



DEBATE PACK

Number CDP 2018-0250, 19 November 2018

Parliamentary debate: 20/11/18: Road justice and the legal framework

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Summary

This debate will take place between 9.30 and 11.00 am on 20 November in Westminster Hall. The Members who secured the debate are Ruth Cadbury MP (Lab., Brentford and Isleworth) and John Lamont (Con., Berwickshire, Roxburgh and Selkirk).

Relevant PQs and Parliamentary debates can be found via the following links:

[Cycling](#)

[Road traffic offences](#)

Relevant Commons Library background policy papers include:

[Cycling FAQs \(June 2017\)](#)

[Serious driving offences \(December 2015\)](#)

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The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

1. Vulnerable road users

1.1 Cyclists

During early 2017 the All Party Parliamentary Cycling Group (APPG) conducted an inquiry called '[Cycling and the Justice System](#)', culminating in a report published in May 2017. The debate today is being led by Ruth Cadbury MP, co-chair of the APPG.

The APPG took evidence from cycling organisations, lawyers, road safety campaigners, the police and members of the general public on whether the current judicial system is serving all cyclists.

The report made 14 recommendations [emphasis added]:

1. The **Highway Code** should be revised
2. The **driving test** must be changed to help improve driver behaviour towards cyclists
3. Professional drivers should be **retested** more frequently
4. **Roads policing** should be given a higher priority
5. The Government and other local authorities should adopt similar partnerships to the ones in London in other parts of the country, to counter the risk posed by **illegal freight operations**
6. The Department for Transport and Ministry of Justice should research the growing discrepancy between **road casualty figures**
7. More police forces should adopt **close passing enforcement practice** on a wider scale
8. The police must ensure that a **higher standard of investigation** is maintained in all cases where serious injury has resulted
9. All police forces should ensure that **evidence** of common offences submitted by cyclists, or other witnesses, using bike or person mounted cameras or smart phones is put to use, and not ignored
10. The **length of time** required by the Police to serve a **Notice of Intended Prosecution** for a road traffic offence is currently just 14 days and must be extended
11. Confusion and overlap between **'careless' and 'dangerous' driving** means that often bad driving does not receive the level of punishment that the public feel it should, the MoJ should investigate how these offences are being used

12. The police and CPS should ensure that **victims** and **bereaved families** are always kept adequately informed throughout the process of deciding charges
13. The Ministry of Justice should examine the reasons behind the decline in the use of the penalty of **disqualification**
14. The Soft Tissue Injury Reforms – the '**whiplash** reforms' – should not include injuries to cyclists or pedestrians

The Government [announced](#) in October 2018 its intention to revise the Highway Code expressly to help protect vulnerable road users like cyclists, horse riders and pedestrians. The Code was last revised in 2007 and the future revision will be preceded by a public consultation.

In May 2014, the Ministry of Justice [announced](#) a "full review of all driving offences and penalties, to ensure people who endanger lives and public safety are properly punished". This was finally [published](#) in December 2016, and sought views on a number of proposals. The paper also explained in more detail the Government's thinking on the issue of careless driving, which road safety and cycling groups have been campaigning about for a number of years. This encompassed why the distinctions between 'careless' and 'dangerous' driving should be retained, including the use of the word 'careless' – for full details [see paras 23-28](#).

The [response to the consultation](#) was published in October 2017. It stated the following on the 'careless' and 'dangerous' issue:

The government recognises the concern that some respondents have for both the test of what amounts to careless or dangerous driving and the terminology used in the law. The consultation paper set out the government's view that the objective test for careless and dangerous driving is an important and practical way to assess the degree of culpability of an offender. Having considered all responses to the consultation, the government remains of the view that the objective test relating to the standard of driving is the most effective way to secure convictions and to define offences and penalties that reflect both the harm caused by the offence and the culpability of the offender. The government will however give further consideration to how the legal test and decisions made under it can be more transparent and better understood by victims and the public. We will work with criminal justice practitioners and victims' groups to examine ways to improve information available throughout the criminal justice process.

The government keeps under review both the offences and the penalties available for all offences and will continue to do so to ensure that the courts have the full range of powers they need to deal with driving offences. Many of those comments that would have wider implications for all offences dealt with the arrangements for the release of offenders. Again, the government keeps the law and practice relating to the release of offenders under review and will continue to consider the most effective way to punish offenders, protect the public whilst ensuring offenders can be rehabilitated in the community.

Separately, following the Charlie Alliston case last year, the DfT issued consultations on cycle safety and associated offences in [March](#) and [August](#) 2018. The second of those consultations has only recently

closed, so we may have to wait awhile yet for the Government's conclusions on whether it plans to introduce a new cycling offence of causing death or serious injury by dangerous cycling (which would then require primary legislation).

Any change to the law in this area would be proposed for the whole of GB. This is because road traffic offences are, by and large, a reserved matter under Schedule 5, Part II, Head E1 of the [Scotland Act 1998](#), as amended. The consultation has a section explaining the differences in the law in Scotland, [here](#).

1.2 Horse riders

There was a [Westminster Hall debate](#) on the issue of horse rider safety on 4 July 2017. In his speech at the end the Minister, Jesse Norman, set out the measures the Government is supporting to aid horse rider safety [emphasis added]:

... the Department, through the **"THINK! road safety" campaign**, worked directly with the British Horse Society to support its own **"Dead Slow" campaign**, to encourage car drivers to pass horses safely. The Department was able to reinforce the BHS campaign by developing a short film that is being promoted as a public information film on UK TV stations [...]

The Department has also invested in promoting the film on YouTube and other social media, such as Twitter and Facebook. Leaflets and posters to support the campaign further reminded motorists of the need to be patient when they encounter horses on the road and supplemented the advice already given in the Highway Code.

The **leaflets and posters** are available free of charge from the THINK! online shop and are often used by riding groups to support local campaigns. Road safety officers around the country have also been encouraged to feature the campaign locally. To some extent, therefore, there is already a national campaign, in embryo at least, but I have no doubt more can be done. Officials in my Department have worked with the BHS on its **"Ride Safe" book**, which is endorsed with the THINK! logo. There is a great deal of co-operation already.

