



ROAD TRAFFIC PENALTIES IN NORTHERN IRELAND

A Consultation Document

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Northern Ireland Office

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(i) Summary of Proposals

Proposal 1: Revaluation of points

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

Proposal 2: Retraining

Those receiving an endorsement or penalty points which take their points total up to or beyond 10 points should ideally be offered automatically the opportunity to attend, at their own expense, a driver retraining and improvement programme. Successful completion of the course would earn remission of five points. Those disqualified for a period of over 56 days up to and including 12 months should be automatically offered the same with a remission of 20 per cent of the period of disqualification. Also, Driver Improvement Courses should be created as an alternative to prosecution for offences where a driver's mistake, rather than intent or dangerous driving, has led to a collision. Such courses would provide an incentive for improved driver behaviour and would reduce the need for enforcement through the courts and we are minded to create them for Northern Ireland.

Proposal 3: Totting up disqualification as a fixed penalty

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

Proposal 4: Long-life points

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

Proposal 5: Requalifying after disqualification

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

Proposal 6: Decoupled community penalties

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

Proposal 7: Forfeiture of vehicles

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

Proposal 8: Causing death or grievous bodily injury by dangerous driving

Increase in maximum imprisonment penalty to 14 years. Disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death or grievous bodily injury by dangerous driving, or causing death or grievous bodily injury by aggravated vehicle taking (once created), or causing death or grievous bodily injury by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

Proposal 9: Causing death or grievous bodily injury by careless driving while under the influence of drink or drugs

Increase in maximum imprisonment penalty to 14 years. Disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death or grievous bodily injury by dangerous driving, or causing death or grievous bodily injury by aggravated vehicle taking (when created), or causing death or grievous bodily injury by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

Proposal 10: Creating an offence of causing death or grievous bodily injury by aggravated vehicle taking

Created with a maximum imprisonment penalty of 14 years. Disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death or grievous bodily injury by dangerous driving, or causing death or grievous bodily injury by aggravated vehicle taking (when created), or causing death by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

Proposal 11: Creating an offence of aggravated vehicle taking; dangerous driving

Maximum term of imprisonment increased to five years for dangerous driving. Likewise, the same penalties will apply to the new offence of aggravated vehicle taking. In both cases disqualification to be for a minimum of three years. Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had

previously committed an offence of dangerous driving, or causing death or grievous bodily injury by dangerous driving, or causing death or grievous bodily injury by aggravated vehicle taking, or causing death or grievous bodily injury by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

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

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

Proposal 13: Repeat drink-drive offending

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

Proposal 14: Driving while disqualified

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

Proposal 15: Driving without a licence; causing or permitting a person to drive without a licence; failure to comply with any conditions prescribed for driving under provisional license where conditions applicable to driving under full license; or causing or permitting a person to drive while under age

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

Proposal 16: Driving while uninsured

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

Proposal 17: Careless or inconsiderate driving

Available sentences to include requirement to undergo a driver retraining and improvement programme; “Decoupled” community penalties, and a fine at level 5 on the standard scale (currently £5,000) in place of level 4 (currently £2,500). A mandatory minimum award of 15 points for a second offence of careless driving within five years, or for a first offence of careless driving if within the preceding five years the driver had committed any of the more serious categories of offence. A minimum period of disqualification of whatever length necessary to require an automatic retest for a third or subsequent offence of careless driving within five years.

Proposal 18: Speeding offences

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

Proposal 19: Temporary Speed Limits

The Road Traffic Offenders (NI) Order 1996 will be amended to bring Northern Ireland in line with GB. This will allow for discretionary disqualification for exceeding a temporary speed limit, with obligatory endorsement and 3-6 penalty points as well as the currently available fine.

Proposal 20: Fraud with parking tickets, deception with licences, MOT certificates, etc and fraudulent use of documentation

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

Proposal 21: Using vehicles in a dangerous or overloaded condition

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

Proposal 22: Bus lanes

The Department for Regional Development should be empowered to deal with offenders by a means of a fixed penalty notice. This would enable a much more effective system to be in place. Any further comments on this issue are welcome.

Proposal 23: All fixed penalty offences

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

Proposal 24: Using a hand-held mobile phone while driving

This will be made a specific offence by adding a new provision to the Road Vehicles (Constructions and Use) Regulations (Northern Ireland) 1999 (SR 199 No. 454). The prohibition will cover the use while driving of all mobile phones or similar devices which are not hands-free. The phone need not be physically in a drivers hands for an offence to be committed. The penalty on conviction would be a fine of up to level 3 on the standard scale (£1000).

Proposal 25: Not wearing a seatbelt

We propose to introduce penalty points for the offence of not wearing a seat belt, including a provision whereby adults travelling with unrestrained children would held liable and receive penalty points accordingly. This will be in addition to the fines presently available

Views are also invited on the following issues:

Paragraph 8.2 (e):

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

Paragraph 8.2 (h):

The use of **short term disqualifications**, even for periods as short as a fortnight or a month, could give a sharp warning to drivers whose behaviour, if it did not change, would be likely to result in a much more serious penalty including a prolonged disqualification. We would also welcome comments on the proposal that the PSNI should be able to administer such short term disqualification as a fixed penalty.

Paragraph 9.1.11:

For offences involving death or grievous bodily harm, dangerous driving or aggravated vehicle taking, drivers that show a high level of irresponsibility in the commission of offences will always justify a **substantial preventative period of disqualification**. This consultation document proposes a pattern of minimum disqualifications for the first offence. The question of whether the “special reasons” exception on the basis of which courts may decide not to disqualify in these circumstances should be removed was considered, but there may be

implications in terms of the compatibility of such a measure with the European Convention on Human Rights. We would be interested to receive views as to the merits of such a change.

Paragraph 9.2.6 :

At present, a roadside screening device for drugs, similar to the device used for alcohol, is not available. Accordingly, we propose to give the police the power to require motorists suspected of being impaired due to drugs to undertake a test of their impairment.

Paragraph 9.5.2:

Provision similar to **Section 38 of the Vehicles (Crime) Act 2001** should be introduced to Northern Ireland which would allow road safety activity to be funded by revenue from speed and 'red light running' cameras.

Paragraph 9.10.3:

We would welcome views on the need for permitting exemptions from the requirement not to use hand-held phones while driving. Any suggestions for exemptions should set out the reasons why they are considered necessary.

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

(ii) Responding to this consultation

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

**Road Traffic Penalties Consultation
Criminal Law Branch
Northern Ireland Office
Massey House
Stoney Road
Belfast BT4 3SX**

Fax: 02890 527507

E-mail: clbranch@nio.x.gsi.gov.uk

by 9 June 2003.

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

If you are responding on behalf of a group or organisation please make this clear. Unless confidentiality is requested, it will be assumed that responses can be made available to others. However, if comments are made publicly available, they will not be attributed to individual respondents.

An electronic version of this document is available at **www.nio.gov.uk/justice.htm**

(iii) Tables

Figure 1 Possible first stage of a two-tier fixed penalty regime for speeding

Figure 2 Possible later stage of two-tier penalty regime for speeding offences

1 INTRODUCTION

1.1 Use of the roads, as a driver, a rider, a passenger, a cyclist or a pedestrian is an integral part of daily life. Careful and considerate use of the roads has a direct impact on the safety and well being of us all. Safer roads, considerate driving and free flowing traffic contribute to an improved environment, cleaner air and better health. By introducing more stringent penalties for various driving offences and other provisions, such as requirements for drivers to retrain or requalify, the aim is to increase the level of road safety awareness amongst drivers which will in turn lead to fewer collisions occurring on the road.

