



Home Office

BUILDING A SAFE, JUST
AND TOLERANT SOCIETY

Department for
Transport



REPORT ON THE REVIEW OF ROAD TRAFFIC PENALTIES



Road Safety

INTRODUCTION

Following the launch of the Government's Road Safety Strategy, "*Tomorrow's Roads - Safer for Everyone*" in March 2000, the Home Office together with the Department for Transport Local Government and the Regions (now the Department for Transport) and the Lord Chancellor's Department undertook a review of road traffic penalties. The purpose of this review was to consider whether the current penalties remain appropriate and to ensure that any changes to penalties would be consistent with the whole sentencing framework. A consultation paper was issued in December 2000 and responses have since been received and analysed. This report gives the findings of that consultation exercise and the conclusions that the Government has drawn. It sets out the Government's recommendations for policy on road traffic penalties.

Response to consultation

Responses fell broadly into 2 categories. Substantive responses were received from many representative groups and organisations most of which considered the proposals as a package and made comments on more than 1 proposal. There were 138 such returns, which are summarised in the table at Annex A. Overall these provided a high level of support for the proposals but they also contained a significant number of valuable suggestions, which have been taken into account.

In addition to these responses there was a large number of communications, either by letter or e-mail, concerning single issues in isolation. Most of these were commenting on the proposals regarding speeding and, to a lesser extent, careless driving. These were also studied carefully and the opinions noted. Some of the comments were less about the levels of penalty than issues of speed limits and speed enforcement.

Implementation

The Government's recommendation in respect of the consultation paper's proposals are set out below after a brief description of the response to each proposal in turn.

In respect of some of the proposals the Government is not recommending any further action. In other cases the Government recommends the proposal be taken forward with further work being undertaken where appropriate. An expression of intent to progress with a proposal must, of course, be subject to the availability of both the necessary resources and, if required, an appropriate legislative opportunity.

RESPONSE ON CONSULTATION AND RECOMMENDATIONS

Proposal 1

Revaluation of penalty points

This proposal was to revalue the points system from 12 to 20 (and the tariffs proportionally) with the aim of providing greater flexibility to the courts in awarding points related to the seriousness of the offence. Although there was support for it, concern was expressed in consultation that it could cause confusion if not communicated carefully to the public, particularly due to the uncertainty about the number of offences that a person can commit before disqualification. It may also give the impression that offenders were entitled to an extra 8 points before being disqualified.

RECOMMENDATION:

The Government is persuaded that this proposal may be an unnecessary complication. In particular there are well founded concerns that the transition from the current scheme may be difficult to manage. In view of the limited benefits the proposal offers the Government will not pursue it.

NOTE: In the consultation document, references to penalty points were made on the basis of the proposed revised system (based on 20 rather than 12). Since it is not proposed to take this forward, references in this report are now based on the current (unchanged) 12 point system rather than a 20 point one.

Proposal 2

Retraining

This proposal would give road traffic offenders who have at least 6 penalty points the opportunity to attend, at their own expense, a driver retraining and improvement programme. If successful on this programme, they would earn remission of 3 points. It would also be available to those disqualified for a period of at least 56 days and up to 12 months. Successful completion of the programme would result in remission of 20% of the period of disqualification. This programme would be available to an offender no more than once every 2 years.

There was a very high level of support for this proposal. Where concerns were expressed they focused mainly on the requirement for offenders to finance themselves. Some consultees thought that this raised issues under the Human Rights Act as it may discriminate against those with low incomes. Other comments on this proposal were that the programme should be available once every 5 years instead of 2 and offenders should have a limit on the number of times they are entitled to attend the programme. Some consultees were not in favour of a programme replacing retesting, nor reducing the sentence.

