

To: Scrutiny

Subject: Compulsory Wearing of Cycle Helmets - Submission to Panel

Here is my submission on the proposed law.

Kind regards

Tony Bellows

Draft Road Traffic (No. 60)(Jersey) Regulations 201-

The States, on 10th March 2010, agreed to support paragraph (a) of Deputy A.K.F. Green of St. Helier's Proposition P.4/2010, and asked the Minister for Transport and Technical Services to bring forward legislation 'to ensure that cyclists were required to wear a suitable safety helmet whilst cycling in the case of persons aged under the age of 18 years'.

On 5th July 2011, the Minister, following discussions with Deputy Green, delivered a Statement to the Assembly confirming the draft legislation to be brought forward would apply to children under 14 years old.

These draft Regulations amend the Road Traffic (Jersey) Law 1956 to give the Minister power, by Order, to require children to wear protective helmets when on a pedal cycle on a road or cycle track.

The Regulations also -

- . create the offences that persons will commit in relation to a child who should be, but is not, wearing a cycle helmet. The level of fine for such offences is level 1 on the standard scale;
- . give powers to Police Officers, among other things, to ask for the child's age, name and address and the parents' names and address(es). A person who fails to abide by a Police Officer's request commits an offence and is liable to fine of level 2 on the standard scale;
- . amend Article 80 of the Law so that an Order under that Article can provide for authorised persons to test and inspect cycle helmets.

One offence is committed by the child himself or herself (if aged 10 or over, and below the prescribed upper age limit), one by either or both of the child's parents if they cause or permit the breach without reasonable excuse, and one by any other person who is driving the cycle without reasonable excuse at the time of the breach (for example where the child is in a child seat, in a trailer or on a tandem).

The exceptions the Minister would propose include children -

- . riding on a sea beach;
- . riding on a cycle track where the pedal cycle is controlled by an adult pedestrian;
- . drawn in a trailer complying with the relevant standard, the children using safety belts and not exceeding the maximum height for the trailer;
- . riding on "Bessie Bikes" on a cycle track;
- . required to wear a turban

General Comments

I can see a host of problems with this legislation, especially with teenagers around 15-17, and

also those 18-21. Unlike some who object, I am not against helmets, and I can see that they can be a major factor in preventing head injuries. Hence my comments do not feature any criticism of statistics about helmet use, increased risk taking (the Peltzman effect) etc.

I am assuming that it is taken for granted that wearing helmets is a good thing. I do not like seeing adults who are, to my mind, risking their health in any injury by not wearing a helmet.

My objection to the law stems purely from the provision to include children, and the inability of the law to specify exactly how it would work. I am also concerned about areas not covered in the law, and the potential detrimental effect on tourism. But my major critique is the way in which the law sets out to levy fines on children and parents, without giving sufficient thought to how this will operate, or if it will be fair and just - which is surely what compulsory laws must ensure.

1. There seems to be no provision to require proof of age. And requiring proof of age when cycling seems rather draconian. On the other hand, if the age is not the correct one, this requires checking up at the address given. Or for the person to have to go to police HQ to supply proof of age if they don't have it with them.

2. Someone of the age of 16 or above could legally be married and living away from home. It is sheer madness that the parent should be responsible.

3. Is this going to lead to "stop and check" policy for people of ages 15-21. It can be extremely difficult to ascertain age in those cases.

4. If someone wears a turban, how can you determine if they are "required to wear it". They can state their religion is Sikh, and there is pretty well nothing that can be done about it.

5. If a kid riding leaves home, helmet in place, and out of site, dismounts and takes it off, the parent will not know. Is the parent expected to supervise the child all the way to school to ensure it stays in place? And what if the child goes off with friends at the weekend on their cycle? Why should the onus be on the parent to police this, and how can they be expected to? Would the impossibility of policing this count, or would the parents be seen "permitting the breach without reasonable excuse"? In fact, what is a "reasonable excuse"? The preamble does not give it at all.

6. What is the status of the Railway walk?

7. As a Law which is enforced in Jersey, but not elsewhere - UK, Europe, Guernsey - how is the information to be conveyed to the tourist, who may arrive only to discover they need to purchase a cycle helmet? Will there be sufficient demand for helmet rental to be a possibility? There could be a very serious discouragement to tourists to come here and cycle around Jersey, especially as no such laws apply in Guernsey.

