

<b>Title: Options to deal with causing serious injury by dangerous driving</b>  <b>IA No: MOJ111</b>  <b>Lead department or agency: Ministry of Justice</b>  <b>Other departments or agencies: Department for Transport, Home Office</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 07/10/11		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> Yvonne Murray 020 334 5008 and David Pearson 020 334 5005			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£NA	£NA	£NA	No
			NA

**What is the problem under consideration? Why is government intervention necessary?**

There has long been pressure for change in road traffic law to close a perceived “gap” in sentences between the current 2 year maximum for the offence of dangerous driving and the 14 year maximum for the offence of causing death by dangerous driving to ensure that courts are given the sentencing powers they need to deal effectively with the worst dangerous driving offences.

There are several lobby groups that campaign for longer sentences for dangerous driving offences where serious harm or injury has resulted. Cases involving death or serious injury are some of the “hardest cases” to sentence: often, the amount of culpability involved is small – momentary loss of concentration, for example – whilst the degree of harm can be very large. Some of the victims are faced with sudden and life changing injuries. The Government believes it is right to ensure that the criminal law is fully effective in addressing bad driving and its consequences.

**What are the policy objectives and the intended effects?**

For the vast majority of dangerous driving cases, the maximum penalty of 2 years’ imprisonment provides the courts with proportionate powers to punish offenders. However, Ministers accept there is too large a gap between the maximum penalties for the offence of dangerous driving and the offence of causing death by dangerous driving, which does not allow cases resulting in serious injury to be dealt with effectively. The policy options will give courts the appropriate custodial sentencing powers to reflect the more serious consequences of a driver’s actions.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing  
Option 1: Create a new offence of ‘causing serious injury by dangerous driving’  
Option 2: Increase the maximum custodial sentence for the offence of dangerous driving from 2 to 5 years

Option 1 is the preferred option. It provides a more targeted and cost effective approach to the problem than option 2. The creation of a new offence, carrying a maximum penalty of 5 years, will allow the courts to target their powers at the most serious and damaging end of the spectrum of dangerous driving incidents.

<b>Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2015/17 Month/Year</b>					
Does implementation go beyond minimum EU requirements?				Yes / No / N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes/No	<b>&lt; 20</b> Yes/No	<b>Small</b> Yes/No	<b>Medium</b> Yes/No
				<b>Large</b> Yes/No	
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b> N/A	<b>Non-traded:</b> N/A

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible Minister:



Date: 07/10/2011

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Create a new offence of 'causing serious injury by dangerous driving'

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/K

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional		Optional
Best Estimate		£5m	

### Description and scale of key monetised costs by 'main affected groups'

The creation of a new offence of 'causing serious injury by dangerous driving' is likely to result in an increase in prison and probation costs, due to the higher maximum custodial sentence being available for the new offence. It is difficult to estimate the precise impact, as data on dangerous driving convictions do not record whether a serious injury has occurred. However, our best estimate is that there will be an upward pressure of around 20 prison and probation places, which would result in a small impact of around £1m. However due to a range of uncertainties we estimate that the **annual costs could rise by up to £5m**. It is worth noting that this option will not criminalise any additional offenders.

### Other key non-monetised costs by 'main affected groups'

None identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

There are no benefits that can be monetised.

### Other key non-monetised benefits by 'main affected groups'

The new offence will allow the courts to target their powers at the most serious and damaging end of the spectrum of dangerous driving incidents. This will give them access to greater sentencing powers to reflect the more serious consequences of a driver's actions. Victims who face life-changing injuries as a result of dangerous driving, their families, and society may feel better served by the level of punishment delivered by the CJS.

There may be a deterrent effect, which could reduce the number of offences. However the evidence of the existence and scale of a deterrent effect is mixed. As a result we have not quantified this.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

The offence will apply equally to England and Wales. The offence will apply to Scotland as driving offences are a reserved matter. The Scottish offence will have slightly different parameters in order to comply with Scots law. However this impact assessment only covers England and Wales. Costs to Scotland would need to be identified separately.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Increase the maximum sentence for the offence of dangerous driving from 2 to 5 years.

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/K

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	£10m	

### Description and scale of key monetised costs by 'main affected groups'

It is likely that increasing the maximum penalty will lead to an increase in sentence lengths across the whole spectrum of dangerous driving cases, as courts perceive the offence as having increased in seriousness. Based on data from Northern Ireland (where the maximum sentence was increased from 2 to 5 years in 2004) it is estimated that the equivalent effect in England and Wales would lead to upward pressure of around 230 prison places, at an estimated annual cost of around £10m.

