

## Chapter 10: Driving Offences Causing Death or Serious Injury

- 10.1. Sentencing for serious road traffic offences presents a challenge to the court. Unlike most serious criminal offences it is not necessary to prove criminal intent on the part of the defendant. Instead the defendant's culpability is mainly determined by their standard of driving and factors influencing it.
- 10.2. A sentence ordered by the court for serious driving offences will comprise a custody and a licence period. A mandatory period of disqualification from driving should also be included. This chapter considers whether:
- the maximum sentence 14 years in prison should be increased for the following offences:
    - causing death or serious injury by dangerous driving;
    - causing death or serious injury by careless driving whilst under the influence of alcohol or drugs; and
    - causing death or serious injury by careless driving and failing to provide a specimen of breath or urine;
  - the same maximum sentence should apply when death or serious injury is caused;
  - the maximum sentence should be increased from the current 2 years in prison for the offence of causing death or serious injury by driving whilst disqualified; and
  - the current mandatory minimum disqualification periods and their application remain appropriate.
- 10.3. The Review is covering dangerous driving in response to calls for the maximum sentence for causing death by dangerous driving<sup>1</sup> to be increased.
- 10.4. Drivers may kill or seriously injure others through circumstances ranging from a minor error of judgment or loss of attention, to serious errors of judgment, to deliberately dangerous driving. Table 11 provides a summary of the current Northern Ireland offences and penalties included in this consultation.

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<sup>1</sup> Dangerous driving is to drive well below the standard of a careful or competent driver.

**Table 11: Summary of Driving Offences and Penalties Being Considered By The Review**

Offence of causing death or grievous bodily injury by	Current maximum penalty	Consequential sanctions available to the Court
Dangerous driving	14 years and unlimited fine	Obligatory disqualification – 2 years minimum and extended retest
Careless driving while under the influence of drink and drugs	14 years and unlimited fine	Obligatory disqualification – 2 years minimum and extended retest
Careless driving and refusing to provide a specimen of breath/urine/ blood without reasonable excuse	14 years and unlimited fine	Obligatory disqualification – 2 years minimum and extended retest
Driving while disqualified	2 years and unlimited fine	Obligatory disqualification of 1 year

## Driving Offences Causing Death

- 10.5. Across the UK, the maximum sentence for causing death by dangerous driving<sup>2</sup> or causing death by careless driving while (a) under the influence of alcohol or drugs or (b) failing to provide a specimen is 14 years.<sup>3</sup>
- 10.6. The maximum sentence is the same as that provided for offences like blackmail, certain serious sexual offences with a child and criminal damage intended to damage or destroy property.<sup>4</sup>
- 10.7. These offences can only be dealt with in the Crown Court<sup>5</sup> and judges sentencing in Northern Ireland take account of the relevant guideline cases provided by the Northern Ireland Court of Appeal.

<sup>2</sup> Road Traffic (Northern Ireland) Order 1995, Article 9; Road Traffic Offenders (NI) Order, Schedule 1: <http://www.legislation.gov.uk/nisi/1996/1320/schedule/1>; Road Traffic Act 1988, section 1

<sup>3</sup> Road Traffic (Northern Ireland) Order 1995, Article 14; Road Traffic Offenders (NI) Order, Schedule 1: <http://www.legislation.gov.uk/nisi/1996/1320/schedule/1>; Road Traffic Act 1988, section 3A.

<sup>4</sup> The review is not concerned with incidents of driving where the vehicle was intentionally used as a weapon to kill or commit grievous bodily harm as in those circumstances a charge of murder may be considered. Equally outside the review is driving off road where the killing was not intended as the statutory offences do not apply but manslaughter may be considered.

<sup>5</sup> Adults who commit these offences are tried only in the Crown Court. Where the offender is a youth these offences can be tried in the Youth Court, which is a specific designated Magistrates' Court.

