

TAYSIDE AND CENTRAL SCOTLAND TRANSPORT PARTNERSHIP**EXECUTIVE COMMITTEE****19 OCTOBER 2018****‘CYCLING AND WALKING INVESTMENT STRATEGY: PROPOSALS FOR NEW
CYCLING OFFENCES’: CONSULTATION RESPONSE****REPORT BY SENIOR PARTNERSHIP MANAGER**

This report seeks approval of a proposed response to the Department for Transport consultation ‘Cycling and Walking Investment Strategy safety review: proposals for new cycling offences’

1 RECOMMENDATIONS

- 1.1 That the Executive Committee approves a proposed Tactran response to the Department for Transport consultation on ‘Cycling and Walking Investment Strategy safety review: proposals for new cycling offences’, as detailed in Appendix A.

2 BACKGROUND

- 2.1 The Department for Transport published consultation on [‘Cycling and Walking Investment Strategy safety review: proposals for new cycling offences’](#) on 12 August 2018, with responses to be submitted by 5 November 2018.
- 2.2 A supplementary report on the [current law in relation to Scotland](#) was published by the Department of Transport on 23 September 2018.
- 2.3 Any amendment to road safety road legislation resulting from this consultation will apply to Scotland, England and Wales as matters relating to road traffic offences and penalties are generally a reserved matter.
- 2.4 At its meeting on 25 September 2018, the Partnership agreed to delegate authority to the Executive Committee to consider and approve the Tactran response to Department for Transport consultation on ‘Cycling and Walking Investment Strategy safety review: proposals for new cycling offences’ (Report RTP/18/37 refers).

3 DISCUSSIONOverview

- 3.1 On 21 September 2017 UK Government Ministers announced a Cycling and Walking Safety Review that would include an analysis of the case for a new offence equivalent to causing death or serious injury when cycling.

- 3.2 On 12 August 2018 the Department for Transport published ‘Cycling and Walking Investment Strategy safety review: proposals for new cycling offences’, seeking views on whether there should be new offences for cyclists of causing death or serious injury when cycling, and what the associated penalties might be. The consultation also seeks views on the scope and penalties of existing offences, which for cycling currently apply only to the road (which includes the pavement) but not in other public places.

England and Wales

- 3.3 The consultation draws on an independent legal review published by the Department for Transport on 9 March 2018 to ascertain whether the current applicable laws in England and Wales are adequate and whether there is need for legislative change.
- 3.4 This review identified 9 cases in the proceeding 10 years where there was judged to be sufficient levels of culpability and harm to be relevant to the review. The most recent, and high profile case, concerning a cyclist causing the death or serious injury to a pedestrian is that of Charles Alliston who was acquitted of manslaughter but convicted by jury of ‘wanton and furious driving’.
- 3.5 The review identified that in England and Wales there was a gap in the law between manslaughter and the historic offence of wanton and furious driving. It was also noted that the use of a historic offence aimed at carriage driving did not fit with a modern approach to road safety.
- 3.6 The conclusion was that there was a persuasive case for legislative change to tackle the issue of dangerous and careless cycling that causes serious injury or death; in order to bring cycling into line with driving offences.

Scotland

- 3.7 The Department for Transport recognised that, while any new road traffic offence would apply in Scotland, as matters relating to road traffic offences and penalties are generally reserved, the legal context in Scotland is different and on 24 September 2018, published a supplementary report that analysed the adequacy of Scottish criminal common law in relation to deaths or serious injury caused by cyclists.
- 3.8 The supplementary report notes that there are significant differences between the law in England and Wales and the law in Scotland relating to the prosecution of ‘bad’ cycling resulting in death or serious injury. Culpable homicide and culpable and reckless conduct can be used to prosecute behaviour that would be covered by offences of causing death injury by dangerous cycling or causing serious injury by dangerous cycling. However, there is no Scottish crime or offence that can be used to prosecute behaviour that would be covered by offences of causing death by careless cycling or causing serious injury by careless cycling.

- 3.9 The supplementary report concludes that in Scotland the immediate need for reform that exists in England and Wales does not exist as culpable homicide and culpable and reckless conduct can be used to prosecute cases where death or serious injury has been caused by a cyclist. It does, however, ask whether there is a place for modernising the law in this respect.
- 3.10 It is also worthwhile noting that during the period 2011 to 2016 there were no deaths in collisions between pedestrians and cyclists in Scotland. It has been reported that in 2017 there was a death of a pedestrian that involved a cyclist but there was insufficient evidence to proceed with a prosecution. The last prosecution of a cyclist for culpable and reckless conduct reported in the law reports was in 1956.

