

<b>Title: Causing death or serious injury by driving while disqualified</b>  <b>IA No:</b> MoJ020/2014  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 13/06/2014		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> general.queries@justice.gsi.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as Two-Out?
			No   OUT

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

Victims' families, campaign groups and MPs have raised concern that the current maximum penalty of two years' imprisonment for causing death by driving when disqualified (under section 3ZB of the Road Traffic Act 1988) does not adequately reflect the culpability of the offender or the consequences of the offending. They have also campaigned for the introduction of a new offence of causing serious injury by driving when disqualified to reflect the fact that it can be a matter of chance whether the victim lives or dies. The Government is sympathetic to these concerns and believes legislation is necessary to address them.

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

The aim is to ensure that the courts have sufficient powers to ensure disqualified drivers are punished appropriately when their driving causes a death or serious injury. It is hoped that prison terms reflecting the seriousness of the offending will provide surviving victims and their families with a greater sense that justice has been done.

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

Option 0 – Do nothing. Continue to rely on existing offences under the Road Traffic Act 1988 to punish disqualified drivers who cause death or serious injury.

Option 1 – Make the offence of causing death by driving while disqualified an indictable only offence and increase the maximum penalty for such conduct from 2 to 10 years' imprisonment.

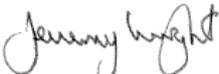
Option 2 - Create an offence of causing serious injury by driving while disqualified - an either way offence with a maximum penalty of four years' imprisonment.

Option 3 - Do option 1 and option 2

Option 3 is the Government's favoured option because it considers that tougher sentences are needed both for drivers who cause death and serious injury.

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

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

Signed by the responsible Minister:  Date: 18 June 2014

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Make the offence of causing death by driving while disqualified an indictable only offence and increase the maximum penalty for such conduct from 2 to 10 years' imprisonment (under new section 3ZC of the Road Traffic Act 1988)

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012/14	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate		0.15	

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

As causing death by driving while disqualified is already an offence (section 3ZB of the Road Traffic Act 1988) which is usually tried in the Crown Court, the Government anticipates the main impact on the criminal justice system will arise as a result of convicted offenders spending longer in prison. Overall we estimate increased annual costs to the Criminal Justice System (CJS) in the region of £150,000 (in 2013/14 prices).

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

There may also be some one-off familiarisation costs for the police, CPS and the judiciary.

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

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

The main benefits of this policy would be non-monetised (see below).

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

Longer prison sentences could mean that British roads are safer both because fewer disqualified drivers are driving on them. Increasing the maximum penalty for this offence may also provide families of victims with a greater sense that justice has been done and increase public confidence in the justice system.

### Key assumptions/sensitivities/risks

Discount rate (%)

As Ministry of Justice (MoJ) statistics do not distinguish between disqualified, unlicensed or uninsured drivers causing death, we use data on proportions from Northern Ireland (NI) to estimate the number of disqualified offenders (roughly one sixth, that is, three offenders). We use MoJ data on the existing offence of causing death by dangerous driving to estimate proportions for disposals, including the average custodial sentence length (ACSL) given of 48.7 months. If longer sentence lengths are given this will impact on the costs.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net:	No	OUT

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Creating a new offence (new section 3ZD in the Road Traffic Act 1988) of causing serious injury by driving while disqualified – an either way offence with a maximum penalty of four years' imprisonment

## FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
2013/14			Low: N/A	High: N/A	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate			0.05	

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

A disqualified driver who causes serious injury may currently be charged with the offence of driving while disqualified which is a summary only offence. Creating a new either way offence will not therefore generate any new proceedings, but it could have an impact on criminal justice agencies (CPS, HMCTS, Legal Aid Agency, NOMS) as more cases are heard in the Crown Court and the average custodial sentence length increases. Overall we estimate increased annual costs to the CJS in the region of £50,000 (in 2013/14 prices).

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

There may also be some one-off familiarisation costs for the police, CPS and the judiciary.

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

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

The main benefits of this policy would be non-monetised (see below)

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

Longer prison sentences for disqualified drivers who cause serious injury could mean that British roads are safer because fewer disqualified drivers are driving on them, provide victims and their families with a greater sense that justice has been done, and increase public confidence in the justice system.

