



Circular No. 2008/03

TITLE **ROAD SAFETY ACT 2006: IMPLEMENTATION OF SECTIONS 20 & 21**

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This circular is addressed to

England and Wales

- Lord Chief Justice, President of the Queen's Bench Division, Senior Presiding Judge, Lords of Appeal in Ordinary, Lords Justices of Appeal, High Court Judges, Crown Court Judges, District Judges (Magistrates' Courts), Chairman of Justices, Justices' Chief Executives, Clerks to the Justices, Judicial Studies Board, Council of Circuit Judges, Magistrates' Association, Justices' Clerks' Society
- HMCS Area Directors, Crown Court Managers
- Chief Officers of Police, Association of Chief Police Officers, HM Chief Inspector of Constabulary, Chairmen of Police Authorities, Association of Police Authorities
- Chief Crown Prosecutors
- The Coroners' Society
- The Law Society, the Bar Council, the Criminal Bar Association

Scotland

- Lord Justice General, Lord Justice Clerk, Sheriffs Principal, Sheriffs Association, Scottish Justices Association, Director of Judicial Studies
- Chief Executive, Scottish Court Service; Sheriff Clerks; the Principal Clerk of Session & Justiciary; District Court Clerks
- Crown Agent; Area Procurators Fiscal
- Dean of the Faculty of Advocates; Law Society of Scotland
- Chief Constables; Association of Chief Police Officers Scotland; HM Inspector of Constabulary for Scotland; Convenors of police authorities and joint police boards

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ROAD SAFETY ACT 2006: IMPLEMENTATION OF SECTIONS 20 & 21

Summary

1. The purpose of this circular is to draw your attention to arrangements for implementing sections 20 and 21 and section 30 (to the extent not already implemented) of the Road Safety Act 2006.
2. Section 20 creates a new offence of causing death by careless or inconsiderate driving and section 21 creates an offence of causing death by driving when unlicensed, disqualified or uninsured. The new offences complement the existing offences of causing death by dangerous driving (section 1, Road Traffic Act 1988) and causing death by careless driving when under the influence of drink or drugs (section 3A, Road Traffic Act 1988).
3. This circular provides an overview of the new offences and information about where to obtain further guidance. This document should not, however, be regarded as providing legal advice. **Legal advice should be sought if there is any doubt as to the application or interpretation of the legislation.**
4. The Crown Prosecution Service will be providing more detailed guidance for prosecutors in England and Wales, as will the Crown Office and Procurator Fiscal Service for prosecutors in Scotland.

Section 20 – Causing Death by Careless or Inconsiderate Driving

5. **Section 20** creates a new criminal offence of causing death by careless, or inconsiderate, driving. The offence is triable either way and has a maximum penalty of five years imprisonment. It provides for obligatory disqualification and endorsement; and specifies the circumstances in which this offence could be an alternative verdict where prosecution for a more serious offence has been unsuccessful. The various elements of section 20 are set out in more detail below.

The offence

6. **Section 20(1)** of the Road Safety Act 2006 inserts a new section (**section 2B**) into the Road Traffic Act 1988. This provides that a person who causes a death by driving a mechanically propelled vehicle on a road or another public place without due care or attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.
7. The meaning of driving 'without due care and attention' is defined in section 3ZA of the 1988 Act (as inserted by section 30 of the Road Safety Act 2006) and explained further in paragraph 20 below.

Alternative verdicts

8. **In section 20(2)**, paragraphs (a) and (c) provide that causing death by careless driving can be an alternative verdict where more serious charges of causing death by dangerous driving (under section 1 of the Road Traffic Act 1988) or causing death by careless driving when under the influence of drink or drugs (under section 3A of the Road Traffic Act) have been unsuccessful. This is significant because it ensures that drivers, who might otherwise have escaped conviction for those more serious offences, can still be sentenced for the lesser offence of causing death by careless driving.
9. Similarly, section 20(2)(b) provides that careless or inconsiderate driving (an offence under section 3 of the Road Traffic Act 1988) may be an alternative verdict where a charge of causing death by careless driving is unsuccessful.

