

Safety, Health and Environment Regulatory: Motor Crime Team's Transport & Logistics

November 2021 Update



Introduction

In our November motor crime update we provide market insight into the key developments over the last month and the current challenges faced, including:

- ORR publishes independent review of smart motorways;
- Government to tackle HGV driver shortage;
- Figures published on e-scooter deaths;
- Digital driving licences to be introduced within three years;
- Speed limiters to be fitted on new cars by 2022;
- Government publishes data on road casualties; and
- Perverting the course of justice- impact of pandemic on suspended sentence.



The safest roads in the country? ORR publishes independent review of smart motorways

"My commission for assurance into smart motorway safety data by the ORR is another step towards improving road safety and instilling public confidence in the safety of our roads, which make a crucial contribution to economic and social development in this country."¹

The Office of Rail and Road (ORR) has published an independent review of the data concerning the safety of all lane running (ALR) motorways². ALR motorways are a type of smart motorway and have been in operation in England since 2014. The report supports National Highway's findings that smart motorways are "the safest roads in the country in terms of fatalities".³

The report was provided for the Transport Secretary in response to his request in March 2021 to undertake quality assurance of the data and evidence underpinning the conclusions arrived at regarding ALR motorways.

It specifically addressed the following questions:

- is the data and evidence used in the stocktake and the progress report reliable and robust and in line with established/best practice?

- have comparisons been made in an appropriate way about the relative safety of ALR motorways, with reference to conventional motorways and other roads?
- is there any other data that could be used to enhance our understanding of the relative safety of ALR motorways or to support the monitoring and evaluation of the effectiveness of the measures we are putting in place to improve safety and perceptions of safety?
- is there data and evidence available which can compare the international experience of operating similar types of road?

The ORR's review found that there were no underlying errors in the data and evidence used in the stocktake and the progress report and it was used robustly by both Highways England (now known as National Highways) and the Department for Transport.

The review highlighted that there is a lack of long-term data available. It said that this is largely due to the fact that smart motorways are relatively new and there is limited data available to make definitive conclusions about their relative safety. In 2019, there were only 141 miles of ALR motorway, the network having expanded from 29 miles in 2014.

1. Grant Shapps, Transport Secretary

2. [Quality Assurance of All Lane Running Motorway data - Report for Secretary of State, Rt. Hon. Grant Shapps MP - 28 June 2021 \(publishing.service.gov.uk\)](#)

3. [ORR report supports smart motorway safety claims | Latest news \(smarttransport.org.uk\)](#)

The ORR has made a number of recommendations to help strengthen the data and analysis used, as well as how risks can be managed.

One such recommendation is to ensure that the before and after analysis is strengthened and reviewed more regularly to better reflect the specifics of each scheme rather than the use of national trends.

The ORR also found some anomalies and inconsistencies in the hazard log used by the company during our review. It therefore recommended that National Highways makes its Generic Hazard Log more complete with additional forms of analysis used to complement the company's approach, and to gather additional data, if possible, to better understand the risk exposure to road users.

Mr Shapps said:

"The ORR's report contains several recommendations for improvement that will strengthen our understanding of road safety. National Highways has agreed to all its recommendations and developed an action plan in response which is already underway."

However, Neil Greig, policy and research director at independent road safety charity IAM RoadSmart, believes

that smart motorways need to be given more time before their safety performance can be accurately assessed⁴.

Government takes action to tackle HGV driver shortage

"From Inverness to St Ives, HGV drivers are helping to keep the country running, and have been throughout the pandemic. The shortage of drivers is a global problem, but we've been taking action here in the UK to help industry leaders attract drivers and build a more resilient sector."⁵

We previously reported on the proposal to relax the legal limits on lorry drivers' hours following concerns over a workforce shortage⁶. The Government has now confirmed that up to 50,000 more HGV driving tests will be made available each year in order to streamline the testing process and tackle the issue⁷.

