



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

August 2021 Update

Introduction

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

- Responses to third consultation on automated vehicles;
- Longer hours for lorry drivers;
- Response to consultation on Highway Code;
- Pedestrian crossings to prioritise walking;
- Motorists to face fines for moving traffic offences;
- Case considers driving without a seat belt;
- Rehabilitation training offered for NI drink driving offences; and
- Welsh Government to reduce speed limit to 20mph.



In the driving seat - Law Commission publishes consultation responses on automated vehicles

The Law Commission, jointly with the Scottish Law Commission, has published the responses to its third consultation on automated vehicles (AVs)^[1]. This follows the first consultation paper, in November 2018, which focused on safety assurance and legal liability. The second paper looked at how AVs would be able to provide Highly Automated Road Passenger Services (or HARPS) within a public transport network, together with the challenges of regulating vehicles without a responsible person on board.

The proposals in the third consultation develop a scheme for the approval and deployment of AVs, safety and criminal liability. They include:

- The creation of distinctive rules for two types of automated driving features: Category-1 features that might require human driving for part of a journey (for example, AVs that only drive themselves on the motorway) and Category-2 features that can complete a whole journey unaided and without a user in the vehicle (such as a remotely operated ride-hailing fleet).
- Proposals to enhance safety, for the deployment of AVs on British roads and during their lifetime. This covers vehicle approval as well as software updates and cybersecurity risks. It includes a shift away from the criminal enforcement of traffic rules towards a new no-blame safety culture including a new range of regulatory sanctions.
- New legal roles to reflect legal responsibilities arising from automated driving: for developers of AVs, users of AVs that are less than drivers but more than passengers (the user-in-charge), and AV fleet operators.

New criminal offences

The great majority of consultees thought the Commission should review possible criminal offences where wrongs by an ADSE (Automated Driving System Entity) result in death or serious injury.

The consultation suggests it would be wrong to blame or prosecute an ADSE simply because a human driver

would be blamed in similar circumstances. It should be an offence for an ADSE to omit safety relevant information or include misleading information when putting a vehicle forward as self-driving or responding to requests from the regulator. The offence would be committed by the ADSE as a corporate body, subject to a due diligence defence. An offence would also be committed by senior managers, where the conduct took place with their consent or connivance or was attributable to their neglect. Where the wrongdoing was associated with a death or serious injury, the offence would be aggravated, and higher penalties would apply.

However, there were some areas of controversy with the above approach:

- (1) Some consultees thought that “safety-relevant information” required more specific definition.
- (2) Several consultees raised issues about the definition of “senior managers”. Although this concept is currently used on the statute book, it may not correspond with the practical reality of safety responsibility. Some thought that the ADSE should de-signate a single responsible senior manager. Others thought more junior employees should also be guilty of an offence, especially if the employee knew that information was misleading.
- (3) Several industry members argued that, rather than requiring the defendant or accused to show due diligence, the prosecutor should prove knowledge or intent.
- (4) A few consultees pointed to difficulties in defining when the non-disclosure or misrepresentation “caused” the death or serious injury.
- (5) The majority of consultees agreed that it should be a criminal offence to be carried in a vehicle which requires a user-in-charge if there is no-one in the driving seat. However, a strict liability offence could operate unfairly in some circumstances, so the Law Commission will consider the careful exploration consultees gave to possible mental elements for this offence

The Law Commission stated,

“We recognise the many unknowns regarding the development of self-driving technology, its capabilities and social acceptance.”

[1] [Summary of the analysis of responses to CP3 and next steps](#)

The final report will be published at the end of 2021 and will include recommendations for legal change, in the hope that new legislation will be enacted soon to establish a legal framework for AVs.

More than a sticking plaster? Longer hours for lorry drivers amid shortage

"Ministers should be mindful that road safety is the reason HGV drivers' hours are limited. Relaxing them should only be used as a last resort to resolve short-term issues that cannot be addressed in other ways."^[2]

Legal limits on lorry drivers' hours will be relaxed because of concerns over a workforce shortage despite warnings it could lead to more road accidents^[3].

Existing restrictions will temporarily be eased to allow companies to fulfil delivery orders. Drivers are typically required to take a 45-minute break after four-and-a-half hours on the road, driving for no more than nine hours in a day. This will be extended to 10 hours, with up to two days a week of 11 hours. The relaxation will be effective from 12 July until August 8.