### Key assumptions/sensitivities/risks

As the offence of causing serious injury by dangerous driving is too recent (December 2012), we use data from NI to estimate the number of proceedings. We estimate broadly twice as many proceedings for causing serious injury as for causing death, roughly seven. We use the offence of causing death by careless driving as a proxy to estimate proportions for disposals, including the average custodial sentence length (ASCL) given of 15.3 months. If longer sentence lengths are given this will impact on the costs.

### Discount rate (%)

## BUSINESS ASSESSMENT (Option 2)

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

# Summary: Analysis & Evidence

# Policy Option 3

**Description:** Do Option 1 (Make the offence of causing death by driving while disqualified an indictable only offence and increase the maximum penalty for such conduct from 2 to 10 years' imprisonment (under new section 3ZC of the Road Traffic Act 1988)) and Option 2 (Creating a new offence (new section 3ZD in the Road Traffic Act 1988) of causing serious injury by driving while disqualified – an either way offence with a maximum penalty of four years' imprisonment)

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013/14	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate		0.25	

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

Overall we estimate increased annual costs to the CJS in the region of £250,000 (in 2013/14 prices). The main impact on the criminal justice system will arise as a result of convicted offenders spending longer in prison.

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

There may also be some one-off familiarisation costs for the police, CPS and the judiciary.

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

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

The main benefits of this policy would be non-monetised (see below)

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

Longer prison sentences could mean British roads are safer because there are fewer disqualified drivers driving on them. There may also be a deterrent effect if disqualified drivers are deterred from flouting their driving bans, but we are not able to quantify this precisely.

### Key assumptions/sensitivities/risks

Discount rate (%)

It is difficult to estimate volumes of cases for both options, so estimates are made using data from NI offences. We have also used proxy offences to estimate proportions for disposals and ACSL given (further information in the Summary Sheet for each option, and in the Assumptions and Risks section in the main Evidence Base). The main risks are around longer sentence lengths given, which would impact on costs.

## BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:		

# Evidence Base (for summary sheets)

## Introduction

1. Disqualified drivers who defy a court ban and continue to drive can pose a real danger to others. If they cause a death or a serious injury, this can have a devastating impact on the victim and their relatives and friends.
2. In the Government's view, such offenders should be treated far more seriously by the courts than they are at present. The maximum penalty for causing death by disqualified driving is two years' imprisonment and there is no offence for causing serious injury by disqualified driving.

## Problem under consideration

3. Victims' families and MPs acting on their behalf have raised concern that the current maximum penalty of two years' imprisonment for causing death by driving when disqualified<sup>1</sup> does not reflect the culpability of the offender or the tragic consequences of the offending.
4. They have also campaigned for the introduction of a new offence of causing serious injury by driving when disqualified to reflect the fact that it can be a matter of chance whether the victim lives or dies. Unless the offender was driving dangerously at the time of the collision, the most he or she could be charged with in these circumstances is driving while disqualified which has a maximum penalty of six months' imprisonment. When permanent or life changing injuries are suffered, the impact this has on the victim and close family and friends can be profound. Campaigners say this justifies a higher penalty.

## Policy objective

5. The Government is sympathetic to these concerns and believes legislation is necessary to address them. It believes that disqualified drivers who cause death or serious injury should be treated far more seriously by the courts than they are at present. It considers that longer prison sentences will do more to reflect the culpability of the offender and give victims and their families a greater sense that justice has been done.
6. The Government therefore intends to make the offence of causing death by driving while disqualified an indictable only offence (under new section 3ZC of the Road Traffic Act 1988) and increase the maximum penalty for such conduct to 10 years' imprisonment.
7. It also plans to create a new offence (new section 3ZD of the Road Traffic Act 1988) of causing serious injury by driving while disqualified. For the purpose of this provision, 'serious injury' means physical harm which amounts to grievous bodily harm<sup>2</sup>. The offence will be triable either way (TEW) and will have a maximum penalty of four years' imprisonment.
8. The meaning of 'causing' death 'by driving' was considered by the Supreme Court in the case of *R v Hughes* in July 2013.<sup>3</sup> In that case the court held that a driver cannot be said to have *caused* somebody's death *by driving* whilst disqualified, unlicensed or uninsured unless there was something open to proper criticism in the way in which he or she was driving which contributed more than minimally to the death.. The causative element need not amount to 'careless' or 'dangerous' driving;

