualification. The opportunity of a driver retraining and improvement programme should however be available no more frequently than once in 2 years. Those whose further offences suggested that they had not benefited by a recent course should not be eligible to reduce the sentence by attending another one.

Resource implications of proposal 2: This will result in fewer "disqualification days" awarded. It is assumed that this will be reflected in a reduction in the incidence of cases of driving while disqualified. This has been estimated at about 7200 fewer cases. If we further assume one court hearing per case, and that a hearing costs £200, this suggests a potential saving of £1.4m. As driving while disqualified is an imprisonable offence, there will also be a saving in the number of prison places; we estimate some 430 fewer places will be required, saving about £14m.

Proposal 3 Totting up disqualification as a fixed penalty

It should be possible for offenders to choose to accept a fixed penalty even where to do so would bring their penalty points up to or beyond totting up level. In that event offenders would automatically be awarded, in addition to the fixed penalty, a six month disqualification. If in other respects offenders qualified for it, they could earn a reduction of 20% in the period of disqualification by successful attendance at a driver retraining and improvement programme. (Existing provision for additional mandatory penalties would be maintained for those subject to totting up for a second or subsequent time.)

Resource implications of proposal 3: We estimate that this could result in a saving of some 35,000 hearings. On the basis that the cost of a hearing is £200, this suggests a saving of £7m.

Proposal 4 Long-life points

For a period of three years after resuming driving following disqualification for more than 56 days, any fresh penalty points or endorsements awarded as a result of further offences or fixed penalties would remain on the licence for six years, not three. (This would be governed by the penalty imposed, and would not be affected by any remission of the penalty as a result of attendance at a driver retraining and improvement programme.)

Resource implications of proposal 4: This has a potential effect on disqualifications and thus on the driving while disqualified figure. However, it is estimated that the direct effect of this proposal on the numbers in the system will be minimal.

Proposal 5 Requalifying after disqualification

A driver sentenced to disqualification for a substantial period of time could be required, as an automatic consequence of not being allowed to drive for such a period, to requalify. Views on the period of time that would be appropriate are invited. As for any new driver, this would involve accompanied driving on a provisional licence and all other requirements applicable to new drivers. A disqualified driver previously qualified to drive several types of vehicle and who is required to undergo a retest, whether an extended or ordinary

test, would not be allowed to resume driving large goods vehicles or passenger carrying vehicles without retaking a test for such categories, even if his offence had been committed in a smaller vehicle such as a motor car. There is an issue here about how best to rate one type of licence against another (e.g. one type of bus versus a type of lorry), but it should be possible to provide a meaningful hierarchy.

Resource implications of proposal 5: This proposal will not have any effect on the workload of the Criminal Justice system.

Proposal 6 Decoupled community penalties

Community sentences such as community service orders, involving service particularly relevant to driving and road safety, could be made available for some offences for which imprisonment is not available.

Resource implications of proposal 6: Use of community penalties where formerly fines were imposed would result in a loss of fine income which should be counted as a cost to the system. When added to the increased Probation Service costs involved in administering the community penalties, this would produce a total of £41.5m. There will be further costs in holding the extra court hearings for breaches of the new CSOs, amounting to £2.6m. The overall total is therefore £44.1m. In view of the cost of this proposal it might be some time before it could be implemented.

Proposal 7 Forfeiture of vehicles

Procedures for permanent forfeiture of vehicles should no longer involve the police, and should be contracted out to vehicle removal companies. A new penalty - temporary forfeiture - should be made available to the courts for certain offences. It might often be achieved by temporary immobilisation of the vehicle, either at the defendant's premises or some other suitable place.

Resource implications on proposal 7: This proposal will not have any effect on the workload of the Criminal Justice system.

10 THE STRUCTURE OF OFFENCES AND AVAILABLE PENALTIES

Offences involving death, dangerous driving, or aggravated vehicle taking

10.1 The most serious charge in connection with a death on the roads is normally **manslaughter** (or, in Scotland, **culpable homicide**), for which the courts have the highest penalties available - life imprisonment, unlimited fine, unlimited period of disqualification. There is no scope for any increase. The standard of proof required to show the necessary level of intent is high. If the evidence is unavailable, the prosecution authorities must use a less serious charge.

10.2 The next in the hierarchy of seriousness is **causing death by dangerous driving**, for which the maximum penalty is 10 years imprisonment, an unlimited fine, an obligatory period of disqualification (which could be for life) and, if permitted to return eventually to driving, an extended retest. Forfeiture of the vehicle is also available.

10.3 Public attention has focused in particular on the courts' use of imprisonment for this offence. There is no logic in providing the same sentence, life imprisonment, as for the more serious offence

of manslaughter. The maximum period of imprisonment available for causing death by dangerous driving could be increased from 10 to 14 years. It seems unlikely, however, that there would be any practical benefit in doing so. However devastating the consequences of causing death by dangerous driving, it seems unlikely that public opinion generally, or the sentencing practice of the courts, would equate that offence with other serious offences for which 14 years imprisonment is available, and which are typically committed by professional criminals who in effect set out to live their lives outside the law. This is borne out by the existing sentencing practice of the courts, which is illustrated in Figure 1 below, showing in detail the upper end of the courts' use of their existing powers of imprisonment for this offence. It would be an empty gesture to raise a maximum penalty when the present maximum is clearly not preventing the courts from sentencing at a level which they regard as right for the cases which come before them. Although no changes are currently proposed on the available powers of imprisonment or fine, we would welcome views on whether there should be an automatic disqualification for life and/or an automatic minimum penalty of one year imprisonment.