Grant Shapps, the transport secretary, said he was "aware of a shortage of HGV drivers" and the change would allow "drivers and operators to make slightly longer journeys".

It follows warnings from businesses that the driver shortage threatens deliveries, including to supermarkets. However, haulage groups warned the change would not work and that it failed to address the underlying problem, while also putting drivers' and other road users' safety at risk.

The Road Haulage Association has called for better support for apprenticeships, improved on-road facilities and temporary visas for overseas drivers to address the crisis.

RHA chief executive Richard Burnett said:

"We oppose wholesale extensions to drivers' hours as we believe they can be counter-productive by making the job less attractive. Loading more hours on to drivers that are already exhausted is not the answer – the problem needs more than just a sticking plaster."

"Their hours are long anyway, and so we're piling more pressure on, and that's going to probably force many drivers to reconsider whether or not they want to stay in this

industry, but it's also a road safety issue. So, big concerns around the measures that government are taking."

Response to consultation on Highway Code

"One of the biggest changes to the road network in recent years is the way that motorways are built and operated. Modern motorways use technology to monitor and manage the flow of traffic.... As roads change, it is important that drivers understand these changes and know what to do when driving on them, so that everyone remains safe. The Highway Code plays an important role in this understanding."^[4]

We previously reported on the proposed review of The Highway Code to improve safety on motorways and high-speed roads. The Government has now published the responses to that consultation^[5], indicating that the majority of respondents were in favour of the proposed changes.

The consultation follows the evidence stocktake carried out by the Department for Transport into smart motorways, which resulted in the Smart Motorway Safety Evidence Stocktake and Action Plan being published in March 2020.

The consultation concerned proposed updates to rules within The Highway Code. These updates are intended to improve safety for users of smart motorways and other high-speed roads through the provision of improved guidance.

The proposed amendments to The Highway Code include new and additional guidance on:

- the availability, appearance and safe use of emergency areas;
- the use of variable speed limits to manage congestion;
- the use of the red 'X' sign to close lanes in order to provide a safer area for those involved in traffic incidents and in which road works can be undertaken;
- the use of hard shoulders that become extra lanes during periods of congestion;
- how road users can help keep themselves safe in the event of a breakdown; and

[2] Richard Burnett, RHA Chief Executive

[3] The Times, 8 July 2021

[4] [Review of The Highway Code to improve safety on motorways and high-speed roads.pdf](#) (publishing.service.gov.uk)

[5] [Consultation Response Report FINAL_V0_dark.pdf](#) (publishing.service.gov.uk)

- how safety cameras are employed to promote compliance with speed limits and lane closures.

The amendments also propose improved guidance to strengthen The Highway Code in relation to other factors that are contributing to incidents on motorways and other high-speed roads including:

- driver fatigue;
- unroadworthy vehicles;
- unsafe towing; and
- tailgating.

In total, the consultation proposes the addition of two new rules, amendments to 33 existing rules and six proposed changes to the additional information and annexes within The Highway Code:

- 92% of respondents agreed with the introduction of the new rule about emergency areas and 89% agreed with the introduction of the new rule about places of relative safety. These rules, together with rule 269 (hard shoulder) also attracted additional comments about motorways where the hard shoulder has been converted to a traffic lane.
- Respondents also sought clarification that carrying a mobile phone and having high-visibility clothing for use in an emergency are recommendations not requirements.
- The proposed changes to the rules for breakdowns and incidents were widely supported. 90% of respondents agreed with changing rules 275 and 277 to introduce new safety information for road users who break down and to inform them of what action they should take in such a situation.
- Respondents also expressed concern about the removal of the hard shoulder, to provide an extra traffic lane, on some motorways.

The Association of Consumer Support Organisations (ACSO) was broadly supportive of the proposals, but added that changes to The Highway Code need to be supported by appropriate enforcement:

"It is important that the Highway Code is enforced effectively, otherwise there is a risk that any changes are rendered meaningless. This matter is particularly pressing given that

roads policing has been under-resourced and under-prioritised at local and national level for a number of years.... In order to ensure that the changes to the Highway Code are implemented effectively, it is imperative that police traffic officers are available to enforce the rules and record traffic incidents accurately."

All the proposed changes will now be taken forwards and it likely that The Highway Code will be updated online in Autumn 2021 and a new printed edition produced in early 2022.