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<sup>1</sup> The offence of causing death by driving when disqualified, unlicensed or uninsured is set out in section 3ZB of the Road Traffic Act 1988. Maximum penalties for offences in that Act are covered in the Road Traffic Offenders Act 1988.

<sup>2</sup> Grievous bodily harm means **really serious** bodily harm. Examples of GBH given in CPS guidance include injury resulting in permanent disability, loss of sensory function, broken or displaced limbs or bones, or injuries which cause substantial loss of blood, usually resulting in lengthy treatment or incapacity.

<sup>3</sup> *R v Hughes* [2013] UKSC 56, 31 July 2013

it could involve a relatively minor indiscretion such as driving marginally over the speed limit or driving with a deflated tyre which affected stopping distance if this could be shown to have contributed to the death in more than a minimal way. It is not necessary that the act or omission is the principal cause of death but an illegal driver who was involved in a fatal collision caused wholly by somebody else (e.g. where a dangerous driver crashed into him and died) should not be prosecuted and convicted for causing death by driving. The Government's proposals in relation to disqualified drivers who 'cause' death or serious injury should therefore be read in the light of the judgment in *R v Hughes*.

9. While the current law under section 3ZB of the Road Traffic Act 1988 applies to disqualified, unlicensed and uninsured drivers who cause death, the Government is only proposing to increase maximum penalties in respect of disqualified drivers who cause death and serious injury. The penalties for uninsured or unlicensed drivers who cause death will remain unchanged. The Government considers that a good case can be made for treating disqualified drivers differently from other illegal drivers. They are arguably more culpable because they have been banned from driving following previous misdemeanours and are blatantly defying the will of the court by continuing to drive.

### **Rationale for intervention**

10. The conventional economic approach to government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way the market operated ("market failures") or if there are strong enough failures in existing intervention ("institutional failures"). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons.
11. In this case, the Government is intervening to ensure that maximum penalties for disqualified drivers who cause death or serious injury adequately reflect the culpability of the offender and the terrible consequences of his or her actions.

### **Proposed reforms**

12. The proposed reforms include:
  - Making the offence of causing death by driving while disqualified an indictable only offence (new section 3ZC in the Road Traffic Act 1988), and increasing the maximum penalty for such conduct from 2 to 10 years' imprisonment;
  - Creating a new offence (new section 3ZD in the Road Traffic Act 1988) of causing serious injury by driving while disqualified – an either way offence with a maximum penalty of four years' imprisonment

### **Main Affected Groups**

13. The following groups would be affected by this policy:
  - Police
  - Crown Prosecution Service (CPS)
  - Her Majesty's Courts and Tribunals (HMCTS)
  - DVLA
  - National Offender Management Services (NOMS)
  - Legal Aid Agency (LAA)
  - Lawyers
  - Victims, potential victims and their families
  - Road safety campaigners and organisations
  - Motoring organisations such as the AA, RAC

### **Costs and Benefits**

14. This Impact Assessment identifies both monetised and non-monetised impacts from society's perspective, with the aim of understanding what the net social impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot sensibly be monetised. These might be distributional impacts on certain groups of society or changes in equity or fairness, either positive or negative. The current offences in the Road Traffic Act 1988, and our proposed changes, will extend to England and Wales and Scotland, but not to Northern Ireland where there is a separate framework of road traffic offences. This Impact Assessment monetises impacts to England and Wales only. As the numbers of people affected in Scotland are likely to be very low, we assume the impact will be minimal.