- 10.8. Guideline cases assist judges on the “*proper approach to the actual appeal before taking account of the factors and range of sentence appropriate to the appeal itself*”.<sup>6</sup>
- 10.9. The most recent guideline case for dangerous driving causing death<sup>7</sup> was handed down in January 2017. The Northern Ireland Court of Appeal reaffirmed the guidance, provided in 2007<sup>8</sup> detailing four levels of culpability and the range of custodial sentences applied by the Court of Appeal for England and Wales<sup>9</sup> continued to apply for Northern Ireland.<sup>10</sup> The four ‘tiers of culpability’ are set out in Table 12 alongside the relevant range of sentence of imprisonment.
- 10.10. While the magnitude of harm (i.e. the number of people killed or seriously injured) is relevant, the primary consideration must be the culpability<sup>11</sup> of the offender, assessed by reference to the offender’s driving.

**Table 12 – Northern Ireland Court of Appeal Guidance on Culpability and Sentencing**

Tiers of Culpability	Period of Imprisonment
Cases with no aggravating circumstances <sup>12</sup>	12 months - 2 years
Cases with intermediate culpability	2 - 4 1/2 years
Cases with higher culpability <sup>13</sup>	4 1/2 - 7 years
Cases with most serious culpability <sup>14</sup>	7 - 14 years

<sup>6</sup> The Queen v Conrad T Doole [2010] NICA 11 paragraph 5; <https://www.judiciary-ni.gov.uk/sites/judiciary/files/decisions/R%20v%20Doole%20%28Conrad%20Trafford%29%20%282010%20NICA%2011%29.pdf>

<sup>7</sup> DPP reference R v David Lee Stewart [2017] NICA 1.

<sup>8</sup> R v McCartney [2007] NICA 41; In this case the Northern Ireland Court of Appeal referred to the revision of the range of sentencing undertaken by the EWCA in R v Richardson and others [2006] EWCA Crim 3186 at paragraph 19.

<sup>9</sup> R v Richardson and others [2006] EWCA Crim 3186.

<sup>10</sup> The approach was expressed in R v Cooksley [2003] EWCA Crim 996.

<sup>11</sup> For sentencing purposes the seriousness of an offence is determined by two main parameters; the culpability of the offender and the harm caused or risked being caused by the offence. Culpability is the term used to reflect the mentality of the offender when committing the offence - in other words the extent to which the offender intended, was reckless, had knowledge of the risk of harm or was negligent to the harm caused by their involvement in a particular offence. The worse the harm intended, the greater the seriousness.

<sup>12</sup> Cases across the United Kingdom have identified a number of aggravating and mitigating factors. The courts have stated they were ‘not to be regarded as an exhaustive statement of the factors’ and significance of factors can differ. In 2007, the offence of ‘taking and driving away’ was added to the list of aggravating factors by the Northern Ireland Court of Appeal, see R v McCartney [2007] NICA 41; R v Maloney [1996] 1 CAR (S) 221.

<sup>13</sup> The cases of higher culpability are reflected by the presence of two or more aggravating factors.

<sup>14</sup> The cases of the most serious culpability have three or more aggravating factors or an exceptionally bad example of a single factor.

10.11. Normally a custodial sentence will be imposed although it should be for no longer than necessary. Exceptional mitigating circumstances are required to avoid a custodial sentence. This is to deliver a clear message on the consequences for drivers who fail to maintain proper standards of driving and to deter other drivers from similar behaviour.

10.12. Statutory guidelines in England and Wales on these serious driving offences were issued in 2008.<sup>15</sup> Table 13 reflects the current England and Wales sentencing guideline for causing death by dangerous driving. These closely align to the current guidelines operating in Northern Ireland.

**Table 13 - Statutory Guidelines in England and Wales for Dangerous Driving**

Nature of Offence	Starting point (custody)	Sentencing range (custody)
Level 1 The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others	8 years	7–14 years
Level 2 <sup>16</sup> Driving that created a substantial risk of danger	5 years	4–7 years
Level 3 Driving that created a significant risk of danger [Where the driving is markedly less culpable than for this level, reference should be made to the starting point and range for the most serious level of causing death by careless driving]	3 years	2–5 years

10.13. Following a consultation in 2017 on driving offences causing death or serious injury and related sentences in England and Wales<sup>17</sup> more changes in sentencing there are expected.

