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

October 2020 Update

Introduction

In our October motor crime update we look at the key developments over the last month and the current challenges faced, including:

- Life sentences for dangerous drivers;
- Lorry company closed following cyclist death;
- Motorway speed limits cut to 60mph;
- Impact of lockdown on average speeds;
- Drink-driving case sentenced from car;
- Heavy vehicle test exemptions, changes to car theory test and extension to driving licences renewal dates;
- Restrictions to non-essential journeys;
- E-scooter trials paused over safety concerns; and
- US introduces automated buses.

An eye for an eye? Update to life sentences for dangerous drivers

“Driving is a privilege not a right and yet our flawed legal system continues to allow convicted dangerous drivers on the roads where they can endanger others. We all want safer roads but we will only achieve this if the law treats road crime with the seriousness it deserves.”[1]

We previously reported on the proposal to ensure those who drive dangerously face life imprisonment through the introduction of the Death

by Dangerous Driving (Sentencing) Bill[2]. Last year, 174 people were sentenced for causing death by dangerous driving, while a further 19 were convicted of causing death by careless driving whilst under the influence of drink or drugs.

The Bill would amend the existing Road Traffic Offenders Act 1988 to increase the maximum sentence for causing death by dangerous driving from 14 years to life imprisonment. Offenders who caused death by careless driving while under the influence of drink or drugs would also face a life sentence. Judges would still retain discretion as to what length of sentence is appropriate, but the measure in the Bill would give them greater scope and enable them to issue more severe sentences than currently possible.

The proposal has been subject to a long-running debate. Back in August 2008 the Sentencing Council for England & Wales implemented sentencing guidelines for causing death by dangerous driving, giving a range of two years to the current UK statutory limit of 14 years imprisonment. These guidelines distinguish between three levels of seriousness and provide for each level a starting point and range of sentences as well as aggravating and mitigating factors.

The Government's most recent white paper, "A Smarter Approach to Sentencing"[3], confirms its commitment to introducing the above provisions. In addition, the current gap in the law will be closed by creating a new offence of causing serious injury by careless driving[4].

1 Director of campaigns, Joshua Harris, at Road Safety Charity Brake

2 <https://www.clydeco.com/en/insights/2020/07/safety,-health-and-environment-july-update>

3 <https://www.gov.uk/government/publications/a-smarter-approach-to-sentencing>

4 An offence of causing serious injury by dangerous driving already exists, contrary to section 1A of the Road Traffic Act 1988 and carries a maximum sentence of 5 years' imprisonment

Reaction to the announcement has been mixed. According to recent research from the RAC, the majority of drivers believe the current 14-year maximum is insufficient, with just 16% believing the current maximum term is sufficient[5].

Leading road safety charity IAM RoadSmart also welcomed the proposals but warned that the threat of jail alone is unlikely to make people drive in a less dangerous way. Others have questioned whether prevention is better than extreme punishment.

Nina Champion, director of the Criminal Justice Alliance, said there was "*no evidence that longer prison sentences deter people from committing crimes or make our communities safer*"[6].

The Bill will have its second reading in the House of Commons on 23 October. The Government has pledged to introduce the new legislation next year and we will closely monitor any developments.

Sentence unduly lenient

A recent appeal shows that, perhaps despite some popular belief to the contrary, dangerous driving cases involving death or serious injury can attract a severe sentence even when there are strong mitigating features.

The driver in the case of *R v Yaashmi Ravikumar*[7], who was only 18 years old at the time of the accident, pleaded guilty to one offence of causing death by dangerous driving and four offences of causing serious injury by dangerous driving. She had tragically failed to stop at a junction, causing her to collide with a double decker bus, which in turn collided with an oncoming car.

She was sentenced to a total of 18 months' detention in a young offender institution and disqualified from driving for two years and nine months. An appeal was made to the Court of Appeal (Criminal Division) by the Attorney General on the basis of the sentence being too lenient.

It was accepted that the offender's driving had created a brief but obvious danger arising from her seriously dangerous manoeuvre in failing to observe the give way signs. The offence of causing death by dangerous driving was seriously aggravated by the four offences of causing serious injury by dangerous driving. Concurrent sentences were appropriate, with the sentence for the lead offence reflecting the overall criminality.

There were a number of powerful mitigating factors which the sentencing judge correctly identified. The offender was a young, inexperienced driver and very remorseful for the harm caused. She was of positive good character, with no previous endorsements on her driving licence and unlikely to reoffend. The judge also referred to the added difficulty of serving a prison sentence during the pandemic.