Proposed Response

- 3.11 From the above it can be seen that the independent advice and supplementary report have concluded that there is a persuasive case for legislative change in England and Wales, however there is not the same immediate need in Scotland.
- 3.12 While the primary purpose of the proposed changes may be to fill the identified 'gap' in the law in England and Wales, any changes to road safety legislation will apply in Scotland, as matters relating to road traffic offences and penalties are generally reserved.
- 3.13 If it is considered that a change in legislation is required to close the gap in England and Wales, this new legislation will also apply to Scotland and therefore it is appropriate that Tactran responds to the majority of the questions provided with this in mind.
- 3.14 Where specific questions have been asked regarding sentencing and specific legal aspects, it is proposed that Tactran provide no comments as it is considered that this area of the consultation would be a matter better commented on by legal experts.
- 3.15 The Executive Committee is asked to consider and approve the proposed Tactran response, as shown in Appendix A to allow submission by the deadline of 5 November 2018.

4 CONSULTATIONS

- 4.1 Tactran officers have consulted with the relevant Local Authority officers.

5 RESOURCE IMPLICATIONS

- 5.1 There are no resource implications arising directly from this report.

6 EQUALITIES IMPLICATIONS

6.1 This report has been screened for any policy implications in respect of Equality Impact Assessment and no major issues have been identified.

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NOTE

The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (and not containing confidential or exempt information) were relied on to a material extent in preparing the above Report.

[Report to Partnership RTP/18/37](#), General Consultations, 25 September 2018.

[Cycling and Walking Investment Strategy safety review: proposals for new cycling offences](#), Department for Transport, August 2018

[Cycle safety review independent legal report](#), Department for Transport, March 2018

[Cycling and Walking Investment Strategy safety review: supplementary report on the current law in relation to Scotland](#), Department for Transport, September 2018

CYCLING AND WALKING INVESTMENT STRATEGY: PROPOSALS FOR NEW CYCLING OFFENCES

DEPARTMENT FOR TRANSPORT

Question 1

Our consultation proposes that there should be an offence of causing death by dangerous cycling. Do you agree with this proposal?

The independent legal and supplementary advice highlight that there is a legal gap in England & Wales; however the analysis undertaken on Scots law indicates that the gap is significantly less in Scotland.

It is our understanding that any proposed change to the Road Traffic Act 1988 would apply in Scotland and therefore maintain parity across England, Wales and Scotland on currently reserved road safety matters.

Therefore, Tactran agrees in principle with the proposed offence of causing death by dangerous cycling. However, a clearer definition of what constitutes 'dangerous cycling' must be considered (bearing in mind the subjective nature of people's perception of danger) along with consideration of the expected competency levels of cyclists. This should also consider the rarity of these events.

Question 2

Do you think that there should be an offence of causing death by careless or inconsiderate cycling?

Tactran agrees in principle with the proposed offence of causing death by careless or inconsiderate cycling. However, a clearer definition of what constitutes 'careless or inconsiderate' must be considered (bearing in mind the subjective nature of people's perception of danger) along with consideration of the expected competency levels of cyclists. This should also consider the rarity of these events.

Question 3

The consultation also proposes that there should be an offence of causing serious injury by dangerous cycling. Do you agree with this proposal?

Tactran agrees in principle with the proposed offence of causing serious injury by dangerous cycling. However, a clearer definition of what constitutes 'dangerous cycling' must be considered (bearing in mind the subjective nature of people's perception of danger) along with consideration of the expected competency levels of cyclists. This should also consider the rarity of these events.

Question 4

The Ministry of Justice consulted on bringing forward a new offence of causing serious injury by careless driving. This consultation proposes that there should be an offence of causing serious injury by careless or inconsiderate cycling. Do you agree with this proposal?

Agree – this would provide parity and consistency with other proposed changes, however similar caveats should apply to this offence as previously noted with clearly defined 'careless and inconsiderate cycling'.

Question 5

If there were a new offence of dangerous or careless cycling, do you think the sentences should match the sentences for dangerous or careless driving (current driving sentences shown in brackets)?

- a. causing death by dangerous cycling (currently 14 years for driving)
- b. causing death by careless cycling (currently 5 years for driving)
- c. causing serious injury by dangerous cycling (currently 5 years for driving)

No comment.