RECOMMENDATION:

There is a clear endorsement for this proposal. Currently retraining courses are offered by the police as a “diversionary” measure in lieu of prosecution. But they could be made available as a disposal of the court in the same way as the drink-drive rehabilitation courses. The Government considers that the “offender pays” principle is a key factor in securing commitment of the motorist to take more responsibility. However, note has been taken of the opinion expressed in consultation that such courses should be compulsory. The Government believes that there may be a place for *mandatory* retraining (which has, in fact, always been possible under the terms of probation) but it will be more effective if the offender makes the commitment voluntarily. It is, furthermore, a matter for the courts in individual cases to decide what is most appropriate.

The Department for Transport are currently funding research into the effectiveness of different types of courses and schemes in other countries which will assist in preparing detailed proposals for a scheme. This proposal will require primary legislation but will be taken forward when an opportunity arises. As the proposal is for a self-funding scheme, resource implications should be minimal.

Proposal 3 **Totting up disqualification as a fixed penalty**

This proposal would entitle offenders to choose to accept a fixed penalty even where to do so would bring their penalty points up to or beyond the 12 point totting up level. The automatic 6-month driving disqualification would be applied without the offender having to attend court.

There was a positive reaction to this proposal, but a number of practical issues were raised concerning enforcement. It was thought that offenders might be more likely to ignore the ban if it is not given in court. It would be vital to ensure beyond doubt that the ban is notified to the disqualified driver, otherwise it may be difficult to prove that the offender is aware of the implications of the further offence of driving while disqualified, which is punishable by imprisonment.

RECOMMENDATION:

The main objective of this proposal was to reduce the burden on the courts. If implemented, however this could carry a risk of more people driving whilst disqualified. This proposal is consistent with the recommendation of the Auld Review that fixed penalty notices be used more often for those road traffic offences designated fixed penalty offences under Schedule III of the Road Traffic Offenders Act 1988, and is worthy of further consideration. Accordingly, if solutions can be found to the practical problems the Government believes this proposal should be pursued.

Proposal 4 **Long-life points**

For a period of 3 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 6 years, rather than 3 years as now. Most respondents supported this. However, there were concerns that this would be too complicated and not an effective deterrent. Some took the view that it should be the responsibility of the courts to decide whether a previous offence should affect sentencing on the current offence.

RECOMMENDATION:

Further enquiries revealed that there could be difficulties with the administrative arrangements as they affect the Driver and Vehicle Licensing Agency. In view of this, it is not proposed to pursue the proposal in the shorter term. However, there is clearly some merit in examining the fixed period attached to endorsements and it could be reviewed again at a later date.

Proposal 5 **Requalifying after disqualification**

This proposal would require drivers disqualified for a substantial period of time to requalify. Currently a court may impose such a requirement at its discretion but the facility is insufficiently used. For the serious offences of dangerous driving, the retest is, however, mandatory. The review identified retestings as a highly important sanction, which is potentially very effective in addressing bad driving. Views were sought on whether the retesting provision should apply to a wider range of offences; in particular those involving a long period of disqualification such as drink-driving.

This was one of the most heavily supported proposals. Suggestions on the period of disqualification that should trigger an automatic retest ranged from 12 months to 5 years, with an average around 18 months to 24 months. It was suggested alternatively by some that it should be the type of offence rather than the length of the sentence that should dictate the need for retesting. Some respondents echoed the view taken by the Government in 1991, which was reflected in the Road Traffic Act of that year. Drink drivers were generally thought to be competent in their driving skills and, at least for first time offenders, retesting was less appropriate than a sanction that focused on the drinking habits such as a rehabilitation course.

RECOMMENDATION:

There is much public support for retesting of drivers convicted of offences so serious that they are disqualified for 1 or more years. The Government considers that requiring such people to take a retest would have road safety benefits. It is also minded to provide for the imposition of

this requirement for all drivers disqualified from driving for a period of 2 years or more rather than leaving the matter to the discretion of the courts. The Government notes comments made about drink drivers, but believes that for long disqualifications they should not be an exception.

The Government has already taken a step with the offence of “causing death by careless driving while unfit through drink or drugs”. In December 2001 Parliament approved an Order by the Secretary of State to make this subject to a mandatory extended retest on the same footing as “causing death by dangerous driving”.