I am aware of requests, and we have discussed them today, that the Government prescribe **speed limits and minimum distances when drivers are passing horses** [...] That is something that my Department can properly look at, but it is important to be aware that even bringing in speed limits—the same is true for national speed limits—may not necessarily be safe in all circumstances [...]

The Department's focus has been to raise awareness of the issues and to provide advice to all road users. Last autumn we ran a **"Country Roads" campaign**, which encouraged drivers to anticipate the hazards ... and reduce their speed into bends [...]

As well as targeted campaigns, the Department also endeavours to protect vulnerable road users through other channels. The **driving theory test** contains questions about how drivers should interact with vulnerable road users, including horse riders. The hazard perception test uses on-road video clips shown from a driver's perspective. Learner drivers are required to successfully

identify developing hazards. The current test includes a number of clips where horse riders are the hazard to be identified, either directly or indirectly. The clips are refreshed and updated periodically, and the move to computer-generated imagery may mean that we are able to incorporate situations that would otherwise be too difficult to film [...]

Wider efforts are also in place to improve road safety. Many things combine to create safe and responsible roads users. As has been noted, young and novice drivers are at the highest risk of being involved in a road collision. That is why the Department has recently invested £2 million in the design phase of a research programme to identify the best **technological and behavioural interventions for learner and novice drivers**, and has awarded funding via the Innovation Challenge Fund to develop new hazard perception training.

There are duties on motorists and cyclists to ensure that they are obeying the Highway Code when driving or riding near to and passing horse riders. Similarly, horse riders should be aware of the Highway Code and children riding on the road should be properly supervised:

- Rule 215 of the [Highway Code](#) provides guidance to drivers. There is also a road safety [Think! campaign](#) about horses. Similar guidance is available to motorists from [the AA](#).
- The current rules for riding a horse on the road are set out in the [Highway Code, rules 49-55](#); young children can ride horses on the road but that they must wear a helmet if they are under the age of 14 [the [Horses \(Protective Headgear for Young Riders\) Act 1990](#)]. Horse riders are not allowed on a footpath, pavement or cycle track and should use a bridleway where possible [section 72 of the [Highways Act 1835](#)].

1.3 Pedestrians

[Rules 1-35 of the Highway Code](#) set out guidance for pedestrians on the use of the road environment. [Rules 205-210](#) provide guidance to motorists on how to take extra care around pedestrians. These include where and when to drive carefully and slowly, including near schools.

One of the biggest issues for pedestrians, particularly vulnerable pedestrians and those with a visual impairment, is what is called 'shared space'.

Shared space or shared streets encompass a design approach that seeks to change the way streets operate by reducing the dominance of motor vehicles, primarily through lower speeds and encouraging drivers to behave more accommodatingly towards pedestrians. There is no such thing as a definitive shared space design. Each site is different and the way a street performs will depend on its individual characteristics, the features included and how these features work in combination.

There have long been concerns by disabled people and those campaigning on their behalf, and particularly on the behalf of blind people, that shared space is dangerous [see, e.g. Lord Low at [HL Deb 3 February 2010, cc83-84GC](#)].

In 2011 the UK Government published guidance on the design of shared spaces [DfT, [Shared Space](#) (Local Transport Note 1/11), October 2011]. In late 2015 the Government said it was working with the Chartered Institution of Highways and Transportation (CIHT) to help identify and disseminate good practice in implementing shared space [[HL WPO 3730, 2 December 2015](#)]. This was [published in 2018](#).

In terms of evaluation, Lord Holmes' report on user experience, was published in July 2015, [Accidents by Design: The Holmes Report on "shared space" in the United Kingdom](#), July 2015.

There are shared space schemes across the country, but there has been no systemic cataloguing of them or their effects (the most famous is probably the one on [Exhibition Road](#) in South Kensington). This lack of evidence was highlighted by the Women & Equalities Committee. Their April 2017 report sets out a number of concerns about the safety of shared spaces, based on evidence received during their inquiry. This, along with their recommendations to the Government, is set out in [section 6](#), in particular paras 160-183.

Most recently there were concerns following the publication of the Government's [Inclusive Transport Strategy](#) in July 2018. In a [September 2018 open letter](#) to clarify the position the Minister, Nus Ghani, said:

Creating places that are attractive and work well for everyone should be a central goal of street design, whether as part of new developments or through improving existing areas. As part of this, we need to secure a step-change in how we design streets and communities that are accessible and inclusive for all.

The National Planning Policy Framework emphasises the importance of prioritising walking and cycling, and addressing the needs of people with disabilities and reduced mobility. The Inclusive Transport Strategy covers a number of issues, including the design, function and use of shared space, which is one approach which has been used to create attractive places and reduce the dominance of motor traffic.

In response to concerns raised about shared space and navigability, the Inclusive Transport Strategy asked local authorities to pause the introduction of new shared space schemes that feature a level surface, and which are at the design stage. This therefore does not apply to development schemes that are currently at the planning application stage or beyond. For the avoidance of doubt, a level surface is a design feature in which the level difference between the footway and the carriageway is removed. The request to pause such schemes has led to a number of enquiries from developers, practitioners and planning authorities.

While authorities need to ensure that all schemes are designed with the needs of different users in mind, and satisfy their obligations under the equalities legislation, the focus of the pause is on level-surface schemes in areas with relatively large amounts of pedestrian and vehicular movement, such as high streets and town centres (outside of pedestrian zones). The pause does not apply to streets within new residential areas, or the redesign of existing residential streets with very low levels of traffic, such as appropriately designed mews and cul-de-sacs, which take into

account the relevant aspects of the National Planning Policy Framework and associated guidance.