### **Option 0 – Do nothing**

15. This would involve maintaining the status quo. Under this option the existing offence of causing death by driving when disqualified, unlicensed or uninsured under section 3ZB of the Road Traffic Act 1988 would remain the same. Since its commencement<sup>4</sup> in August 2008, there have been on average around 19 offenders proceeded against and 17 convictions each year in England and Wales.<sup>5</sup> This includes offenders who were disqualified, unlicensed or uninsured. Ministry of Justice (MoJ) statistics do not distinguish between the three different limbs of the offence. In order to estimate the number of disqualified offenders, we use proportions from Northern Ireland (NI) data for 2012<sup>6</sup>, which separate out the different offences. Using the NI proportions, we estimate that around 15% of offenders proceeded against are disqualified – around 3 offenders. However, the NI sample size is small, so the estimates are not robust. In Scotland there have been on average two offenders proceeded against for the period 2009-10 to 2012-13. Only one offender was found not guilty during this period.<sup>7</sup> These figures refer to all three limbs of the existing 3ZB offence (disqualified, unlicensed, or uninsured).

16. Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

### **Option 1 – Making the offence of causing death by driving while disqualified an indictable only offence (under new section 3ZC of the Road Traffic Act 1988) and increasing the maximum penalty for such conduct to 10 years' imprisonment**

#### **Costs**

17. In order to estimate the additional costs, we compare the costs of increasing the maximum penalty to 10 years' imprisonment to maintaining the current two years.

18. The current offence is triable either way, that is, may be tried either in the Magistrates' or Crown Courts. MoJ statistics show that in 2011 roughly 10% of cases were tried in the Magistrates' and 90% in the Crown Courts.<sup>8</sup> Increasing the maximum penalty to 10 years and making the offence of causing death by driving whilst disqualified an indictable only offence means cases will only be tried in the Crown Courts.<sup>9</sup> This shift to the Crown Court has implications in terms of costs to the Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunals (HMCTS), and the Legal Aid Agency (LAA), as cases heard in the Crown Court tend to be more expensive for all these agencies. Although the offence of causing death by dangerous driving has a maximum penalty of 14 years imprisonment, we use it as a proxy to estimate proportions for disposals, including the average

<sup>4</sup> Except for the first year of implementation, (2008) when only one offender was prosecuted and convicted.

<sup>5</sup> Ministry of Justice, Criminal Justice Statistics.

<sup>6</sup> In 2012, there were 12 causing death/grievous bodily injury by either disqualified, unlicensed or uninsured driving, Two of these cases were disqualified driving.

<sup>7</sup> Scotland Justice Statistics.

<sup>8</sup> MoJ, Criminal Justice Statistics.

<sup>9</sup> Please note that all cases start in the Magistrates Courts. For an offence that is triable only in the Crown Court, proceedings will start in the Magistrates but will be sent straight for trial in the Crown Court.

custodial sentence length (ACSL) for the proposed offence. This is because 1) there are no driving offences with a maximum of penalty of 10 years imprisonment; 2) the ACSL of causing death by dangerous driving is 48.7 months, which is substantially below the 14 year maximum; and 3) in 2011 there were no offenders sentenced to more than 10 years in custody. Since 2002, only four offenders were sentenced to more than 10 years (excluding indeterminate sentences), out of a total of more than 2,000 offenders sentenced to custody in the period 2002-2012.<sup>10</sup>

19. As the majority of cases for the existing offence under section 3ZB of the Act are already tried in the Crown Courts, we do not anticipate significant additional costs for the police, CPS, HMCTS or LAA. There might be some one-off costs associated with the preparation of new training or guidance material.
20. We anticipate the main impact on the criminal justice system would arise as a result of convicted offenders spending longer in prison. Overall we estimate increased annual costs to the CJS in the region of £150,000 (in 2013/14 prices)<sup>11</sup> and five additional prison places. If we assume that all the offenders sentenced to immediate custody are given the maximum sentence of 10 years, then costs would increase to £500,000, with 13 prison places. Note that the maximum sentence given for causing death by dangerous driving was 12 years, although since 2002 only four offenders have been given a sentence of longer than 10 years. Further information can be found in the Assumptions and Risks section.
21. There will also be some costs to the DVLA, as this new offence in 3ZC will lead to further periods of disqualification which will need to be recorded on a driver's record by the DVLA.