HGV driving tests will be overhauled, meaning drivers will only need to take one test to drive both a rigid and articulated lorry, rather than having to take two separate tests (spaced three weeks apart). This will make around 20,000 more HGV driving tests available every year and mean drivers can gain their licence and enter the industry more quickly.

4. [ORR road tests smart motorway safety claims and calls for improved analysis | IOSH Magazine](#)

5. Transport Secretary, Grant Shapps

6. [Safety, Health and Environment Regulatory Motor Crime Team's Transport and Logistics Update August 2 : Clyde & Co \(clydeco.com\)](#)

7. [Government takes further action to tackle HGV driver shortage - GOV.UK \(www.gov.uk\)](#)

Tests will also be made shorter by removing the “reversing exercise” element – and for vehicles with trailers, the “uncoupling and recoupling” exercise – and having it tested separately by a third party. This part of the test is carried out off the road on a manoeuvring area and takes a significant amount of time. Testing such manoeuvres separately will free up examiner time, meaning they can carry out another full test every day.

Car drivers will no longer need to take another test to tow a trailer or caravan, allowing roughly 30,000 more HGV driving tests to be conducted every year.

The driver shortage is a widespread problem affecting countries across Europe and also the United States, caused by a range of factors, including Brexit and an ageing workforce. This new legislation is changing previous EU regulations which the UK is no longer obliged to use.

The changes follow a public consultation⁸ over the summer, which saw thousands of respondents, including industry leaders, support the move as a positive step to help the sector tackle the lorry driver shortage.

The standard of driving required to drive an HGV will not be affected and any driver who does not demonstrate utmost competence will not be granted a licence. All car drivers will also still be encouraged to undertake training to tow trailers and caravans.

RHA Chief Executive, Richard Burnett previously told Roads Minister, Baroness Vere:

“The need for action is clear and urgent. We and many others have provided overwhelming evidence that the shortage is getting worse – the situation must be addressed right now.”⁹

E-scooters- riding a death trap?

“Rental e-scooters provide a flexible and socially-distanced travel option that contributes towards regional transport goals such as reducing congestion, improving air quality, and improving connectivity to public transport hubs.”¹⁰

We previously reported that the use of e-scooters¹¹ is becoming increasingly popular, with more than 100 hire schemes in operation worldwide and a market estimated to be worth up to \$50 billion by 2025¹².

8. [Changes to HGV and bus driving tests and allowing car drivers to tow a trailer without an extra test - GOV.UK \(www.gov.uk\)](#)

9. [The HGV driver shortage: Our campaigning \(rha.uk.net\)](#)

10. Spokesperson for Transport for Greater Manchester

11. Under section 185(1)(c) of the Road Traffic Act 1988 (RTA 1988), an e-scooter is classified as a motor vehicle and subject to the same legal requirements for road use as other vehicles, including insurance, a driving licence, number plates, and registration.

12. [E-scooter market could be worth 40 to 50 billion USD by 2025 \(brusselstimes.com\)](#)

However, figures recently released by the Government show there were 483 people injured and one killed across Britain in 2020. This includes 291 injuries reported to the Metropolitan police - equating to 60 per cent of the national total - and five to the City of London police¹³. Separate data from Transport for London shows there have been three e-scooter deaths in the capital this year.

The report from the Department of Transport confirmed that nationally there were 128 serious injuries and 355 slight injuries last year. The data includes privately owned e-scooters - which are illegal to use on public roads - and those available for rental in Government-backed trials. This compares with 115,584 road deaths and injuries across the country last year.

The popularity of e-scooters has in part increased due to dozens of legalised rental schemes which have popped up in urban areas since July 2020 as part of government trials.

However, several charities have raised concerns about their safety, with the Guide Dogs charity calling for the sale of private high-speed e-scooters to be banned. It also expressed fears their use means some people with sight loss are being forced to change their route or avoid independent travel altogether.