2. Roads policing

Scotland

Roads policing – like all police matters – is devolved in Scotland. Police Scotland has a [road safety website](#) and it sets out its policing priorities in its [Annual Police Plan for 2018-19](#). It includes commitments to:

- Modify driver behaviour and reduce injury on Scotland’s roads through engagement and proportionate enforcement of legislation.
- Detect and deter all types of criminality on the roads through efficient use of intelligence and analytical products.
- Develop and deliver a national road safety and road crime calendar of activity, which will be aligned to ‘priority focus areas’, as identified during the mid-term review of the Scottish Government’s Road Safety Framework to 2020.¹

2.1 Capacity

In March 2016 the Commons Transport Select Committee published a report on road traffic law enforcement. The [report](#) set out how road policing works and challenges the police face in terms of resourcing:

The Department uses three means to meet its policy goals in road safety, known as the “Three E’s”. These are Enforcement, Engineering, and Education. While Education and Engineering are important, they cannot stand alone—Enforcement must be adequate and its methods designed to ensure safety in order to continue the trend in reducing road fatalities and injuries.

Enforcement is by necessity a cross-cutting activity and the Department works closely with the Home Office and other Departments. The police and other enforcement bodies must have the resources and technology to deliver improved safety irrespective of whether the policies are set by the Home Office, the Department for Transport, or another part of Government. This requires good communication and cooperation. It is essential that any activity undertaken in road traffic law enforcement is done in partnership across Departments, and, where appropriate, that skills and resources are shared.

The number of specialist roads policing officers has been declining for years, and there is increasing reliance on technology for road traffic law enforcement. For enforcement to be successful and for educational campaigns¹ to be convincing there must be the likelihood that offenders will be apprehended. There is a growing concern that the lack of specialist dedicated road traffic officers means that “minor” offences such as careless driving cannot be effectively detected and enforcement action taken. There is also a concern that where enforcement is carried out by technology, it is perceived as unfair by the public or as a means to raise revenue rather than improve road safety. This should never be the case.

The December 2015 road safety statement gave the Government’s support to harnessing technological innovation, stating that “new technologies can help detect dangerous criminal behaviour and free up police time to respond to other public emergencies”. This however cannot be the only part of the

¹ Our thanks to colleagues at the Scottish Parliament Information Centre (SPICe) for their assistance on policing and justice in Scotland

evolving road traffic law enforcement landscape. The number of specialist roads policing officers should be maintained, and the police and other enforcement agencies should conduct intelligence-led operations to maximise the effective use of their resources. Some variation in road safety enforcement approach between police forces is inevitable given their operational independence, but this must not allow any area to neglect its road safety obligations with impunity. [summary]

In its May 2016 [response to the report](#) the Government said:

The level of effective roads policing is not necessarily dependent solely on one factor, for example all police officers can enforce the law, including road traffic law, and there can be improved targeting of resources on particular problems.

How road traffic offences are enforced are operational matters for the police, taking into account local demands and priorities, while decisions on the size and composition of a force's workforce are for Chief Constables and Police and Crime Commissioners. As Her Majesty's Inspectorate of Constabulary has repeatedly set out in its reports, what matters is how officers are deployed, not how many of them there are in total.

As announced in the Chancellor's 2015 Autumn Statement, police spending will be protected in real terms over the Spending Review period, when local income is taken into account. This is an increase of up to £900 million in cash terms by 2019/20 and reinforces the Government's commitment to protect the public.

Police engagement with the local community provides the opportunity for the public to influence and contribute to law enforcement and road safety activity. The use of technology can assist law enforcement to free up officers' time for the activities which need their direct and professional involvement.

The Government's [road safety strategy](#), which dates back to December 2015, explains the Government's view as to local accountability for roads policing and safety strategies:

We support local decision making and think that local authorities are best placed to decide what safety measures are needed in their local areas, rather than having centralised national targets for the whole of the UK. However, local authorities and the police are free to set their own targets if they find this useful. The government empowers local authorities and Police and Crime Commissioners to make choices on spending priorities to benefit the communities they serve, based on their own assessment of needs.

2.2 Collision investigation

The College of Policing states:

The police are the lead agency for collision investigation, and have the primary duty to investigate and establish the circumstances that have led to road deaths and life changing injuries. They must discharge their responsibilities to the coroner, the wider judiciary and family members. The investigation provides an explanation to family and friends of what has happened to the deceased and/or seriously injured. It should also be used to identify preventive measures to reduce further deaths and serious injuries on the roads...

Forces should ensure that:

- there is an appropriate initial response and an investigation stage
- there is effective collision scene management
- an effective forensic collision investigation strategy is in place
- the investigating team have access to appropriate facilities, equipment and external expertise to perform their roles effectively
- there are agreements with partner agencies which clarify roles and responsibilities in relation to road death investigation
- specific roles and responsibilities are set out.

An appropriate review process should be developed and implemented. Throughout this process consideration should be given to:

- timing
- the reviewing officer and the focus of the review
- procedures
- reports and subsequent action
- disclosure.²

The College of Policing goes on to explain [in some detail](#) the incident response protocol.

² CoP, [Investigation of fatal and serious injury road collisions](#) [accessed 19 November 2018]

3. Driver training, testing & licensing

Over the years there have been repeated calls for Governments of all parties to introduce **graduated driver licensing**, to make new drivers safer.

A graduated driver licensing (GDL) system aims to provide a staged progression from initial learning to unrestricted solo driving using measures to restrict exposure during early driving, exert a supervisory influence over driver behaviour during the first part of a driver's solo driving career or improve the level of training and experience accumulated before driving solo without restrictions. GDL can consist of a number of different elements, designed to best fit local conditions. Many of these are, in effect, post-test prohibitions (see below).