1.2 Each year, on average 13,000 people are injured on the roads in Northern Ireland, 1,600 of these seriously, and each year on average 150 people are killed. In 1999/2000 alone, 20 children were killed on our roads, and 201 seriously injured. Comparing 1990/91 with 1999/2000, total road collision casualties increased by almost 25 per cent. The tragedy underlying these statistics is even more unacceptable when we consider that 80 per cent of these collisions are mainly attributable to driver behaviour, particularly carelessness. It is a worrying trend that looks set to continue, with an abnormally high number of people killed in road traffic collisions so far this year.¹

1.3 A crucial element in addressing the problem is enforcement. To this end, the Government is seeking your views on proposals to revise the sanctions available against those drivers who break the law on our roads, and consequently put all of us at risk.

1.4 The Department of the Environment (DOE) has recently published the *Northern Ireland Road Safety Strategy 2002- 2012*. The aims of the DOE consultation which lead to this report were to focus public attention on road safety, to stimulate a re-examination of the problem by society and to identify contributions which organisations, departments and agencies involved in road safety, together with road users and others, can make to achieving further significant reductions in road casualties.

1.5 The DOE consultation took into consideration the Great Britain road safety strategy 2001-2010, *Tomorrow's Roads – Safer for Everyone*, published in March 2000. A principal aspect of achieving reductions in road casualties identified in both the DOE and the Great Britain road safety strategy documents is the enforcement of road traffic legislation. The Great Britain road safety strategy contains a commitment to review road traffic penalties, and in response the Home Office launched a consultation exercise seeking views by March 2001. A final report, containing proposals for Great Britain, was announced on 24 July 2002. The Home Office intends to implement these proposals as soon as parliamentary time allows.

1.6 The proposals presented in this corresponding Northern Ireland consultation, with minor exceptions relating to the role of local government and some additional proposals reflecting the unique Northern Ireland position, mirror those consulted upon in Great Britain. Road safety policy was one of the matters devolved to the Northern Ireland administration. Although law and order matters, including the creation of road traffic and other offences and penalties, remain the responsibility of the Secretary of State for Northern Ireland. Accordingly this Northern Ireland consultation on road traffic penalties is being undertaken by the Northern Ireland Office.

1.7 We would welcome your consideration of the **twenty-five** proposals presented here.

¹ For a broader statistical picture visit the PSNI WebPage at <http://www.psni.police.uk/stats/index>

2 SCOPE OF CONSULTATION

2.1 This consultation focuses mainly on the sanctions available to the courts when dealing with road traffic offending, although it also examines the possibility of creating new offences for Northern Ireland. It discusses a range of options for changes in the structure of penalties to provide a mixture of better enforcement measures and better incentives to change behaviour through training and testing.

2.2 The need for enforcement through the courts can be reduced by effective training and testing, and by “social enforcement”. This means not only raising public awareness of the effect which the taking of drink or drugs can have on driving ability, but also changes in public attitudes. The most obvious recent example of this is drink driving. In a few years, the introduction of the breathalyser, near-mandatory disqualification, and a substantial programme of public information about the risks have transformed social attitudes to this offence. The behaviour of drivers and other road users can be altered by decisions on the part of drivers themselves, and by those around them, their families, their friends, and other road users. But the structure of road traffic penalties also has a part to play by signalling what is dangerous, providing incentives for improvement, and by generally encouraging consideration for other road users.

2.3 Equally important are training, and better information about the sort of behaviour that adds to danger on the roads. That applies particularly to offences seen by some as less serious, or involving little risk to others such as speeding, or driving while uninsured or unlicensed. We must start to change any perception that those are mere regulatory offences. Changes to penalties and other sanctions do not, in themselves, have an immediate and directly measurable effect on road collisions. They do, however, provide the framework within which the enforcement agents - police and courts - can undertake their duties more effectively. In re-examining traffic offences, the aim has been to concentrate on those offences where there may be problems with present sentencing powers and those offences where there is evidence to suggest that improved driver behaviour would have a significant impact on safety. In looking at new traffic penalties, the aim has been to concentrate on those which seem likely to have the greatest impact on driver behaviour.

3 COSTS

3.1 In some cases the proposals in this consultation document will give rise to savings because of a redirection of effort. In others they add to costs, but with an expectation that the contribution to road safety, for which the Government has set long term casualty reduction targets as the focus of its Road Safety Strategy, will produce cost savings elsewhere which cannot be factored into the resource analysis. Consultees should bear in mind that it is always difficult to know what the costs of any proposal will be because of the impossibility of predicting accurately the behaviour of drivers or the decisions of the courts. In this document we have attempted, where possible, to highlight the additional costs that might emerge. It is believed that to implement the proposals in full would amount to a significant net cost and consultees should note that implementation of any proposals that are agreed following this consultation will be dependent on the necessary resources being available.

4 MOTORING OFFENCES AND CRIMINALITY

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

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

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

5 DISTINCTIVE PENALTIES FOR MOTORING OFFENCES

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

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

5.3 For example, many drivers break the speed limit from time to time. Any speeding is a serious matter as it is a risk to safety, but excessive speeding poses the greatest risks. We are particularly concerned to deal with the problem of those who drive at speeds some way above the relevant legal speed limits, thus creating the greatest risks to other road users. In Northern Ireland excessive speed is the principal factor in about one-sixth of all road collisions, and one-third of single vehicle collisions. Small increases in impact speed significantly increase the likelihood of causing serious injury, where a pedestrian is hit by a moving car. For example, where the speed of impact in a collision is 25mph the likelihood of a fatality occurring is 20 per cent. Where the speed of impact is 45mph the likelihood of a fatality is 95 per cent. Where the speeding is so excessive that it is in particular circumstances dangerous, drivers can be charged with dangerous driving as opposed to speeding. In addition, where such speeding results in a person's death, it is often possible for the driver to be charged with a more serious offence.

6 PROBLEMS FOR THE COURTS

6.1 One specific difficulty with traffic offences is that, although the defendant's misbehaviour may not in itself be blameworthy to the same degree as found in other criminal offences, the consequences of the defendant's misbehaviour, while in control of a motor vehicle, may be out of all proportion to his offence. It is right that the courts sentence in relation to the seriousness of the carelessness or lack of consideration which constituted the offence rather than on the basis of the severity of any harm which results. This is a source of distress to the families of victims, and causes difficulties for the courts in cases of careless driving where a death has occurred. At the upper end of the scale, a stringent penalty may be needed. But the factors which distinguish this offence from the greater degree of culpability apparent in dangerous driving have led successive governments to make imprisonment available for dangerous driving, but not for careless driving. Following the Home Office review, this consultation document is not looking specifically at the issue of whether there should be an additional offence of causing death by careless driving. We believe that additional severe penalties need to be available for the offence of careless driving but we are not persuaded that it would be appropriate to make it imprisonable at this stage. New penalties for this offence, with minimum penalties for repeat offenders in this or more serious categories, are set out at paragraph 9.4 below.