The National Federation of the Blind echoed these thoughts, advising that e-scooters are not safe for riders or pedestrians and that trials should be halted immediately¹⁴.

The charity pointed to 10 deaths involving e-scooters to back up the charity's case, the most recent of which was where a 16-year-old was killed in London.

Others include a Brighton man of 54, who died after an e-scooter crash, and a 19-year-old in Portsmouth who died after colliding with a car. In June, a 20-year-old man died from his injuries following an e-scooter crash and in Wales a man died after he hit a parked car. YouTube star Emily Hartridge was the first e-scooter rider to die in London, when she was involved in a collision with a lorry in Battersea in July 2019.

Digital driving licences to be introduced

Digital driving licences will be introduced for the first time as part of post-Brexit reforms designed to make the licensing system more efficient. Provisional licences (required by those learning to drive) will initially be made available via a smartphone app before the technology is expanded to cover full licences.

13. [Hundreds of Londoners injured in e-scooter crashes, figures reveal | Evening Standard](#)

14. [Call to halt e-scooter trials after string of deaths across the country - Manchester Evening News \(ampproject.org\)](#)

The Driver and Vehicle Licensing Agency (DVLA) has committed to developing an app featuring the licences by 2024. The DVLA is to introduce the system initially as a trial¹⁵. If the rollout is successful then full driving licences could also be digitised. Traditional physical plastic cards would continue to be available.

Digital driving licences will be introduced as part of post-Brexit measures to make transport “fairer, greener and more efficient”. A Department for Transport (DfT) source said that the Government was prevented from developing digital licences before Brexit due to EU law.

Transport Secretary Grant Shapps said his department is also “bringing MOTs into the modern age”, which will involve introducing digital versions of booking systems and certificates.

However, there are concerns that carrying personal data in such an accessible way will make it more vulnerable to being stolen. Steve Gooding, director of motoring research charity the RAC Foundation, said:

“These days the one thing drivers are most likely to have with them is their phone, so using it to carry their driver’s licence could be quite handy. The risk is that the more personal data we store on our phones the more tempting a target they become for thieves and hackers.”

In its strategic plan for 2021-2024, the DVLA said:

“We will introduce a digital driving licence for provisional drivers and also start to build a customer account facility.

This will ultimately give our customers personalised, easy and secure access to a range of services and allow them more choice in how they transact with us.

Our services will be secure, scalable and resilient and we will continue to explore and expand the use of emerging technologies.”

Put the brakes on! Speed limiters to be fitted by 2022

“ISA is a driver assistance technology: the driver, not the car, is responsible for obeying the current speed limit at all times.”¹⁶

All new vehicles sold in Europe – including the UK – will be fitted with a mandatory speed limiter from 2022 to keep cars within the UK speed limits and boost road safety¹⁷. All new vehicles will be fitted with a speed limiter as a legal requirement from 6 July 2022. The 2019/2044 regulation also mandates all new cars that have already launched be fitted with an Intelligent Speed Assist (ISA) by 7 July 2024. The software will be mandatory for all new cars, despite the UK leaving the EU.

15. [Digital driving licences to be introduced in post-Brexit transport changes - BelfastTelegraph.co.uk](#)

16. European Transport Safety Council

17. [Mandatory speed limiters on UK cars from 2022 | AutoTrader](#)

A speed limiter is a safety device that can be fitted into a car so that the vehicle does not exceed a certain speed. Unlike cruise control, which maintains a consistent speed

throughout to eliminate the use of the accelerator, a speed limiter allows the driver to accelerate and decelerate as they normally would, provided they do not go above the speed limit set.

The ISA uses either a video or a GPS-linked system to detect speed signs. The system alerts the driver if they are going over the speed limit, and if the driver does not slow down the ISA should intervene¹⁸. After a series of alerts, if the driver does not apply the brakes, the vehicle reduces power to the engine. The car should then naturally slow down to the new speed limit. Automatic detection of pedestrians and cyclists was also approved alongside the ISA.