## **Benefits**

22. Longer prison sentences could mean that our roads are safer because there are fewer disqualified drivers driving on them. There may also be a deterrent effect if disqualified drivers are deterred from flouting their driving bans. However, we are not able to quantify this precisely.
23. Increasing the maximum penalty for this offence will contribute to providing justice for victims and their families and increase levels of public confidence in the justice system.

## **Option 2 - Creating a new offence (new section 3ZD in the Road Traffic Act 1988) of causing serious injury by driving while disqualified – an either way offence with a maximum penalty of four years' imprisonment**

### **Costs**

24. In order to estimate volumes for the proposed offence, we use data from Northern Ireland, as their data set can split some driving offences between 'causing death' and 'causing Grievous Bodily Harm (GBH)'. We interpret GBH to be broadly equivalent to causing serious injury, so have based our estimates on the number of cases on the proportions generated from the Northern Ireland data for 2011. These show broadly twice as many proceedings for causing GBH as for causing death. Applying this factor to the previously estimated volume of around three offenders for the offence of causing death by driving whilst disqualified, we estimate around seven offenders proceeded against for this proposed offence.
25. In terms of case progression through the CJS, we use the offence of causing death by careless or inconsiderate driving as a proxy. This is a TEW offence, with a maximum custodial sentence of five years. In 2011, roughly 25% of cases were tried in the Magistrates' Courts and 75% in the Crown Courts. Around 20% of those proceeded against were sentenced to immediate custody, with an

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<sup>10</sup> Ministry of Justice, Criminal Justice Statistics. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used

<sup>11</sup> Costs are rounded to the nearest £50,000.

average custodial sentence length of 15.3 months, and around 70% were sentenced to a community order or suspended sentence (probation).

26. Although the offence of causing death by careless or inconsiderate driving has a maximum penalty of five years imprisonment, we use it as a proxy to estimate case progression through the CJS and for proportions for disposals, including the average custodial sentence length (ACSL) for the proposed offence. This is because 1) there are no driving offences with a maximum of penalty of four years imprisonment; 2) the ACSL of causing death by careless or inconsiderate driving is 15.3 months, which is substantially below the five year maximum; and 3) no offender has been sentenced to more than four years.<sup>12</sup>
27. We also considered using the offence of causing death by serious injury as a proxy which also has a maximum penalty of five years' imprisonment. This offence was only introduced on 3 December 2012, and data is not yet available beyond 31 December 2012. In December 2012, one offender was prosecuted and was sentenced to immediate custody. Given the low numbers, it is not possible to use this existing offence as a proxy for the proposed offence, either in terms of potential numbers of cases, or progression through the CJS (for example, what proportion of cases are heard in the Magistrates' or Crown Courts, how many offenders are sentenced to immediate custody).
28. We assume that the offenders proceeded against for the proposed offence come from the pool of offenders currently proceeded against for disqualified driving (which is a summary only offence, with a maximum custodial sentence of six months). This means that we do not expect any new proceedings, but that there will be a transfer from the general offence to the new offence of causing serious injury.
29. We estimate that the overall additional cost to the CJS is estimated to be in region of £50,000 per year,<sup>13</sup> including one additional prison place in the steady state. Further information can be found in the Assumptions and Risks section.<sup>14</sup>

## **Benefits**

30. The new provision will, for the first time, specifically criminalise disqualified drivers who cause serious injury. We propose that in creating this new offence, the logical position, in terms of coherence of the current sentencing framework, would be to set the penalty at a lower level than the offence of causing death by driving when disqualified (which under Option 1 will have a maximum penalty of ten years' imprisonment).
31. The Government considers that any potential costs to the criminal justice system are outweighed by the non-monetised benefits of the proposal. Longer prison sentences could mean that our roads are safer because there are fewer disqualified drivers driving on them. There may also be a deterrent effect if disqualified drivers are deterred from flouting their driving bans. However, evidence on the scale of any deterrent effect is unclear. For this reason, we have not quantified a possible deterrent effect.
32. Creating a new offence with a higher maximum penalty than is currently available will contribute to providing better justice for victims and their families and increase levels of public confidence in the justice system.