Despite the collective weight of the mitigating factors, the Court of Appeal held that they were outweighed by the aggravating feature of the related offences and the fact that four persons had been seriously injured in addition to the fatality.

The total sentence was therefore amended to two years and four months, with a corresponding increase of the period of disqualification to three years and two months.

5 <https://www.fleetnews.co.uk/news/car-industry-news/2020/10/16/two-in-five-want-life-sentences-for-dangerous-drivers>

6 <http://criminaljusticealliance.org/cja-comments-on-government-sentencing-proposals/>

7 [2020] EWCA Crim 1217

8 [2020] EWCA Crim 1319- [https://www.lawtel.com/MyLawtel/FullText/AC5013122CA\(CrimDiv\).pdf](https://www.lawtel.com/MyLawtel/FullText/AC5013122CA(CrimDiv).pdf)

No double jeopardy for dangerous driver

In the recent case of R v Joseph Karumbawangige[8] the Court of Appeal considered whether a second prosecution could be brought against a defendant originally convicted in the magistrates' court of charges relating to a hit-and-run incident.

The Defendant had pleaded guilty in the Magistrates' Court to four lesser driving offences and was sentenced to an immediate custodial sentence of 4 months' imprisonment and disqualified from driving for 14 months.

A second prosecution was brought two years later for causing death by dangerous driving, based solely on a new expert collision report which reached a different view as to the speed which the defendant was travelling immediately prior to the collision. This second expert report was not produced until after the initial conviction.

The Court held that it was unfair and oppressive for the Defendant to face a subsequent prosecution, since both sets of proceedings were based on substantially the same facts and there were no special circumstances sufficient to justify a second prosecution.

Lorry company closed after cyclist's death

A transport company has been ordered to close following a public inquiry held after the death of a cyclist.[9]

Dr Suzanna Bull was struck by a lorry in Birmingham in October 2017.

She had been working at Birmingham Children's Hospital and was out cycling with her brother at the time of the accident. The driver, Robert Bradbury was jailed for 21 months in December for causing her death. S&J Transport, which admitted an offence under health and safety law, was fined £112,500 and ordered to pay £3,000 in costs. West Midlands Police said the decision "*further holds the company to account*".

After the sentencing, a public inquiry was opened by the Office of the Traffic Commissioner, which is responsible for the licensing and regulation of operators of heavy goods vehicles.

Following that inquiry, S & J Transport, which employed Mr Bradbury, will have its operator's licence revoked on 1 October.

The inquiry heard that the company was not aware of a tray table on the driver's dashboard, with clutter obstructing his view. However, following a submission by PC Mark Crozier that this contradicted evidence given during the trial, the company "*accepted it had misled*" the commissioner and had been aware Bradbury was driving with the table in place.

Mr Crozier said:

"Truthfully, I am pleased with the outcome following this public inquiry as it further holds the company to account for the tragic loss of an innocent life. I believe it could have been avoided if the driver didn't have a dashboard filled with clutter on top of a table and I'm glad that Suzie's family know we have done all we can to get justice for her death".

Reaching the limit? Motorway speed limit to be cut to 60mph

“We have a duty to tackle air quality around our network and as part of this we are trialling 60mph speed limits on short sections of our network where action needs to be taken.”[10]

Highways England is to cut the speed limit to 60mph on four stretches of motorway under a trial to assess the effects on air pollution.[11]

The scheme takes place from the end of September for 12 months and will cover the following areas chosen due to their high levels of nitrogen dioxide: M6 junctions 6 to 7 (near Witton), M1 junctions 34 to 33 (near Rotherham), M602 junctions 1 to 3 (near Eccles) and the M5 junctions 1 to 2 (near Oldbury). Each location is up to 4.5 miles long and the new speed limits will be operational 24 hours a day.

60 mph limits have previously been mooted by campaign groups and were explored in 2014 under former Transport Secretary Patrick McLoughlin and the then-Highways Agency with a view to keeping them in place until 2019 – when it was believed car pollution would have dropped to sufficient levels.

However, there had been concerns over the negative impact on business efficiency and individual mobility and, speaking at the time, Mr McLoughlin said all motorways should run at 70mph. The plans were therefore dropped and smart motorway schemes were pursued instead.

