



## **Road Share Campaign for Presumed Liability MSP briefing for 7 January Scottish Government debate on active travel**

### **Introduction**

The Road Share Campaign for Presumed Liability is calling for legislation to change where the onus of proof lies in relation to compensation claims involving vulnerable road users. We believe such a change – where motor vehicle drivers would be presumed liable for any loss, injury and damage caused to a cyclist involved in a collision and cyclists presumed liable in similar incidents with pedestrians – would help foster a culture of respect on Scotland’s roads and lead to improvements in road safety.

This change is designed to protect the most vulnerable road users and to reflect a hierarchy of use and protection. The UK is one of five nations in Europe that does not have a presumed liability regime meaning Scotland has a chance to take the lead in protecting our vulnerable road users.

### **The need for action**

The safety of vulnerable road users on our roads continues to be dire. According to the latest statistics from Transport Scotland, there were 13 cyclist fatalities in 2013<sup>1</sup>, four more than the previous year. In addition, though pedestrian fatalities declined in 2013, the fatality per capita rate in Scotland remained 13% higher than in England and Wales<sup>2</sup>.

Clearly, something needs to be done urgently to address this state of affairs and it is for this reason that Road Share was launched in April 2013 to campaign for the introduction of presumed liability in Scottish Civil Law for road traffic collisions.

A system of presumed liability would create a hierarchy of responsibility whereby motor vehicle drivers would be presumed liable for any loss, injury and damage caused to a cyclist involved in a collision. A cyclist would also be presumed liable for loss, injury and damage caused to a pedestrian in any collision thus ensuring fairness while protecting the vulnerable.

Since our launch, Road Share already has garnered support of public figures like Mark Beaumont, Nick Nairn, Cameron McNeish, Scott and Jenny Hastings, media commentator Lesley Riddoch; athletes such as paracyclist Karen Darke, endurance athlete Dr Andrew Murray, Olympic and Paralympic cyclist Craig MacLean, Scottish track stars Silas Goldsworthy and Martin Williamson; and organisations like Scottish Cycling, Pedal on Parliament, SPOKES, CTC Scotland and Go Bike, the Bike Station, Edinburgh Bicycle Co-operative, driving schools RED and Pro-Scot and a number of MSPs and MP. Additionally, an online petition calling for the introduction of presumed liability legislation has collected over 7,500 signatures.

### **Presumed liability and the promotion of active travel**

The Scottish Government should be commended for committing itself to such a wide ranging and comprehensive active travel strategy. Of particular note is the section on cultural and behavioural change, which emphasises that, by 2030, drivers will “show an extremely high duty of care towards pedestrians and cyclists” which is “reflected in cautious and considerate driving standards and behaviour”<sup>3</sup>.

<sup>1</sup> Transport Scotland, *Reported Road Casualties Scotland 2013*, page 34. Accessed on 19 December 2014 via [http://www.transportscotland.gov.uk/system/files/documents/statistics/RRCS\\_final13.pdf](http://www.transportscotland.gov.uk/system/files/documents/statistics/RRCS_final13.pdf).

<sup>2</sup> Ibid., page 40.

<sup>3</sup> Transport Scotland, *A Long-Term Vision for Active Travel in Scotland 2030*, page 10. Accessed on 19 December 2014 via [http://www.transportscotland.gov.uk/sites/default/files/554346\\_334708\\_Active\\_Travel\\_210mm\\_p9\\_HR\\_20141126103050.pdf](http://www.transportscotland.gov.uk/sites/default/files/554346_334708_Active_Travel_210mm_p9_HR_20141126103050.pdf).

The document states officials expect to see this cultural change come through greater education and training provision in Scotland, which we agree is a necessary condition if we are to see improvements in road safety. However, these in and of themselves will not be sufficient to effect cultural change on the scale ministers envisage. What is needed, in addition, is an approach that takes Civil Law into account.

We all have responsibility for our safety on the roads and to give due respect to all other road users. Presumed liability will help promote Scotland as a cycling-friendly nation and will build a culture of mutual respect on our roads.

For example, research conducted by the campaign has indicated that there is a strong correlation between European Nations that operate presumed liability regimes and higher levels of active travel and a safer road user environment. When it is part of a package of measures designed to boost cycle safety, presumed liability has the powerful potential to create a culture of mutual respect between road users on the level imagined by the Scottish Government.

Adopting presumed liability for road traffic collisions would send out a clear message as to the importance of drivers keeping a proper look out for pedestrians and cyclists leading to a safer road environment for all. In France, for example, since the passage of a stricter liability regime in 1985, bicycle safety has improved markedly. In fact, according to 2012 OECD statistics, the fatality rate for cyclists has decreased by 66 per cent since 1990 alone despite a relative dearth of cycling-specific safety legislation since then.

Presumed liability is the proper approach for a mature, socially conscious nation. A simple, yet powerful, change to Civil Law has the power to effect great improvements to Scotland's road safety, as seen by the situation on the Continent, while leaving untouched the foundational principle of 'innocent until proven guilty' found in Criminal Law.

### **Conclusion**

Scotland has not been shy in taking strong action in devolved areas to create a more inclusive, safer and healthier society. While the Scottish Government should be lauded for emphasising the role of cultural and behaviour change in their vision for active travel in Scotland, what is needed is a presumed liability regime to truly bring about change on the scale imagined by officials.

***We therefore urge you to discuss the role presumed liability can play in realising the Scottish Government's vision for active travel during this debate and to press ministers for a commitment to support legislation implementing presumed liability for road traffic collisions in Scotland.***

If you would like more information on any aspect of this briefing in advance of the debate, please contact:

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