6.2 Another difficulty arises where the level of fines which the courts can impose is constrained by the means of the offender, so that the penalty imposed may sometimes be regarded by the public as insufficient recognition of the seriousness of the offence. A slightly different complaint is frequently raised about the offence of driving while uninsured. The court may strongly suspect that the driver has been driving uninsured for a significant period of time. But the court can only deal with the particular instance that was detected, due to the evidential difficulties in demonstrating previous offences. The sentence may, accordingly, be a fine that is less than the driver would have had to pay for insurance during the full period of uninsured driving. These are examples where the court needs a wider range of penalties than purely financial ones to reflect the circumstances of the offence and the offender, but where few would argue that imprisonment is an appropriate - or economically justifiable - response.

7 WHAT INFLUENCES DRIVER BEHAVIOUR?

7.1 The most severe penalties such as imprisonment, available to the courts only for the most serious traffic offences, influence the behaviour of drivers very directly: they are removed from circulation. Such penalties are often accompanied by a prolonged period of disqualification. These severe penalties are clearly needed, in the interest of us all, for those drivers who behave with gross irresponsibility towards the safety of other road users. Severe penalties may also be needed for those whose use of a vehicle is an inherent part of their criminal activity (statistical evidence suggests a strong link between serious road traffic offending and mainstream crime).¹ These are people whose manner of driving may be persistently irresponsible, who ignore penalties such as disqualification if they can, and who, in consequence, are too often unlicensed and uninsured.

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

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

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

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

7.6 For the great majority of drivers, the prospect of disqualification will often be sufficient to encourage compliance with the law and, accordingly, more effective use of that penalty

¹ Home Office Research Study No.206 *The Criminal Histories of Serious Traffic Offenders*

should not in their case mean actual disqualification: it means reminding them more frequently that the risk of disqualification is there. It also means making remedial training available, sometimes in exchange for remission of some of the penalty for an offence, so that those willing to work to improve their driving may improve their chances of avoiding future penalties. There is growing evidence that a remedial approach works. Research during the experimental phase of the Drink Drive Rehabilitation scheme in Great Britain found that offenders who went on courses were less likely to re-offend than those who did not. In Great Britain, police Driver Improvement Schemes are being monitored so that their impact can also be gauged. The Department of the Environment has introduced Drink-Drive courses on a pilot basis in Northern Ireland, these operate in all Petty Sessions areas and will continue until 2005.

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

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

8 POSSIBLE NEW PENALTIES

8.1 The measures set out below have been identified to meet the need for new penalties for the wide range of traffic offences. Section 9 of this consultation document will illustrate how they can be applied, especially by sending a strong message to those who do not change their behaviour after initial warnings and opportunities for retraining, and who offend again.

8.2 The new penalties might be as follows:-

a. Driver retraining and improvement programmes should form a constructive part of the ‘penalty’ in a wide range of cases. Police forces in other parts of the UK have had considerable success with driver improvement programmes, which have been offered to drivers as an alternative to prosecution. This road safety initiative has delivered significant benefits in England and Wales and we would expect it to have a similar positive impact in Northern Ireland.

b. At the moment some drivers believe that they have a certain number of ‘graces’ before they will be disqualified. We want to discourage this view. One way of achieving this is to **re-value the penalty points system**. This would give the courts greater scope and flexibility in determining the number of points awarded according to the seriousness of the offence as there would be a larger number of points available to them for individual offences. Under this new system, **20 points** (in place of 12 as now) **would result in totting up disqualification**. **New drivers’ licences should be subject to revocation at 10 points, instead of six as at present.** It is important to note that this proposal does not mean that an offender (whether a new driver or otherwise) would be able to commit more offences before being disqualified than under the existing system. The other purpose of this change is to facilitate the new fixed penalty regime for speeding offences, described at paragraph 9.5.5 below. Existing points will be scaled up to ensure that those who already have points on their licences do not receive extra ‘graces’.

c. Move to a situation where any driver disqualified for more than 56 days but not more than 12 months, or any driver receiving points on his licence which take him up to 10 or more (half way to “totting up” under the new points values) should be offered the opportunity to undergo a driver retraining and improvement programme. Successful completion of the scheme, for which the driver would pay, would earn 20 per cent remission of the period of disqualification, or a remission of five points at the new value described above. It should not be available to a driver more frequently than once in two years - if he did not learn from the experience, on a second occasion he could not expect mitigation of the points penalty or disqualification. In cases where a driver’s carelessness is wholly responsible for the commission of an offence such a system might offer an alternative to prosecution. In this instance the course would be designed to correct poor driving habits arising from errors of judgement, without the need to bring the case to court.

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

e. To ensure thorough retraining for drivers whose behaviour results in a substantial period of disqualification, such drivers should as a general rule have to pass a driving test again. It is suggested that **re-testing should be an automatic consequence of a substantial period of disqualification, in addition to any other penalty.** We welcome views as to what the length of this period should be. In Northern Ireland mandatory re-testing already applies to dangerous driving offences; manslaughter; causing death of grievous bodily injury by careless driving when under the influence of drink or drugs; driving or attempting to drive while unfit; driving or attempting to drive with excess alcohol; and failing to provide a specimen in the case of an offence involving obligatory disqualification.

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

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

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

i. For a period of three years after resuming driving following disqualification for more than 56 days, any fresh penalty points or endorsements awarded as a result of further offences or fixed penalties would remain on the licence for six years, not three. This would mean that those whose driving behaviour was bad enough to result in such a period of disqualification would return to driving 'on probation'.

j. For all offences capable of being dealt with by way of fixed penalty (including the new regime for fixed penalty speeding offences described at paragraph 9.5.5 below) **a mandatory minimum penalty for such offences when dealt with in court should be set, at the same level of endorsement points and financial penalty as would apply if the offence were dealt with by way of fixed penalty.** This would be intended to deter those receiving a fixed penalty notice from opting for trial unless they believed that they had grounds for pleading not guilty. They would know that, in the event of a finding of guilt, they would certainly receive a penalty no lower than the fixed penalty - and it might be higher.

k. Until now, certain community penalties have been available only where imprisonment can be imposed. In future, for some traffic offences, it might be possible to empower **the courts to use community sentences in cases where imprisonment is not available.** This new penalty is referred to below as "decoupled" community sentences. This consultation is proposing that community penalties should be available for a wide range of offences. Given the range of traffic offences for which these new penalties could be available, the Government will welcome comments on this suggestion and on the form which constructive penalties of

this sort might take. It is popularly thought, for example, that those guilty of bad driving, particularly causing a collision, might perform service in the accident and emergency department of a hospital.

l. Forfeiture of the vehicle is a little used, and little known, existing penalty for the more serious offences. The courts often find it unsuitable where, for example, the driver is not the owner of the vehicle, or its loss would inflict unjustifiable hardship on others guilty of no offence. Those problems are likely to remain, and permanent forfeiture is unlikely to be used very frequently. But the courts might be a little better able to use the power if the procedures were modified. At present the police are responsible for impounding and storing the vehicle. A better alternative might be to take enforcement of such a penalty out of the hands of the police, and arrange for it to be carried out on a contractual basis by vehicle-removal companies. Costs would be defrayed out of the sale of the vehicle, with any sums over going first to pay unpaid fines, and then to the exchequer. Forfeiture of the vehicle is a serious penalty, the impact of which varies with the value of the vehicle. Its value would be something to be taken into account by the court in deciding whether to impose that sentence, and whether any other sentences should be imposed at the same time. It could be useful in the case of offenders where past experience showed a reluctance (as distinct from an inability) to pay fines.