Successive governments have been resistant to introducing a 'graduated driving licencing system' largely on the grounds that they do not want to restrict the freedom of young people (GDL can involve a longer period of driver training). This argument was summed up by the former Road Safety Minister, Robert Goodwill, in February 2014:

The Government recognise that there are many voices calling for a graduated driving licence to be considered or introduced in Britain. We recognise that there is a significant body of evidence to suggest that a GDL regime would have a beneficial effect on British road safety. However, against that we need to weigh carefully the implications for the freedom of our young people, as any such change to the law would result in some difficult cases—for instance, where a young person is stranded, unable to drive home legally—or would limit the ability of young people to offer each other lifts and thereby reduce transport costs.³

In March 2015 the then Transport Minister in the Lords, Baroness Kramer, reiterated these principles, saying: "There is a difficult balance to strike between promoting young drivers safety and their freedom to access work and education. We won't rule out further measures, but at present we are focussing our efforts on technological solutions".⁴

As indicated by Mr Goodwill above, others – in particular road safety groups – have long been calling for action in this area. Most recently in May 2015 the RAC Foundation called for a graduated licensing system "given the disproportionate number of young drivers involved in accidents the conclusion must be that many teenagers are being killed by the inexperience of their friends at the wheel".⁵ In February 2015 academics and road safety professional made their regular call in the BMJ for the introduction of GDL. Their article said: "Graduated driver licensing adds an intermediate phase between the learner and full licence. During this phase, exposure to high risk conditions is minimised by restricting late night driving, carriage of similar aged passengers, and

³ [HC Deb 26 February 2014, cc383-4](#)

⁴ [HL5768, 25 March 2015](#)

⁵ RAC Foundation press notice, "[Teen driver crashes take toll on young passengers](#)", 14 May 2015

driving after having consumed alcohol. These high risk conditions have repeatedly been associated with young driver crashes".⁶

Work for the RAC Foundation by TRL, published in 2014, found that overall, a GDL system, based on the effectiveness achieved at an international level (20%), could save 4,478 casualties (433 of these being KSI casualties – killed or seriously injured) and deliver social and economic benefits valued at more than £200 million in Great Britain every year. This analysis included only drivers aged between 17 and 19 years old. A GDL system that applied to older – or all – novice drivers would therefore result in even greater casualty savings.⁷ Older work from the United States found that sixteen-year old drivers were involved in 38% fewer fatal crashes and 40% fewer crashes resulting in injuries if their state had GDL.⁸

In the absence of graduated driver licensing, there have been calls for the Government to revise or reform the existing driver testing curriculum, particularly the theory test, to improve training regarding vulnerable road users.

⁶ "[Crashes involving young drivers](#)", *BMJ* 2015;350:h659, 11 February 2015

⁷ TRL for RAC Foundation, [Graduated Driver Licensing A regional analysis of potential casualty savings in Great Britain](#), 27 May 2014, executive summary

⁸ AAA Foundation for Traffic Safety press notice, "[16-year old drivers involved in 38 percent fewer fatal crashes in states with most comprehensive GDL programs](#)", 15 February 2007

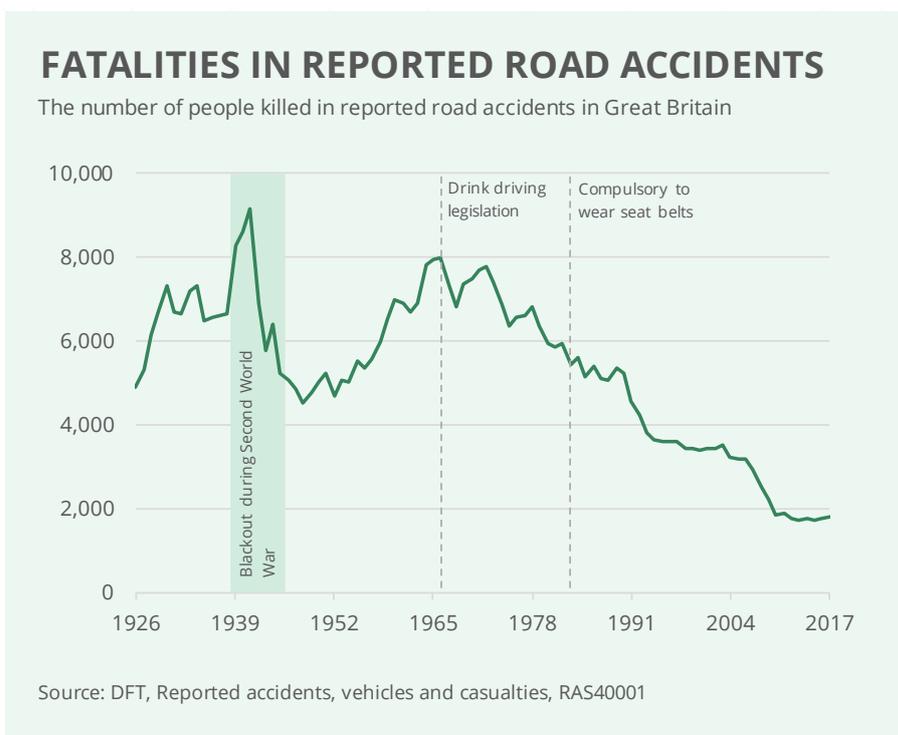
4. Road accident statistics

Constituency level data

The DfT has published data on the number of reported road accidents by severity and parliamentary constituency over the last five years – this data is available [here](#).

In 2017⁹ there were 170,993 accident casualties recorded on Britain's roads; 1,793 of these were fatal. The long-term trend in the numbers killed and injured from road accidents has been declining, especially in the last two decades.