Proposal 6 **Decoupled community penalties**

Certain community penalties are not available for offences in respect of which the courts have no power to impose a custodial sentence. The consultation paper proposed that a full range of community penalties should be available for motoring offences for which imprisonment is not presently an option.

The idea was positively welcomed by consultees, some suggesting that offenders would become aware of the implications of road traffic accidents on victims if they were required to work in hospitals, for example, as a community penalty. It would be a more powerful sanction than a fine, particularly for certain offences such as driving without insurance. It might also reassure the public that offenders are being suitably punished for such road traffic offences although some consultees believed that for the more serious offences members of the public might see this as a soft option.

RECOMMENDATION:

Before the commencement of this review of road traffic penalties the Government commissioned a major review of the sentencing framework. This sentencing framework review was established by the Home Secretary on 16 May 2000 and reported to Ministers on 1 May 2001. The review was tasked with considering what principles should guide sentencing decisions and what type of disposal should be made available to the courts so as more effectively to reduce re-offending.

The report of the review, “*Making Punishments Work*”, recommended a number of proposals for

change. One of the key recommendations of the report was a single ‘generic’ community sentence, enabling the court to select from a menu of options focused on punishment, crime reduction and reparation.

The Government’s proposals for implementing this recommendation are set out, as part of a programme of sentencing reform, in the Criminal Justice White Paper “*Justice for All*” published on 17 July 2002. The White Paper signalled the introduction of a new customised community sentence to replace individual community penalties and give sentencers a menu of options which can be combined for form a single sentence.

The extent to which the new disposal will be available for offending that does not attract a custodial maximum penalty, including road traffic offending, will necessarily form part of the work on the legislation governing the customised community sentence. Accordingly, the Government intends to take up the proposal on wider use of community penalties for road traffic offences within this context.

Proposal 7 **Forfeiture of vehicles**

It was proposed that 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 courts for certain offences. Variants on this disposal, including temporary forfeiture by immobilising the vehicle at the owner’s premises, and a large-scale scheme operated by a private agent (like wheel clamping for illegal parking) were also floated.

Outright support for these proposals was relatively low. Some respondents welcomed the spirit of the proposal but most drew attention to practical difficulties, and some to the spin-off adverse consequences for other users of the family car. There was considerable disapproval of the idea of putting the management into private hands. It was generally seen as something to apply as a last resort where an offender simply could not be trusted not to drive whilst disqualified

RECOMMENDATION:

Despite the practical problems associated with this proposal, the Government believes that there is considerable utility in, and support for, the use of forfeiture. It would be particularly useful where it can be used as a temporary measure to assist in enforcing a short-term disqualification as a response to persistent or first time serious offending. The use of shorter-term disqualifications has been encouraged since the North Report. There is some doubt however as to whether they are currently used in the most effective way. They can be used, for example, as a way of avoiding the more serious consequences of a “totting” disqualification or the revocation of a licence as it applies to new drivers under the New Drivers Act. There are also concerns about enforceability of short periods of disqualification.

Nevertheless, there is considerable support for more use of disqualification as a direct penalty including restrictions or curfews providing for “weekend disqualifications”. Accordingly, the Government will look at the issues involved to assess the potential for overcoming the practical problems.

Proposal 8

Causing death by dangerous driving

The consultation paper proposed that the maximum penalty for this offence should not be increased but that the mandatory period of disqualification should be for a minimum of 3 years or possibly for life where the defendant had previously committed an offence of dangerous driving, or causing death by dangerous driving, or causing death by aggravated vehicle taking or causing death by careless driving while under the influence of drink or drugs. This could be reviewed after a substantial period of time, for example 10 years. The permanent or temporary forfeiture of the vehicle would be applicable if it were available.

There was general support for these proposals, but suggestions were also made that penalties should be harsher where death is involved, possibly increasing to 14 years imprisonment with a longer period of disqualification for second or third offence. It was also suggested that the period of disqualification for a second offence should be life. But there was also concern about mandatory minimum sentencing, reliance on the discretion of the courts being the preferred option.