Question 6

The report from the independent expert concluded that there is a gap in the law regarding dangerous or careless cycling. Do you feel that existing laws adequately cover circumstances where a person's cycling causes harm or injury others?

The review does indicate a gap in current laws in England and Wales with a reliance on outdated legislation in some cases. However, the separately undertaken review of Scots Law indicates that there is less of a gap in Scotland. See Question 8 for further comments.

Question 7

Do you have any comments on any laws not covered in this consultation which could apply when trying to prosecute for this cycling behaviour?

No

Question 8

Do you have any other comments that you wish to make in relation to how existing laws apply in Scotland?

Supplementary information relating to the law in Scotland was published on 23 September 2018. This report indicates that the gap identified in England and Wales is much less apparent in Scotland with offences able to be prosecuted using existing laws.

The only identified gap is in the case of prosecuting death or serious injury by careless driving. It is noted that the law could be modernised in Scotland through new offences being introduced and the existing offences of 'culpable homicide' and 'culpable and reckless conduct' reserved for use in the most serious cases. Tactran agrees with the conclusions presented in this analysis.

It is our understanding that any proposed change to the Road Traffic Act 1988 would apply in Scotland and therefore maintain parity across England, Wales and Scotland on currently reserved road safety matters.

Question 9

This consultation proposes that new offences should apply to public places as well as roads. Do you agree with this proposal?

There should be a differentiation between places that cycling is permitted and places that cycling is prohibited. New offences should take into account what would be considered reasonable behaviour in different cycling environments.

Question 10

The current offences of dangerous or careless cycling apply to a road. This consultation proposes that it should also extend to a public place. Do you agree with this proposal?

There should be a differentiation between places that cycling is permitted and places that cycling is prohibited. New offences should take into account what would be considered reasonable behaviour in different cycling environments.

Question 11

Are there any other comments that you wish to make about where the laws should apply?

Cognisance should be taken with regard to the different standards of cycling infrastructure in the UK. Dangerous or careless cycling within a shared use area (or pedestrian only area) would be different to what would constitute dangerous (or careless) cycling within a segregated cycling facility.

A clearer definition of what constitutes 'dangerous cycling' must also be considered (bearing in mind the subjective nature of people's perception of danger) along with consideration of the expected competency levels of cyclists. This should also consider the rarity of these events.

Question 12

Drivers may be banned from driving for committing a current cycling offence. Minimum driving disqualification periods currently apply under the Road Traffic Offenders Act 1988. For drivers this is currently 2 years for causing death or serious injury, 1 year for causing death by careless driving. Do you think this should also apply to any of the new offences proposed in this consultation?

No comment

Question 13

If not please explain why? If so, do you have any views on how long the minimum disqualification period should be?

N/A

Question 14

There is currently an offence of dangerous cycling (with a fine of up to £2,500) and for careless cycling (with a fine of up to £1,000). This consultation proposes that the penalties for these offences should remain unchanged. Do you agree with the proposal?

No comment

Question 15

If not, please explain why. Are there any other comments you wish to make on the level of penalty?

N/A

Question 16

This consultation proposes that there should not be a new offence of causing death by careless cycling when under the influence of drink or drugs. Do you agree with the proposal?

Tactran agrees with this proposal as there is no evidence provided to support creating a new offence. Any situation where alcohol or drugs was an aggravating factor should be considered on a case by case basis, as outlined in section 3.7 of the consultation document.

Question 17

The current fine for riding a cycle when unfit to ride through drink or drugs is £1,000. Do you think we should consider increasing the fine?

No comment

Question 18

Do you think we should consider making it an offence to attempt to cycle (as well as actually cycling) when unfit to do so through drink or drugs?

There is no evidence presented to support this approach. The practicalities of enforcement would likely be problematic. Tactran considers that the existing offence is adequate.

Question 19

Are there any further comments you wish to make?

Cycling should be encouraged as a positive mode choice and any changes to legislation must not discourage people from cycling. There are significant mental and physical health benefits associated with regular cycling which should be taken into consideration, particularly given the rarity of pedestrian fatalities caused by collisions involving pedestrian and cyclists in Scotland.

Cycling safety is a much wider issue and there should be particular focus on cycle training and providing better infrastructure where conflicts between road and public space users is minimised and risks mitigated appropriately. People who choose to ride a bicycle are often the most vulnerable road users particularly as there is often a lack of dedicated provision; with this in mind a wider review of road safety for all vulnerable users is required.