Length of Sentences (yrs)	5.5	6	6.5	7	7.5	8	Over 8	Total
1996	1	13	0	4	1	1	0	20
1997	2	10	3	5	0	0	0	20
1998	2	12	0	9	1	2	0	26

FIGURE 1
CAUSING DEATH BY DANGEROUS DRIVING - SENTENCES OF CUSTODY (IMPRISONMENT OR YOUNG OFFENDER INSTITUTION) OVER 5 YEARS - ENGLAND AND WALES

Length of Sentences (yrs)	5.5	6	6.5	7	7.5	8	Over 8	Total
1996	0	3	0	1	0	0	0	4
1997	0	5	0	2	0	0	0	7
1998	0	2	1	1	0	0	0	4

FIGURE 2
CAUSING DEATH BY CARELESS DRIVING WHILE UNDER INFLUENCE OF DRINK OR DRUGS - SENTENCES OF CUSTODY (IMPRISONMENT OR YOUNG OFFENDER INSTITUTION) OVER 5 YEARS - ENGLAND AND WALES

10.4 So far as the offence of **causing death by careless driving while under the influence of drink or drugs is concerned**, the driver's responsibility for the resulting death is greatly increased, when compared with the less serious offence of careless driving, by being under the influence of substances known to affect judgement and driving ability. The maximum sentence of imprisonment for this offence is already 10 years. Figure 2 shows that, in this case, as for causing death by dangerous driving, the sentencing practice of the courts appears not to be constrained by the level of the maximum sentence available to them. No increase in the penalty is proposed. However, we would welcome views on whether there should be an automatic disqualification for life and/or an automatic minimum penalty of one year imprisonment.

10.5 It is however anomalous that the comparable offence of **causing death by aggravated vehicle taking** (which is available in England and Wales, but not in Scotland) is at present subject to a maximum term of imprisonment of 5 years. There would be obvious logic in increasing the maximum sentence for that offence to 10 years, to match the maximum of the other two offences mentioned above.

10.6 On the whole these offences do not seem to be suitable cases in which to influence the sentence of the court more directly, for example by requiring them to impose a mandatory minimum prison sentence or automatic disqualification for life, given the wide variation of cases which they must deal with (although we would welcome views on this). Nor do the

varying financial circumstances of offenders permit minimum fines. A severe minimum for a defendant of limited means would be a derisory penalty for some other offenders. However, we would welcome views on whether it might be appropriate to impose an automatic disqualification for life and/or an automatic minimum penalty of one year imprisonment.

10.7 Other mandatory elements of the sentence structure can however remain - those convicted would always have to undergo an extended retest if allowed to return to driving.

10.8 The resulting new pattern of available sentences for these offences is summarised at the end of this section.

10.9 In the case of the next most serious offence, **dangerous driving**, there is evidence that the sentencing practice of the courts is constrained by the maximum penalty available to them, as shown in Figure 3.

10.10 Similar driving behaviour is too often apparent in the offence of **aggravated vehicle taking**, for which the present maximum is also two years imprisonment. There seems a clear case for an increase in the maximum penalty for these two offences, to 5 years imprisonment.

10.11 In respect of all these offences, there may be a case for making clear to drivers that the high level of irresponsibility shown in the commission of such offences will always justify a **substantial preventative period of disqualification**. The courts already impose significant periods of

Length of Sentences (months)	20	21	22	23	24	Total
1996	3	37	2	1	16	59
1997	3	39	0	0	32	74
1998	4	28	4	0	24	60

FIGURE 3
DANGEROUS DRIVING - SENTENCES OF IMMEDIATE CUSTODY (IMPRISONMENT OR YOUNG OFFENDER INSTITUTION) OVER 18 MONTHS - ENGLAND AND WALES

disqualification in such cases, but there may be some safety benefit in removing any shadow of doubt from the minds of those whose driving behaviour may risk committing these offences. The review therefore proposes a pattern of minimum disqualifications for the first offence. The question of whether the “special reasons” exception on the basis of which courts may decide not to disqualify in these circumstances should be removed was considered, but there may be implications in terms of the compatibility of such a measure with the European Convention on Human Rights. However, we would be interested to receive views as to the merits of such a change. Consideration of this issue will need to take account of the potential impact on the mobility of disabled drivers as discussed at paragraph 8.5 above.

10.12 The sentence should include life disqualification if a second offence within this category were to occur. It would also be desirable to make clear that permanent or temporary forfeiture should be available in these cases; and that drivers convicted of these offences, if permitted to return to driving, should always be required to undergo an extended retest before doing so.

10.13 Thus, for this group of offences, involving death or dangerous driving, the government proposes the following:-

Proposal 8 Causing death by dangerous driving

No change in powers of imprisonment or fine, nor in the requirement of extended retest. Disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death by dangerous driving, or causing death by aggravated vehicle taking, or causing death by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

Proposal 9 Causing death by careless driving while under the influence of drink or drugs

No change in the powers of imprisonment, but disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death by dangerous driving, or causing death by aggravated vehicle taking, or causing death by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

Proposal 10 Causing death by aggravated vehicle taking

The maximum term of imprisonment increased to 10 years. Disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death by dangerous driving, or causing death by aggravated vehicle taking, or causing death by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

Proposal 11 Dangerous driving and aggravated vehicle taking

Maximum term of imprisonment increased to five years for both these offences. Disqualification to be for a minimum of three years. In addition, disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death by dangerous driving, or causing death by aggravated vehicle taking, or causing death by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

Resource implications of proposals 8-11 (taken together as they form a group defined by similarity of offence - the most serious offences - and similarity of proposed treatment): It is estimated that these will require an extra 1,740 prison places at an annual cost of £32,500 each, giving a total cost of £56.5m. There will also be additional costs associated with the additional level of disqualification awarded. Calculated on the same basis as proposal 2, these would lead to 1300 extra cases (at a cost of £0.3m). 77 further prison places would be needed as a result of the extra use of disqualification (at a cost of £2.5m). The fact that there would be a shift of business between the magistrates' and Crown Courts has itself a cost of £6.7m. The grand total for this proposal is therefore likely to be around £66m.