Proposal 9

Causing death by careless driving while under the influence of drink or drugs

Again, no increase in the maximum penalty was proposed but the review suggested a minimum 3 year disqualification or longer where the defendant had previously committed an offence of dangerous driving, or causing death by dangerous driving, or causing death by aggravated vehicle taking, or causing death by careless driving while under the influence of drink or drugs. This could be reviewed after a substantial period of time, for example 10 years. Permanent or temporary forfeiture of the vehicle would also be applicable if available.

Support for this proposal was high. In common with other offences, concerns were that forfeiture would only be effective if it was proved to be the driver’s car and other users didn’t suffer and some respondents thought that disqualification should begin after custody in order to make it worthwhile. It was also suggested that there should be a requirement to pass a retest at the end of the driving ban.

Proposal 10

Causing death by aggravated vehicle taking

It was proposed that the maximum term of imprisonment be increased to 10 years. Disqualification to be for a minimum of 3 years and to be for life where the defendant has previously committed an offence of dangerous driving, causing death by dangerous driving, or causing death by aggravated vehicle taking, or causing death by careless driving while under the influence of drink or drugs. This could be reviewed after a substantial period of time, for example 10 years. Permanent or temporary forfeiture of the vehicle would be available.

This proposal received support in terms similar to that for Proposal 9.

RECOMMENDATION

FOR PROPOSALS 8, 9 AND 10:

The Government has noted that since the commencement of the review there have been a number of serious cases of causing death by dangerous driving in which the sentence imposed has approached the maximum penalty of 10 years

imprisonment. In one case the sentencing court even imposed the full maximum penalty. The Government is, therefore, now persuaded that the proposed maintenance of the current position in respect of the offences of causing death by dangerous driving and causing death by careless driving whilst under the influence of drink or drugs is no longer appropriate. The Government remains of the view, however, that the maximum penalty for the offence where a death occurs as a result of an aggravated vehicle taking ought to be brought into line with the other causing death offences and, therefore intends to raise the maximum penalty for all these offences to 14 years' imprisonment.

The Government believes that the minimum disqualification period for the causing death offences should be 3 years but is content to leave it to the discretion of the courts to determine appropriate longer periods for repeat offenders.

As explained under Proposal 5 above, the requirement to pass a retest following a conviction for causing death by careless driving whilst under the influence of drink or drugs has already been implemented.

The Government is persuaded that there are considerable difficulties in imposing a period of disqualification, which commences upon release from a custodial sentence. The courts should choose the appropriate length of disqualification in each case with a fixed end date.

Proposal 11 **Dangerous driving and aggravated vehicle taking**

Under this proposal the maximum term of imprisonment would increase to 5 years for both these offences and disqualification would be for a minimum of 3 years. Disqualification would be for life where the defendant has previously committed an offence of dangerous driving, or causing death by dangerous driving, or causing death by aggravated vehicle taking, or causing death by careless driving while under the influence of drink or drugs. This could be reviewed after a substantial period of time for example 10 years. Permanent or temporary forfeiture of the vehicle would be available.

98% of the responses were in support of this proposal. One concern was that aggravated vehicle taking has a wide definition and could apply to scratching the car. It was also suggested by some that the driving ban should start when the custody ends. The use of a minimum penalty was more acceptable in the event of a second offence in the dangerous driving category. The main reservations about this proposal came from those who would be involved in the administration of the penalties - DVLA and the courts, for understandable reasons. There were mixed views about minimum disqualification periods with some groups favouring a 3 or 5-year minimum and a few supporting life bans. Magistrates prefer retaining discretion.

RECOMMENDATION:

The Government believes there is a need to raise the maximum prison sentence for both these offences and that 5 years imprisonment is appropriate. A maximum penalty of 5 years imprisonment for dangerous driving and aggravated vehicle taking will be commensurate with the maximum penalty of 14 years imprisonment for the "causing death" offences because the former deal with the driving of the vehicle rather than the consequences.