8. And for that matter, what is the state of St Brelade's Promenade where I have seen the odd cyclist?

Levying the Fines

I assume that like seatbelt legislation, the law would levy the fine on the parents, and certainly it looks as if this would be the case. Now with seat belt law, it is the driver who is responsible for juveniles in the car. That's all well and good and easy to police, after all, a stationary car would hardly pose a problem, and if it is being driven, it is fairly easy to spot the driver if stopped for

breaking the law regarding juvenile passengers.

On the other hand, if the fine is levied just on a child who has no income, is the parent liable to pay? How is a child, with no income in their own right, supposed to pay a fine? But is it right that the parent should be due to pay if they have taken all the steps they can reasonably do while the child is within sight to ensure the law is complied with? Are parents likely to encourage children to cycle when they end up bearing the burden of the fine, though no fault of their own?

Cycling helmet law seems to place the burden on the parents, which is an impossible situation. A parent might see the child depart for school, helmet in place, but unless they follow the child to school, they have no way of monitoring if the helmet stays on. The same, if the child visits a school friend, and is going to cycle round to them.

And as I mention, a 16 year old can be living away from home, and even married, yet the law places the burden of responsibility for the helmet on his or her parents! That is ridiculous! It's simply not been thought out properly.

Sweden has a common sense approach. If an adult is with a child under 15 cycling, the adult gets fined. If the child is alone, there is no fine. That would constitute "reasonable excuse" for the parent. Presumably if the child was 16 and living away from home, that would also constitute "reasonable excuse" for the parent.

Even in Queensland, for children 10 - 16 years, a fine is imposed on a third violation, after a caution and then a warning. There is no provision like that here. In British Columbia, for children under 16, the penalty accrues to the parents - but only if aware of the offence. In Victoria, Children receive a Bicycle Offence Report, which is a letter to their parents, without monetary penalty.

However, in the Northern Territory of Australia, the offender is fined, and if not paid within 3 months, the offender (children included) faces court followed by a detention centre or jail.

In Queensland, a report (in 2013) noted:

"The Committee is aware that police enforcement of helmet wearing by children is hampered by the fact that the children are not able to pay the fine and their parents have no legal responsibility to pay the fine on their behalf. The Committee believes parents should be responsible for ensuring their children wear helmets and should therefore be responsible for paying any fine their child incurs."

It makes the argument that this is similar to seat belt legislation, but as I have argued, this is simply not the case. A passenger is within view of the driver, a child cyclist is not in view of their parent. Removing a helmet and placing it on handlebars (or elsewhere) is a matter of moments.

I really do not think it is simply sufficient for the Courts to test "reasonable excuse", and some indication at the very least should be enshrined in the law, or the preamble to the law. This is a major deficiency which must be addressed before the law is changed. What counts as "reasonable excuse" must be given teeth, otherwise it is vague, unclear, left to the Courts, and parents may well pay fines rather than incur costly legal fees. Is that just?

My Suggestions

My preferred option:

1) caution or words of advice to both "responsible adult" and child

2) reduce age range to 15 and below. Or change "responsible adult" not to include parent if child is living away from home (and left school, in employment etc). My preference would be the first option.

3) if second (or third) offence, confiscation order on bike for specified period. That affects the child, not the adult, directly, so they have the main burden of responsibility - they suffer a forfeit where it hurts them, and not their parent, who may well be trying to ensure their child wears a helmet when they can see them. It is like disqualification.

Some notes on confiscation

There is a degree of precedence for confiscation in UK Law.

Confiscation of an asset such as a car / motor bike is allowed under UK law, as I understand it. The Police Reform Act 2002 gives the police these kinds of powers. Section 59 of the Act provides for the seizure of the vehicle and section 60 covers the duties of the police in respect of the retention, safe keeping and disposal of the vehicle.

For the powers to be available, the officer/Police Community Support Officer (who has received the required additional training on the Road Traffic Act and s59 Police Reform) must have reasonable grounds for believing that a mechanically propelled vehicle is being, or has been, used on any occasion in a manner which:

- (i) contravenes section 3 or section 34 of the Road Traffic Act 1988 (careless and inconsiderate driving and prohibition of off road driving)
- (ii) is causing, or is likely to cause, alarm, distress or annoyance to members of the public.

Now the Road Traffic Act does include provision for pedal cycles. under "Dangerous cycling" and "Careless, and inconsiderate, cycling"

So in theory it might be possible to do something to change in Jersey law to allow confiscation. The kind of legislation which would be needed is in place for some traffic offences, at any rate, in the UK. In principle, Jersey could follow the Police Reform Act, and adapt that to include bicycles.

Insofar as it was a punishment, confiscation would not really be suitable, but if it was to prevent the owner repeating the offence, then I think there might be some grounds for this. It could merit further study.