The drink driving offences, and driving while under the influence of drugs

10.14 The road safety strategy identified drink-driving as a particular continuing concern, especially in relation to high risk offenders. This review does not cover the matter of the basic level of the drink-drive offence at 80mg BAC level, which the government has said, again in the road safety strategy, will be dealt with in a European context.

10.15 There are already special arrangements for **high risk drink driving offenders**, defined as those with an alcohol level above 200 milligrams per 100 millilitres of blood, or who offend for a second time within 10 years, or who refuse to provide a sample. This is known as the High Risk Offenders (HRO) Scheme. High risk offenders are required to take a medical test before regaining the licence at the end of their period of disqualification, in order to satisfy the Secretary of State's advisers that they do not have a serious alcohol problem. They may therefore be refused a new licence on medical grounds after the court's order of disqualification has expired. It would not be appropriate for this review to propose any change in those medical arrangements, which exist for preventative purposes and are imposed automatically rather than as a sentence of the court.

10.16 Under current provisions (section 34 Road Traffic Offenders Act 1988) persons convicted of any drink-drive offence carrying obligatory disqualification¹ are subject to disqualification for a minimum period of twelve months unless special reasons apply. The courts currently have discretionary powers to disqualify where the offender was found to be in charge of a vehicle whilst under the influence of drink or drugs² rather than actually driving or attempting to drive. We do not propose any change to the nature of the disqualification powers of the courts or the current minimum periods for first time offenders, nor do we believe there is any reason to change the discretionary power for the "in charge" offences because the level of culpability is significantly lower than that involved in the "drive or attempt to drive" offences.

10.17 Nevertheless, in view of the substantial change in public attitudes towards drink driving, and the continuing evidence of the impact on safety

¹ The offences are : Causing death by careless driving when under the influence of drink or drugs (section 3A Road Traffic Act 1988) (N.B. the minimum period of disqualification for this offence is 2 years (section 34(4) Road Traffic Offenders Act 1988); driving or attempting to drive whilst unfit through drink or drugs (section 4(1) Road Traffic Act 1988); driving or attempting to drive with excess alcohol in breath, blood or urine (section 5(1)(a) RTA) and refusing to provide a specimen for analysis where it is required to ascertain ability to drive or level of alcohol at the time of driving or attempting to drive (section 7(6) RTA).

² The offences are: Being in charge of a mechanically propelled vehicle when unfit to drive through drink or drugs (section 4(2) Road Traffic Act 1988); being in charge of a motor vehicle with excess alcohol in breath blood or urine (section 5(1)(b) Road Traffic Act 1988).

if drink driving were further reduced, there is a strong case for warning the more serious and repeat offenders that they face particularly severe punishment. We propose therefore that those convicted of driving or attempting to drive with a particularly high level of alcohol are subject to a higher minimum period of disqualification. This review believes that the principle that those convicted of “in charge” offences should not be subject to obligatory disqualification is also valid in relation to the higher level offence. The issue as to what the appropriate minimum period of disqualification for the higher level offence should be is one which we do not make any firm proposal but invite views. The period would need probably to be at least eighteen months but the threats to road safety and the potential for serious injury and death when driving is impaired by high levels of alcohol may justify a much higher minimum period.

10.18 One important consideration, however, is the penalty for failing to provide a specimen for analysis where it is required to ascertain the level of alcohol. Obviously the aims of the proposal for a higher level offence could be easily frustrated if drivers were able to avoid liability for the higher level minimum by the simple expedient of refusing to provide a sample for analysis. Respondents should therefore bear in mind that the period of disqualification for the offence of failing to provide a specimen where it is required to ascertain the level of alcohol will have to be the same as that determined to be appropriate for the higher level offence. There is, in principle, much to support the view that the “failure to provide” penalty should be as severe as the worst possible outcome of a conviction for the charge which is being evaded.

10.19 Another important issue is the relationship between the penalty for the offence of driving or attempting to drive while having a higher level of alcohol and the offence of driving or attempting to drive whilst unfit through drink or drugs. This latter offence may be charged in circumstances in which failing to provide a specimen is not appropriate and, had the offender provided a specimen, the level shown could have been either low or high. Accordingly it would be inappropriate to consider replicating the proposals for failing to provide a specimen and make the minimum period of disqualification for driving whilst unfit the same as that for the higher level offence. We believe that reliance can be placed on the courts to exercise their discretion. This may be achieved with the assistance of guidelines, in a manner

which ensures that where the evidence suggests that the offenders ability to drive safely was seriously impaired the period of disqualification imposed (which will continue to be subject to a minimum of 12 months) imposed is comparable to that which would have been imposed had the offender been shown to have driven whilst being over the higher level.

10.20 As regards repeat offending, all drink-drive offences (including failing to provide a specimen where required for ascertaining the level of alcohol or whether the provider is unfit to drive) which attract obligatory disqualification (ie excluding the “being in charge offences”) now carry a minimum period of disqualification of three years upon a second conviction within ten years (section 34(3) Road Traffic Offenders Act 1988). We make no proposal to increase the minimum period in these circumstances but will consider any views as to whether an increase is favoured and what the appropriate period might be. As to the higher level alcohol offence, repeat offending would also need to attract a higher minimum period of disqualification.