The Government favours the introduction of a mandatory minimum disqualification period of 3 years for these offences but, again, is not minded to fetter the discretion of the courts in the selection of sentences where the offender has previously committed a serious road traffic crime.

Proposal 12 **A new penalty for a higher level of alcohol**

The review proposed the creation of a new "higher level" offence at possibly twice the current legal limit. This would automatically entail higher minimum disqualification period and could also give rise to a mandatory retest if that proposal were also adopted.

Views on the appropriate periods for disqualification were invited. Permanent or temporary forfeiture of the vehicle could be available. Offenders convicted of the higher level of alcohol test would always be required to

undertake an extended retest before regaining their licence. If they fell within the High-Risk Offenders (HRO) arrangements, they would also be required to undergo a medical test before being allowed to resume driving.

This proposal was well supported. Suggestions for the length of disqualification following a conviction for the higher level offence included 2 years and 3 years. There was a suggestion that the minimum disqualification period should be 5 years for the second offence. There was also agreement that failing to provide a specimen should be treated as a higher level offence. There was support for the idea of offenders being required to attend counselling and take a retest following disqualification.

Most consultees were in favour of higher penalties for higher blood alcohol concentration (BAC) levels but some thought the higher level offence unnecessary because the courts apply an escalating scale according to the BAC level anyway. Recent evidence that the average disqualification period for drink-driving offences is falling would, however, support the case for fixing another minimum threshold.

Regarding the current High Risk Offenders scheme, which requires an offender to undertake a medical examination before having the driving licence restored, several respondents suggested that, if there were to be a higher penalty, the threshold at which it was set should be the same as for the HRO scheme (currently 200mg).

RECOMMENDATION:

The Government firmly believes that sentences should be more severe for higher levels of alcohol. It is mindful, however, of the proposal for a new sentencing guidelines body that is being developed as part of the reform of the sentencing framework as set out in the Criminal Justice White Paper "*Justice for All*". The goal for any new guidelines body will be to create a set of comprehensive and robust guidelines which cover all areas of offending, are easily accessible and which command the respect of the judiciary, practitioners and the wider public. The Government is therefore not minded at the present time to impose a further minimum sentence but rather to pursue sentencing policy and practice in this area through the establishment of firmer guidelines.

Proposal 13 Repeat drink-driving offending

Views were invited on the minimum period of disqualification for a second drink-drive offence within 10 years. The proposal suggested this should be at least 3 years (the current level) but could be increased. This could also result in the requirement to undertake an extended retest if it became an automatic consequence of a long driving disqualification.

There was a very high degree of support for this proposal. But, whilst there were numerous suggestions that the period of disqualification for a second offence should be 5 years instead of 3 years, there was some concern as to whether a longer disqualification would be an effective deterrent. There were suggestions that community sentences or custody would be preferable as custody would be the most efficient way of keeping the offender off the road. It was also suggested that there should be more emphasis on retraining and rehabilitation.

RECOMMENDATION:

The Government considers that the minimum period of disqualification should remain at 3 years and that a mandatory extended retest should apply. Consideration will be given to whether a process of retesting (driving) could be combined with medical reassessment in the case of drink drivers. And the feasibility of rehabilitation programmes using breath alcohol ignition interlocks will be explored.

Proposal 14 Driving while disqualified

This proposal focused on the use of a wider range of community penalties in addition to the existing option of 6 months imprisonment. Permanent or temporary forfeiture of the vehicle should be available and a minimum 2 year disqualification for a second offence within 10 years which would always trigger a retest.

84% of the responses were in support of this proposal. There was considerable support for increasing the period of disqualification for a second offence within 10 years. It was suggested that the powers of arrest should be extended to include 'having driven' as well as 'driving'.

