

# Culpable Homicide (Scotland) Bill Consultation

## Cycling Scotland Submission

Cycling Scotland welcomes the opportunity to comment on this consultation. Culpable homicide is an important issue as it affects how road users are punished for dangerous (and careless) behaviour and for offences committed when on the road.

Cycling Scotland is the nation's cycling organisation. Working with others, we help to create opportunities and an environment so anyone anywhere can cycle easily and safely. Our vision is for a sustainable, inclusive and healthy Scotland where anyone anywhere can enjoy all of the benefits of cycling.

### **Question 7 – What do you think would be the main practical advantages and disadvantages of the proposed Bill?**

The UK Department for Transport, as part of its Cycling and Walking Safety Review, has proposed to introduce offences of dangerous and careless cycling into UK law. In our submission to the consultation held on the proposals, we outlined that the proposals are unlikely to apply to Scotland based on the differences between English (rest of UK) and Scots law, primarily the existing offence of culpable homicide. Dangerous driving/road behaviour offences are already punished using this offence of culpable homicide in Scotland. The Olson legal opinion that was issued to accompany the consultation, and to provide guidance with regards to the differences in Scots Law, supports this position, stating 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.”<sup>1</sup>*

Amending the offence of culpable homicide, as proposed by this consultation, will impact on this, and applicability in law.

The aim of the proposed Bill is to amend the law of culpable homicide to ensure that *“where loss of life is caused by the recklessness or gross negligence of individuals, companies or organisations that, where proved, the wrongdoer can be convicted of the offence that reflects the appropriate seriousness and moral opprobrium of what occurred”*. The Bill will also make it clear in statute that a person may be guilty of culpable homicide if that person causes the death of another recklessly or by gross negligence.

In the context of road behaviours, we broadly welcome the proposed changes to culpable homicide legislation, as this further calls into question the need for and applicability of new offences of causing death by dangerous cycling in Scotland, as proposed by the UK Department of Transport. The proposed change to culpable homicide legislation is advantageous as it provides clearer grounds on which an individual can be charged for an offence.

It is important that there are clear definitions of ‘recklessness’ and ‘gross negligence’ to ensure that both terms are properly understood and consistently applied in the legal system. Examples of offences that would be punishable under each offence in different sectors – such as road traffic offences – would also be helpful and would aid professional and public understanding. This is

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/740535/supplementary-cycling-walking-report-scotland.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740535/supplementary-cycling-walking-report-scotland.pdf)

currently a gap, as identified in the consultation, in the current culpable homicide legislation, and which the proposed definition(s) goes some way to addressing.

#### **Culpable homicide by causing death recklessly**

***Question 12 – Do you have any comment to make on the way in which causing death recklessly is defined in the proposal?***

The consultation suggests that ‘recklessness’ is not properly defined and that this is a problem with existing legislation, and thus its application to punishment for offences. We identified a similar problem with terms ‘dangerous’ and ‘careless’ in UK Department for Transport consultation; there is no clear definition for either, and they are inconsistently applied across the justice system, with a lack of understanding of what constitutes each offence.

We welcome the consultation’s proposal for the proposed Bill to define what is meant by causing death recklessly as the following - *“that is if the person is, or ought to be, aware of an obvious and serious risk that acting will bring about death but nonetheless acts where no reasonable person would do so”*. The definition embodies an objective standard which would allow recklessness (and/or reckless behaviour) to be established objectively. Applying this definition consistently in the legal system for offences committed by road users that behave recklessly or act in a reckless manner on the road should help to ensure equitable punishment. It also further removes the need for the offence of dangerous cycling to be introduced into law in Scotland, as proposed by the UK Government, as the offence of culpable homicide would be effective in punishing such behaviour.

#### **Culpable homicide by gross negligence**

***Question 15 – Do you have any comment to make on proposals to reintroduce culpable homicide by gross negligence into the law in Scotland?***

As with recklessness, the consultation suggests that the term ‘gross negligence’ is currently not properly defined and that this is a problem with existing legislation, and thus its application to punishment of offences. The consultation proposes the following definition of gross negligence - *“that a natural person would be found guilty of that offence if he acts in a way which amounts to a gross breach of a duty of care to another and that breach causes that person’s death”*.

One of the areas currently missing under the existing culpable homicide legislation in Scotland is the ability to punish for careless cycling (and driving) offences. Under the proposals by the UK Department for Transport, this is the one area where we felt the proposed new offences could potentially apply to Scotland. The proposed definition in this consultation goes some way to addressing this and, if inserted into law, might address this gap, and resultingly, the proposed UK Department for Transport offence of ‘careless cycling’ would potentially not apply to Scotland as such offences could be covered by the new culpable homicide legislation. Going forward, there is a need to monitor how this is implemented and actioned in the justice system with regards to punishment of offences.

It is important that there is a legally binding and delineated definition of both ‘gross negligence’ and ‘recklessness’ for the purpose of punishing road traffic offences under these categories, and that it is clearly understood and established under law what constitutes an offence of ‘recklessness’ or ‘gross negligence’ (in relation to deaths on the road for example).

**Cycling Scotland  
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