<sup>15</sup>[https://www.sentencingcouncil.org.uk/wp-content/uploads/web\\_causing\\_death\\_by\\_driving\\_definitive\\_guideline.pdf](https://www.sentencingcouncil.org.uk/wp-content/uploads/web_causing_death_by_driving_definitive_guideline.pdf)

<sup>16</sup> There is a different table provided for the 2 indictable only careless driving causing death offences with the most serious levels reflecting greater levels of drink or drugs above the legal minimum and increased deficit in driving displayed. The lowest starting range runs from 26 weeks to 4 years with the highest level matching the dangerous driving range of 7 to 14 years.

<sup>17</sup> Ministry of Justice, Cmnd 9381, 'Driving offences and penalties relating to causing death or serious injury'; December 2016; <https://www.gov.uk/government/consultations/driving-offences-and-penalties-relating-to-causing-death-or-serious-injury>

10.14. The Government has signalled its intention to bring forward legislation for these serious driving offences in England and Wales, once parliamentary time allows, to increase the current 14 year maximum sentence to imprisonment for life.<sup>18</sup>

## Facts and Figures

10.15. In Northern Ireland between 2013 and 2018 18 defendants were found guilty of the offence of causing death by dangerous driving. All were given immediate custodial sentences. The average sentence<sup>19</sup> was 61 months with sentences ranging from 54 months in custody with a further 54 months on licence to 5 months custody with further 10 months on licence. There was a 7.3% decrease in the average sentence length in 2018 as compared with cases disposed in 2013.

10.16. An additional three offenders were convicted of causing death by driving carelessly while unfit through alcohol or drugs and a further 3 were convicted of driving carelessly and failing to provide a specimen. All 6 received an immediate custodial sentences. The average sentence for the offence causing death by driving carelessly while unfit through alcohol or drugs was 4 years (custody and licence). Sentences ranged from 18 months custody with a further 18 months on licence to 30 months in custody with a further 30 months on licence.

10.17. The range of sentences was lower for the driving carelessly and failing to provide a specimen offence with sentences ranging from 6 months custody and 6 months licence to 9 months custody and 9 months on licence.

10.18. Overall the average sentences imposed for these offences are not dissimilar to statistics published for equivalent offences in the England and Wales consultation.<sup>20</sup>

## Options

10.19. The following options for Northern Ireland were considered by the Review.

### Option A: Increase sentence maximum to life imprisonment

10.20. Increasing the maximum sentence to life imprisonment for the three serious driving offences resulting in death or grievous bodily injury, would mirror the

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<sup>18</sup> Road Traffic Act 1998, section 3A also includes offences of causing death while driving careless and being required to provide a specimen and without reasonable excuse for failing to do so.

<sup>19</sup> Sentence is used to reflect the totality of the custody and licence period ordered by the court to be served by the offender.

<sup>20</sup> Ministry of Justice, Cmnd 9381, 'Driving offences and penalties relating to causing death or serious injury'; December 2016; <https://www.gov.uk/government/consultations/driving-offences-and-penalties-relating-to-causing-death-or-serious-injury>

maximum sentence available currently for offences such as manslaughter, rape, shooting or wounding with intent to commit grievous bodily harm.

- 10.21. Drivers can already face a charge of manslaughter where there is something to set the case apart<sup>21</sup> from cases where a specific offence such as causing death by dangerous driving could be proved. It is well established that simply driving dangerously does not amount to an unlawful act for the purpose of unlawful act manslaughter.<sup>22</sup>
- 10.22. The statutory offence simply requires evidence that the driving was dangerous and that driving caused the death of another person. It could appear inconsistent to place the maximum sentence for these driving offences at the same level as manslaughter.
- 10.23. The courts in fatal driving cases often record that the distress and impact on the deceased's family is a matter that the courts can and should take into account. Equally courts repeatedly stress that human life cannot be restored, nor its loss be measured by the length of a prison sentence.
- 10.24. The introduction of a discretionary life sentence as a potential maximum sentence introduces an additional sentencing process known as determining the tariff. As discussed in chapter 4, a tariff is the minimum custodial period the defendant will serve before being eligible for consideration for release from a life sentence.<sup>23</sup>
- 10.25. A current Northern Ireland Court of Appeal guideline case requires that a discretionary life sentence should only be imposed where the offence is "*an extremely grave offence and secondly it is likely that there will be further offending of a grave character*".<sup>24</sup>
- 10.26. Increasing a maximum sentence to life does not guarantee an increase in the custody or licence element of a sentence.
- 10.27. The main aim of a sentence will continue, as present, to reflect the level of blame or culpability of the driver, determined by an independent judge in light of the circumstances of the individual case.