### Other key non-monetised costs by 'main affected groups'

None identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

There are no benefits that can be monetised.

### Other key non-monetised benefits by 'main affected groups'

Increasing the maximum sentence will give judges greater sentencing powers to reflect the more serious consequences of a driver's actions. Victims who face life-changing injuries as a result of dangerous driving, their families, and society may feel better served by the level of punishment delivered by the CJS.

There may be a deterrent effect, which could reduce the number of offences. However, the evidence of the existence and scale of a deterrent effect is mixed. As a result we have not quantified this.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

There are modelling risks around using the Northern Ireland experience and applying it to England and Wales. The true impacts could, therefore, be higher or lower than estimated.

The new offence will not criminalise any drivers who are not already caught by the current offence of dangerous driving. However it is expected to impact on a wider range of offenders than the more targeted approach of Option 1.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

# Evidence Base (for summary sheets)

## 1. Problem under consideration

There has long been pressure for change in road traffic law to close a perceived “gap” in sentences between the current 2 year maximum for the offence of dangerous driving and the 14 year maximum for the offence of causing death by dangerous driving to ensure that cases resulting in serious injury could be dealt with better by the courts.

## 2. Rationale for intervention

There are several lobby groups that campaign for longer sentences for bad driving offences, including dangerous driving offences where serious harm or injury has resulted. Cases involving death or serious injury are some of the “hardest cases” to sentence: often, the amount of culpability involved is small – momentary loss of concentration, for example – whilst the degree of harm can be very large. Some of the victims are faced with sudden and life changing injuries.

The Government believes it is right to ensure that the criminal law is fully effective in addressing bad driving and its consequences.

## 3. Policy objective

The objective is to address and close the gap in sentencing by enabling the courts to reflect the consequences of dangerous driving in a targeted manner.

## 4. Description of options considered (including do nothing);

Option 0 is to make no changes (do nothing). This is the status quo, resulting in no extra costs or benefits to the UK. This will form the baseline.

Option 1: is to create a new offence of ‘causing serious injury by dangerous driving’. This offence would effectively target those cases where serious injury is caused. The new offence would carry a maximum custodial sentence of 5 years.

Option 2: is to increase the maximum sentence for the existing offence of dangerous driving from 2 to 5 years.

The Government’s preferred option is Option 1 as it addresses the problem in a more targeted and cost-effective manner than does Option 2. It gives the Courts the ability to better reflect, in sentencing, the more serious consequences of dangerous driving, by targeting intervention only at cases where serious injury is caused.

## 5. ONE-IN-ONE-OUT (OIOO)

These policies do not fall within the scope of one-in-one-out.

## 6. Groups Affected

Ministry of Justice, HMCTS, Prisons and Probation Services, Department for Transport, Home Office.

Dangerous Driving offenders, victims and their families, and road safety campaign groups for example, Brake and Roadpeace.

## 7. Costs and Benefits

### Option 0: 'Do nothing'

Under this option there would be no change. Therefore the costs and benefits of this option are zero.

All costs and benefits are compared against the 'Do Nothing' (Option 0).

### Option 1: Create a new offence of 'causing serious physical injury by dangerous driving'

#### Costs

Creating a new offence will result in additional costs, as some dangerous driving cases will fall under the new offence, with a higher maximum custodial sentence. It is difficult to estimate the precise impact, due to a lack of data on how many current dangerous driving cases involve the causing of serious injury.

We have looked at cases involving s.20 Grievous Bodily Harm (GBH) charges to give an indication of the number of cases that may fall under the new offence. In 2010, there were approximately 20 cases where defendants were charged with both dangerous driving and GBH, but only successfully convicted of the offence of dangerous driving. The fact that GBH charges were brought in these cases suggests that serious injury was caused. However, the difficulty in proving the required intent/level of recklessness may have prevented a successful GBH conviction, thereby limiting the courts to convicting for the offence of dangerous driving. This intent/ level of recklessness would not be required under the new offence, so we believe these 20 or so cases would be our best estimate of the number of cases per year that may be successfully convicted under the new offence. These 20 cases received an average custodial sentence of 1 year, which we assume increases to 3 years under the new offence. This would lead to an upward pressure of around 20 prison and probation places in steady state. This would result in a marginal impact on MOJ costs of around £1m.