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

Summary of proposals for new penalties and assessment of their resource implications.

8.3 Many items in the list of new or adapted penalties in paragraph 8.2 above are referred to in Section 9 in the context of the particular offences where they might be used, on which comments are invited. But some of those items are of general application, and are not separately considered below. They are summarised here in order that those who wish to do so may comment on them.

Proposal 1 Revaluation of points

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

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

Proposal 2 Retraining

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

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

Further, there should be Driver Improvement Courses in operation which offer an alternative to prosecution for offences where a driver's mistake, rather than intent or dangerous driving, has led to a collision. The course will seek to correct poor driving behaviour arising from errors of judgement without the need to bring the case to court. The courses would provide an incentive for improved driver behaviour and would reduce the need for enforcement through the courts.

Resource implications of proposal 2: *This will result in fewer “disqualification days” awarded. It is assumed that this will be reflected in a reduction in the incidence of cases of driving while disqualified. As driving while disqualified is an imprisonable offence, there will also be a saving in the number of prison places.*

Proposal 3 Totting up disqualification as a fixed penalty

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

Resource implications of proposal 3: *This should result in savings from the reduction in number of hearings.*

Proposal 4 Long-life points

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

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

Proposal 5 Re-qualifying after disqualification

A driver sentenced to disqualification for a substantial period of time could be required, as an automatic consequence of not being allowed to drive for such a period, to re-qualify. Views on the period of time that would be appropriate are invited. As for any new driver, this would involve accompanied driving on a provisional licence and other requirements applicable to new drivers. A disqualified driver previously qualified to drive several types of vehicle and who is required to undergo a retest, whether an extended or ordinary test, would not be allowed to resume driving large goods vehicles or passenger carrying vehicles without retaking a test for such categories, even if his offence had been committed in a smaller vehicle such as a motor car. There is an issue here about how best to rate one type of licence against another (e.g. one type of bus versus a type of lorry), but it should be possible to provide a meaningful hierarchy.

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

Proposal 6 Decoupled community penalties

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

Resource implications of proposal 6: *Use of community penalties where formerly fines were imposed would result in a loss of fine income that should be counted as a cost to the system. This should be added to the increased Probation Service costs involved in administering the community penalties. There will be further costs in holding the extra court hearings for breaches of the new CSO. In view of the likely high cost of this proposal it might be some time before it could be implemented.*

Proposal 7 Forfeiture of vehicles

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

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

9 PROPOSALS INVOLVING EXISTING PENALTIES (BY OFFENCE CATEGORY)

9.1 Offences involving death or grievous bodily injury, dangerous driving, or aggravated vehicle taking

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

9.1.2 Next in the hierarchy of seriousness is, under the Road Traffic (NI) Order 1995, **causing death or grievous bodily injury by dangerous driving**, for which the maximum penalty is 10 years imprisonment, an unlimited fine, an obligatory period of disqualification (which could be for life) and, if permitted to return eventually to driving, an extended retest. Forfeiture of the vehicle is also available.

9.1.3 Public attention has focused in particular on the courts' use of imprisonment for this offence and there have been calls to increase the maximum sentence available. Increasing the maximum from 10 to 14 years would mark the seriousness of the offence but would bring it within the range of other quite different offences for which this sentence is available. These offences are typically committed by professional criminals who in effect set out to live their lives outside the law. However, due to a number of serious incidents in Great Britain the Home Office was concerned that the current level of 10 years did not allow judges sufficient scope to deal appropriately with the most serious cases and, therefore, proposed to raise the maximum penalty for this offence to 14 years imprisonment. Northern Ireland has witnessed similar problems, with an unacceptably high number of fatal road traffic collisions in the early part of 2003. Therefore, as part of the Governments efforts to tackle this, we intend to mirror the Home Office proposals on this offence in Northern Ireland. Although no changes are currently proposed on the available powers of fine, we would welcome views on whether there should be an automatic disqualification for life and/or an automatic minimum penalty of one year's imprisonment.

9.1.4 So far as the offence of **causing death or grievous bodily injury by careless driving while under the influence of drink or drugs** is concerned, the careless driver's responsibility for the resulting death or injury is greatly increased by being under the influence of substances known to affect judgement and driving ability. The maximum sentence of imprisonment for this offence is 10 years. However, in light of the proposed increase for causing death or grievous bodily injury by dangerous driving, there is obvious logic in a similar increase for this offence, therefore we propose that the maximum penalty be increased to 14 years. We would also welcome views on whether there should be an automatic disqualification for life and/or an automatic minimum penalty of one year imprisonment.

9.1.5 In England and Wales there is the offence of **causing death by aggravated vehicle taking**. At present it is subject to a maximum penalty of five years imprisonment but this clearly is an anomaly when compared to the other causing death offences and it has been proposed to increase the penalty to 14 years in line with the offences described above. There is no equivalent offence of causing death by aggravated vehicle taking in Northern Ireland.

Indeed there is no offence of aggravated vehicle taking, an issue that is dealt with below (paragraph 9.1.10). If an offence of aggravated vehicle taking were to be created in Northern Ireland, it would be logical also to create the offence of causing death or grievous bodily injury¹ by aggravated vehicle taking and to impose a maximum penalty of 14 years imprisonment.

9.1.6 On the whole these offences do not seem to be suitable cases in which to influence the sentence of the court more directly, for example by requiring them to impose a mandatory minimum prison sentence or automatic disqualification for life, given the wide variation of cases which they must deal with (although we would welcome views on this). Nor do the varying financial circumstances of offenders permit minimum fines. A severe minimum for a defendant of limited means would be a derisory penalty for some other offenders. However, we would welcome views on whether it might be appropriate to impose an automatic disqualification for life and/or an automatic minimum penalty of one year imprisonment.

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

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

9.1.9 In the case of the next most serious offence, **dangerous driving**, the maximum penalty is two years imprisonment. In England and Wales there is evidence that courts are constrained by the maximum penalty available to them. Although there isn't equivalent evidence in Northern Ireland (where the number of cases is very much smaller), given the level of irresponsibility shown, it is logical that we should follow the Home Office recommendation that the maximum sentence should be increased to **five years**.

9.1.10 In Northern Ireland there is no equivalent to the offence in Great Britain of **aggravated vehicle taking**. This is the offence where the person who has taken a vehicle without consent drives dangerously or causes an accident. The offence would typically be charged in instances of so-called joy-riding. It currently carries a maximum penalty of two years imprisonment but the Home Office intends to increase this to five years. The behaviour giving rise to the offence is a matter of concern in Northern Ireland and there seems to be no good reason why this offence is not available here. It is suggested that this offence should be created and, in line with the suggested maximum for dangerous driving, should carry a maximum penalty of five years. (Were this new offence created it would be possible to create the new offence of causing death or grievous bodily harm by aggravated vehicle taking (see paragraph 9.1.5 above.)