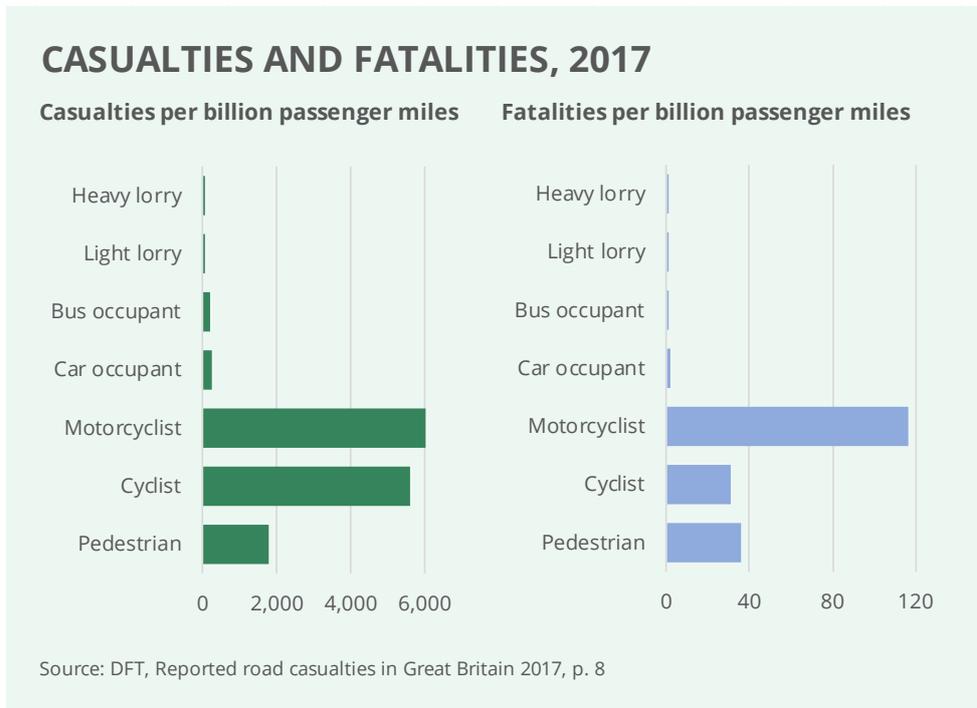
The chart below shows annual road fatality data from 1926 to 2017. Between 1939 and 1945 the wartime blackout contributed to a high number of fatalities on Britain's roads – in 1942 alone, around 9,100 were killed in reported traffic accidents. The number of fatalities decline almost immediately after the war, although increased again throughout the 1950s and early 1960s to a peace-time peak of 7,985 (more than 21 road deaths per day) in 1966. The decline in fatalities coincided with the introduction of drink-driving laws in 1966 and, allowing for fluctuation in individual years, the trend has been downwards to the point where fatalities are less than a quarter of the level at the mid-1960s.



In 2017 44% of those fatal road accident victims were car occupants; 26% were pedestrians; 19% motorcyclists; and 6% were cyclists. From these headline figures you may think that car occupants are those most at risk of suffering an injury on the roads. However, as car occupants

⁹ All data comes from [DfT: Reported road casualties in Great Britain 2017](#) unless otherwise specified.

account for much of the travel on Britain’s roads we need to look at accident casualties in terms of the number of miles travelled to identify relative vulnerability of different road users.



The chart above illustrates the number of casualties and fatalities by road user type per 1 billion miles travelled. It is clear which three groups of road users are the most vulnerable: pedestrians, cyclists and motorcyclists.

Motorcyclists, for instance, had around 6,000 casualties per billion miles travelled, and a fatality rate of just under 117 per billion miles travelled. Car occupants, in comparison, had a casualty rate of 238 per billion miles and a fatality rate of 1.9 per billion miles.

4.1 Pedestrian and Cyclist deaths and casualties

In 2017 531 pedestrians were hit by pedal cyclists resulting in 3 deaths and 122 individuals having serious injuries. This number is markedly smaller than the number of pedestrians hit by cars (18,855), with 318 being killed, and 4,353 pedestrians receiving a serious injury.

There were 141 pedal cyclist user casualties because of an accident with another pedal cyclist – there were 47 seriously injured pedal cyclist users and zero deaths. In the same year there were 14,327 pedal cycle user casualties because of accidents with cars – 2,650 pedal cyclist users were seriously injured, and there were 48 deaths.

4.2 Child deaths and casualties

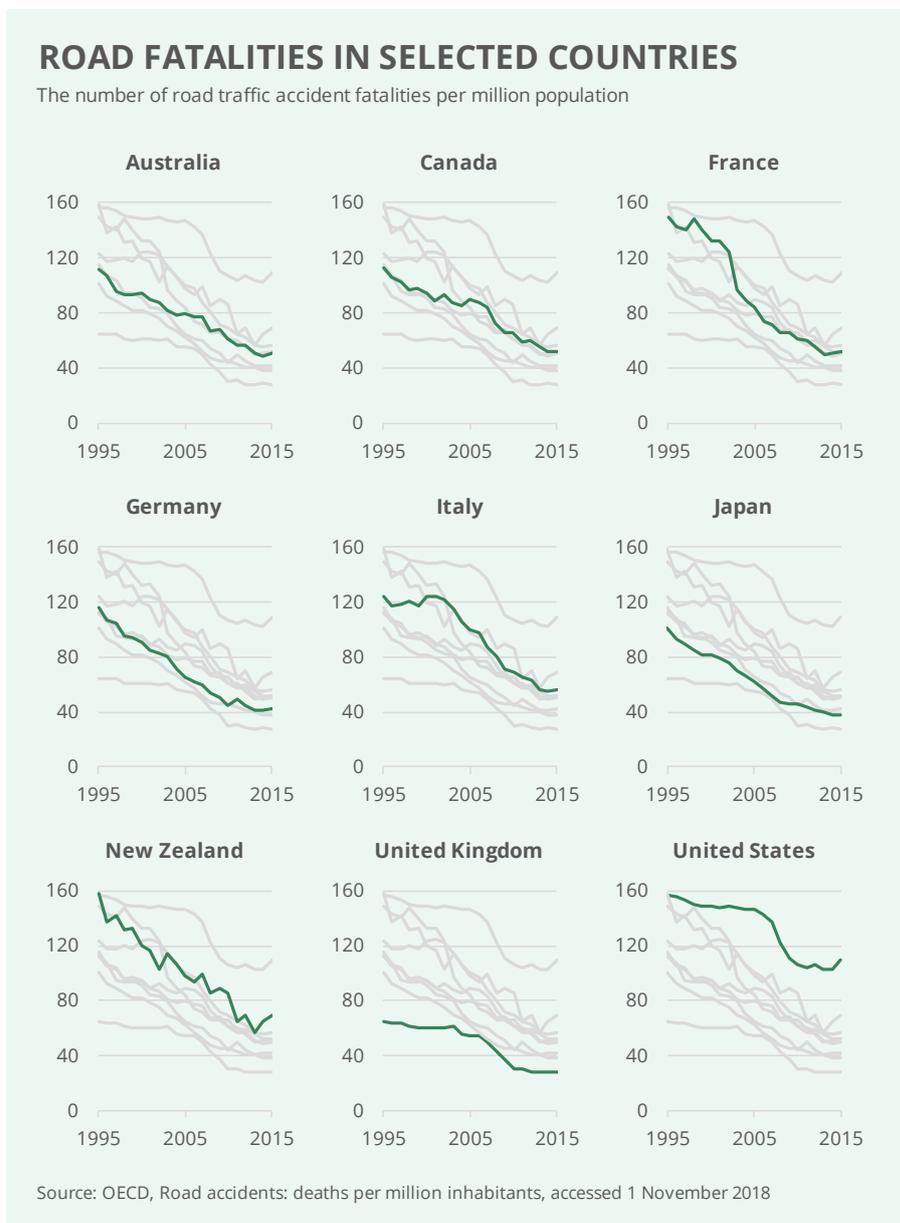
There were 48 child (aged 15 or younger) deaths in 2017 – around a 2% decrease on the number killed in 2016. The DfT note that between 2010 and 2017 child deaths have fluctuated with no clear trend. Many