There are, however, a number of uncertainties surrounding this estimate, and given the risks associated with the potential for (a) additional cases being charged under the new offence, (b) average sentences for the new offence being closer to the 5 year maximum than the 3 years assumed, and (c) an associated up-tariffing in sentences for the offence of dangerous driving; we estimate that costs could rise by up to **£5m per annum**.

#### Benefits

The creation of a new offence will close a gap between the current 2 year maximum sentence available for the offence of dangerous driving and the 14 year maximum for the offence of causing death by dangerous driving to ensure that cases resulting in serious injury can be dealt with more effectively by the courts. The new offence will allow the courts to target their powers at the most serious and damaging end of the spectrum of dangerous driving incidents. This will give them access to greater sentencing powers to reflect the more serious consequences of a driver's actions. It is hoped that victims who face life-changing injuries as a result of dangerous driving, their families, and society in general will feel better served by the level of punishment delivered by the CJS. These benefits have not been quantified.

There may be a deterrent effect, which could reduce the number of offences. However, the evidence of the existence and scale of a deterrent effect is mixed. As a result we have not quantified this.

## Option 2: Increase the maximum custodial sentence for the offence of dangerous driving from 2 to 5 years

### Costs

It is likely that increasing the maximum penalty will tend to drag up sentences across the whole spectrum of dangerous driving cases (rather than simply affecting the small number of cases involving serious injury that the policy is targeted at) as courts perceive the offence as having increased in seriousness.

In 2004, Northern Ireland increased the maximum sentence for the offence of dangerous driving from 2 to 5 years, as this option proposes to do in England and Wales. Analysis of the available data shows a significant increase in sentence lengths and consequent increase in the demand for prison places. It is estimated that an equivalent impact in England and Wales on prison places, if the maximum penalty were to be increased to 5 years, would be in the region of 230 places and at a cost of around **£10 million per annum**.

### Benefits

The new offence would allow the Courts to properly take into account the most severe injuries caused by dangerous driving. They would be able to better reflect the more serious consequences of such bad driving. It is hoped that victims who face life-changing injuries as a result of dangerous driving may feel better served by the level of punishment delivered by the CJS.

There may be a deterrent effect, which could reduce the number of offences. However, the evidence of the existence and scale of a deterrent effect is mixed. As a result we have not quantified this.

### **8. Risks and assumptions;**

- There is a risk that there may be further additional cases tried under the new offence than the 20 we have estimated. Our estimate, that costs could increase by up to £5m per year, reflects this risk.
- There is a risk that average custodial sentences could increase by more than assumed, in both option 1 and 2. This would result in higher additional costs.
- We have assumed that the experience of increasing the maximum sentence in Northern Ireland would be similar to that in England and Wales. There is a risk that this may not be the case, which could result in higher or lower costs.

### **9. Wider impacts**

An equalities impact assessment is being undertaken to more fully understand the impacts of the proposals.

### **10. Summary and Recommendations**

The preferred option is to create a new offence of 'causing serious injury by dangerous driving' subject to a 5 year maximum custodial sentence. This option will not criminalise any more people than is the case now and will be more cost effective than increasing the current maximum custodial sentence for the offence of dangerous driving. Increasing the maximum sentence to 5 years could result in the courts increasing sentencing across the spectrum of dangerous driving rather than the more targeted approach offered in our preferred option.

The new offence is to be tabled as an amendment to the Legal Aid, Sentencing and Punishment of Offenders Bill at Committee Stage. This policy will be reviewed in 2015/17.

**In addition to the dangerous driving amendment, we are also introducing additional amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill:**

Magistrates Court powers

This retains the unimplemented provision to extend Magistrates Court powers to imprison from the current 6 months to 12 months. The possibility of increasing magistrates' powers at some point has not been ruled out, if the case can be made for it. If this case is made, a full impact assessment of the likely impacts and assessment of costs and benefits of implementation of this policy will be produced.

Knife Crime

We are amending the new offences of threatening with a bladed/pointed article or offensive weapon so that lawful authority or good reason/reasonable excuse for possession alone are not defences.

The amendment will also seek to make expressly clear that where a defendant is acquitted of the aggravated offence the basic possession offence will be available as an alternative.

In practice we think that a person who uses knife or offensive weapon to threaten and endanger would have had real difficulty persuading the court that they were in lawful possession of the item and therefore that any of these defences applied. The amendment simply makes sure that there is no risk that someone who may have been in lawful possession of a knife or offensive weapon gets acquitted on this basis despite having threatened and endangered. On this basis we do not expect to have additional resource implications as a result of this amendment.