9.1.11 In respect of all these offences, there may be a case for making clear to drivers that the high level of irresponsibility shown in the commission of such offences will always justify a **substantial preventative period of disqualification**. The courts already impose significant periods of disqualification in such cases, but there may be some safety benefit in removing any shadow of doubt from the minds of those whose driving behaviour may risk committing these offences. This consultation document therefore proposes a pattern of minimum disqualifications for the first offence. The question of whether the "special reasons" exception on the basis of which courts may decide not to disqualify in these circumstances should be removed was considered, but there may be implications in terms of the compatibility of such a measure with the European Convention on Human Rights. However, we would be interested to receive views as to the merits of such a change. Consideration of this issue will need to

¹ In England and Wales, unlike Northern Ireland, causing grievous bodily injury is not part of these offences.

take account of the potential impact on the mobility of disabled drivers as discussed at paragraph 7.5 above.

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

9.1.13 Thus, for this group of offences, involving death or grievous bodily injury or dangerous driving, the Government proposes the following:-

Proposal 8 Causing death or grievous bodily injury by dangerous driving

Increase in maximum imprisonment penalty to 14 years, no change in powers of fine, or in the requirement of extended retest. Disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death or grievous bodily injury by dangerous driving, or causing death or grievous bodily injury by aggravated vehicle taking (when created for Northern Ireland), or causing death or grievous bodily injury by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

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

Increase in maximum imprisonment penalty to 14 years, no change in powers of fine, but disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death or grievous bodily injury by dangerous driving, or causing death or grievous bodily injury by aggravated vehicle taking (when created), or causing death or grievous bodily injury by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

Proposal 10 Creating an offence of causing death or grievous bodily injury by aggravated vehicle taking

This will be similar to the existing offence in England and Wales, though with the added component of 'causing grievous bodily injury' to fit into the Northern Ireland context. The maximum term of imprisonment would be 14 years in line with the above two offences. Disqualification to be for a minimum of three years (or, possibly, for life). Disqualification to be for life (possibly reviewed after a substantial period of time, 10 years for example) where the defendant had previously committed an offence of dangerous driving, or causing death or grievous bodily injury by dangerous driving, or causing death or grievous bodily injury by aggravated vehicle taking (when created), or causing death or grievous bodily injury by careless driving while under the influence of drink or drugs. Permanent or temporary forfeiture of the vehicle would be available.

Proposal 11 Creating an offence of aggravated vehicle taking; dangerous driving

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

Resource implications of proposals 8-11 (taken together as they form a group defined by similarity of offence - the most serious offences -and similarity of proposed treatment):

It is expected that these will require an increased number of prison places. There will also be additional costs associated with the additional level of disqualification awarded. And, to the extent that the more severe penalties do not act as a deterrent, there will be costs involved in the shift of business from the magistrates' court to the Crown Court. In addition the possibility of more severe penalties might lead to more cases being contested, again with associated costs.

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

9.2.1 The Northern Ireland Road Safety Strategy 2002-2012, issued by the Department of the Environment in November 2002, identifies drink driving as a particular concern.¹

9.2.2 There are already **special arrangements for high risk drink driving offenders** available in Great Britain, defined as those with an alcohol level above 200 milligrams per 100 millilitres of blood, or who offend for a second time within 10 years, or who refuse to provide a sample. This is known as **the High Risk Offenders (HRO) Scheme**. High risk offenders are required to take a medical test before regaining the licence at the end of their period of disqualification, in order to satisfy the Secretary of State's advisers that they do not have a serious alcohol problem. They may therefore be refused a new licence on medical grounds after the court's order of disqualification has expired. **We invite comments on the possibility of the introduction of a similar HRO scheme for Northern Ireland.**

9.2.3 Under current provisions (*Road Traffic Offenders (NI) Order 1996*) persons convicted of any drink-drive offence carrying obligatory disqualification are subject to disqualification for a minimum period of twelve months unless special reasons apply. The courts currently have discretionary powers to disqualify where the offender was found to be in charge of a vehicle whilst under the influence of drink or drugs rather than actually driving or attempting to drive. We do not propose any change to the nature of the disqualification powers of the courts or the current minimum periods for first time offenders in such cases. Further, we do not believe there is any reason to change the judge's discretionary power with regard to the "in charge" offences because the level of culpability is significantly lower than that involved in the "drive or attempt to drive" offences.

¹ This consultation document does not cover the matter of the basic level of the drink-drive offence at 80mg blood alcohol maximum level. DOE has indicated that it will carry out a public consultation on this issue as part of the Road Safety Strategy.

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

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

9.2.6 An issue closely related to this is testing for **driving while under the influence of drugs**. While alcohol is widely regarded as the chief threat to road safety, drugs are an emerging problem. Both illegal and prescription drugs can also greatly impair a motorist’s driving performance. At present, a roadside screening device for drugs, similar to the device used for alcohol, is not available. PSNI have developed dedicated teams, tasked to address this issue using tests of co-ordination. However, officers are unable to oblige suspected offenders to undergo testing and therefore their effectiveness is limited to those cases where suspects volunteer to take the tests. Accordingly, we propose to give the police the power to require motorists suspected of being impaired due to drugs to undertake a test of their impairment.

9.2.7 Another important issue will be the relationship between the penalty for the proposed offence of driving or attempting to drive while having a higher level of alcohol and the offence of driving or attempting to drive whilst unfit through drink or drugs. This latter offence may be charged in circumstances in which a charge of failing to provide a specimen would not be appropriate as, had the offender provided a specimen, the level shown could have been either low or high. Accordingly it would be inappropriate to consider replicating the proposals for failing to provide a specimen and make the minimum period of disqualification for driving whilst unfit the same as that for the higher level offence. We believe that reliance can be placed on the courts to exercise their discretion. This may be achieved with the assistance of guidelines, in a manner which ensures that, where the evidence suggests that the offenders ability to drive safely was seriously impaired, the period of disqualification imposed (which will continue to be subject to a minimum of 12 months) is comparable to that which would have been imposed had the offender been shown to have driven whilst being over the higher level.

9.2.8 As regards repeat offending, all drink-drive offences (including failing to provide a specimen where required for ascertaining the level of alcohol or whether the provider is unfit to drive) which attract obligatory disqualification (i.e. excluding the “being in charge offences”) now carry a minimum period of disqualification of three years upon a second conviction within ten years (*Road Traffic Offenders (NI) Order 1996*). We make no proposal

to increase the minimum period in these circumstances but will consider any views as to whether an increase is favoured and what the appropriate period might be. As to the higher level alcohol offence, repeat offending would also need to attract a higher minimum period of disqualification.

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

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

Resource implications of proposal 12: *The resource implications of this proposal will be assessed once a firm recommendation for the appropriate minimum period of disqualification is made following consultation.*

Proposal 13 Repeat drink-drive offending

For any second drink-drive offence within 10 years, disqualification, where applicable, should at least remain at the current minimum period of three years but could be increased. We invite views on this issue. The second drink-drive offence within 10 years would also result in a requirement to undertake an extended retest, in place of an ordinary re-test, before the driving licence could be regained. These penalties would apply in respect of any combination of offences under sections 15(1), 16(1)(a) and 18 (where the sample is required to ascertain the level of alcohol or fitness to drive) of the Road Traffic (NI) Order 1995 - e.g. one drink and one drug offence within this category would trigger the minimum penalty. We propose that two convictions for drink-drive offences within ten years, in which one or both of the offences is a higher level offence or failing to provide a specimen where disqualification is obligatory, should attract a minimum period of disqualification in excess of that applying to repeat commission of basic offences (currently three years).

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

9.3 Driving while disqualified, while unlicensed, or while uninsured

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

penalties are six months imprisonment, and a fine at level 5 on the standard scale (currently £5,000), further disqualification and the possibility of a retest. There seems little scope for further increasing these penalties for first offenders - it is noteworthy that the courts already use their existing powers severely in these offences.

