

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

December 2020 Update

Introduction

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

- Full ban on mobile-phone use while driving;
- Disqualification from driving- update to guidelines;
- Update on smart motorways;
- Case on accuracy and use of roadside breath tests;
- Survey results on proposed changes to Highway Code;
- Launch of electric robo trucks;
- Further funding announced for cycle lanes; and
- Ban on diesel and petrol cars from 2030.

UK to ban any use of hand-held mobile phones while driving

*"Using a hand-held mobile phone while driving is reckless, thoughtless and, in far too many cases, fatal."*¹

The Government has confirmed plans to close a legislation loophole and improve road safety by banning use of hand-held mobile phones in all circumstances, not just calling and texting, while driving. Last year 18 deaths and 135 serious injuries were reported in accidents where the driver was using a mobile phone².

It is already a criminal offence to use a hand-held mobile phone to call or text while driving, but not for other actions such as taking photos. While still distracting, drivers have previously escaped punishment due to a gap in the law where such actions aren't seen as "interactive communication", and therefore do not fit the current definition of the offence³.

A consultation has now been launched⁴ on bringing the law into line with modern technology, to ensure that when a driver chooses to pick up a mobile phone while driving and use it for any purpose (for example, to send a text message or to browse through photos), that driver will be committing an offence. Ministers have rejected calls to go further by banning the use of hands-free functions so drivers will still be able to continue safely using devices "hands-free" while driving, such as a sat-nav secured in a cradle.

Recognising that mobile phones are commonly used as a method of payment (such as at drive-thrus) an exemption will apply under the new proposals to contactless payments, if a vehicle is stationary, and if goods or services (such as a takeaway meal) are delivered immediately.

A recent project, commissioned by the Department for Transport and carried out by the University of Leeds, looked at footage of 51 drivers and found over 765 trips, 662 mobile phone interactions were observed with only 38 completely hands-free.

By updating the law, police powers will be bolstered to tackle this behaviour even further, by ensuring they can take immediate action if they see a driver holding and using their phone at the wheel. The penalties in place for using a hand-held mobile phone while driving are 6 penalty points and a £200 fine.

AA president Edmund King OBE said:

"There's no excuse for picking up a mobile phone when driving so we're pleased this loophole will be closed. Phones do so much more than calls and texts, so it's only right that the law is changed to keep pace with technology.....this dangerous act can have the same consequences and be as socially unacceptable as drink driving."

The consultation closes on 17 January 2021 and a further update will follow.

1. Baroness Vere of Norbiton, Parliamentary under Secretary of State
 2. <https://www.rac.co.uk/drive/news/motoring-news/it-will-soon-be-illegal-to-pick-up-your-phone-while-driving/>
 3. https://webcache.googleusercontent.com/search?q=cache:ggsH_FbylDsJ:https://www.eveningexpress.co.uk/motoring/loophole-over-mobile-phone-use-by-drivers-set-to-be-closed/+&cd=1&hl=en&ct=clnk&gl=uk
 4. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927069/using-a-mobile-phone-while-driving-consultation-on-changing-the-law.pdf

Disqualification from driving- update to guidelines

The Magistrates' Courts Sentencing Guidelines have been updated from 1 October 2020 with changes occurring to the sections dealing with breach of a community order and totality⁵. In relation to the changes relating to "totting up" disqualification, a legal loophole that allows drivers with 12 or more penalty points to avoid a ban has now been closed.

The relevant provisions state ⁶:

Incurring 12 or more penalty points within a three-year period means a minimum period of disqualification must be imposed⁷.