of the children killed in 2017 were as a pedestrian (46%), and as a car occupant (42%).

In 2017, there were a total of 15,721 child casualties which is the lowest number on record. Of these child casualties, 37% were as pedestrians, around one in five occurred on a weekday between 3pm and 5pm, and just under 60% were male.

4.3 International comparisons

The OECD publishes data on the number of road accidents in a range of countries each year. The graph below illustrates the number of road traffic fatalities occurring in a few selected countries between 1995 and 2015 (the last year in which full data for most countries is available).



The United Kingdom had a lower road death rate in 2015 than 45 of the other 49 countries included in the OECD's data series. Countries with a lower rate included Sweden (27 per million population), Malta (26 per million population) and Norway (23 per million population). The

death rate in the United States was more than 3 times higher than that in the UK.

5. Charging policy

Scotland

The justice system in Scotland is devolved.

In Scotland the Crown Office and Procurator Fiscal Service (COPFS) makes decisions as to whether and what to charge in any case. It has a general [Prosecution Code](#), though this does not discuss road traffic offences in any detail.

There are [Lord Advocate's Guidelines on the Investigation of Road Traffic Deaths](#), published in 2017.

There is a perception that the police and prosecutors frequently favour prosecuting motorists involved in accidents where there is a fatality or serious injury with a lesser offence, for which they are more likely to gain a conviction.

The Crown Prosecution Service (CPS) has been aware of this problem for a long time. In the introduction to its 2007 review of its guidance on how to prosecute bad driving, it said:

Bad driving resulting in death or injury has devastating consequences for victims and their families and friends, and it is important that justice is seen to be done in cases where this has happened.

The CPS is committed to ensuring that in such cases our prosecutors reach the correct charging decisions, so that the right person is prosecuted for the right offence in the right court.

For this to be achieved these decisions must be in line with current law, but also, where it is just and lawful to do so, they should reflect changing public attitudes to bad driving and the desire of victims, or their families, friends and the public, to see that justice is done in these cases.¹⁰

In the revised version of the guidance, published in 2013 and last updated in February 2018,¹¹ it sets out particular guidance for accidents where the victim is a close friend or relative of the driver, stating that: "Whilst the serious nature of these cases usually means that a prosecution will be in the public interest, prosecutors must acknowledge the greater emotional impact likely to be felt by a driver where the death he or she has caused is that of a relative or someone with whom they share a close personal relationship".¹²

It also makes more general observations about other public interest considerations when charging offences arising from driving incidents:

The following is not exhaustive but it indicates some further public interest considerations that prosecutors should keep in mind with driving offences:

¹⁰ CPS, [Policy for prosecuting cases of bad driving](#), December 2007, paras 2-4; the first edition of the guidance was published in 1996

¹¹ following consultation, see: CPS, [Public consultation on the CPS Guidance on Charging Offences arising from Driving Incidents](#), September 2012

¹² CPS, [Road Traffic Offences - Guidance on Charging Offences arising from Driving Incidents](#), 2013 [accessed 14 November 2018]

- The level of culpability of a driver is likely to be relevant. The greater the degree of culpability, the greater the public interest in favour of prosecution;
- If the driver has caused harm, annoyance or distress to other road users, it is more likely to be in the public interest to prosecute; see the section on Driving without reasonable consideration;
- If a person drives below the required standard and they have not passed a driving test, are unfit to drive because of a medical condition, or are driving otherwise than in accordance with the conditions of a provisional licence, it is more likely to be in the public interest to prosecute;

It will not necessarily be appropriate to prosecute every case where a minor collision occurs e.g. where the incident is of a type that involves minimal carelessness which may occur when parking a vehicle or in traffic queues. The extent of any damage does not matter in such cases; it is the extent of the driving error.

Prosecutors should ensure that proceedings are not conducted for the sake of settling questions of liability for the benefit of individual drivers or insurance companies.¹³

Furthermore, all Crown Prosecutors must apply the [Code for Crown Prosecutors](#) when considering charges. Prosecutors must consider each individual case on its own facts and on its own merits. They must consider whether there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge (the evidential stage) and, if there is sufficient evidence, go on to consider whether a prosecution is in the public interest (the public interest stage).¹⁴

The CPS guidance sets out examples of what is likely to be regarded as dangerous driving as follows:

- **rac**ing or competitive driving;
- failing to have a proper and safe regard for **vulnerable road users** such as cyclists, motorcyclists, horse riders, the elderly and pedestrians or when in the vicinity of a pedestrian crossing, hospital, school or residential home;
- **speed**, which is particularly inappropriate for the prevailing road or traffic conditions;
- **aggressive driving**, such as sudden lane changes, cutting into a line of vehicles or driving much too close to the vehicle in front;
- disregard of **traffic lights and other road signs**, which, on an objective analysis, would appear to be deliberate;
- disregard of **warnings from fellow passengers**;
- **overtaking** which could not have been carried out safely;
- driving when knowingly suffering from a **medical or physical condition** that significantly and dangerously impairs the offenders driving skills;
- driving when knowingly **deprived of adequate sleep** or rest;
- driving a vehicle knowing it has a **dangerous defect** or is poorly maintained or is dangerously loaded;