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

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

9.3.5 **Driving while unlicensed**, in some cases, can mean that the driver has not undergone the necessary training. He or she may lack the necessary experience and skill in controlling the vehicle. Perhaps more important, untrained and untested drivers may have dangerous perceptions of what is to be expected of their own behaviour, and that of other road users, on our congested roads. It should be remembered, however, that this offence may also be committed by qualified drivers who have failed to renew an expired a license.

9.3.6 **Driving while uninsured** means, in the event of a collision, that those who suffer loss as a result may not be adequately compensated. Though there are some limited arrangements, through the Motor Insurers Bureau, to meet some such uninsured losses, those arrangements are in effect funded by means of a levy on the insurance payments of all law abiding drivers. Uninsured driving, in addition to its other dangers, drives up the costs experienced by others.

Proposal 14 Driving while disqualified

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

Resource implications of proposal 14: *This proposal will divert offenders from the penalty of imprisonment though is expected to lead to some increase the workload of the probation service.*

Proposal 15 Driving without a licence; causing or permitting a person to drive without a licence; failure to comply with any conditions prescribed for driving under provisional license where conditions applicable to driving under full license or causing or permitting a person to drive while under age

In addition to existing penalties, “decoupled” community penalties to be available in any

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

Resource implications of proposal 15: *Use of community penalties has been addressed more widely above (at proposal 6).*

Proposal 16 Driving while uninsured

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

Resource implications of proposal 16: *Use of community penalties has been addressed more widely above (at proposal 6).*

9.4 Careless and inconsiderate driving

9.4.1 Careless and inconsiderate driving spans a wide range of blameworthiness. The difficulties surrounding the appropriate allocation of conduct either side of the threshold between careless and dangerous driving have already been discussed at section 6.1 above. In view of the relatively serious nature of offending which can fall within the current formulation of the offence of careless driving this consultation document believes that there is a clear role for mandatory minimum penalties for repeat offenders. These are set out below. This consultation also believes, however, that the proposed mandatory minimum penalties would be inappropriate for the less serious end of the scale of conduct which is sometimes dealt with as careless driving. Much of this type of conduct constitutes being behind the wheel of a vehicle whilst trying to undertake other activities in such a way as to cause temporary lapses of concentration and thereby be a potential danger to other road users, i.e. using a mobile phone¹, eating and drinking, etc. It does not necessarily constitute the actual manoeuvre of a vehicle in a manner which is a danger to other road users. This type of conduct, which is often dealt with as careless driving, may be more appropriately charged under the construction and use offence of failing to have proper control of a vehicle (contrary to article 58 of the Road Traffic (NI) Order 1995 and regulation 120 of Motor Vehicles (Construction and Use) Regulations (NI) 1999), which carries a maximum penalty of £1,000. This consultation makes no firm proposals on this issue. A shift in charging practice, however, could be implemented by the use of operational guidelines and would not require any legislative change. Such a measure would help to ensure that offenders that fall under this category would not be subject to the proposed mandatory minimum penalty. More generally, there is a need to widen the range of penalties available to the courts, and to provide options to the courts for dealing more severely with any drivers whose carelessness seems not to be isolated but to be a more persistent feature of their driving.

¹ Although this is widely regarded as a problem in itself, see paragraph 9.10

Proposal 17 Careless or inconsiderate driving.

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

“Decoupled” community penalties, but not imprisonment.

A fine at level 5 on the standard scale (currently £5,000) , in place of level 4 (currently £2,500).

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

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

Resource implications of proposal 17: *There would be a small amount of fine income generated by this proposal .*

9.5 Speeding

9.5.1 Breaking the speed limit is by far the most common motoring offence. Research has shown that for each 1 mph reduction in average speed, collision frequency is cut by 5 per cent. Other research suggests that one in three of those drivers who have been penalised for speeding offences in the last three years had been involved in an collision as a driver in the same period. Furthermore motorists who grossly exceed speed limits greatly increase the risk to both themselves and to others.

9.5.2 The significant savings in collisions which can be achieved by dealing with speed, can only be made if the right balance of measures is used. The issue is being addressed in a number of ways. First, it is planned to enhance the enforcement efforts of the police through the operation of safety enforcement cameras under a self financing arrangement, in line with Great Britain. Further on this issue, we would welcome comments as to whether a provision similar to **Section 38 of the Vehicles (Crime) Act 2001** should be introduced to Northern Ireland which would allow road safety activity to be funded by revenue from speed and ‘red light running’ cameras. Pilot projects in GB have shown that intensified use of the system has a real impact on road safety through curtailment of speeding and a reduction in casualties. Secondly, the penalties have to be appropriate to provide an effective framework of sanctions; the focus of this consultation . Pilot projects in Great Britain have shown that intensified use of the system has a real impact on road safety through curtailment of speeding and a reduction in casualties. Secondly, the penalties have to be appropriate to provide an effective framework of sanctions; the focus of this consultation . Thirdly, the whole regime must be adequately understood and command the respect of the motoring public. Offences of **speeding** make up the category of offences for which this consultation proposes the most substantial changes.

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

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

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

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

b. Although this consultation has not drawn any conclusions as to the precise speeds at which the higher level of penalty would apply, for the purpose of illustration Figure 1 sets out (in the second column) the maximum speed for which a standard fixed penalty might be offered. Above that, a higher fixed penalty would apply; but above the second threshold (fifth column) the case would have to be taken to court. For the purposes of illustration the figures reflect a simple threshold formula of, on the standard penalty, 10mph above the speed limit, and for higher penalty, 25mph above the limit. The exception to this is in the 20mph limit where, because the environment is invariably one where pedestrians are found, lower thresholds would be appropriate. **These thresholds are provided for illustration purposes only and do not represent a blueprint for the scheme.** Views on the appropriate levels of these thresholds are invited.

c. Figure 1 shows, for first tier offences, a tariff of penalty points no higher than that prevailing now (after taking account of the proposed revaluation of points, under which five new points would equate to the present tariff of three points for speeding). The important difference is that, for upper tier offences, there would be an increase in the financial penalty but a proportionately greater increase in the points penalty.

Speed Limit mph	Standard Speeding Fixed penalty offence			Higher Speeding Fixed penalty offence				
	Speed to:	up	Penalty Points	fine	Speed to:	up	Penalty Points	fine
20	25		5	£60	30		12	£90
30	40		5	£60	55		12	£90

40	50	5	£60	65	12	£90
50	60	5	£60	75	12	£90
60	70	5	£60	85	12	£90
70	80	5	£60	95	12	£90

**FIGURE 1
POSSIBLE FIRST STAGE OF A TWO-TIER FIXED PENALTY REGIME FOR SPEEDING.**

d. In later stages, if experience and research evidence justified it by reductions in the rate and severity of speed-related casualties, the two tier structure could be further modified. That process might continue through several steps, both so that the safety impact could be tested, and so that drivers would have the opportunity to adjust their behaviour in the light of new penalties based on objective evidence of their effect. A rather later stage, for which changes in technology, police practice and driver behaviour might be needed, could be as illustrated in Figure 2 below.

e. The approach illustrated in Figure 2 would increase the risk of disqualification for those who exceeded the limit by a wide margin - they would know that more than one speeding offence, any one of which was in the upper tier, would virtually guarantee a period of disqualification. The impact on drivers who generally respected the limits would be less threatening, though the slight increase in lower tier points would mean that three modest speeding offences would result in totting up disqualification, instead of four as at present.