The European Transport Safety Council (ETCS) believes that the technology could reduce road collisions by 30% and deaths by 20%. The ETCS has said the speed limiters (along with other measures included in the legislation) could prevent 140,000 serious road

traffic injuries by 2038. Overall, it hopes to cut road deaths to zero by 2050. In the UK, there were 1,472 fatalities and 22,014 serious injuries reported due to road accidents in 2020¹⁹.

Many Ford models already use the ISA system, as do Mercedes-Benz, Peugeot/Citroen and Renault cars. Volvo was the first manufacturer to roll out the system across all its models. The company will cap the speed of all new cars at 112 mph. Volvo is also developing “smart speed controls” that should detect when a car is driving near a vulnerable site, such as a school or a hospital.

However, Matthew Avery, director of research at Thatcham Research warns that there are limitations to the technology when it comes to detecting speed:

“Speed signs can often be obscured or inaccurate, while GPS mapping can be out of date. Temporary limits and road works can confuse the system too. This could lead to speeding fines if the system isn’t picking up the limit correctly. And drivers will still be liable, whether they were relying on the system or not.”

18. [Speed limiters on new cars by 2022 - Confused.com](#)

19. [Reported road casualties Great Britain, provisional results: 2020 - GOV.UK \(www.gov.uk\)](#)

The new EU regulations also include other compulsory safety equipment such as autonomous emergency braking, data loggers (black box technology), emergency stop signal, driver fatigue detection system, lane keep assist, built-in breathalysers which won't let you start the car if you fail, and reversing sensors or cameras. Several of these systems are widely available as standard on many cars sold in the UK.

*"Many drivers want to remain safe and drive within the law, however changing from one speed limit to another can be difficult and distracting. In this respect, Intelligent Speed Assistance (ISA) systems help to not only keep drivers safe but also legal."*²⁰

A preventable tragedy- Government publishes data on road casualties

*"Every death and serious injury on the road is a preventable tragedy and yet, on average, five people die every day on the road in the UK and countless more are seriously injured."*²¹

The Government has published data on those killed in reported road accidents in Great Britain, both in terms of the number of fatalities and fatality rates, for different road user types²². The report includes the road users

themselves, as well as other parties in collisions with them.

These statistics show that, in 2020:

- Car occupants accounted for 42% of road users killed in Great Britain in 2020, more than any other road user group. This reflects the fact that cars account for most traffic, with fatality rates for car occupants lower than vulnerable road users.
- The more vulnerable road users - motorcyclists, pedal cyclists and pedestrians - together accounted for over half (53% of fatalities) in 2020 and had the highest user casualty rates.
- The number of pedal cyclist fatalities was notably high during 2020, with a large increase in cycling following the Covid-19 lockdown from March. Together the 'vulnerable road users' accounted for over half of fatalities in 2020 (pedestrians 24%, motorcyclists 20% and pedal cyclists 10%).
- Cars were the vehicle type most often involved in fatal collisions where other road users were killed in 2020, followed by heavy goods vehicles (HGVs).

20. Matthew Avery, director of research at Thatcham Research

21. [UK road death and casualty statistics | Brake](#)

22. [Reported road casualties Great Britain: road user risk, 2020 data - GOV.UK \(www.gov.uk\)](#)

- Per passenger mile, HGVs had the highest rate of other road user fatalities in 2020, followed by motorcyclists. Conversely pedal cyclists and pedestrians presented lower risks of fatality to other road users in collisions

The above analysis relates to fatality risk for different types of road user but does not consider the risk that other road users present to them. The report breaks down the total fatalities by the nature of collision they are involved in and shows that:

- a considerable proportion of car occupant and motorcyclist fatalities occur in single vehicle accidents (43% and 29% respectively).
- most vulnerable road users fatalities are killed in collisions with cars (in 2020, 68% of pedestrian and 48% of pedal cyclist fatalities were hit by a car). Again, this is perhaps unsurprising given that cars account for the majority of traffic.