## **Option 3 – Do option 1 and 2 (the Government's preferred option)**

33. This would involve making the offence of causing death by driving while disqualified an indictable only offence (under new section 3ZC of the Road Traffic Act 1988) and increasing the maximum penalty for such conduct to 10 years' imprisonment. It would also involve creating a new offence

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<sup>12</sup> Please see footnote 10.

<sup>13</sup> Costs are rounded to the nearest £50,000.

<sup>14</sup> Ibid.

(new section 3ZD of the Road Traffic Act 1988) of causing serious injury by driving while disqualified. The offence would be triable either way and have a maximum penalty of four years' imprisonment.

34. The Government considers that longer prison sentences will do more to reflect the culpability of offenders and give victims and their families a greater sense that justice has been done.

**Costs**

35. It is anticipated that increasing the penalty for causing death by driving when disqualified from two to 10 years **and** introducing a new offence of causing serious injury by driving when disqualified with a four year maximum custodial sentence will cost the CJS in the region of £250,000 per annum (in 2013/14 prices),<sup>15</sup> including an additional six prison places per year.

**Benefits**

36. The Government sees a clear benefit in pursuing both options. The suddenness and finality of death can be very difficult for friends and relatives of the victim to come to terms with, but so can living with a person who has suffered permanent and life changing injuries who may be in need of round-the-clock care.

37. The Government believes increasing maximum penalties for disqualified drivers who cause death or injury will strengthen justice for victims and their families and increase levels of public confidence in the justice system beyond that achievable through adoption of Option 1 or Option 2 alone.

**Assumptions/Risks**

38. For the analysis of the impact to the criminal justice system, a number of assumptions were made. There are several risks associated with these, primarily related to availability and robustness of data which underpin estimates of volumes.

Assumption	Risk
<i>Option 1:</i>	
<p>Volumes of cases:</p> <ul style="list-style-type: none"> <li>• We use MoJ data on the existing offence of causing death by driving whilst disqualified, unlicensed or uninsured.</li> <li>• However, MoJ statistics do not distinguish between the three different limbs of the offence (disqualified, unlicensed or uninsured). The number of offenders proceeded against/sentenced to custody just for the disqualified or unlicensed parts of the offence are estimated using proportions from Northern Ireland (NI) 2012 data, which separates out the different offences. We estimate that around one sixth of offenders prosecuted under section 3ZB are for causing death by disqualified driving.</li> <li>• MoJ estimates for section 3ZB of the 1988 Act are based on 2011 statistics for defendants proceeded against, and offenders sentenced. It was not possible to use 2012 statistics as the number of offenders sentenced to custody for the offence of causing death by driving whilst disqualified, unlicensed or uninsured,</li> </ul>	<ul style="list-style-type: none"> <li>• The NI sample size is small so the estimates are not robust. There is the risk that the volumes may be higher/lower.</li> <li>• Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used</li> </ul>

<sup>15</sup> Costs are rounded to the nearest £50,000.