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

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

Proposal 18 Speeding offences
<p><i>A new fixed penalty system for speeding offences should provide for two levels of fixed penalty, with a higher level of points awarded to those exceeding the limit by a wide margin so as to increase the risk to them of losing their licence through totting up.</i></p> <p><i>The levels of penalty, and the speeds at which they would apply, should be altered in stages, at well-advertised intervals and on a basis supported by research into the safety effects of earlier stages in this long-term process of change.</i></p> <p><i>The objective of this sustained programme would be to adjust driver behaviour, and public attitudes to speeding, over time and on the basis of objective evidence. Each stage should be capable of being evaluated before the next is decided upon.</i></p>

Resource implications of proposal 18: *We believe that there will be some additional disqualification days awarded under this proposal. This will be combined with the cost of additional court hearings and prison places.*

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

FIGURE 2
POSSIBLE LATER STAGE OF TWO-TIER PENALTY REGIME FOR SPEEDING OFFENCES.

9.5.6 There is an anomaly which exists in the current Northern Ireland road traffic legislation concerning the imposition of **temporary speed restrictions**. The Road Traffic Regulation (NI) Order 1997 allows temporary speed restrictions to be imposed for certain specified purposes and also provides that it is an offence to breach these limits. The commission of such an offence attracts a fine of up to level 3 on the standard scale both in Northern Ireland and in GB. However, while the relevant GB legislation also provides for discretionary disqualification for exceeding a speed limit, with obligatory endorsement and 3-6 penalty points, the Northern Ireland legislation does not. There appears to be no reason for this divergence, indeed there is no such difference in the law on permanent speed limits. We propose, therefore, to bring the penalties available in Northern Ireland in line with those in GB by amending the Road Traffic Offenders (NI) Order 1996.

Proposal 19 Temporary Speed Limits

The Road Traffic Offenders (NI) Order 1996 will be amended to bring Northern Ireland in line with GB. This will allow for discretionary disqualification for exceeding a temporary speed limit, with obligatory endorsement and 3-6 penalty points as well as the currently available fine.

Resource implications of proposal 19: *We anticipate that the effects of this proposal are likely to be minimal.*

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

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

Proposal 20 Fraud with parking tickets, deception with licences, vehicle test certificates, etc and fraudulent use of documentation

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

9.7 Using vehicles in a dangerous or overloaded condition

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

Proposal 21 Using vehicles in a dangerous or overloaded condition

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

Resource implications of proposal 21: *We anticipate that the effects of this proposal are likely to be minimal.*

9.8 Misuse of bus lanes

9.8.1 Misuse of bus lanes can be a serious problem for the flow of traffic and it can have safety consequences where the presence of other vehicles means that buses cannot let passengers on or off near the kerb at designated places. The level of fixed penalty for bus lane offences was increased to £30. The Department of Regional Development is currently considering the possibility that it should be able to enforce bus lanes as well as the police, this may involve the use of cameras.

Proposal 22 Bus lanes

The Department for Regional Development should be empowered to deal with offenders by a means of a fixed penalty notice. This would enable a much more effective system to be in place. Any further comments on this issue are welcome.

Resource implications of proposal 22: *We anticipate that the effects of this proposal are likely to be minimal.*

9.9 Other fixed penalty offences

9.9.1 The Vehicle Excise and Registration Act 1994 contains a number of offences relating to vehicle excise duty and vehicle registration documentation. Most of these currently attract a level 3 fine (currently £1,000). The Government has looked at the penalties regime for the

vehicle excise duty offences, taking into account both internal and external relativities. We remain unconvinced of the need to change the levels of penalty.

9.9.2 In relation to vehicle registration, the Great Britain Vehicle Crime Reduction Action Team document, “Tackling Vehicle Crime - a five year strategy”, discusses the way in which changes to this part of the law might contribute to reducing vehicle crime. The document notes that there are three main car crime problem areas which could be reduced by improving vehicle registration procedures. These are:

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

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

9.9.4 The Government has concluded that this would not be consistent with the current framework of offences, within which all the main offences in the Vehicle Excise and Registration Act 1994 are treated with the same level of seriousness. Additionally, the approach adopted here seeks to enhance the role of endorsement but in keeping with its traditional application to offences where road safety considerations are relevant. It would require strong justification, which appears not to be present here, to depart from that rationale. However, we would welcome comments on whether there might be other ways in which offending of this kind could be appropriately punished, e.g. “de-coupled” community sentences.

9.9.5 Similarly for a range of other fixed penalty offences we do not propose to make changes. The Government does, however, acknowledge there may be some safety related offences for which endorsement could be an effective penalty and we would welcome views on that.

9.9.6 More generally, however, all fixed penalty offences should be brought within the minimum penalty regime described at paragraph 8.2 (j). That is to say, the minimum penalties for those offences when tried in court would be set at the fixed penalty level so that the only purpose in challenging the fixed penalty in court would be where there was a basis for pleading not guilty. The penalty imposed by the court could not be lower on conviction than the fixed penalty and might be higher.

Proposal 23 All fixed penalty offences

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

Resource implications of proposal 23: *We anticipate this would have the effect of fewer court hearings.*

9.10 Using a mobile phone while driving

9.10.1 While mobile phones can be of great assistance to drivers, they can also represent a real risk to road safety. At present the police may prosecute drivers under **Regulation 120 of the Road Vehicles (Constructions and Use) Regulations (Northern Ireland) 1999 (SR 199 No. 454)** for failing to have proper control of their vehicle. Offenders may be offered a fixed penalty notice of £30. If not, the fine on conviction is a maximum of £1,000 (Level 3). In some circumstances a prosecution for careless or dangerous driving may be justified. As outlined above, the penalties for these offences include endorsement, disqualification and even imprisonment in the most serious cases.

9.10.2 Though the Highway Code makes it clear that drivers should never use a hand-held mobile phone and that using a hands-free phone is also likely to distract a driver's attention from the road. The Government is concerned that too many drivers are using their phones while on the move. In these circumstances, it has been decided that further action is needed to send a clearer message to motorists that they should not be used. We are now considering an addition to the Northern Ireland construction and use Regulations to make it a specific offence to use a hand-held mobile phone while driving. The proposed new regulation is not intended to weaken existing legislation in any way. The police would continue to be able to use a range of options for prosecution under existing legislation appropriate for the circumstances of each case.

9.10.3 The Government recognises that research shows that using a hands-free phone is also distracting and increases the risk of having an accident. We have considered whether a specific offence should include hands-free phones but believe that such a provision would be largely unenforceable. We do not therefore believe that it would be practical to include hands-free phones within the scope of the proposed new regulation. The Government has also considered if exemptions should be permitted, eg to enable the police and emergency services to use hand-held phones if necessary in the course of their duties. Our initial view is that as we are not proposing to introduce a specific ban on hands-free phones, there is no justification for permitting exemptions from the requirement not to use hand-held phones. We also consider that there should be no exemption of very short-term use (such as "hang on while I pull over and stop"). Nevertheless, the Department would welcome views on the need for exemptions. Any suggestions for exemptions should set out the reasons why they are considered necessary.