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<sup>21</sup> This will normally be evidence to show a very high risk of death, making the case one of the utmost gravity.

<sup>22</sup> *Andrews v DPP* [1937] A.C. 576.

<sup>23</sup> Life sentenced prisoners who are released are subject to licence conditions. Licence conditions can remain in place for the rest of their lives unless the Parole Board agrees to vary the conditions. They remain in place for a minimum period before the Parole Board can be asked to consider removal by an offender. Licence conditions can be added, varied or cancelled when the Parole Board considers that change is appropriate to manage and reduce the risk of reoffending. Reoffending leaves an offender at risk to recall to prison.

<sup>24</sup> *R v Alan McDonald* [2016] NICA 21, para 33.

## **Option B: Increase maximum to a higher fixed number of years**

- 10.28. The legislative changes made in 2004, when the maximum penalty was last increased for these offences from 10 to 14 years, resulted in the pre-existing ranges of sentence being revised by relevant Courts of Appeal.<sup>25</sup>
- 10.29. Table 12 reflects the upward adjustments made by the Northern Ireland Court of Appeal to each of the four tiers of culpability.
- 10.30. In option A, a discretionary life sentence would involve a further hearing for the sentencing judge to determine the appropriate tariff. In contrast, Option B, by increasing the maximum penalty to a higher fixed number of years, provides immediate transparency and certainty regarding the expected sentence.
- 10.31. The Review considered the question of the appropriate level for an increased fixed term in years. Most serious offences either carry a maximum of Life or fourteen years imprisonment. There is one category of offence which carries a maximum of 30 years. It concerns war crimes and related offences other than the offence of murder.<sup>26</sup>
- 10.32. Maximum penalties are generally required to reflect those covering other offences of similar seriousness on the statute books. This is to ensure a consistency of penalty. When considering what might be an appropriate comparison in seriousness, the Review looked at the starting points for murder and adopting the approach of increasing the current maximum by a similar percentage to the 2004 changes,<sup>27</sup> which results in a maximum sentence of around twenty years.
- 10.33. The Northern Ireland statistics provided for serious driving offences indicate that the courts appear to impose a lesser sentence for the third category – causing death driving carelessly and failing to provide a specimen. The Review seeks your view on whether the current equivalence should be maintained.

***Please see Consultation Questions: No. 55 - 57***

## **Driving Offences Causing Grievous Bodily Injury (GBI)**

- 10.34. The maximum penalty provided in Northern Ireland legislation is the same (14 years) whether the unlawful driving causes death or grievous bodily injury.<sup>28</sup> In contrast the maximum penalty in Scotland, England and Wales for the offence

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<sup>25</sup> R v R McCartney [2007] NICA 41; R v Richardson and others [2006] EWCA 3186.

<sup>26</sup> International Criminal Court Act 2001; s.51 or s.52 which concern the offence of genocide, crimes against humanity, war crimes and related offences other than one involving murder; 30 years

<sup>27</sup> The maximum sentence was increased by 40% when it increased from 10 years to 14 years.

<sup>28</sup> Grievous bodily injury is not defined in the relevant Northern Ireland road traffic legislation but in practice must amount to 'really serious harm' caused to the victim.



of causing serious injury by dangerous driving<sup>29</sup> is 5 years' imprisonment. In Ireland the maximum penalty is 10 years,<sup>30</sup> the same as that for causing death by dangerous driving.