Identifying the driver of the car

10. **Section 20(3)** provides that sections 11 and 12(1) of the Road Traffic Offenders Act 1988 will apply to the offence of causing death by careless driving. Section 11 of that Act provides that a constable can certify who was driving a car on a particular occasion and this will be admissible in court proceedings. Section 12(1) provides that in summary proceedings, where the driver of the car provides written confirmation that he was driving on a particular occasion, this can be accepted as evidence by the court.

Penalties

11. **Section 20(4)** provides that the offence of causing death by careless or inconsiderate driving is triable either way. On indictment the maximum penalty is five years imprisonment and/or an unlimited fine. On summary conviction, the maximum penalty is 6 months' imprisonment¹ and/or a fine of up to the statutory maximum (currently £5000). This section also provides that those convicted of this offence will be subject to mandatory disqualification and endorsement.

Adjournment of Coroners' Inquests in event of criminal proceedings

12. Section 20(5) adds the offence of causing death by careless or inconsiderate driving to sections 16 and 17 of the Coroners Act 1988 to provide for the mandatory adjournment of inquests in the event of criminal proceedings in a magistrates' or Crown Court. It is not anticipated that the coroner will seek to resume an inquest following a criminal prosecution for causing death by careless or inconsiderate driving, though there may be exceptional circumstances where there is sufficient cause to do so.

¹ Section 61(5) of the Road Safety Act 2006 (Commencement) provides that the references to 12 months' summary imprisonment in column 4 of part 1 to Schedule 2 of the Road Traffic Offenders Act 1988 shall be of no effect until such time as the Custody Plus sentencing provisions contained in section 154(1) of the Criminal Justice Act 2003 are brought into force. The maximum custodial penalty on summary conviction in England and Wales for this offence is therefore six months' imprisonment.

International co-operation

13. **Section 20(6)** adds the offence of causing death by careless or inconsiderate driving to Schedule 3 to the Crime (International Co-operation) Act 2003. This provides that the Secretary of State may inform the authorities of a third country where one of their nationals has been disqualified from driving in the UK as a consequence of this offence.

Section 21 - Causing Death by Driving: Unlicensed, Disqualified or Uninsured Drivers

14. Section 21 of the Road Safety Act 2006 creates a new offence of causing death when driving when unlicensed, disqualified or without insurance. The offence is triable either way and has a maximum penalty of two years imprisonment. It also provides for obligatory disqualification and endorsement. Unlike the other death by driving offences, this offence is not linked to the standard or quality of driving on the part of the accused. Culpability arises from the offender driving a vehicle on road when by law he is not allowed to do so. The various elements of section 21 are set out in more detail below.

The offence

15. Section 21(1) inserts a new section (section 3ZB) into the Road Traffic Act 1988. This provides that a person is guilty of an offence if he causes the death of another person by driving a motor vehicle on a road when unlicensed, disqualified or uninsured.

Identifying the driver of the car

16. Section 21(2) provides that sections 11 and 12(1) of the Road Traffic Offenders Act 1988 will apply to the offence of causing death by driving when unlicensed, disqualified or uninsured drivers. Section 11 of that Act provides that a constable can certify who was driving a car on a particular occasion and this will be admissible in court proceedings. Section 12(1) provides that in summary proceedings, where driver of the car provides written confirmation that he was driving on a particular occasion, this can be accepted as evidence by the court.

Penalties

17. Section 21(3) provides that the offence is triable either way and has a maximum penalty, on indictment, of two years' imprisonment and/or an unlimited fine. On summary conviction, the maximum penalty is six months' imprisonment and/or a fine of up to the statutory maximum (currently £5000).² It also sets out that the offence will be subject to mandatory disqualification and endorsement.

² Section 61(5) of the Road Safety Act 2006 (Commencement) provides that the references to 12 months' summary imprisonment in column 4 of part 1 to Schedule 2 of the Road Traffic Offenders Act 1988 shall have no effect until such time as the Custody Plus sentencing provisions contained in section 154(1) of the Criminal Justice Act 2003 are brought into force. The maximum custodial penalty on summary conviction in England and Wales for this offence is therefore six months' imprisonment.