RECOMMENDATION:

The courts regard this offence as serious because it compounds irresponsible driving behaviour with a flouting of an order of the court. Disqualification is perhaps the most potent deterrent to irresponsible driving for generally law abiding motorists but arguably it has no effect whatsoever on people who have little respect for the law and are prepared to drive whilst disqualified. Although there is no doubt that this offending raises serious issues the Government is concerned that custody may not be the most effective means of addressing reoffending. As explained above the Government is developing proposals for new more flexible forms of sentence combining custody with punishment in the community as set out in the Criminal Justice White Paper “*Justice for All*”. These new forms of disposal combined with the proposed generic community penalty should offer more scope for both punishing and rehabilitating these kind of offenders.

Vehicle forfeiture may also be a useful sanction in serious cases. It could mean that an owner who knowingly allows a disqualified driver to use his vehicle would lose it temporarily or even permanently.

The power of arrest issue is being considered in the context of the Police Reform Bill.

Proposal 15

Driving otherwise than in accordance with a licence, or causing or permitting a person to drive otherwise than in accordance with a licence

The proposal was for additional community penalties and for temporary or permanent forfeiture of a vehicle. 96% of the responses were in support of this proposal. Concerns were expressed about the increase of pressure this would have on an already stretched probation service and the practical issues of forfeiture discussed in previous proposals. Another view was that community penalties were not severe enough.

RECOMMENDATION:

There is undoubtedly a role for community penalties particularly where the offenders are young persons. To some, unlicensed driving is seen as a minor regulatory offence. But, in fact it

represents a hazard to other road users. Although vehicle forfeiture may not be appropriate in many cases it can be a powerful sanction and it can mean that an owner who knowingly allows an unlicensed driver to use his vehicle would lose it temporarily or even permanently. As recommended above the nature and availability of community penalties will be considered in the context of the Government’s implementation of the new sentencing framework. The other aspects of this proposal will be maintained under review.

Proposal 16

Driving while uninsured

Under this proposal decoupled community penalties and permanent or temporary forfeiture of the vehicle would be available to the courts in addition to the existing penalties. Responses were similar to those for Proposal 15 (Unlicensed driving). There were concerns about the practical issues of vehicle forfeiture and it was suggested that clamping might be more appropriate than forfeiture.

RECOMMENDATION:

The Government views this offence as being similar to disqualified and unlicensed driving and it is often committed in tandem with one or other of those. As in the case of Proposal 15 the availability of new more effective community penalties will be considered in the context of the implementation of the Government’s new sentencing framework. Other aspects of this option will be maintained under review.

Proposal 17

Careless or inconsiderate driving

Under this proposal, available sentences would include the requirement to undergo a retraining and improvement programme, decoupled community penalties, and a level 5 fine. A mandatory minimum of 9 points (against a maximum of 12) if, within the previous 5 years, the offender has already committed a careless driving offence or one of the more serious ones considered in this proposal. This number of points would almost certainly mean immediate disqualification for any offender who already had existing points.

The review noted the wide range of blameworthiness that the offence embraces. This was picked up by a number of consultees who were particularly opposed to a harsher penalties of 9 (out of 12) points for a second offence – almost certainly triggering a totting disqualification – and an automatic retest for a third offence within 5 years. The proposal to raise the maximum fine to level 5 was more acceptable as was the use of driver retraining courses and community penalties.

RECOMMENDATION:

The research report “*Dangerous Driving and the Law*” (Road Safety Research Report No. 26) draws attention to the range of bad driving that is covered by the careless driving offence. The Government agrees that further consideration needs to be given to the possibility of breaking the careless driving offence into 2 parts. However, there is a good case for raising the ceiling on penalties in the form of the maximum fine and the possible use of community penalties. The availability of driver retraining should also be seen as a progressive change. The courts could be expected to apply appropriate discretion in the use of it. However the Government accepts the views made by several respondents that minimum penalties such as 9 points for repeat offenders could be seen as unduly harsh in certain circumstances. This proposal will be deferred until the careless driving offence has been examined in detail.