10.35. Grievous bodily injury is not defined in our legislation but serious injury is defined for England and Wales. It means physical injury amounting to grievous bodily harm. In Scotland it is defined as severe physical injury.<sup>31</sup> There is little real difference in practice as the injury caused to a victim must amount to 'really serious harm'.

10.36. The Northern Ireland offence of causing grievous bodily injury by careless driving while under the influence of drink or drugs or failing to provide a specimen has no equivalent in Scotland, England and Wales or Ireland.

10.37. Following a 2017 consultation, a proposal to introduce an offence of causing serious injury by careless driving for England and Wales arose. It would carry a possible maximum sentence of 3 years. A new offence will only be created when the Government drafts the necessary legislation and finds parliamentary time to enact it.

## Facts and Figures

10.38. Northern Ireland statistics for 2013 to 2018 indicate that there are considerably more convictions for causing serious injury by dangerous driving or careless driving while (a) under the influence of alcohol or drugs or (b) failing to provide a specimen than for the offences causing death.<sup>32</sup>

10.39. Of the 94 cases in which there was a conviction for any of these grievous bodily injury offences, a suspended sentence was imposed in 34 (36.2%) cases. The suspended sentences imposed ranged from 6 months suspended for 2 years to 30 months suspended for 2 years.

10.40. The average sentence<sup>33</sup> imposed for all grievous bodily injury offences was 41 months. The range of sentences ran from 8 months with no licence period to 7 years custody with a further licence period of 5 years.

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<sup>29</sup> Road Traffic Act 1988, section 1A: <http://www.legislation.gov.uk/ukpga/1988/52/section/1A>

<sup>30</sup> Dangerous driving causing death or serious bodily harm contrary to section 53 of the Road Traffic Act 1961, as amended by section 4 of the Road Traffic (No. 2) Act 2011 carries a maximum of 10 years imprisonment or a fine not exceeding € 20,000 or both.

<sup>31</sup> Ministry of Justice, Cmnd 9381, 'Driving offences and penalties relating to causing death or serious injury'; December 2016; page 9, <https://www.gov.uk/government/consultations/driving-offences-and-penalties-relating-to-causing-death-or-serious-injury>

<sup>32</sup> Between the years 2013 to 2017 there were 74 convictions in total (61 GBI by dangerous, 7 by GBI careless with excess alcohol, 1 GBI careless while unfit drugs and 5 GBI careless and failing to permit a specimen).

<sup>33</sup> Sentence is used to reflect the totality of the custody and licence period ordered by the court to be served by the offender.



10.41. There were fewer than 5 cases where an immediate custodial sentence was handed down for the careless driving offence causing grievous bodily injury and failing to provide a specimen. However, over the period suspended sentences were the most common disposal for this offence.<sup>34</sup>

## Analysis

10.42. The current maximum sentence available in Northern Ireland for causing grievous bodily injury by dangerous driving exceeds the maximum available in the rest of the United Kingdom.

10.43. Northern Ireland's current maximum of 14 years exceed by 9 years the equivalent GB maximum for dangerous driving causing serious injury<sup>35</sup> and exceeds by 4 years the maximum for that offence in Ireland. Northern Ireland is the only region in the British Isles with the offence of causing serious injury by careless driving while under the influence of alcohol or drugs.

10.44. The Northern Ireland Court of Appeal does not consider a distinction should be drawn between those cases in which grievous bodily injury is sustained and those cases in which death is caused.<sup>36</sup> The offence is aimed at really bad driving and the Northern Ireland Court of Appeal considers culpability of that driving can rarely be judged simply by regarding the fact that serious injury rather than death is the consequence.<sup>37</sup>

10.45. The courts are clear that the penalty ought not to be substantially reduced because the consequence was injury and not death.<sup>38</sup>

10.46. At pre-consultation stakeholder engagement events the view was expressed that the maximum penalty for causing grievous bodily injury from dangerous driving should not be increased. It was considered any increase could be disproportionate to the harm or level of culpability in contrast to offenders who deliberately cause serious injury to persons through planned or deliberate assaults.