9.10.4 If an amendment was made to the Northern Ireland construction and use Regulations, offenders would be subject to a fixed penalty notice, currently £30 or a fine on conviction of up to £1000. New legislation would be needed to apply discretionary disqualification and penalty points to such an offence. You are also invited to say if you consider whether any new offence should be subject to such sanctions.

9.10.5 The existing regulations are the Road Vehicles (Constructions and Use) Regulations (Northern Ireland) 1999 (SR 199 No. 454). Regulation 120 currently requires a driver to be in a position to maintain control of their vehicle at all times. It states "**A person shall not drive or cause or permit any other person to drive a motor vehicle on a road if he is in such a position that he cannot have proper control of the vehicle or have a full view of the road and traffic ahead**". The proposal would add a new provision to the Regulations, which would apply to the driver of any motor vehicle. This would specifically prohibit the use of hand-held mobile phones so that the police would be able to prosecute anyone driving a

vehicle on a highway or other road to which the public have access while using any type of hand-held mobile telephone or similar device. We propose that the new regulation should apply in all circumstances other than when the vehicle was parked and with the engine off. This would mean that the prohibition would apply even if a vehicle was paused at traffic lights or stopped in a temporary traffic jam or in very slow moving traffic.

9.10.6 As with Regulation 120, we consider that the proposed new Regulation should enable the police to take action if anyone 'causes or permits' the use of a hand-held mobile phone by a driver. This should make it clear to employers that they cannot expect their employees to use a hand-held phone while driving. **We do not propose that a passenger should be prohibited from using a mobile phone but are concerned that a passenger should not hold it for a driver to use in a moving vehicle.** There is no intention however to apply any new provision to someone who calls a mobile phone that is answered by a person who is driving at that time. The intention is for the new regulation to prohibit the use of hand-held mobile phones or other similar hand-held devices that permit 2-way communication, whether the medium is speech, text or other forms of data. It would include equipment such as radio microphones. However, there is no intention to prohibit the use of in-vehicle equipment that has been designed to support the driving task. Although the new regulation should apply generally to the drivers of buses and coaches, we would not want to interfere with the provision that allows use of a microphone while driving to make an announcement to passengers in an emergency using the in-vehicle loud speaker system.

9.10.7 We consider that the use of a hand-held mobile phone while driving should have a wide interpretation. We do not consider that it should be necessary for phones to be switched off while the vehicle is on the move because that would be difficult to enforce. But we do consider it is necessary to prevent drivers speaking or listening to a call on a hand-held phone or using a hand-held phone interactively in any way (including using the internet) or composing or interrogating a text message, whilst driving. **The proposed prohibition would apply to the use of all mobile phones or similar devices that are not hands-free. We do not consider that the phone needs to be physically held in a driver's hand in order to commit an offence.** This would prohibit the use of hand-held phones used with an earphone and microphone whether using a wire, or wireless, connection. Even though they can be used 'hands-free' to some extent, these still require the user to hold the phone in order to press buttons or to read a message on the phone's screen. Nor should a driver escape prosecution because a phone was being held to the ear by other means (eg a shoulder).

9.10.8 We believe that a hands-free phone would be one that did not require the driver to significantly alter their position in relation to the steering wheel in order to use it. It should be permanently wired into the vehicle and use one or more speakers permanently fixed in the vehicle; or be plugged into a unit in the vehicle (commonly a cradle on the dashboard) thereby directly connecting it to fixed speaker(s) in the vehicle. This would not include those types of car phones that are permanently wired into the vehicle but require hand operation (eg telephone style handset that needs to be held up to the ear/mouth).

9.10.9 It may not be necessary to define all the above circumstances in the regulations, but the above points indicate the scope of the proposal.

Proposal 24: Using a hand-held mobile phone while driving

This will be made a specific offence by adding a new provision to the Road Vehicles (Constructions and Use) Regulations (Northern Ireland) 1999 (SR 199 No. 454). The prohibition will cover the use while driving of all mobile phones or similar devices which are not hands-free. The phone need not be physically in a drivers hands for an offence to be

committed. The penalty on conviction would be a fine of up to level 3 on the standard scale (£1000).

Resource implications of proposal 24: *There should be no direct costs on drivers as a result of introducing a prohibition as proposed. Those who currently use hand-held mobile phones while driving would have to use their message service and take or make calls when parked*

9.11 Not wearing a seatbelt

9.11.1 The non wearing of seatbelts is a major problem on the roads of Northern Ireland. Drivers and passengers involved in road traffic collisions while not properly restrained are at significantly heightened risk of death or serious injury. Seatbelt wearing rates in Northern Ireland have improved in recent years. Between 1995 and 2001 the overall wearing rate increased from 80 per cent to around 86 per cent. However, these rates remain low when compared with Great Britain where rates for drivers and children passengers are 90 per cent.

9.11.2 Recently PSNI have taken a tougher line on the wearing of seatbelts, shifting from a policy of preferring advice and warning, to the issue of £30 fixed penalty notices more regularly. The campaign was part of a major cross-border initiative to promote the use of seatbelts which was supported by television and cinema advertising. The Government recognises, however, that seat belt wearing rates in Northern Ireland not only could, but should be further improved; PSNI estimate that more than **twenty lives a year** could be saved if all car occupants wore their seatbelts.

9.11.3 At present, under **article 23** of the **Road Traffic (Northern Ireland) Order 1995** it is an offence for an adult to drive or ride in a motor vehicle and not to wear a seatbelt. **Article 24** of the same order makes it an offence to drive a vehicle with a child under fourteen to riding as a passenger without a seatbelt. Currently these offences, when detected, are only capable of being dealt with by means of a fixed penalty notice. Usually this will be at a level of £30. We now propose that these offences should attract **endorsable fixed penalty notices**. We believe that seatbelt wearing rates would be significantly improved if it were possible to award penalty points for these offences, as well as existing fines.

9.11.4 Under the proposed new scheme, three penalty points would be awarded to drivers not wearing seatbelts, with three points being awarded in cases where the driver is carrying a passenger under fourteen who is not wearing a seatbelt. Where the offence is committed by a passenger over fourteen, they should also receive two penalty points or, if they do not have a licence, then the penalty points should be endorsed on their 'shadow' driving licence at DVLNI Coleraine, in the event of them later applying for a licence.

Proposal 25: Not wearing a seatbelt

We propose to introduce penalty points for the offence of not wearing a seat belt, including a provision whereby adults travelling with unrestrained children would held liable and receive penalty points accordingly. This will be in addition to the fines presently available.

Resource implications of proposal 25: *We anticipate that the effects of this proposal are likely to be minimal and that they will have little effect on the criminal justice system.*



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Dear Consultees

Consultation on road traffic offences and penalties in Northern Ireland

The attached consultation paper contains a number of proposals for changes to the law on road traffic penalties. We are seeking your comments on some or all of these provisions, in addition, we would also welcome comments you may have on any related issues, not explicitly mentioned in this paper.

The consultation period is a vital part of the legislative process, as it allows for a broad range of ideas, from a variety of sources, to be discussed and examined. It provides the most direct opportunity for public involvement in the formulation of new Government policy and new laws. Therefore, we consider it very important that we receive a wide scope of opinion and comment, to ensure that the consultation process is as effective as possible.

We will be accepting responses for twelve weeks, during which time we will examine carefully all the comments we receive and take them into account in the final report.

Criminal Law Branch