When considering whether there are grounds to reduce or avoid a totting up disqualification the court should have regard to the following:

- It is for the offender to prove to the civil standard of proof that such grounds exist. Other than very exceptionally, this will require evidence from the offender, and where such evidence is given, it must be sworn.
- Where it is asserted that hardship would be caused, the court must be satisfied that it is not merely inconvenience, or hardship, but exceptional hardship for which the court must have evidence.
- Almost every disqualification entails hardship for the person disqualified and their immediate family. This is part of the deterrent objective of the provisions combined with the preventative effect of the order not to drive.
- If a motorist continues to offend after becoming aware of the risk to their licence of further penalty points, the court can take this circumstance into account.
- Courts should be cautious before accepting assertions of exceptional hardship without evidence that alternatives (including alternative means of transport) for avoiding exceptional hardship are not viable.
- Loss of employment will be an inevitable consequence of a driving ban for many

people. Evidence that loss of employment would follow from disqualification is not in itself sufficient to demonstrate exceptional hardship; whether or not it does will depend on the circumstances of the offender and the consequences of that loss of employment on the offender and/or others.

The guidelines apply to all Magistrates' Courts in England and Wales and in the case of the changes made to the sections dealing with breach of a community order and totality, these changes also apply in the Crown Court.

Update on smart motorways- an accident waiting to happen?

*"The Government needs to grasp that there is nothing 'smart' about creating death traps."*⁸

We previously looked at the use and perceived benefits of smart motorways, criticisms of the system⁹, as well as the Government's evidence stocktake and action plan¹⁰. However, despite the Government's seeming commitment to address perceived safety risks and improve public confidence in these roads, it seems that further smart motorways projects with dangerously few lay-bys are to be introduced.

The nine projects, with a combined distance of 138 miles, are going ahead with the cheaper and more dangerous spacing of between 1.04 and 1.39 miles. They include a 32-mile section of the M3, 17 miles of the M6 and 23 miles of the M1, all already under construction. A 10-mile section of the M3 will go ahead without extra lay-bys.¹¹ This is in stark contrast to the recommended three-quarters of a mile to a maximum of one mile.

Previous criticisms surrounding smart motorways had primarily arisen following a number of fatalities involving stranded vehicles and vehicles proceeding down closed lanes. These criticisms focused on those with a "dynamic hard shoulder" (where the hard shoulder is temporarily opened up to traffic) and those with "all lane running" (where the full width of the road is usable with emergency refuge area alongside), with members of the public being unsure about using the hard shoulder.

5. <https://www.sentencingcouncil.org.uk/news/item/updates-to-the-magistrates-courts-sentencing-guidelines-come-into-force-on/>

6. <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/road-traffic-offences-disqualification/3-totting-up-disqualification/>

7. s.35 Road Traffic Offenders Act (RTOA) 1988

8. Sarah Champion, Labour MP for Rotherham

9. <https://www.clydeco.com/en/insights/2019/11/smart-motorways-outstanding-roads-or-seriously-in>

10. <https://www.clydeco.com/es/insights/2020/04/putting-brake-smart-motorways-government-publish-e>

11. The Sunday Times, 8 November 2020

44 deaths during the past five years prompted Grant Shapps, the transport secretary, to announce a £700 million overhaul after he admitted he was "greatly concerned" by a rising number of fatalities.

Research by Highways England has suggested that 26 vehicles a day stop in flowing traffic on smart motorways. Indeed, Highways England is potentially facing judicial review of the decision to introduce such roads¹² and calls for further legal action have been renewed.

Edmund King, President of the AA, previously said:

"If a driver can see an emergency refuge area, they are likely to make it to the relative safety of that lay-by. If they cannot see the lay-by, they are more likely to stop in a live lane of traffic."

The Department for Transport has said that it is committed to ensuring that Highways England delivers its 18-point action plan to the agreed timescales. However, with campaigners remaining critical of the proposals as well as doubts as to how effectively they will be implemented, only time will tell whether the recommended measures are sufficient to address the safety concerns and fatalities occurring.

Driving to the limit? Case considers breath tests

A recent case has considered the reliability of machines used to carry out breath tests and to what extent such tests should be relied on in drink-driving cases.

In *Hani Ali v Director of Public Prosecutions*¹³ the appellant had been pulled over while driving, on suspicion that he had been using a mobile phone. The police officer at the scene administered two roadside breath tests, both of which the driver failed. At the police station, two tests with an evidential breath machine (EBM) showed that the driver had excess alcohol in his blood. The defendant was convicted after trial, but appealed against his conviction for driving with excess alcohol.