10.47. Another view expressed was that dangerous driving or driving under the influence of alcohol or drugs is a decision made by a person either before they enter the vehicle or while already driving.

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<sup>34</sup> All sentences imposed ranged from 9 months to 2 years custody/licence suspended for periods ranging from 2 to 3 years

<sup>35</sup> GB currently carries a maximum sentence of 5 years for offence of dangerous driving causing serious injury.

<sup>36</sup> R v James John Stewart Caswell [2011] NICA 71, paragraph 13.

<sup>37</sup> R v Sloan [1998] NI 58.

<sup>38</sup> Attorney General's Reference (No's 2, 6, 7 and 8 of 2003) [2003] NICA 28

10.48. The earlier sentencing change in 2004 was described as a measured response to public outrage as well as recognising that such offences include “*serious acts of recklessness—so serious that those involved must have known that their actions, just before or during the offence, were likely to kill. Those people need to be dealt with most severely...especially for those people who kill under the influence of drink or drugs, or who drive at ludicrous speeds*”.<sup>39</sup>

**Please see Consultation Questions: No. 58 - 59**

## Causing Death When Driving While Disqualified

10.49. The current Northern Ireland maximum sentence for the offence of causing death or grievous bodily injury by driving when disqualified is 2 years. This is the same maximum penalty as for the offence of driving while disqualified, and applies whether the offence is tried in the Crown Court or the Magistrates’ Court.<sup>40</sup>

10.50. In GB, since changes made in 2015,<sup>41</sup> the maximum sentence for causing death when driving while disqualified is 10 years,<sup>42</sup> while the maximum for causing serious injury is 4 years.<sup>43</sup> There is no equivalent offence for disqualified drivers in Ireland.

## Facts and Figures

10.51. During the period 2013 to 2018 there were 16 cases with a conviction for at least one offence of causing death or grievous bodily injury by an uninsured, disqualified or unlicensed driver. Fewer than 5 of these cases included a conviction for the offence of causing death or grievous bodily injury by driving while disqualified.

10.52. At least one of those convictions accompanied a more serious charge, causing grievous bodily injury by driving dangerously. While a disqualification from driving for a period of 10 years was imposed on this defendant it has been excluded as it may have been influenced by the more serious related charge.

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<sup>39</sup> Hansard House of Commons, 23/May/2003; <https://hansard.parliament.uk/Commons/2003-05-20/debates/441fffa9-7447-4451-a584-abe20a3bae15/DeterminationOfMinimumTermInRelationToMandatoryLifeSentence>

<sup>40</sup> Road Traffic (NI) Order 1995, Article 12B: <http://www.legislation.gov.uk/nisi/1995/2994/contents>; Road Traffic Offenders (NI) Order 1996, Schedule 1 details summary and indictable maximum penalties: <http://www.legislation.gov.uk/nisi/1996/1320/schedule/1>

<sup>41</sup> The maximum sentence for causing death driving while disqualified was increased from 2 years to 10 years (Criminal Justice and Courts Act 2015, section 29); the same section 29 also created a maximum sentence for causing serious injury driving while disqualified of 4 years when tried in the Crown Court and 12 months when tried in the Magistrates Court.

<sup>42</sup> Road Traffic Offenders Act 1988, section 3ZC increased the 2 year maximum sentence to 10 years.

<sup>43</sup> Road Traffic Offenders Act 1988, section 3ZD introduced a 4 year maximum where the offence was tried in the Crown Court; the maximum is 12 months when tried in the Magistrates’ Court.

10.53. The average sentence imposed was 37 months, ranging from a custodial period of 4 months with no licence period, to 36 months custody with a further licence period of 36 months. The average driving disqualification imposed was 48 months.

## Analysis

10.54. The low numbers may be due to a United Kingdom Supreme Court decision<sup>44</sup> which provided a narrower interpretation of the circumstances in which a charge for this offence would be appropriate.<sup>45</sup>

10.55. The Supreme Court stated that the wording of this offence essentially required at least some act or omission in the control of the car, which involves some element of fault, and which contributes in a more than minimal way to the death although not necessarily the principal cause of the death.