Adjournment of Coroners' Inquests in event of criminal proceedings

18. **Section 21(4)** adds the offence of causing death by driving when unlicensed, disqualified or uninsured to sections 16 and 17 of the Coroners Act 1988, which provides for the mandatory adjournment of inquests in the event of criminal proceedings in the magistrates' or Crown Court. As this offence is not directly linked to the standard of driving, it is anticipated that the coroner will normally wish to resume the inquest to establish the circumstances of the death. Each case will be considered individually, however, and there may be circumstances in which an inquest is not considered to be necessary.

International co-operation

19. Subsection (5) adds the offence of causing death by driving when unlicensed, disqualified or uninsured to Schedule 3 to the Crime (International Co-operation) Act 2003. This provides that the Secretary of State may inform the authorities of a third country where one of that state's nationals is disqualified from driving as a consequence of this offence.

Section 30 – Meaning of driving without due care and attention or without reasonable consideration for other road users

20. Section 30 inserts a new section 3ZA into the Road Traffic Act and defines the meaning of driving without due care and attention for the purposes of the offence of causing death by careless or inconsiderate driving. This definition is already in use for the existing offences of careless driving (section 3 of the Road Traffic Act 1988) and causing death by careless driving when under the influence of drink or drugs (section 3A of the Road Traffic Act).
21. **Section 30(2)** provides that driving "without due care and attention" means driving in a way that falls below what would be expected of a competent and careful driver. In determining what would be expected of a careful and competent driver, Section 30(3) requires regard to be given not only to what a driver could be expected to be aware of, but also to any circumstances shown to have been within the knowledge of the accused.
22. **Subsection (4)** provides that a person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.

Commencement

23. These provisions will apply in England, Scotland and Wales from Monday 18 August 2008. The commencement order (The Road Safety Act (Commencement No. 4) Order S.I. 2008/1918) bringing these offences into force can be viewed on the Office of Public Sector Information website at:

www.opsi.gov.uk/si/si2008/uksi_20081918_en_1

24. In relation to sentencing, the Sentencing Guidelines Council for England and Wales has published definitive guidelines relating both to these two new offences and to the existing two offences. These can be viewed on the Sentencing Guidelines Council website:

www.sentencing-guidelines.gov.uk

The Crown Prosecution guidance for Prosecuting Cases of Bad Driving can be viewed at:

www.cps.gov.uk/Publications/prosecution/pbd_policy.html

Sections previously commenced

25. The following provisions of the Road Safety Act 2006 were brought into force by commencement orders made before implementation of sections 20 and 21.

<u>Provision</u>	<u>Commencement</u>	<u>S.I. No.</u>
Section 14	24.9.2007	2007/2472
Sections 23 – 25	24.9.2007	2007/2472
Section 26	27.2.2007	2007/237
Sections 27 – 29	24.9.2007	2007/2472
Section 30 in so far as section 3ZA of the Road Traffic Act 1988 has effect for the purposes of sections 3 and 3A of that Act	24.9.2007	2007/2472
Section 31 – 33	24.9.2007	2007/2472
Section 36	27.2.2007	2007/237
Section 40	27.2.2007	2007/237
Section 41	24.9.2007	2007/2472
Section 43	24.9.2007	2007/2472
Section 44	16.3.2007	2007/466
Section 45	30.7.2008	2008/1862
Section 46	31.7.2008	2008/1864
Section 50	27.2.2007	2007/237
Section 52	16.3.2007	2007/466
Section 53	28.1.2008	2007/3492
Section 54	31.3.2008	2007/3492
Section 55	28.1.2008	2007/3492
Section 59, in so far as it relates to paragraphs 9, 12 and 16 of Schedule 7 (and accordingly paragraphs 9, 12 and 16 of Schedule 7)	27.2.2007	2007/237
Section 59, in so far as it relates to paragraphs 5 and 13 of Schedule 7 (and accordingly paragraphs 5 and 13 of Schedule 7)	24.9.2007	2007/2472