Proposal 12 A new penalty for a “higher level of alcohol”

This penalty might, for example, apply at 160 milligrams alcohol per 100 millilitres of blood (a figure which represents twice the basic level). This offence would apply in respect of driving or attempting to drive with this much higher level of excess alcohol, or being in charge of a vehicle with such a level of excess alcohol. The maximum penalty for the new “higher level of alcohol” offence would be the same as for the basic offence. But the minimum period of disqualification applying to the “drive and attempt to drive” offence would be longer than the basic offence. We invite views on the appropriate periods of disqualification. Disqualification would remain at the discretion of the court for the “in charge” offence and the minimum of 12 months would continue to apply for driving or attempting to drive whilst unfit. Permanent or temporary forfeiture of the vehicle would also be available, though temporary forfeiture is unlikely to be appropriate for a substantial period of disqualification. Offenders convicted of the new offence would always be required to undertake an extended retest before regaining their licence, and if they fell within the terms of the High Risk Offenders arrangements would also be required to undergo a medical test before being allowed to resume driving.

Resource implications of proposal 12: The resource implications of this proposal will be assessed once a firm recommendation for the appropriate minimum period of disqualification is made following consultation. For illustrative purposes, however, it is estimated that, if the period were to be three years, there would be something in the order of 400,000 days extra disqualification generated by this proposal, which would in turn result in 172 extra cases of driving while disqualified and 11 additional prison places. On this basis, the total cost would be £0.4m.

Proposal 13 Repeat drink-drive offending

For any second drink-drive offence within 10 years, disqualification, where applicable, should at least remain at the current minimum period of three years but could be increased. We invite views on this issue. The second drink-drive offence within 10 years would also result in a requirement to undertake an extended retest, in place of an ordinary re-test, before the driving licence could be regained. These penalties would apply in respect of any combination of offences under sections 4(1), 5(1)(a) and 7 (where the sample is required to ascertain the level of alcohol or fitness to drive) of the Road Traffic Act 1988 - e.g. one drink and one drug offence within this category would trigger the minimum penalty. We propose that two convictions for drink-drive offences within ten years, in which one or both of the offences is a higher level offence or failing to provide a specimen where disqualification is obligatory, should attract a minimum period of disqualification in excess of that applying to repeat commission of basic offences (currently three years).

Resource implications of proposal 13: The resource implications of this proposal can only be properly assessed once a firm recommendation for the appropriate minimum period of disqualification is made following consultation. This proposal will have a minimal effect on the workload of the Criminal Justice system.

Driving while disqualified, while unlicensed, or while uninsured

10.21 The law has always provided severe penalties for the offence of **driving while disqualified**, because it involves a direct flouting of the order of the court. Maximum penalties are

six months imprisonment, and a fine at level 5, further disqualification and the possibility of a retest. There seems little scope for further increasing these penalties for first offenders - it is noteworthy that the courts already use their existing powers severely in these offences, and in 1997 (the most recent year for which figures are available) 49% of those found guilty of this offence were sentenced to immediate imprisonment.

10.22 There are however three changes which might be useful for this offence. First, it is important that the court should have the widest possible range of penalties for this offence, and this might be a case where they would benefit from the wider range of community penalties already suggested, particularly for some less serious cases. Second, bearing in mind the greater use of short term disqualification which this review recommends, it is important to signal clearly to disqualified drivers the seriousness of this offence. Temporary forfeiture of the vehicle might be a useful obstacle to breach of the disqualification order in some cases; permanent forfeiture should be available for serious cases. Third, a mandatory minimum penalty of two years additional disqualification for a second offence within 10 years for this offence would underline the seriousness of flouting the order of the court.

10.23 The offences of driving while unlicensed or uninsured come close to disqualified driving in seriousness, and are of course likely to be committed by any who drive while disqualified, though they are also committed by others. Even where they do not involve flouting a court order of disqualification, it is important to bring home to offenders that these are not mere regulatory offences.

10.24 **Driving while unlicensed** means that the driver has not undergone the necessary training. He or she may lack the necessary experience and skill in controlling the vehicle. Perhaps more important, untrained and untested drivers may have dangerous perceptions of what is to be expected of their own behaviour, and that of other road users, on our congested roads.

10.25 **Driving while uninsured** means, in the event of an accident, that those who suffer loss as a result may not be adequately compensated. Though there are some limited arrangements,

through the Motor Insurers Bureau, to meet some such uninsured losses, those arrangements are in effect funded by means of a levy on the insurance payments of all law abiding drivers. Uninsured driving, in addition to its other dangers, drives up the costs experienced by others.

Proposal 14 Driving while disqualified

A wider range of community penalties to be available in addition to the existing option of six months imprisonment. Permanent or temporary forfeiture of the vehicle. A minimum two-year disqualification for a second offence within 10 years (which would always trigger a retest requirement.)

Resource implications of proposal 14: This proposal would potentially divert 5,000 offenders from a penalty of imprisonment. The average imprisonment awarded in such cases is 90 days, of which 45 days would be served. This should save about 600 prison places, which equates to a monetary saving of £19.5m.

Proposal 15 Driving otherwise than in accordance with a licence, or causing or permitting a person to drive otherwise than in accordance with a licence

In addition to existing penalties, “decoupled” community penalties to be available in any case where disqualification is available (ie where the driver could not have held a licence for the class of vehicle driven, for example because he was under the minimum driving age for all vehicles); and permanent or temporary forfeiture of the vehicle involved in the offence. This would mean, for example, that a parent or friend foolish enough to allow an unlicensed person to use his vehicle would risk loss of the vehicle, temporarily or even permanently.