Look both ways! Pedestrian crossings to prioritise walking

"Walking has so many benefits – it doesn't just enable us to get from A to B, but also improves our mental and physical health. We know that safety is a key concern for people walking around London and giving pedestrians priority is a powerful way of putting them first and making it easier to cross London's roads."^[6]

Transport for London (TfL) has announced that 18 pedestrian crossings will be programmed to show a continuous green signal to pedestrians, until traffic approaches, to prioritise people walking^[7].

They have already been installed at seven locations in Tower Hamlets, Newham, Hounslow, Richmond and Hillingdon – and will be installed at a further 11 locations over the coming weeks.

The 'Green Person Authority' traffic signals are designed to make it easier for people to cross the road and are part of the Capital's drive to be "the world's most walkable city".

TfL notes the number of journeys made on foot has hugely increased throughout the pandemic, with data from earlier this year showing that 31% of Londoners say they are walking to places where they used to travel by a different mode. 57% say they now go on more walks for exercise or walk for longer than they did before.

TfL says a number of factors have influenced the signal locations, including high pedestrian flow, proximity to pedestrian destinations such as shopping centres, stations and schools, and suitability of existing technology. It will continue to identify new locations where these crossings can be introduced, with the aim of increasing their number over the coming years.

[6] Will Norman, London's walking and cycling commissioner

[7] [Pedestrian priority introduced at crossings in London \(roadsafetygb.org.uk\)](https://roadsafetygb.org.uk)

Motorists to face fines for errant driving

"Local authorities will need the tools to manage roads in the way that best serves local needs, which may vary in different parts of the country, and it is this ethos of localism that lies behind our decision to give more powers to local authorities under the Traffic Management Act."^[8]

Motorists will face £70 fines for a range of common traffic offences by the end of this year as councils are given new powers to punish errant driving^[9]. Drivers outside London will face fines for "moving traffic offences" such as stopping in yellow box junctions, driving the wrong way on a one-way street and performing banned turns.

For the first time local authorities outside of London and Cardiff will be allowed to issue penalty charge notices for these types of offences, which are currently enforced by the Police.

The Government has pledged to change the Traffic Management Act 2004 to allow councils in England to apply for the wider powers. The reforms, to be finalised by late summer, will set out fines and the need for a proper appeals process. They will give councils powers to enforce at least ten offences, including failing to give way, passing through a "no entry" sign, entering a pedestrianised zone and ignoring weight restrictions on roads. Councils currently enforce only parking offences and driving in bus lanes. On average, motorists are fined £70 for these offences, rising to £130 in London.

The Department for Transport confirmed that the introduction of the powers from December must be publicised by councils in advance with guidelines to ensure that motorists are not unfairly targeted. Almost 300 councils in England, which already have responsibility for enforcing parking offences, will be able to apply for the powers. London and Cardiff are the only cities in England and Wales to hold such powers. It is feared that a cut in traffic officers has left the rules largely unenforced. Baroness Vere of Norbiton, the transport minister, said that the change would allow councils to prioritise cycling, reduce congestion and improve air quality.

Motoring groups warned that drivers could be hit by a huge number of fines. Research published by the RAC last year showed that drivers in London and Cardiff were collectively fined £58 million in a year for moving traffic offences.

Simon Williams, an RAC spokesman, said:

"Drivers who blatantly ignore signage or highway rules should expect penalties but there are instances which not always clear-cut. Large yellow box junctions can be particularly problematic to get across without stopping."

"So, it's important common sense is applied rather than instantly issuing penalties to drivers. The first thing councils should do is review the road layout at these junctions."

R. v Muhammed (Israr)^[10] - Driving without a seat belt

In this recent case, the defendant driver appealed against his convictions for causing death and serious injury by dangerous driving, and death by driving whilst uninsured.

The defendant driver had been driving a car uninsured with his wife and three children as passengers. Witnesses stated that he had been racing with another vehicle at over 100mph. A blowout to the defendant driver's tyre immediately preceded him losing control across the motorway and colliding with a tree. His three-year-old son died at the scene, and his wife and remaining children suffered serious injuries. During his police interview, the defendant refused to comment on when he had last checked the vehicle's roadworthiness or tyres. An expert in road traffic accident investigation established that the wife had been wearing a seat belt, and that the child seat in which the three-year-old son had been travelling had not been adequately secured with the seatbelt. An accident investigator and tyre expert who inspected the tyre found that it had old latent damage to the tread structure. Both experts agreed that the car was travelling over 100mph.