Proposal 18 **Speeding Offences**

This proposal would introduce a new fixed penalty system for speeding offences with 2 levels of fixed penalty. A higher level of points would be 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.

A range of permutations was available using different speed thresholds, levels of points and fines. It was also proposed that any scheme would best be introduced in transitional stages with the possibility of tightening the penalties progressively.

This proved to be the most controversial topic of the review. There was massive support from the safety lobby groups – some arguing for very high

fines and driving bans for life. The motoring organisations appeared to have no difficulty with the principle of a higher level offence and severer penalties for it. Their main disagreement was with tougher penalties for the basic offences and increased risk of loss of licence for “marginal” driving errors. They also argued that there is a widespread prevalence of “inappropriate” speed limits and these made it especially difficult to accept the proposals. There were also more extreme responses inspired by media and pressure groups that saw the proposals as an attack on the ordinary motorist.

RECOMMENDATION:

The Government is giving due consideration to all comments made about speed policy, particularly since the publicity surrounding the roll out of the safety camera regime last year. The response to the proposal for the additional penalty was not negative but the precise details are clearly going to be an issue on which there will need to be specific consultation. The Government will therefore be seeking a legislative opportunity to take this proposal forward but will revisit the details of thresholds and levels of penalty in the context of speed policy prior to implementation.

Proposal 19 **Fraud with parking tickets, deception with licences, MOT certificates, etc. and fraudulent use of documentation**

With regard to the range of documentary offences dealing with MOT certificates, parking tickets, deception with licences, which are triable either way, it was proposed that magistrates sentencing powers be enlarged to include custody so as to be compatible with sentencing powers in the Crown Court. There was no dissent from this in the consultation. Some consultees suggested that fraudulent use of insurance documents should be within the scope of the same penalties.

RECOMMENDATION:

The Government believes there is merit in resolving this anomaly. We take the view, however, that this proposal needs to be addressed within the context of the proposals for Magistrates’ sentencing powers and the reform of the sentencing framework set out in the Criminal Justice White Paper “*Justice for All*”.

Proposal 20 **Using vehicles in a dangerous condition**

Under this proposal disqualification would be mandatory for a second or subsequent offence in this category within 3 years. It was also suggested that community penalties and temporary forfeiture could also be available.

Overloading was considered not to be taken seriously enough and the review suggest mandatory minimum disqualification for a second offence.

Although most responses were in support of this proposal, there were concerns over an assumption about who is responsible for the overloading of a vehicle. Drivers may be intimidated into driving a vehicle against their better judgement. It was necessary therefore to exercise powers to prosecute the consignor who overloads the vehicle and/or the holder of the operating licence.

RECOMMENDATION:

The Government views this as a serious offence and considers repeat offending particularly blameworthy. It will therefore pursue the proposal to introduce a mandatory disqualification for second or subsequent offences. Although the owner or consignor of the vehicle are liable under current legislation and should not escape punishment where culpable, the driver must also be held to account if he takes an unsafe vehicle onto the road. The availability of community penalties will be considered in the context of the implementation of the Government's new sentencing framework. Temporary forfeiture of the vehicle may be a particularly appropriate penalty for owners who deliberately flout the law.

Proposal 21 **Bus lanes**

Under this proposal local authorities would be able to enforce bus lanes as well as the police, by the use of cameras. Local authorities would be empowered to deal with offenders by a fixed penalty.

Mixed views were expressed on the issue of making bus lane offences endorseable. There was general support for leaving the matter to local authorities by means of penalty charge notices as provided for in the Transport Act 2000.

Among the responses, which were generally positive, there were also suggestions for a need for clear sign posting, and the possibility of making bus lanes available for cars with at least 2 people in.

RECOMMENDATION:

The Government believes the provisions in the Transport Act are sufficient for allowing local authorities to deal with this matter. We will make no changes to the fixed penalty arrangements as they are currently enforced by the police.

Other fixed penalty offences

Comments were invited on whether there were any other safety-related offences for which endorsement could be an effective penalty. The most popular proposal for creating an endorsable offence was for use of mobile phones.