The Court held that in cases of driving with excess alcohol, there was a common law presumption that breath specimen machines were reliable¹⁴. The court had to proceed on the basis that an EBM was in good working order and producing reliable readings, unless sufficient relevant evidence to the contrary was produced.

If such evidence was produced, it was for the prosecution to prove, beyond reasonable doubt that the reading was reliable.

The judge had concluded, to the criminal standard, that the reading had been reliable. Her conclusion that the EBM reading was reliable was a factual assessment, based on the evidence. The appeal was therefore dismissed.

Look both ways - Changes to Highway Code fail to gain public support

We previously reported on the consultation, which closed at the end of October, launched by the Department for Transport on proposed changes to the Highway Code, designed to improve road safety for cyclists, pedestrians and horse riders¹⁵.

A recent survey¹⁶ has now discovered that the majority of road users are not in fact in favour of many of the changes, believing that they will instead increase conflict and potentially reduce the safety of the vulnerable road users they are intended to protect.

The key figures from the survey indicate:

- 71% of drivers and motorcyclists believe the new proposal to give pedestrians priority when turning into and out of junctions, for example, will increase conflict rather than reducing it.
- 73% think that the new Highway Code should make it compulsory for cyclists to wear a helmet, in contrast to the proposed Code itself which, while restating the evidence that wearing a cycle helmet reduces the risk of sustaining a head injury in certain circumstances, stops short of making them compulsory.
- 71% of people agree with the general concept that drivers and riders should give motorcyclists, cyclists, horse riders, horse drawn vehicles and pedestrians walking in the road at least as much room as they would when overtaking a car.
- 80% believe that the Code should introduce an obligation on cyclists to use cycle lanes or tracks when they are present.

12. <https://www.clydeco.com/blog/insurance-hub/article/smart-motorways-outstanding-roads-or-seriously-in-need-of-improvement>

13. [2020] EWHC 2864 (Admin)

14. Cracknell v Willis [1988] A.C. 450 followed

15. <https://www.clydeco.com/en/insights/2020/09/safety-health-and-environment-regulatory-motor-cr>

16. <https://www.iamroadsmart.com/media-and-policy/newsroom/news-details/2020/11/03/uk-drivers-and-motorcyclists-unconvinced-by-proposed-new-highway-code-fearing-more-conflict-with-cyclists-and-pedestrians>

- There is also strong support for every proposal that contains clear guidelines on passing distances, with 78% in favour of the one and a half-metre gap between cyclist and vehicle travelling below 30mph, with a two-metre gap when above 30mph.
- 90% agree with the new Code's advice that drivers and motorcyclists should give horse riders at least two metres' space and pass at speeds under 15 mph.
- 56% agree with the proposed introduction of a hierarchy of road user, which has been one of the code's most controversial suggestions.

Regardless which of the proposals are ultimately introduced, it is clear that an effective education campaign will be needed to ensure that the changes are understood and adopted by the public.

Neil Greig, Policy and Research Director at IAM RoadSmart, said:

"The simple truth is that most of us don't read the Highway Code unless we drive or ride professionally, or are about to take a test. The Department for Transport needs to be realistic about the impact simply changing a seldom read document will have on the behaviour and safety of road users."

Next step in automated revolution-company launches fleet of electric robo trucks

*"We can already see a strong traction from the market to start using autonomous and electric transport... The benefits are clear and we want to be the player in the market that can help our customers to make the transition to a better future of transport happen."*¹⁷

We have previously reported on the UK's investment in automated technology in vehicles (also known as driverless cars), as well as developments across the pond, most recently with the Automated Bus Consortium announcing completion of the country's first-ever automated buses¹⁸.

Swedish autonomous vehicle manufacturer Einride has now confirmed the launch of the next generation of its driverless electric transport vehicles, saying they will be available globally¹⁹.