The judge concluded that a reasonable jury could find that the manner of the defendant's driving was dangerous and that it was at least a contributory cause of death and serious harm. He also highlighted to the jury that a deficiency in the restraint mechanism of an occupant was capable of being considered as a factor in the offence if the prosecution had made the jury sure that that deficiency would have been obvious to a competent driver and created an obvious danger of injury to any person or serious damage to property.

The defendant was sentenced to four and a half years' imprisonment and disqualified from driving for six years and three months and until passing an extended driving test thereafter.

[8] Baroness Vere

[9] The Times, 18 July 2021

[10] [2021] EWCA Crim 802

The defendant appealed his convictions and submitted that the death of his son and serious injury to his family were directly attributable to his lack of control following on from the unexpected blowout, and not from "competitive driving". He contended that the blowout effected a break in the chain of causation, and so in the absence of any evidence that he had been aware of the tyre defect the judge should have withdrawn the case from the jury. He also contended that the apparent lack of proper restraint by seatbelts should not have been capable of independently grounding a finding of dangerous driving.

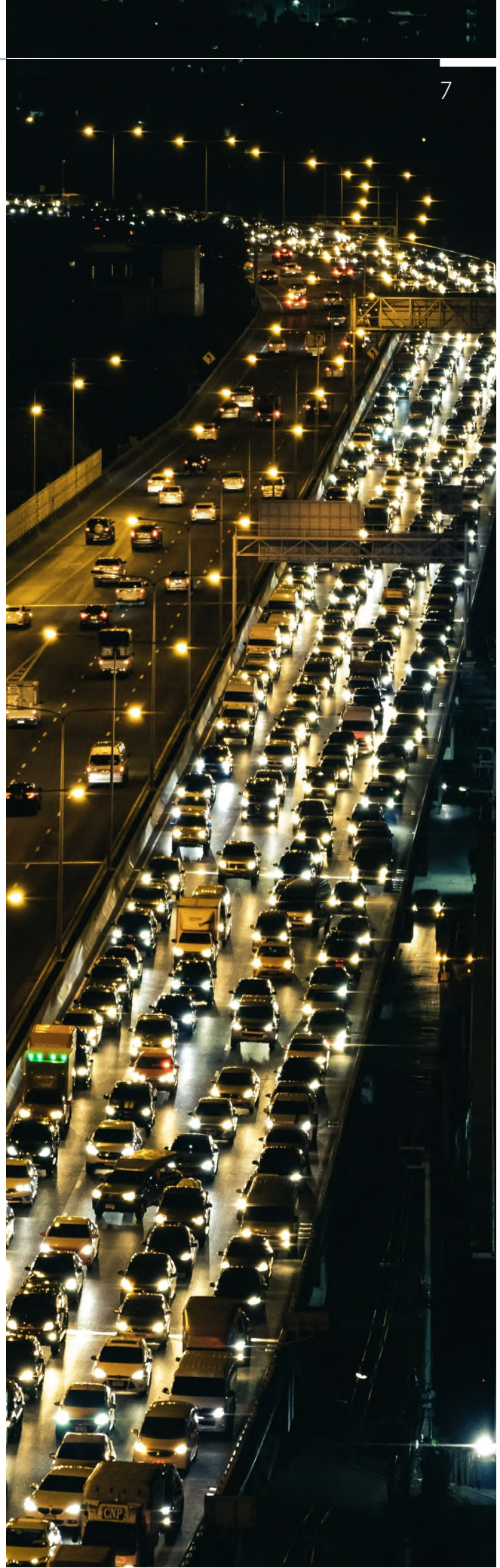
The Court of Appeal dismissed the appeal on the following grounds:

- Whether the judge should have withdrawn the case from the jury - There was no doubt that there was evidence from which the jury could conclude that the defendant had been driving competitively. They had been entitled to conclude that it amounted to dangerous driving. Both experts had concluded that the greater the speed of the vehicle, the greater the risk to the tyre's integrity and to the loss of control.

The judge had correctly directed the jury that (i) the dangerous driving was not required to be the sole or major cause of the death or injuries; (ii) the prosecution was not required to establish that the precise mechanism of the collision was foreseeable; and (iii) the question of the seat belt deficiencies could establish, in the appropriate context, dangerous driving.