Assumption	Risk
<p>was too small to give a meaningful average for the Average Custodial Sentence Length (ACSL). We estimate that around three offenders are proceeded against for causing death by disqualified driving.</p> <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013 and MoJ internal analysis, 2013.</p>	
<p>Progression of a case through the CJS (eg, proportion proceeded in the Magistrates v. Crown courts, proportion sentenced to immediate custody):</p> <ul style="list-style-type: none"> <li>• By increasing the penalty for the existing offence under section 3ZB of the 1988 Act in relation to disqualified drivers from 2 to 10 years and making it indictable only means that it will only be tried in the Crown Court – although all proceedings will start in the Magistrates courts these will be sent straight for trial in the Crown Court.)</li> <li>• As there are no driving offences with a maximum penalty of 10 years imprisonment, we use data on the existing offence of causing death by dangerous driving to estimate proportions for disposals.</li> <li>• We assume the ACSL given will be the same as for the proxy offence (48.7 months in 2011).</li> </ul> <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013 and MoJ internal analysis, 2013.</p>	<ul style="list-style-type: none"> <li>• There is a risk that more/fewer offenders may be sentenced to custody, and that the ACSL given may be longer/shorter. This means our assessment of costs may be an over/under-estimate.</li> </ul>
<i>Option 2:</i>	
<p>Volume of cases:</p> <ul style="list-style-type: none"> <li>• In order to estimate volumes for the proposed new 'Causing serious injury' offence, we have used data from Northern Ireland, as their data set splits some driving offences between causing death and causing Grievous Bodily Harm (GBH). We have interpreted GBH to be broadly equivalent to causing serious injury, so have based our estimates for the numbers of offenders proceeded against on the proportions generated from the NI data for 2011. These show broadly twice as many proceedings for causing GBH as for causing death. We estimate that around seven offenders are proceeded against for causing serious injury by disqualified driving.</li> </ul> <p>Source: MoJ internal analysis, 2013.</p>	<ul style="list-style-type: none"> <li>• Due to the small numbers from NI, estimates are not robust. There is the risk that the volumes may be higher/lower.</li> <li>• There is the risk that the ACSL given may be longer/shorter.</li> </ul>
<p>Progression of a case through the CJS (eg, proportion proceeded in the Magistrates v. Crown courts, proportion sentenced to immediate custody):</p>	<ul style="list-style-type: none"> <li>• There is a risk that more/fewer offenders may be tried in the magistrates' courts or the Crown</li> </ul>

Assumption	Risk
<ul style="list-style-type: none"> <li>As there are no driving offences with a maximum penalty of four years imprisonment, we use data on the offence 'causing death by careless driving'</li> <li>We assume the ACSL given will be the same as for the proxy offence (15.3 months in 2011).</li> </ul> <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013 and MoJ internal analysis, 2013.</p>	<p>Courts and that more/fewer offenders may be sentenced to custody.</p>
<ul style="list-style-type: none"> <li>We assume that the offenders proceeded against for the new causing serious injury offence come from the pool of offenders currently proceeded against for the general driving offence (driving whilst disqualified). This means that we do not expect any new proceedings, but that there will be a transfer from the general offence to the new offence of causing serious injury.</li> </ul> <p>Source: MoJ internal analysis, 2013.</p>	
<i>Common to Options 1 and 2:</i>	
<p>CPS costs:</p> <p>The estimated CPS costs consist of two broad categories, advocacy costs and Activity Based Costings (ABC). The primary purpose of the ABC model is resource distribution, and has several limitations (see risks). The costs reflect the different ABC and advocacy costs for guilty plea and effective trials, as well as the assumption that 100% of the cases would be prosecuted in the Crown Courts for the causing death offence, and c. 25% in Magistrates' and 75% in the Crown Courts for the causing serious injury offence.</p> <p>Source: CPS, 2013 and MoJ internal analysis, 2013.</p>	<ul style="list-style-type: none"> <li>The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated. For further information about how CPS ABC costs are calculated please see the following CPS guidance (CPS, 2012): <a href="http://www.cps.gov.uk/publications/finance/abc_guide.pdf">http://www.cps.gov.uk/publications/finance/abc_guide.pdf</a>.</li> </ul>
<p>HMCTS costs:</p> <p>Magistrates Courts Costs</p> <p>To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrate's court costs are £1,220 per sitting day in 2013/14 prices. A sitting day is assumed to be 5 hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2012-13 and updated in line with the GDP deflator of 2% (<a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls</a>). HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set</p>	<p>Timings data for offence categories:</p> <ul style="list-style-type: none"> <li>The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a DJ(MC) sits.</li> <li>Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information is available on admin</li> </ul>