Einride calls its line Autonomous Electric Transport (AET) vehicles "pods", which have no driver/passenger cabins and are remotely controlled by operators back at the office. The new line includes the AET 1, AET 2, AET 3 and AET 4. They are 100% electric heavy transport vehicles the company says can improve shipment efficiency, reduce transportation costs by up to 60% and carbon dioxide emissions by 90%. The company says vehicles will cut transport costs by up to 60% and CO2 emissions by 90%. The company says vehicles will cut transport costs by up to 60% and CO2 emissions by 90%.

Available now for pre-order, the AET 1 and 2 are designed to run in closed fenced facilities, harbors and public roads. The AET 3 and 4 will be available in 2023 and will run at higher speeds and be suited to long-distance highways and larger warehouses.

Einride's announcement comes as businesses increasingly turn to self-driving vehicles to move goods from factories and warehouses to points of sale and customers. An example is retail giant Walmart which has been using autonomous vans and trucks built by Palo Alto, Calif, startup Gatik to move groceries from distribution points to pickup sites for online grocery customers in the retailer's home base of Bentonville, Ark.

Over the past year or so, Einride has made important connections with large companies that started using their pods—namely vegan food giant Oatly and German food store chain Lidl. Indeed, the pandemic may have accelerated the immediate demand for reduced human contact in many industries.

We are closely watching the progress of automated vehicle technology and will report any further developments in due course.

17. Einride founder Robert Falck

18. https://cdn.clydeco.com/clyde/clyde/media/awards/she-reg-transport-and-logistics-update-october-2020_2.pdf

19. <https://www.forbes.com/sites/edgarsten/2020/10/08/einride-launches-global-fleet-of-electric-robo-trucks/>

On your bike! Walking and cycling schemes get further funding boost

“Whether you’re walking, cycling, driving or using public transport, people must have the space they need to get around safely.”²⁰

The Transport Secretary Grant Shapps has given councils across England a further £175 million to create safe space for cycling and walking as surveys and independent polls show strong public support for high-quality schemes²¹.

The funding forms part of the £2 billion announced for cycling and walking in May²², and will go towards measures including:

- School Streets – where streets around schools are closed to motorists at school times
- Low-traffic neighbourhoods (LTNs) – where residential side streets are closed to through traffic to stop rat-running
- Segregated cycle lanes
- Pedestrian improvements

The Government hopes that these measures will give people more opportunities to choose cycling and walking for their day-to-day journeys, as part of wider plans to boost active travel. Indeed, a recent study suggested 65% of people across England support reallocating road space to cycling and walking in their local area, while 78% support measures to reduce road traffic in their neighbourhood²³.

However, some motoring groups have been less than impressed by the announcement, saying the schemes have worsened gridlock and pollution, caused delays for 99 services and hurt firms which rely on trade from passing traffic. Some private residents have even launched legal action, claiming that because the schemes were introduced under emergency Covid powers, disability groups, local residents and businesses were not consulted, and consequently, normal local democratic procedures have been ignored²⁴.

To try to allay some of these concerns, Mr Shapps has set tough new conditions on councils receiving funding, requiring them to ensure schemes are properly consulted on.

Under the conditions, councils must:

- Publish plans to show how they will consult their communities, including residents, businesses and emergency services, among others.
- Show evidence of appropriate consultation prior to schemes being implemented.
- Submit monitoring reports on the implementation of schemes 6-12 months after their opening, highlighting how schemes have been modified based on local feedback to ensure they work for communities.

This will allegedly help avoid the problems seen in a minority of the schemes developed in the first round of funding. If these conditions are not met by a council, future funding allocations will be reduced and claw-backs could also be imposed.

Greater Manchester’s Cycling and Walking Commissioner Chris Boardman said:

“Making it easier for people to get about on foot and by bike is the single best investment that councils can make because it doesn’t just address transport. Time and again, evidence shows that communities that prioritise cycling and walking enjoy major benefits – cleaner air, less congestion, improved health, and even a bigger average monthly spend at local shops and restaurants. Most importantly, it makes our streets happier places to be²⁵.”