The defendant's submissions ignored the factual evidence, and his interpretation of the test on the question of foreseeability, namely that the prosecution needed to prove that he could sensibly have anticipated the exact event which led to the impact in order to secure conviction, was too narrow. If the general form and risk of further harm was reasonably foreseeable, it might not matter that the specific manner in which it occurred was entirely unpredictable.

- Judge's reference to seat belts as a factor of dangerous driving - The convictions in respect of causing serious injury to the defendant's wife by dangerous driving indicated that the jury had been unanimous in approach. It was illogical to suppose that the jury would have reached verdicts in respect of the children, who might not have been wearing seat belts, on a different basis.



A second chance – Rehabilitation training offered for drink drive offences

“The challenge to curb drink driving is not only about enforcement – it is also about education. I want to make sure people who are convicted of drink driving learn from their experience and - crucially - do not go on to offend again. These courses are crucial in making a positive difference, not only for the individual offenders who complete the training, but also for the wider community sharing the use of the roads.” ^[11]

Infrastructure Minister Nichola Mallon has announced a change to drink driving legislation which will automatically offer all those convicted of drink drive offences in Northern Ireland the opportunity to undertake rehabilitation training, known as the Course for Drink Drive Offenders ^[12]. Despite reduced traffic levels during 2020, police detected 3,409 drivers who failed a roadside breath test.

Under Article 36(2) of the Road Traffic Offenders (NI) Order 1996, where a person is convicted of a drink-drive related offence and the court makes an order disqualifying him for a period of not less than 12 months, the court may decide that the offender is suitable to attend an approved rehabilitation course and on its completion, order that the period of disqualification be reduced by up to 25%.

At present referral to the course is at the discretion of the Court. The change to the law will make referral onto this course automatic - unless for special reasons the court decides attendance would be inappropriate. The decision to enrol will remain voluntary.

The Department for Infrastructure has commissioned a number of reconviction studies to examine the impact and value of this training in reducing re-offending. The most recent study demonstrates that people who have completed a course are less likely to reoffend than those who have not attended.

PSNI Chief Constable Simon Byrne said: *“We welcome this new legislation which we hope will both deter and re-educate those people who have been detected drink driving. The police service sees the value in re-educating drivers and reducing reoffending, so this automatic referral scheme for convicted drink drivers will be a positive step towards changing attitudes and behaviour.”*

Welsh Government announces 20mph speed limit

“We know that 20mph zones reduce speed of traffic, reduce accidents – particularly accidents to children– and we want to see that become the default position right across Wales.” ^[13]

The Welsh Government has announced plans to reduce the national default speed limit from 30mph to 20mph on residential roads and busy pedestrian streets ^[14]. It is hoped the introduction of a default 20mph limit will play an instrumental role in helping to save lives, protect communities and improve quality of life.

It was previously revealed in February that Wales would become the first country in the UK to reduce the speed on restricted roads to 20mph. Restricted roads are defined as roads on which are provided a system of street lighting furnished by means of lamps placed not more than 200 yards apart. They are typically located in residential and built-up areas of high pedestrian activity in Wales. The default national speed limit for such roads is currently 30mph, although local authorities can use traffic regulation orders to set another speed limit in appropriate cases.

Trials in eight pilot areas will get underway this summer, ahead of the planned national rollout for April 2023.

In order to develop a best practice approach, the Welsh Government has also launched a consultation ^[15] before the necessary legislation is laid. The consultation will run for 12 weeks and come to an end on 30 September.

Lee Waters, deputy minister for climate change, said:

“Not only does it save lives, but it also helps to make our streets a safer and more welcoming place for cyclists and pedestrians, has a positive outcome for our physical and mental wellbeing and with fewer vehicles on the road helps create a positive impact on the environment.”

“We know this move won’t be easy – it’s as much about changing hearts and minds as it is about hard enforcement – but over time 20mph will become the norm just like the restrictions we’ve introduced before on carrier bag change, smoking inside businesses and organ donation.”

[11] Infrastructure Minister Nichola Mallon

[12] [Minister Mallon tackles drink driving re-offending rates | Department for Infrastructure \(infrastructure-ni.gov.uk\)](#)

[13] Senedd Mark Drakeford, First Minister

[14] [Making 20mph the default speed limit in Wales “a bold step” \(roadsafetygb.org.uk\)](#)

[15] [consultation-document_0.pdf \(gov.wales\)](#)

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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