Resource implications of proposal 15: Use of community penalties has been addressed on a global scale above (at proposal 6).

Proposal 16 Driving while uninsured

In addition to existing penalties, “decoupled” community penalties, and permanent or temporary forfeiture of the vehicle, should be available to the courts.

Resource implications of proposal 16: Use of community penalties has been addressed on a global scale above (at proposal 6).

Careless and inconsiderate driving

10.26 Careless and inconsiderate driving spans a wide range of blameworthiness. The difficulties surrounding the appropriate allocation of conduct either side of the threshold between careless and dangerous driving have already been discussed at section 7.1 above. In view of the relatively serious nature of offending which can fall within the current formulation of the offence of careless driving this review believes that there is a clear role for mandatory minimum penalties for repeat offenders. These are set out below. This review also believes, however, that the proposed mandatory minimum penalties would be inappropriate for the less serious end of the scale of conduct which is sometimes dealt with as careless driving. Much of this type of conduct constitutes being behind the wheel of a vehicle whilst trying to undertake other activities in such a way as to cause temporary lapses of concentration and thereby be a potential danger to other road users, i.e. using a mobile phone, eating and drinking, etc.. It does not necessarily constitute the actual manoeuvre of a vehicle in a manner which is a danger to other road users. This type of conduct, which is often dealt with as careless driving, may be more appropriately charged under the construction and use offence of failing to have proper control of a vehicle (contrary to section 42 Road Traffic Act 1988 and regulation 104 Road Vehicles (Constructions and Use) Regulations 1986), which carries a maximum penalty of £1,000. This review makes no firm proposals on this issue. A shift in charging practice, however, could be implemented by the use of operational guidelines and would not require any legislative change. Such a measure would help to ensure that offenders that fall under this category will not be subject to the proposed mandatory minimum penalty.

10.27 More generally, there is a need to widen the range of penalties available to the courts, and to provide options to the courts for dealing more severely with any drivers whose carelessness seems not to be isolated but to be a more persistent feature of their driving. In this class of offence in particular retraining may have a valuable role to play.

Proposal 17 Careless or inconsiderate driving.

Available sentences to include requirement to undergo a driver retraining and improvement programme (successful completion of which would qualify the defendant for a 20% discount on any period of disqualification awarded, or the remission of 5 penalty points). But this would not be available where the driver had undergone a driver improvement programme within the preceding two years.

“Decoupled” community penalties, but not imprisonment.

A fine at level 5, as already announced, in place of level 4.

A mandatory minimum award of 15 points for a second offence of careless driving within 5 years, or for a first offence of careless driving if within the preceding 5 years the driver had committed any of the more serious categories of offence already considered above. The number of points to be imposed would mean immediate disqualification for any offender who already had existing points on his licence.

A minimum period of disqualification of whatever period is necessary to ensure that the requirement of a retest is automatically triggered for a third or subsequent offence of careless driving within five years.

Resource implications of proposal 17: There should be a small amount of fine income generated by this proposal - perhaps about £75,000. The major effects would result from an increased use of disqualification, about 1m days per year, which would in turn lead to 430 extra cases of driving while disqualified, and thereafter probably 26 extra prison places. The overall cost here, estimated on this basis, would be £0.85m.

Speeding

10.28 Breaking the speed limit is by far the most common motoring offence, accounting for around one million cases per year. The DETR Speed Review⁵ indicates that speed is a factor in one third of all collisions; this equates to around 1,100 deaths and over 100,000 injuries each year. Research has shown that for each 1 mph reduction in average speed, accident frequency is cut by 5%. Other research suggests that one in three of those drivers who have been penalised for speeding offences in the last three years had been involved in an accident as a driver in the same period. Furthermore motorists who grossly exceed speed limits greatly increase the risk to both themselves and to others.

10.29 The significant savings in accidents which can be achieved by dealing with speed, can only be made if the right balance of measures is used. Following the Speed Review, the Government is addressing this issues in a variety of ways. First, the enforcement efforts of the police are being stepped up through the operation of safety enforcement cameras under a self financing arrangement. Pilot projects now in progress suggest intensified use of the system has had a pronounced effect on some of the most serious speeding. Secondly the penalties have to be got right to provide an effective framework of sanctions; the focus of this review. Thirdly, the whole regime must be adequately understood and command the respect of the motoring public. To this end, the Speed Review acknowledged problems with speed limit signs and markings, and concerns about inconsistency in the way speed limits have been set throughout the country. These are matters which DETR is addressing in parallel. Offences of **speeding** make up the category of offences for which this review proposes the most substantial changes.

10.30 In court, the maximum penalties available are a fine of £1,000, for speeding on a motorway £2,500, three to nine points, disqualification, and a requirement to take a fresh driving test. Guidelines, which the courts are not required to follow, recommend a penalty no lower than the fixed penalty level for the offence.

10.31 At present, speeding offences detected by police action and by cameras can be dealt with by way of fixed penalty if the police offer that option,

⁵ 'New Directions in Speed Management- A Review of Policy' DETR, March 2000

and if the offender accepts it. A fixed penalty involves payment of £60 and three endorsement points. The police have discretion not to offer a fixed penalty, for example if they regard the offence committed as too serious. In that event they report the case for prosecution. The offender will not accept the offer of fixed penalty if he disputes the offence, or if he hopes for a lower penalty than the fixed penalty by arguing his case in court. The option of a fixed penalty should not be offered where the resulting points would take the offender up to or beyond the totting up level of 12 points. This causes some practical difficulty and delay where, for example, a recent penalty is not yet apparent on the licence.