Recent Department for Transport (DfT) figures show the proportion of cars sticking to the speed limit is at its highest on 60mph roads[12]. In 2019, 50% of cars were found to exceed the speed limit on motorways, 54% on 30mph roads and just 9% where limits were 60mph.

Ivan Le Fevre, head of environment at Highways England, said:

“Ultimately the air quality challenge will be solved ‘at the tailpipe’ by vehicle manufacturers and changes in vehicle use. Until this happens we will continue our extensive programme of pioneering research and solutions.

“The speed limits trial will stay in place until the shift to cleaner vehicles means we can remove the restrictions and maintain cleaner air.”

Less speed, more haste- impact of lockdown on average speeds

“The world may have changed, but the speed limit and traffic laws remain the same.”[13]

We previously reported on the concerning rise of road speeds during lockdown and recent figures released confirm that the average speed on the Strategic Road Network (SRN) in England rose to a record high during lockdown[14].

Published in September, the Government data looks at average speed and congestion in the year to June 2020.

During April, when lockdown was at its peak and traffic fell to below 40% of that expected, average speeds on the SRN rose to 65.3mph – the highest since April 2015.

10 Ivan Le Fevre, head of environment at Highways England

11 <https://fleetworld.co.uk/motorway-speed-limit-to-be-cut-to-60mph-in-four-trial-areas/>

12 <https://www.highwaysindustry.com/four-motorways-to-have-60mph-speed-limits-as-part-of-air-pollution-trial/>

13 Teresa Ciano, Partnership Manager for Go Safe, the all-Wales road safety partnership

14 <https://roadsafetygb.org.uk/news/figures-show-impact-of-covid-19-on-average-speeds/>

By way of comparison, the average speed on the SRN in April 2019 was 59.9mph – and in February 2020 was as low as 58.5mph.

The gradual easing of lockdown saw speeds begin to drop – with an average of 64.7mph in May and 63.8mph in June. However, these figures still remain above the average for the year to June 2020 – 59.6mph.

Meanwhile in April, average delay on the SRN more than halved compared to the level estimated for the same period without the impact of the Covid-19 on travel. This has led to a yearly fall of 8.5% – down to 8.6 seconds per vehicle per mile.

RAC road safety spokesman Simon Williams previously commented

“Since the Government told the nation to stay at home many roads have become almost deserted so it’s a concern this is being seen by some as an opportunity to illegally ignore speed limits”.[15]

The Police have vowed to come down on “unacceptable” speeding.[16]

CPS prosecutes drink-driving case remotely

As the pandemic causes an ever-increasing backlog of cases to mount in the criminal courts, the CPS recently found a novel way of dealing with a drink-driving prosecution by allowing the defendant to dial into his sentencing hearing from his car.

John Morgan was arrested in August 2020 for drink driving. He was unable to attend the first hearing in person at Chester Magistrates’ Court so asked the Court if he could dial in from his

car, which was being driven by a relative in Swindon. Having pulled over to a safe place, the Court rang the Defendant and he subsequently joined the court link and appeared on screen from his car. He pleaded guilty, was sentenced and went on his way.

CPS Mersey-Cheshire lawyer Andrew Page described it as *“The ultimate surely in remotely prosecuted cases!”* adding *“It’s certainly unique in my experience”*.

The Defendant was disqualified from driving for 36 months, given a £120 fine, ordered to pay £85 costs and must pay a £34 victim surcharge.

Bypassing road safety? Heavy vehicle test exemptions, changes to car theory test and extension to driving licences renewal dates

Heavy vehicle test exemptions

Following our previous updates on the DVSA’s announcements on restarting heavy vehicles testing[17], further updates have been provided regarding those vehicles and trailers with MOT due dates in October 2020 which will now get an exemption.

Eligible vehicles and trailers with October 2020 test dates will be given a 3- or 12-month exemption.

Exemption status	Eligibility	New test date
12-month exemption	Either: <ul style="list-style-type: none"> Earned Recognition operator (whole fleet); Operator in green OGRS roadworthiness band with 50 or more events and a calculated roadworthiness base score of 1.3 or lower on 27 July 2020; or Vehicles or trailers up to 2 years old. 	Oct 2021

15 <https://www.fleetnews.co.uk/news/car-industry-news/2020/04/24/speeding-incidents-increase-during-lockdown>

16 <https://webcache.googleusercontent.com/search?q=cache:mGEsrbj3JuAJ:https://www.dailyecho.co.uk/news/17830665.police-crack-speeding-drivers-part-national-police-chief-39-s-campaign/+&cd=1&hl=en&ct=clnk&gl=uk>

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

Exemption status	Eligibility	New test date
3-month exemption	Not previously had an exemption and not eligible for a 12-month exemption (see above)	January 2021

Mandatory tests will be required for vehicles and trailers which do not qualify for a longer exemption. These are:

- Vehicles with an original test date in April 2020; and
- Vehicles with an original test date in July 2020.