RECOMMENDATION:

People who use mobile phones while driving may be prosecuted for a non-endorsable offence under Construction and Use Regulation 104 (Driver's Control). For a breach of Construction and Use Regulations a fixed penalty of £60 applies. Under certain circumstances they may also be guilty of driving without due care and attention, which is endorsable and has a maximum penalty of a level 5 fine. The Government is persuaded that driving without having proper control carries considerable road safety risks, deserves to be punished more harshly. It therefore proposes to make Regulation 104 endorsable to send a stronger warning to offending motorists. The Government is keeping under review the policy on the use mobile phones whilst driving.

Proposal 22 **All fixed penalty notices**

This proposal was that all offences amenable to fixed penalty treatment should be subject in the courts to minima equivalent to the fixed penalty in financial and points.

There was large support for this proposal but concern was expressed about mitigating circumstances that ought to be considered by the court cases. The fact that mitigating circumstances would not be considered may raise issues under the Human Rights Act.

RECOMMENDATION:

Given that the levels of fixed penalties should not be beyond the financial means of a person who is able to tax, insure and maintain a motor car, the Government is not persuaded that there is a strong case for allowing offenders to come to court to look for a reduced penalty compared to the standard fixed penalty. It recognises, however, that there may be special circumstances to be taken into consideration, as there are now for the matter of special reasons not to disqualify, but mitigation would not normally be applicable in the case of these offences. As the review indicates there are substantial savings on court costs to be made from dissuading offenders from opting for a court hearing. The Government, therefore, proposes to seek an early opportunity to introduce this measure.

The Criminal Justice White Paper "*Justice for All*" sets out the measures the Government is going to take to improve the management and enforcement of fines generally.

Section 172 Road Traffic Act (RTA) 1988 offences

Section 172 of the Road Traffic Act (RTA) 1988 provides that it is an offence to fail to supply information as to the identity of a driver in certain circumstances. The current maximum penalty for this offence is a level 3 fine (£1000) and 3 penalty points. During consultation it was drawn to our attention that the penalty points provision is inconsistent with that for the speeding offence.

RECOMMENDATION:

In the Government's view the current position is anomalous and it therefore proposes to increase the penalty points for Section 172 offences to 6 penalty points in order to bring the penalty in line with that for the offence of speeding (level 3 fine (£1000) and 6 penalty points).

ANNEX A

Proposal	Support (total)	of which		Object	% support
		No Comment	+ive		
1. Revaluation of points	115	50	65	23	80
2. Retraining	125	45	80	13	90
3. Totting up disqualification as a fixed penalty	116	55	61	22	81
4. Long-life points	121	61	60	17	86
5. Requalifying after disqualification	135	45	90	3	98
6. Decoupled community penalties	126	47	79	12	91
7. Forfeiture of vehicles	113	50	63	25	78
8. Causing death by dangerous driving	125	51	74	13	90
9. Causing death by careless driving while under the influence of drink or drugs	128	51	77	10	92
10. Causing death by aggravated vehicle taking	134	53	81	4	97
11. Dangerous driving and aggravated vehicle taking	135	57	78	3	98
12. A new penalty for a higher level of alcohol	121	49	72	17	86
13. Repeat drink-driving offending	129	58	71	9	93
14. Driving while disqualified	119	56	63	19	84
15. Driving otherwise than in accordance with a licence, or causing or permitting a person to drive otherwise than in accordance with a licence	132	62	70	6	96
16. Driving while uninsured	133	61	72	5	96
17. Careless or inconsiderate driving	125	53	72	13	90
18. Speeding offences	108	42	64	30	72
19. Fraud with parking tickets, deception with licence, MOT certificates, etc. and fraudulent use of documents	133	68	55	5	96
20. Using vehicles in a dangerous condition	125	66	59	13	90
21. Bus lanes	122	55	67	16	87
22. All fixed penalty notices	120	56	64	18	85