10.32 A new system might operate on the following lines:-

a. This review believes that there is a clear case for a higher level penalty for the most excessive breach of speed limits. Whilst the most serious cases should come to court (in some cases a charge of dangerous driving may even be contemplated) the review has concluded that provision could be made in the fixed penalty system for a second tier offence which would apply at specified levels. The police discretion to refer offences for prosecution would be retained. That discretion is needed for cases where the recorded speed did not reflect the seriousness of the offence (e.g. 33 mph past a school exit on snowy roads, where the limit was 30 mph).

b. Although the review has not drawn any conclusions as to the precise speeds at which the higher level of penalty would apply, for the purpose of illustration Figure 4 sets out (in the second column) the maximum speed for which a standard FP might be offered. Above that, a higher FP penalty would apply; but above the second threshold (fifth column) the case would have to be taken to court. For the purposes of illustration the figures reflect a simple threshold formula of, on the standard penalty, 10mph above the speed limit, and for higher penalty, 25mph above the limit. The exception to this is in the 20mph limit where, because the environment is invariably one where pedestrians are found, lower thresholds would be appropriate. **These thresholds are provided for illustration purposes only and do not represent a blueprint for the scheme.** Views on the appropriate levels of these thresholds are invited.

c. Figure 4 shows, for first tier offences, a tariff of penalty points no higher than that prevailing now (after taking account of the proposed revaluation of points, under which 5 new points would equate to the present tariff of 3 points for speeding). The important difference is that, for upper tier offences, there would be an increase in the financial penalty but a proportionately greater increase in the points penalty.

Speed Limit Mph	Standard Speeding Fixed penalty offence			Higher Speeding Fixed penalty offence		
	Speed Up to:	Penalty Points	fine	Speed Up to:	Penalty Points	fine
20	25	5	£60	30	12	£90
30	40	5	£60	55	12	£90
40	50	5	£60	65	12	£90
50	60	5	£60	75	12	£90
60	70	5	£60	85	12	£90
70	80	5	£60	95	12	£90

FIGURE 4
POSSIBLE FIRST STAGE OF A TWO-TIER FIXED PENALTY REGIME FOR SPEEDING

d. In later stages, if experience and research evidence justified it by reductions in the rate and severity of speed-related casualties, the two tier structure could be further modified. That process might continue through several steps, both so that the safety impact could be tested, and so that drivers would have the opportunity to adjust their behaviour in the light of new penalties based on objective evidence of their effect. A rather later stage, for which changes in technology, police practice and driver behaviour might be needed, could be as illustrated in Figure 5 below.

e. The approach illustrated in Figure 5 would increase the risk of disqualification for those who exceeded the limit by a wide margin - they would know that more than one speeding offence, any one of which was in the upper tier, would virtually guarantee a period of disqualification. The impact on drivers who generally respected the limits would be less threatening, though the slight increase in lower tier points would mean that three modest speeding offences would result in totting up disqualification, instead of four as at present.

f. The mandatory minimum sanction for each tier if dealt with in court would be set at the fixed penalty level, so that offenders would know that there was no point in going to court unless they had a basis for pleading not guilty - they would almost certainly receive a higher penalty.

g. Speeds above the upper tier level would result in prosecution. The logic of the penalty structure is

that penalties for such cases must be distinctly higher than the upper tier fixed penalty level - a higher fine and the near-certainty of a period of disqualification, which could be substantial, (indeed it would be possible to build into the scheme a minimum sentence of a year disqualification for those speeding beyond the second tier level), for those who already had points on their licence. Consideration should be given to imposing, within these circumstances, the minimum period of disqualification necessary to trigger the requirement to have a retest.

Proposal 18 Speeding offences

A new fixed penalty system for speeding offences should provide for two levels of fixed penalty, with a higher level of points awarded to those exceeding the limit by a wide margin so as to increase the risk to them of losing their licence through totting up.

The levels of penalty, and the speeds at which they would apply, should be altered in stages, at well-advertised intervals and on a basis supported by research into the safety effects of earlier stages in this long-term process of change.

The objective of this sustained programme would be to adjust driver behaviour, and public attitudes to speeding, over time and on the basis of objective evidence. Each stage should be capable of being evaluated before the next is decided upon.

Limit	First tier speed to	First tier points	First tier penalty	Second tier speed to	Second tier points	Second tier penalty
20	23	7	£60	27	15	£90
30	35	7	£60	45	15	£90
40	45	7	£60	55	15	£90
50	55	7	£60	65	15	£90
60	65	7	£60	75	15	£90
70	75	7	£60	85	15	£90

FIGURE 5
POSSIBLE LATER STAGE OF TWO-TIER PENALTY REGIME FOR SPEEDING OFFENCES

Resource implications of proposal 18: We estimate that there will be an extra 0.5m disqualification days awarded under this proposal. The combined effect of additional court hearings and prison places in this instance would be a cost of £0.47m.

Imprisonable offences for which imprisonment is not currently available in the magistrates' court

10.33 There are a number of road traffic offences relating to dishonesty which are triable both in the magistrates' court and the Crown Court. Although imprisonment is available in the Crown Court, it is not available in the magistrates' court. This is anomalous and inconsistent with the sentencing powers normally made available to the courts. We propose that the penalty on summary conviction (i.e. in the magistrates' court) should be increased to six months imprisonment. It is not thought that this will lead to more severe sentencing, since imprisonment was already available in the Crown Court. The three offences are fraud with parking tickets, deception with licences, MOT certificates etc) and fraudulent use of documentation.