¹³ *ibid.*

¹⁴ *ibid.*

- using a **hand-held mobile phone** or other hand-held electronic equipment whether as a phone or to compose or read text messages when the driver was avoidably and dangerously distracted by that use;
- driving whilst avoidably and dangerously **distracted** such as whilst reading a newspaper/map, talking to and looking at a passenger, selecting and lighting a cigarette or by adjusting the controls of electronic equipment such as a radio, hands-free mobile phone or satellite navigation equipment; or
- a brief but obvious danger arising from a **seriously dangerous manoeuvre**. This covers situations where a driver has made a mistake or an error of judgement that was so substantial that it caused the driving to be dangerous even for only a short time.¹⁵

Examples of what is likely to be regarded as careless driving or driving without due care and attention as follows:

- **overtaking** on the inside;
- **driving inappropriately close** to another vehicle;
- inadvertently driving through a **red light**;
- emerging from a **side road** into the path of another vehicle;
- tuning a **car radio** when the driver was avoidably distracted by this action;
- using a **hand-held mobile phone** or other hand-held electronic equipment when the driver was avoidably distracted by that use; or
- selecting and lighting a **cigarette** or similar when the driver was avoidably distracted by that use.¹⁶

Finally, the guidance explains what factors are not relevant when deciding whether an act of driving is dangerous or careless:

- the **injury or death** of one or more persons involved in a road traffic collision. Importantly, injury or death does not, by itself, turn a collision into careless driving or turn careless driving into dangerous driving;
- the **skill** or lack of skill of the driver;
- the commission of **other driving offences** at the same time (such as driving whilst disqualified or driving without a certificate of insurance or a driving licence);
- the fact that the defendant has **previous convictions** for road traffic offences; or
- the mere **disability** of a driver caused by mental illness or by physical injury or illness, except where there is evidence that the disability adversely affected the manner of the driving.¹⁷

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*

6. Sentencing policy

Scotland

The justice system in Scotland is devolved.

The Scottish Sentencing Council was established in October 2015 and, working at top judicial speed, published its [first sentencing guideline](#) last month. It's only two pages long and sets out the principles and purposes of sentencing. It comes into effect on 26 November 2018.

A draft sentencing guideline on death by driving is currently in development.

The 1988 North Report on road traffic law considered that the courts should be able to take consequences into account in sentencing for all the general bad driving offences and that this should be made clear by legislation both in England and Wales and in Scotland.¹⁸ In its response to the report the Conservative Government disagreed that there was any need for legislation and stated that the judicial measures in place were adequate.¹⁹

Section 81(4) of the [Crime and Disorder Act 1998](#) placed a new statutory duty on the Court of Appeal to consider improving sentencing guidelines when cases come before the court and to establish the principles that guidelines take into account. In February 2003 the Sentencing Advisory Panel published advice to the Court of Appeal on sentencing for the offence of causing death by dangerous driving.²⁰ The Panel's aim in making the proposal was to suggest a more structured approach to assist judges in selecting a sentence for the offence which struck an appropriate balance between the level of culpability of the offender, and the magnitude of the harm which resulted. The Panel's proposals included the identification of particular factors that would aggravate the seriousness of the offence (e.g. consuming alcohol or drugs, speeding, distraction, etc.)

In April 2003 the Lord Chief Justice gave a judgment in relation to three appeals against sentence and an Attorney General's Reference.²¹ The appeals and the reference were listed together to enable the Court of Appeal to decide whether it should issue fresh guidelines on sentencing in view of the advice of the Sentencing Advisory Panel. The Court made some general comments about sentencing for death by dangerous driving, including that a custodial sentence would normally be given whatever the mitigating factors because of the need to deter others from dangerous driving.²² The Court issued new guidelines based on the Panel's advice, which in general it accepted. They came into force from the date of the judgment.

¹⁸ DoT/Home Office, *Road traffic law review*, 1988, para 6.38

¹⁹ DoT, *The road user and the law*, Cm 576, February 1989, paras 2.15-2.18

²⁰ Sentencing Advisory Panel, *Advice to the Court of Appeal – 11: Causing Death by Dangerous Driving*, February 2003

²¹ [Regina v Cookley, Stride & Cook](#) ([2003] EWCA Crim 996), 3 April 2003

²² *ibid.*, para 11

In January 2007 the Sentencing Advisory Panel announced a new consultation on advice about the 'causing death by driving' offences.²³ In January 2008 the Panel published its new advice to the Sentencing Guidelines Council²⁴ on these offences. The Panel outlined its general approach in the forward to the advice:

One of the most difficult issues for the Panel to consider was how best to structure a guideline that could differentiate between the factors that led the Crown Prosecution Service to charge a particular offence (which is not within the Panel's remit) and any additional factors that might have made that offence more or less serious. The assessment of seriousness of these offences, especially those involving dangerous driving, requires the court to consider a significant number of factors that combine to form an overall picture of the offence and the offender that can be difficult to unravel.

The Panel's approach is first to identify those factors that relate to the quality of driving (broadly affecting the way in which the vehicle was driven or the offender's ability to drive); these factors are referred to as 'determinants of seriousness' and are used to differentiate between levels of seriousness within each offence. Other factors, largely related to the offender's behaviour or the outcome of the offence, are treated as aggravating and mitigating factors. We hope that the approach we have adopted will help to guide sentencers through this complex consideration process.²⁵

In total the Panel made 18 recommendations.²⁶ These included recommendations on the new offences in the [Road Safety Act 2006](#), to the effect that a fine is most unlikely to be an appropriate sentence for both causing death by careless or inconsiderate driving or causing death by driving when unlicensed, disqualified or uninsured, and that where a custodial sentence is not justified, a community order should be imposed.²⁷ Alongside the advice, the Sentencing Guidelines Council published a consultation on its proposals, which largely accepted the panel's advice.²⁸

In July 2008 the Sentencing Guidelines Council published its final guidelines to the courts for driving offences resulting in death. The new Guidelines provide for the following:

Lengthy custodial sentences are recommended by the Sentencing Guidelines Council for cases involving prolonged, persistent and

²³ SAP press notice, "[Consultation paper on causing death by driving offences](#)", 25 January 2007

²⁴ The Sentencing Guidelines Council was created in 2004 in order to frame guidelines to assist courts as they deal with criminal cases throughout England and Wales; it received advice from the Panel which consults widely before tendering that advice, the Council then produces a draft guideline on which it seeks the views of a limited group as provided by the [Criminal Justice Act 2003](#). The Sentencing Guidelines Council and the Sentencing Advisory Panel were replaced by the Sentencing Council in 2010. Sentencing Council: [About us](#)

²⁵ SAP, [Advice to the Sentencing Guidelines Council: Driving Offences – Causing Death by Driving](#), 9 January 2008, foreword

²⁶ *ibid.*, pp59-60 (Annex E)

²⁷ *ibid.*, p60

²⁸ SAC, [Causing death by driving – consultation guidelines: letter to consultees](#), 9 January 2008

deliberate bad driving or where drivers are intoxicated or under the influence of drugs.