The highest priority is those which legally need a test.

1. Vehicles/trailers legally due a test within a month.
2. Vehicles/trailers going on international journeys.
3. Dangerous goods vehicles.
4. Specialist vehicle types (e.g. refuse vehicles, gritters).
5. Prohibition clearances.

As a backlog builds up, it remains to be seen how the DVSA will get through those vehicles still awaiting tests.

Changes to car theory test

The DVSA will introduce the previously planned changes to the car theory test on 28 September 2020, after the changes were originally postponed in March due to the COVID-19 pandemic.

Video clip scenarios will replace the written case study within the multiple choice part of the current theory test.

Candidates will be asked three questions based on the short video clip. The updated part of the test will make it more realistic and improve the accessibility for all candidates.

Candidates will still:

- be asked 50 multiple-choice questions in total;
- need to get the same pass mark; and
- be tested on the same content.

The full set of updated official learning materials is available from the Safe Driving for Life website [18], where pupils can also practice with free video clips.

Extension to renewal dates

The DVLA has further extended renewal dates for driving licences that expired, or are due to expire, between 1 February and 31 December 2020. Driving licences expiry dates were originally extended for seven months until the end of August 2020[19].

This means that drivers whose photocard driving licence or entitlement to drive expires between 1 February 2020 and 31 December 2020 have an 11-month extension from the date of expiry. Drivers do not need to do anything as this extension is automatic. Those affected by the temporary extension do not need to apply to renew their licence until they receive a reminder which will be issued before the extension expires.

This extension only applies to full GB driving licence holders. It does not apply to provisional driving licence entitlement.

Drivers who have already applied to renew their photocard or entitlement can continue to drive

18 <https://www.safedrivingforlife.info/shop>

19 <https://www.fors-online.org.uk/cms/news/driving-licences-renewal-dates-extended/>

while the DVLA is processing the application providing they have not been told by a doctor or optician that they should not drive. All drivers must also make sure that they always meet the medical standards for fitness to drive when driving.[20]

What is an essential journey? Restrictions proposed for driving

Drivers could see penalties issued for journeys which are not deemed "essential" in areas where local lockdowns have been enforced[21]. Under previous measures, there were no specific distancing measures imposed on journeys but with traffic levels rising again and fear for a second wave of the virus, further restrictions could be imminent.

Local lockdowns mean areas will follow many of the previous measures which could see the police given the powers to enforce fines for some journeys. Drivers could be issued with a fixed penalty notice of £60, although this could be reduced to £30 if paid within two weeks. These charges would increase to £120 for anyone caught as a second-time offender.

It is believed the Police are unlikely to issue penalties to drivers if they cooperate and simply drive home after they are stopped and questioned, albeit this could lead to a "postcode lottery" of enforcement.

Drivers may also be issued penalties for using their car while they are supposed to be self-isolating, with penalties for contravention recently increased to up to £10,000 for repeat breaches[22].

Yet enforcement of the rules may prove difficult with officers unable to spot those on an unnecessary journey, unless they have already stopped a driver for a different offence.

Local lockdowns have come into effect in several areas across South Wales and England which have led to the introduction of stricter measures. However, the Welsh government says trips would be "allowed" through some areas if drivers have no option but to use the route. Clearly, further guidance is required to avoid confusion about what is "essential" or "important".

With many living in isolation during both the national and various local lockdowns, and use of public transport still discouraged, are potential restrictions on driving a step too far in the ever-increasing range of measures being introduced to curb the virus?

A path fraught with difficulties? E-scooter trials paused over safety concerns

"E-scooters, as a new form of micro-mobility, can really help to transform the urban landscape - improving flexibility of personal travel, especially in the shadow of the Covid-19 pandemic making public transport problematic in many instances. We support the legalisation of e-scooters for use on the public highway, as long as certain safety criteria are met."[23]

We previously reported that electric scooters would be allowed on the roads for the first time with trials being approved in an effort to reduce pressure on public transport during the pandemic[24].