Assumption	Risk
<p>and the costing process.</p>	<p>time, however we have excluded it for simplicity.</p> <ul style="list-style-type: none"> <li>• The timings are collection of data from February 2009. Any difference in these timings could influence costings.</li> <li>• The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimates.</li> <li>• Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).</li> </ul> <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> <li>• HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</li> </ul>
<p>HMCTS costs:</p> <p>Crown Courts Costs</p> <p>Timings data for types of case (eg, indictable only, triable either way) were applied to Crown court costs per sitting day. This was added to the cost of the initial hearing in the Magistrates, as all criminal cases start in the Magistrates courts. Crown Court cost is £1,640 per sitting day in 2013/14 prices, assuming a sitting day is 5 hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2012-13 and uprated in line with the GDP deflator of 2%</p> <p><a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn</a></p>	<p>Timings data for types of cases:</p> <ul style="list-style-type: none"> <li>• The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing.</li> <li>• Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate.</li> <li>• The data which informed the timings data excludes cases</li> </ul>

Assumption	Risk
<p><a href="#">Statement December 2013 update v2.xls</a>).</p>	<p>where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results.</p> <ul style="list-style-type: none"> <li>• Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences.</li> </ul> <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> <li>• HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</li> </ul>
<p>Legal Aid costs: We assume an eligibility rate of 50% for cases in the magistrates' courts and 100% in the Crown Court. The average legal aid cost in the Magistrates was assumed to be around £500, and £5,000 in the Crown Court (based on Crime Lower Report and Crime Higher Report, Legal Aid Agency).</p> <p>We use an average cost including all offence types from the dataset that includes both standard and non-standard fees to estimate the cost to the Legal Aid Agency.</p>	<ul style="list-style-type: none"> <li>• Variance in the Legal Aid eligibility rate assumed for cases in the magistrates' courts would impact the costings.</li> <li>• Assuming 100% eligibility for Legal Aid in the Crown court carries several risks. Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary. This could mean that the costings provided are an overestimate.</li> </ul>
<p>Prison costs:</p> <ul style="list-style-type: none"> <li>• We assume that 50% of a prison sentence over 12 months is served on probation and that there is no element of licence for a sentence under 12 months (see risks associated with probation costs below). However, we expect those convicted of these offences to serve more than 12 months in custody, so the Offender Rehabilitation Act changes are unlikely to have an impact here. The proportions of offenders who are sentenced to probation are determined by the proportion of those who receive an over 12 month sentence. The cost per prison place is £29,000 in 2013/14 prices (NOMS management accounts addendum (2012/13)).</li> <li>• Prison places are calculated by taking into account half the ACSL and the number of offenders sentenced to custody. For example, 2 offenders each sentenced to 12 months (each serving 6 months) would represent 1 prison place, as would 1 offender sentenced to 2 years (serving 1 year).</li> </ul>	<ul style="list-style-type: none"> <li>• The cost of additional prison places is dependent on the existing prison population - if this is lower than projected then the marginal cost of accommodating more offenders will be relatively low due to existing large fixed costs and low variable costs, but if it is higher than projected then marginal costs would be higher as contingency measures would have to be found.</li> </ul>

Assumption	Risk
<p>Probation costs:            Costs for probation and community sentences are approximately £2,700 per year in 2013/14 prices. The probation costs are based on national costs for community order/ suspended sentence order, found at NOMS, Probation Trust Unit Costs, Financial Year 2012-13 and uprated in line with the GDP deflator of 2% (<a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls</a>).            Source: MoJ internal analysis, 2013.</p>	<ul style="list-style-type: none"> <li>• Costs represent the national average fully apportioned cost based on delivery by 35 Probation Trusts in 2012/13.</li> <li>• Unit costs are calculated from the total fully apportioned cost of relevant services divided by starts in that year and do not consider which elements of cost are fixed and which will vary based on service volumes. Major changes to the volume, length or content of community sentences or the characteristics of the offender population could affect the unit cost.</li> <li>• The costs consist of costs for both (a) managing the sentence and (b) delivering court-ordered requirements. Excludes centrally managed contract costs for Electronic Monitoring and Sentence Order Attendance Centres.</li> <li>• There is a risk that costs could be higher than forecast should an offender be sentenced to less than 12 months in custody. This is because they would in future be subject to additional licence conditions and associated costs under the Offender Rehabilitation Act 2014. However, because we expect those convicted of these offences to serve more than 12 months in custody, the Offender Rehabilitation Act changes are unlikely to have an impact here.</li> </ul>