The use of mobile phones is also treated robustly with the Council advising that if an offender was distracted by a hand-held mobile phone when the offence was committed the offence will be treated as particularly serious.

The Guidelines state that reading or composing text messages over a period of time whilst at the wheel will be likely to result in an offence being in the higher level of seriousness and offenders should serve up to seven years in prison.

Clear advice on driving bans is also given. Magistrates and judges are reminded that disqualifications are effective from the day that they are imposed and will only be of practical effect if they extend beyond the period that will be served in prison.

The definitive guideline covers four offences: causing death by dangerous driving, causing death by careless driving under the influence of alcohol or drugs, causing death by careless driving and causing death by driving: unlicensed, disqualified or uninsured drivers. The latter two offences were introduced by the Road Safety Act 2006 and will come into force on a date to be announced.

For the first three offences, judges and magistrates are advised they will need to assess how bad the driving was and the degree of danger that it created in deciding the level of seriousness. Other issues – largely related to the offender’s behaviour – are treated as aggravating factors.

The Sentencing Guidelines Council recommends that prolonged, persistent and deliberate bad driving and consumption of substantial amounts of drugs or alcohol should put offenders into the most serious category of **causing death by dangerous driving** and be given jail terms of at least seven years. A combination of these features of dangerous driving – particularly if accompanied by aggravating factors, failing to stop or a very bad driving record - should attract sentences towards the maximum of 14 years.

In dealing with cases of **causing death by careless driving under the influence of alcohol or drugs** the guideline provides for longer sentences as the degree of intoxication increases, so that sentence levels equate to those for causing death by dangerous driving.

The Council recommends that **where death follows careless driving**, a custodial sentence of up to 3 years is likely, with higher sentences where there is a combination of aggravating factors. However, where the driving involved “momentary inattention” and there were no aggravating factors, an offender should be given a community sentence, which could include a curfew requirement.

Where **death results from an offence involving driving unlicensed, disqualified or uninsured**, the maximum sentence possible is two years. The level of seriousness will be based on why the offender should not have been on the road, with driving while disqualified being the most serious when the starting point is set at 12 months imprisonment.

In all cases fines are not likely to be appropriate and where non-custodial sentences are considered appropriate, a community order should be used.²⁹

A review of the guidelines would be a matter for the Sentencing Council and would likely follow any change to the law, for example the introduction of a new offence.³⁰

In December 2016 the Government published a [consultation](#) containing a number of proposals about increasing the maximum sentence for the 'causing death' driving offences, including *causing death by dangerous driving* (from 14 years to life imprisonment). It also set out those reasons why maximum sentences are not automatically handed down for serious driving offences, particularly those which result in death:

Imposing the statutory maximum penalty in all cases would represent a fundamental change to the criminal law and would conflict with the position in relation to other offences resulting in death, such as manslaughter. Given that the approach to sentencing ... applies across all criminal offences it is difficult to justify a different approach for a specific offence or group of offences. Imposing a series of long consecutive sentences in every case irrespective of the culpability of the offender would also constitute an unjustified departure from the current position and lead to a severe restriction in the ability of judges to exercise their discretion to impose a just and proportionate sentence in individual cases. Therefore the Government does not propose to change the law to require the imposition of a maximum penalty.³¹

In October 2017 the Government [stated](#) that there was 'considerable support' for increasing the maximum sentence for causing death by dangerous driving from 14 years to life imprisonment and that the Government intended "to bring forward proposals, when parliamentary time allows, to raise the maximum penalty for both causing death by dangerous driving and causing death by careless driving under the influence of drink or drugs to life imprisonment" [para 57]. No legislation has as yet been put forward.

There have also been concerns expressed about the question of '**exceptional hardship**', which allows drivers to keep their licence where they might otherwise be disqualified. This was raised during a road safety debate in November 2018:

Data from the Driver and Vehicle Licensing Agency show that ... there are 11,000 drivers across Britain who still have their driving licences despite passing the 12-point limit. We are allowing unsafe drivers to remain on our roads, and ultimately we are putting people at risk. Anyone who reaches 12 points should expect to be banned. Anything less makes a mockery of our road laws.³²

²⁹ SAC press notice, "[Council Publishes Guideline for Courts dealing with Driving Offences Resulting in Death](#)", 15 July 2008; and the [Definitive Guidelines](#) [accessed 14 November 2018]

³⁰ [HC Deb 17 October 2017, c273WH](#)

³¹ MoJ, [Driving offences and penalties relating to causing death or serious injury](#), Cm 9381, 5 December 2016, paras 40-41

³² [HC Deb 5 November 2018, cc1332-3](#)

This is ultimately a matter of case law and precedent and is for the courts to determine in any individual case. *Wilkinson's Road Traffic Offences* (2017) explains in broad terms how this works:

The first consideration is that that s.35(4)(b) [of the Road Traffic Offenders Act 1988] requires the defendant to satisfy the court on the balance of probabilities that exceptional hardship other than ordinary hardship exists. The burden of establishing hardship is on the defendant. The court must disqualify the offender for the minimum period unless the court is satisfied exceptional hardship exists.

The second consideration is that what is exceptional hardship is a question of fact to be judged by the court on evidence. All that can be said with certainty is that the hardship must be something "out of the ordinary" [...] [para 21-73]

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