Proposal 19 Fraud with parking tickets, deception with licences, MOT certificates, etc and fraudulent use of documentation

Imprisonment of up to six months should be made available to the magistrates' courts for these offences.

Using vehicles in a dangerous or overloaded condition

10.34 These offences cover a wide range of seriousness, and the new approach to penalties suggested in this paper provides the opportunity to widen the options available to the courts.

Proposal 20 Using vehicles in a dangerous or overloaded condition

"Decoupled" community penalties should be available to enable the courts to deal effectively with particularly serious examples of these offences. Disqualification should be mandatory for second or

subsequent offences in this category within three years; and temporary forfeiture should be available.

Resource implications of proposal 20: We think the effects of this proposal are likely to be de minimis.

Misuse of bus lanes

10.35 Misuse of **bus lanes** is a serious problem for the flow of traffic in some major cities, and it can have safety consequences where the presence of other vehicles means that buses cannot let passengers on or off near the kerb at designated places. The level of fixed penalty for bus lane offences was increased to £30 along with increases to all non-endorsable fixed penalties effective from 1 November 2000. It is our long-term policy objective that local authorities should be enabled to enforce bus lanes as well as the police, by the use of cameras. There are potential difficulties with enforcement which would need to be resolved before this could be brought into effect.

Proposal 21 Bus lanes

Local authorities should be empowered to deal with offenders by a fixed penalty notice. This would enable a much more effective enforcement system to be in place. Any further comments on this issue would be welcome.

Other fixed penalty offences

10.36 The Vehicle Excise and Registration Act 1994 contains a number of offences relating to vehicle excise duty and vehicle registration documentation. Most of these currently attract a Level 3 (£1,000) fine. The Government has looked at the penalties regime for the vehicle excise duty offences, taking into account both internal and external relativities. We remain unconvinced of the need to change the levels of penalty.

10.37 In relation to vehicle registration, the Vehicle Crime Reduction Action Team document, "Tackling Vehicle Crime - a five year strategy", discusses the way in which changes to this part of the law might contribute to reducing vehicle crime. The document notes that there are three main car crime problem areas which could be

reduced by improving vehicle registration procedures. These are:

- vehicle “ringing” - where the identity of a stolen vehicle is disguised with one which has been written off;
- vehicle “cloning” - where the identity of a stolen vehicle is disguised with that of a legitimate vehicle, often off the road and in the motor trade;
- vehicle “clocking” - where the mileage recorded on the odometer is reduced.

10.38 The Action Team believes that one of the ways of helping to combat these problems is by raising the status of the Vehicle Registration Document (V5). For example, it has been suggested that the penalties for vehicle registration document offences might be increased to a fine of more than £1,000, and that the offence could be made endorsable.

10.39 The Government has concluded that this would not be consistent with the current framework of offences, within which all the main offences in VERA are treated with the same level of seriousness. Additionally, the approach adopted here seeks to enhance the role of endorsement but in keeping with its traditional application to offences where road safety considerations are relevant. It would require strong justification, which appears not to be present here, to depart from that rationale. However, we would welcome comments on whether there might be other ways in which offending of this kind could be appropriately punished, e.g. “de-coupled” community sentences.

10.40 Similarly for a range of other fixed penalty offences there are no proposals to make changes. The government does, however, acknowledge there may be some safety related offences for which endorsement could be an effective penalty and we would welcome views on that.

10.41 More generally, however, all fixed penalty offences should be brought within the minimum penalty regime described at paragraph 9.2 (j). That is to say, the minimum penalties for those offences when tried in court would be set at the fixed penalty level so that the only purpose in challenging the fixed penalty in court would be

where there was a basis for pleading not guilty. The penalty imposed by the court could not be lower on conviction than the fixed penalty and might be higher. Costs might also be payable.

Proposal 22 All fixed penalty offences

All offences amenable to fixed penalty treatment should be made subject to minimum sentences, if tried in court, both as to points (if applicable), and to the financial penalty. The minimum penalty should be set at the fixed penalty level, so that the only purpose in opting for trial where a fixed penalty had been offered would be to plead not guilty.

Resource implications of proposal 22: The mid-point suggests 123,000 fewer court hearings, which would indicate a saving of £24.6m.

Summary of Proposals

Proposal 1 Revaluation of points

To provide greater flexibility to the courts in awarding points related to the seriousness of the offence, and also for purposes connected with a new structure of fixed penalty speeding offences, penalty points and endorsements on licences should be revalued.

13

Proposal 2 Retraining

Those receiving an endorsement or penalty points which take their points total up to or beyond 10 points should ideally be offered automatically the opportunity to attend, at their own expense, a driver retraining and improvement programme. Successful completion of the course would earn remission of 5 points. Those disqualified for a period of over 56 days up to and including 12 months should be automatically offered the same with a remission of 20% of the period of disqualification.

13

Proposal 3 Totting up disqualification as a fixed penalty

Offenders can choose to accept a fixed penalty even where to do so would bring their penalty points up to or beyond totting up level. In that event offenders would automatically be awarded, in addition to the fixed penalty, a six month disqualification.

14

Proposal 4 Long-life points

For a period of three years after resuming driving following disqualification for more than 56 days, any fresh penalty points or endorsements awarded as a result of further offences or fixed penalties would remain on the licence for six years, not three.

14

Proposal 5 Requalifying after disqualification

A driver sentenced to disqualification for a substantial period of time should be required, as an automatic consequence of not being allowed to drive for such a period, to requalify. (As to the appropriate period of disqualification- see below)

14

Proposal 6 Decoupled community penalties

Community sentences such as community service orders, involving service particularly relevant to driving and road safety, could be made available for some offences for which imprisonment is not available.