10.56. When introducing the increased maximum penalty of 10 years in GB, it was acknowledged that the wording of the offence would remain subject to that interpretation of the offence.<sup>46</sup> The case was made that:

- treating disqualified drivers differently from other illegal drivers is justified as they have been banned from driving following previous misdemeanours and are blatantly defying the will of the court by continuing to drive;<sup>47</sup>
- longer prison sentences could mean that British roads are safer because fewer disqualified drivers are driving on them; and
- increasing the maximum penalty for this offence might provide families of victims with a greater sense that justice has been done and increase public confidence in the justice system.<sup>48</sup>

10.57. Most recent convictions for this offence in Northern Ireland, were accompanied by more serious driving offences such as causing grievous bodily injury or causing death while driving dangerously.

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<sup>44</sup> R v Hughes UKSC [2013] 56.

<sup>45</sup> Roadpeace 'Sentencing Guide for Bereaved Families' June 2017 page 14.

<sup>46</sup> R v Hughes UKSC [2013] 56.

<sup>47</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/322186/fact-sheet-driving-while-disqualified.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/322186/fact-sheet-driving-while-disqualified.pdf)

<sup>48</sup> Ministry of Justice Impact Assessment IA No: MoJ020/2014 ; <https://www.parliament.uk/documents/impact-assessments/IA14-11C.pdf>

- 10.58. The Supreme Court decision requires the defendant's driving to have some link to the collision, even if less than what would be required in an inconsiderate driving/due care case.
- 10.59. At the same time the principle of totality<sup>49</sup> of a sentence will apply when the court is sentencing for this offence with other offences. The impact of increasing the current sentencing maximum may be diminished when the totality principle is applied, so the main focus for this consultation concerns the maximum sentence available when the only offence before a court is causing death by driving while disqualified.
- 10.60. The sentencing court will be required to determine a just and proportionate sentence, reflecting the culpability of the defendant's driving (which doesn't meet the threshold of careless driving) as well as a clear breach of a court imposed order (disqualification).

***Please see Consultation Questions: No. 60 - 62***

## **Obligatory Disqualifications**

- 10.61. In Northern Ireland a court sentencing a person convicted of the offences carrying the 14 year maximum will be obliged to disqualify the offender for a minimum period of at least 2 years. The obligatory disqualification period of 2 years is increased to a minimum of 3 years where a second or further conviction for that or a similar offence occurs within a 10 year period.
- 10.62. There is judicial discretion on whether to apply the obligatory minimum disqualification<sup>50</sup> where there are exceptional circumstances. The offender will also be required to sit an extended retest for the return of their licence. The law on disqualification in Northern Ireland is exactly the same as in the rest of the United Kingdom.<sup>51</sup>
- 10.63. During pre-consultation stakeholder engagement events the case was made to the Review for longer minimum periods of disqualification for those offenders convicted of the 14 year maximum offences, especially repeat offenders.

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<sup>49</sup> The principle of totality in practice means that all courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it and is just and proportionate. In discharging this task the sentencing court must consider first whether the totality principle requires concurrent sentences to be longer than a single sentence for a single offence. Equally it is not a task to be completed for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with the factors personal to the offender as a whole.

<sup>50</sup> Where the court does not impose the obligatory disqualification it is obliged to endorse between 3 to 11 penalty points on the driver's licence.

<sup>51</sup> Obligatory period of at least 2 years under Road Traffic Offenders Act 1988 section 34(4), unless the offender is a repeat offender within a 10 year period: then the obligatory disqualification period increases to at least 3 years under s 34 (3): <http://www.legislation.gov.uk/ukpga/1988/53/section/34>

10.64. England and Wales recently sought public views on whether a longer minimum period of disqualification should be imposed where persons caused death while driving unlawfully. No specific increased minimum periods were proposed. A majority<sup>52</sup> supported longer minimum periods of disqualification but without agreement on the increased length.