The report also suggests how a number of improvements could be made to collecting and analysing the data, including:

- Looking at trends over time to explore any changes in the numbers

and rates, particularly as 2020 data has been affected by the COVID-19 pandemic.

- Considering data for seriously injured casualties as well as fatalities, or grouping several years, to provide more robust figures. This is particularly relevant for cases where the number of fatalities in a single year is small (e.g. other road users killed in collisions with pedal cyclists).
- Exploring data for different types of road, for example excluding motorways - this can affect the casualty rates as motorways are relatively safe and for some vehicle types (notably HGVs) a high proportion of traffic is on motorways.
- Exploring different ways to calculate casualty rates, rather than per mile travelled - for example by time spent travelling, or number of trips made.

R. v Brown (Keith John)²³- impact of pandemic on suspended sentence

The applicant (B) applied for leave to appeal against a sentence of 18 weeks' imprisonment imposed following his guilty pleas to two counts of perverting the course of justice.

23. [2020] EWCA Crim 1084

B was 64 years old and had worked as a licensed private hire taxi driver for over 20 years. His vehicle had been recorded as travelling at 39mph in a 30mph area. A notice of intended prosecution was sent to him as the registered keeper of the vehicle, but he did not initially respond. When a reminder was received, he falsely named an acquaintance (X) as the driver, with X's approval. X paid the £100 fine and took three penalty points on his licence. Five months later the car was again caught speeding at 40mph in a 30mph zone. B named his wife as the driver, but video footage indicated that the driver was male. All three accused pleaded guilty at the earliest opportunity to perverting the course of justice, with B pleading guilty to two counts. They were afforded full credit of one-third for their pleas. X and B's wife each received sentences of 14 weeks' imprisonment suspended for 12 months. B had two recent convictions for speeding offences which post-dated the instant charges. He received fixed penalties and points on his licence. He was disqualified for six months under the totting-up provisions, having committed a further offence of failing to give information as to the identity of the driver, all of which post-dated the perverting the course of justice offences. A pre-sentence report

indicated that he had been unaware of the serious nature of his conduct or that he was committing an offence by asking others to take his penalty points. He and his wife had lost their jobs because of the offending and had to rely on universal credit. The report recommended 150 hours of unpaid work in the community. The judge noted that B's criminality was more serious than that of the two co-accused, that the offending had been to benefit him, and that the offending called for a custodial sentence. In the light of the impact of the Covid-19 pandemic on prison conditions, B's sentence was as short as it could be. After a trial 27 weeks' imprisonment would have been imposed and that was reduced to 18 weeks with credit for his plea.

B submitted that the sentence should have been suspended because there was a realistic prospect of rehabilitation, he was a hard-working 64-year-old family man who had learnt his lesson, and because he lacked previous convictions other than for motoring offences. He contended that he posed no danger to the public and that his imprisonment would have a significant harmful impact on his wife. He argued that the judge's view that appropriate punishment could only be

achieved by immediate custody had to be viewed in light of previous guidance²⁴ which stated that the Covid-19 pandemic's impact on prison conditions was a factor which could properly be taken into account in deciding whether to suspend a sentence.

It was held on appeal that the sentencing judge had been right to refuse to suspend the sentence, despite the impact of the Covid-19 pandemic on prison conditions. The appropriate punishment could only be achieved by immediate custody and the judge had taken the pandemic's impact fully into account by reducing the length of the sentence.



24. *R. v Manning (Christopher)* [2020] EWCA Crim 592, [2020] 4 W.L.R. 77, [2020] 4 WLuk 414

Our experienced Motor Crime Team is here to assist with all motor, fleet and logistics queries. In addition, if you would like to discuss any aspect of this article further, please get in touch with a member of our team at MotorCrimeTeam@clydeco.com or call us directly on 0161 240 8514.



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