14

Proposal 7 Forfeiture of vehicles

Procedures for permanent forfeiture of vehicles should no longer involve the police, and should be contracted out to vehicle removal companies. A new penalty - temporary forfeiture - should be made available to the courts for certain offences.

14

Proposal 8 Causing death by dangerous driving

Disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death by dangerous driving, or causing death by aggravated vehicle taking, or causing death by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

17

Proposal 9 Causing death by careless driving while under the influence of drink or drugs

Disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death by dangerous driving, or causing death by aggravated vehicle taking, or causing death by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available. 17

Proposal 10 Causing death by aggravated vehicle taking

The maximum term of imprisonment increased to 10 years. Disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death by dangerous driving, or causing death by aggravated vehicle taking, or causing death by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available. 18

Proposal 11 Dangerous driving and aggravated vehicle taking

Maximum term of imprisonment increased to five years for both these offences. Disqualification to be for a minimum of three years. Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death by dangerous driving, or causing death by aggravated vehicle taking, or causing death by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available. 18

Proposal 12 A new penalty for a "higher level of alcohol"

The maximum penalty for the new "higher level of alcohol" offence would be the same as for the basic offence. But the minimum period of disqualification applying to the "drive and attempt to drive" offence would be longer than the basic offence. We invite views on the appropriate periods of disqualification. Disqualification would remain at the discretion of the court for the "in charge" offence and the minimum of 12 months would continue to apply for driving or attempting to drive whilst unfit. Permanent or temporary forfeiture of the vehicle would also be available. Offenders convicted of the new offence would always be required to undertake an extended retest before regaining their licence. 19

Proposal 13 Repeat drink-drive offending

For any second drink-drive offence within 10 years, disqualification, where applicable, should at least remain at the current minimum period of three years but could be increased. We invite views on this issue. The second drink-drive offence within 10 years would also result in a requirement to undertake an extended retest. We propose that two convictions for drink-drive offences within ten years, in which one or both of the offences is a higher level offence or failing to provide a specimen where disqualification is obligatory should attract a minimum period of disqualification in excess of that applying to repeat commission of basic offences (currently three years). 20

Proposal 14 Driving while disqualified

A wider range of community penalties to be available in addition to the existing option of six months imprisonment. Permanent or temporary forfeiture of the vehicle. A minimum two-year disqualification for a second offence within 10 years (which would always trigger a retest requirement.) 21

Proposal 15 Driving otherwise than in accordance with a licence, or causing or permitting a person to drive otherwise than in accordance with a licence

In addition to existing penalties, “decoupled” community penalties to be available in any case where disqualification is available; and permanent or temporary forfeiture of the vehicle involved in the offence. 21

Proposal 16 Driving while uninsured

In addition to existing penalties, “decoupled” community penalties, and permanent or temporary forfeiture of the vehicle, should be available to the courts. 21

Proposal 17 Careless or inconsiderate driving.

Available sentences to include requirement to undergo a driver retraining and improvement programme; “Decoupled” community penalties, and a fine at level 5 in place of level 4. A mandatory minimum award of 15 points for a second offence of careless driving within 5 years, or for a first offence of careless driving if within the preceding 5 years the driver had committed any of the more serious categories of offence. A minimum period of disqualification of whatever length necessary to require an automatic retest for a third or subsequent offence of careless driving within five years. 22

Proposal 18 Speeding offences

A new fixed penalty system for speeding offences should provide for two levels of fixed penalty, with a higher level of points awarded to those exceeding the limit by a wide margin so as to increase the risk to them of losing their licence through totting up. 24

Proposal 19 Fraud with parking tickets, deception with licences, MOT certificates, etc and fraudulent use of documentation

Imprisonment of up to six months should be made available to the magistrates’ courts for these offences. 25

Proposal 20 Using vehicles in a dangerous or overloaded condition

“Decoupled” community penalties should be available to enable the courts to deal effectively with particularly serious examples of these offences. Disqualification should be mandatory for second or subsequent offences in this category within three years; and temporary forfeiture should be available. 25

Proposal 21 Bus lanes

Local authorities should be enabled to enforce bus lanes as well as the police, by the use of cameras. Local authorities should be empowered to deal with offenders by a fixed penalty notice. 25

Proposal 22 All fixed penalty offences

All offences amenable to fixed penalty treatment should be made subject to minimum sentences, if tried in court, both as to points, and to the financial penalty. The minimum penalty should be set at the fixed penalty level. 26

Views are invited on the following issues

Paragraph 9.2 (e)

Proposal 5 above calls for retesting as an automatic consequence of a substantial period of disqualification, in addition to any other penalty. We welcome views as to what the length of this period should be.

Paragraph 9.2 (h)

The use of **short term disqualifications**, even for periods as short as a fortnight or a month, could give a sharp warning to drivers whose behaviour, if it did not change, would be likely to result in a much more serious penalty including a prolonged disqualification.

Paragraph 10.11

For offences involving death, dangerous driving or aggravated vehicle taking, drivers that show a high level of irresponsibility in the commission of offences will always justify a **substantial preventative period of disqualification**. The review proposes a pattern of minimum disqualifications for the first offence. The question of whether the “special reasons” exception on the basis of which courts may decide not to disqualify in these circumstances should be removed was considered, but there may be implications in terms of the compatibility of such a measure with the European Convention on Human Rights. We would be interested to receive views as to the merits of such a change.

Any comments on road traffic penalties that are not explicitly mentioned within this consultation paper, are welcomed.