20 https://www.gov.uk/guidance/dvla-coronavirus-covid-19-update?dm_i=4WKY,E0XY,10ACGK,1MD14,1#renewing-a-driving-licence

21 <https://webcache.googleusercontent.com/search?q=cache:qLGhd4IUvNwJ:https://www.express.co.uk/life-style/cars/1338595/driving-law-fine-new-coronavirus-lockdown-rules-measures+&cd=1&hl=en&ct=clnk&gl=uk>

22 <https://www.legislation.gov.uk/uksi/2020/1045/made>

In a recently published report, "E-scooters: pavement nuisance or transport innovation", the Transport Committee has said that e-scooters have the potential to offer a low cost, accessible and environmentally friendly alternative to the private car[25].

However, the report comes after mixed feedback on the success of the pilot schemes on their use, with a trial in Coventry being paused after five days following concerns over pedestrian safety and e-scooters being abandoned on the streets.

Many UK cities are now looking to scale back the recent trials of rental e-scooters amid concerns that riders are using the machine in a dangerous manner and riding them in prohibited areas[26], with some scooters being hired by riders who are underage, improperly trained, and taking them into areas of the city where they are prohibited from riding.

While supporting the introduction of e-scooters, the Transport Committee said the Government should use trials to monitor the numbers and types of collisions that take place.

The Committee called for robust enforcement measures to eliminate pavement use of e-scooters, which the report says is dangerous and anti-social. Further committee recommendations include allowing local authorities to determine the speed of e-scooters and encouraging users to wear helmets[27]. It also said there are "valid environmental concerns" about the processes used to recharge e-scooter batteries and advised the DfT to monitor the environmental impact.

To ensure that any regulations governing e-scooters are effective in providing a safe environment for both riders and other road users, the Committee has made the following recommendations:

- If the Government legalises e-scooters, users should not be required to have a driving licence for either rental or private use
- The DfT should monitor the number and types of collisions during the trials to determine future insurance requirements for rental and privately owned e-scooters.
- Local authorities should determine the speed of e-scooters in their areas as a 'one size fits all' approach will not work.
- The DfT should use the data from the trials to determine which e-scooter design requirements are appropriate for UK roads.
- Helmet use should be encouraged for rental and privately owned e-scooters.
- The DfT along with local authorities should monitor the trials for problems emerging with abandoned e-scooters leading to 'street clutter'.

Committee chair Huw Merriman said:

"E-scooters have the potential to become an exciting and ingenious way to navigate our streets and get from place to place.

"We need to ensure that their arrival on our streets doesn't make life more difficult for pedestrians, and especially disabled people."

23 Edmund King, President of AA- <https://www.autoexpress.co.uk/news/106335/transport-committee-recommends-e-scooters-be-legalised-road-use>

24 <https://www.clydeco.com/en/insights/2020/07/covid-19-uk-safety,-health-and-environment-regulat>

25 <https://committees.parliament.uk/committee/153/transport-committee/news/119723/legalise-escooters-says-transport-committee/>

US announces automated buses

We previously considered the UK's investment in automated technology in vehicles (also known as driverless cars), with a recent call for evidence looking at the Automated Lane Keeping System (ALKS) – an automated system that can take over control of the vehicle at low speeds, keeping it in lane on motorways[28].

Turning our attention to what is happening across the pond, the Automated Bus Consortium, a collective of U.S. transit and transportation agencies formed to investigate the feasibility of implementing pilot automated bus projects, has recently announced the completion of the country's first ever automated buses[29].

The specification for these vehicles combines the American Public Transportation Association's white book for standard bus specification with the new full-size bus automated driving system requirements.

Its development marks a significant achievement of the Automated Bus Consortium, which prepared the document with input from its own Bus Specification Technical Committee as well as through one-on-one meetings with interested bus suppliers.

The current schedule calls for an early 2021 release to candidate bus manufacturers. Pilot projects will use full-sized, full-speed buses enabling members to collectively demonstrate and use automated technologies in varied live service environments.

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

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 <https://www.highwaysindustry.com/uk-cities-looking-to-scale-back-recent-e-scooter-trials-following-dangerous-misuse/>

27 <https://www.bbc.co.uk/news/uk-politics-54380251>

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

29 <https://highways.today/2020/10/02/automated-bus-specification/>

440

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