20. Grant Shapps, Transport Secretary

21. <https://www.gov.uk/government/news/175-million-more-for-cycling-and-walking-as-research-shows-public-support>

22. <https://www.gov.uk/government/news/2-billion-package-to-create-new-era-for-cycling-and-walking>

23. <https://roadsafetygb.org.uk/news/government-announces-latest-active-travel-funding/>

24. <https://webcache.googleusercontent.com/search?q=cache:VIPuuDit-hoJ:https://www.telegraph.co.uk/politics/2020/10/17/transport-secretary-admits-new-cycle-lanes-leaving-roads-backed/+&cd=1&hl=en&ct=clnk&gl=uk>

25. <https://www.gov.uk/government/news/175-million-more-for-cycling-and-walking-as-research-shows-public-support>

An electric revolution? Government announces ban on petrol and diesel cars

*"Manufacturers have invested billions to deliver vehicles that are already helping thousands of drivers switch to zero, but this new deadline, fast-tracked by a decade, sets an immense challenge."*²⁶

The Government has confirmed that the sale of new petrol and diesel cars and vans will be banned from 2030.²⁷ The ban is part of a 10-point plan to make the UK carbon neutral by 2050.

While that date is a full decade ahead of the initial 2040 date of the ban, the Government will allow certain hybrid cars and vans "that can drive a significant distance when no carbon coming out of the tailpipe" to be sold until 2035. While there is no clarification on what constitutes a "significant distance" yet, it is likely the regulations will allow plug-in hybrid cars, but not hybrid powertrains.

To help facilitate the transition from fossil-fuel cars, £1.3 billion is being invested in EV chargepoints for homes, streets and motorways across England. A further £582 million is being set aside for grants to help people into EVs and PHEVs. The Government is also investing £500 million in battery development and mass production, while £525 million is earmarked for the nuclear power plants, partly to help meet the demand for electricity the growing number of EVs will bring²⁸.

There are approximately 31.8 million cars on the road in the UK, based on 2019 data. Of these, roughly 18.8 million run on petrol, around 12.3 million on diesel, and 513,000 are conventional hybrids. A total of 75,946 new full electric cars have been sold in the UK so far in 2020, accounting for 5.5% of the total of 1,384,601. However, that represents a 168.7% year-on-year increase, with the market expanding rapidly as manufacturers are rapidly rolling out new EVs.

Given the likely growth, several manufacturers have already committed to ending pure combustion engines sales before 2030. Bentley recently announced that it would only sell full electric cars from 2030 onwards, while Volvo is committed to only offering electric or plug-in hybrid models from 2025 onwards.

Jaguar Land Rover, Britain's biggest car manufacturer that produces the I-Pace EV, said: "At Jaguar Land Rover, we have already embraced the direction of the government's announcement, investing heavily in fully electric and plug-in hybrid vehicles for a zero emissions future."

Others were less enthusiastic, saying that the ban would force the UK to become dependent on Chinese battery technology.

Brian Madderson, the chairman of the Petrol Retailers Association (PRA), said:

"Our members strongly feel that government has not done enough to develop low carbon liquid fuels and hydrogen as an alternative to EVs, particularly when the German authorities are investing €7 billion into speeding up the market rollout of hydrogen technology."

Whilst the sentiment beyond the Government's strategy is to be applauded, Edmund King, president of the AA, noted that various issues needed to be addressed to meet the target:

"Consistently, the barriers to EV ownership are: the initial cost of the car and availability, perceived single-charge range anxiety and charging infrastructure – particularly for the third of drivers without off-street parking. If we can tackle these issues with considerable investment and focus, the electric revolution could flourish."

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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26. Mike Hawes, chief executive of the Society of Motor Manufacturers and Traders (SMMT)

27. <https://www.autocar.co.uk/car-news/industry/official-government-ban-new-petrol-and-diesel-car-sales-2030>

28. <https://www.autoexpress.co.uk/news/108960/official-new-petrol-and-diesel-cars-be-banned-2030>

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