10.65. The government announced that it would not change the current disqualification periods until evidence on the effectiveness of disqualification and retesting requirements was obtained.<sup>53</sup>

10.66. In Ireland the minimum period of disqualification for driving dangerously causing death or serious injury is 4 years for a first offence. Disqualification increases to 6 years for a second or subsequent offence.<sup>54</sup> Disqualification is mandatory but the courts have the same power as in the United Kingdom to dis-apply the mandatory disqualification if the court is satisfied of a 'special reason'.

## Facts and Figures

10.67. Statistics for 2013 to 2018 show the Northern Ireland average disqualification period for the 18 convictions for causing death by dangerous driving was 98 months. Disqualifications ranged from 3 years to 15 years.

10.68. The average disqualification period for the three convictions for the offence of causing death while driving carelessly and under the influence of alcohol or drugs was 60 months. Disqualifications ranged from 5 to 6 years.

10.69. The range of disqualification for the three causing death by driving careless and failing to provide a specimen convictions imposed ranged from 2 to 5 years. Overall, for the 24 convictions on these offences the average driving disqualification imposed was 87.5 months.

10.70. In the same period, the average disqualification period for causing GBI by driving dangerously, or driving carelessly under (a) the influence of alcohol or drugs or (b) failing to provide a specimen was 40 months. Disqualification periods ranged from 6 months to life.

## Analysis

10.71. The law sets out minimum periods of disqualification. As can be seen from the figures above the courts can, and do, impose longer periods. The Northern

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<sup>52</sup> 84% of the responses received supported increase in minimum periods of disqualification.

<sup>53</sup> Ministry of Justice, Cmnd 9518, 'Response to the consultation on driving offences and penalties relating to causing death or serious injury'; [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/651882/consultation-response-on-driving-offences-print.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/651882/consultation-response-on-driving-offences-print.pdf)

<sup>54</sup> Road Traffic Act 1961, section 26 (4) as amended.

Ireland Court of Appeal stated that the purpose of disqualification is, so far as is possible, to protect the public and that involves an evaluation of the future risk posed by the offender.

- 10.72. The sentencing judge assesses this in the circumstances of each case, whether or not the disqualification represents an appropriate punishment for the offence.<sup>55</sup>
- 10.73. Legislation exists for a court when imposing a custodial term, to extend the driving disqualification to take account of the period spent in custody.<sup>56</sup> This power is designed to ensure a driving ban does not end, or the length diminish significantly, whilst the offender is in custody. This has not been commenced in law.
- 10.74. In both United Kingdom and Ireland, unless disqualification is for a period of 2 years or less, applications for early restoration of a driving licence can be made when at least half of the disqualified period is completed.<sup>57</sup> Applications for early restoration are often linked with offenders having offers of employment, which can benefit their rehabilitation. The Review would be reluctant to place unnecessary barriers to the rehabilitation of offenders. However, the risks posed to members of society, particularly by offenders who repeatedly drive dangerously or under the influence of alcohol or drugs, must be addressed.
- 10.75. Ireland places some restrictions on the court's powers to reduce the disqualification period initially imposed. No application can be made if there has been a disqualification within the previous 10 years,<sup>58</sup> and the earlier disqualification was for more than 2 years. A disqualification cannot be reduced below 2/3rds of the period ordered<sup>59</sup> or 2 years whichever is the greater.

***Please see Consultation Questions: No. 63 - 68***

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<sup>55</sup> R v Patricia McKeown [2016] NICA 24; paragraph 29

<https://judiciaryni.uk/sites/judiciary/files/decisions/R%20v%20McKeown%20%28Patricia%29%20%282016%20NICA%2024%29.pdf>

<sup>56</sup> Coroners and Justice Act 2009, section 137 and Schedule 16: (not yet commenced), <http://www.legislation.gov.uk/ukpga/2009/25/contents>

<sup>57</sup> Road Traffic Offenders (Northern Ireland) Order 1996, Article 47 (3):

<http://www.legislation.gov.uk/nisi/1996/1320/article/47> ; Road Traffic Offenders Act 1988, section 42.

<sup>58</sup> Road Traffic Act 1961, s.29 (1) as amended.

<sup>59</sup> Road Traffic Act 1961, s.29 (4) (b) as amended.