

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

September 2020 Update

Introduction

As the transport and logistics industry takes its first steps towards returning to normal following the coronavirus pandemic, in our September motor crime update we look at the key developments over the last month and the current challenges faced, including:

- Automated vehicles technology;
- Proposed changes to the Highway Code;
- Update on vehicles testing;
- Changes to EU driver rules;
- Rebuilding the North's economy;
- Local authority powers to fine motorists, including pavement parking;
- Virtual trial for teenage crash;
- Bodycams for DVSA frontline enforcement staff; and
- Dashcam footage used for driving offences.

A bumpy road ahead? Government launches call for evidence for automated vehicles

*"Automated vehicle technology has the potential to transform the way we travel....It could also make our roads safer."*¹

The UK is taking further steps forward in automated technology in vehicles (also known as driverless cars) with the launch of a call for evidence to help shape how such systems could be used in future on the roads.

The call for evidence will look 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.

This technology is designed to enable drivers for the first time to delegate the task

of driving to the vehicle. When activated, the system keeps the vehicle within its lane, controlling its movements for extended periods of time without the driver needing to do anything. The driver must be ready and able to resume driving control when prompted by the vehicle.

Following the approval of ALKS Regulation in June 2020 by the United Nations Economic Commission for Europe (UNECE) the technology is likely to be available in cars entering the UK market from Spring 2021.

The government is currently seeking views from industry on the role of the driver and proposed rules on the use of this system to pave the way towards introducing it safely. The call for evidence will ask whether vehicles using this technology should be legally defined as an automated vehicle, which would mean the technology provider would be responsible for the safety of the vehicle when the system is engaged, rather than the driver.

With driver error accounting for over 90% of road traffic deaths, ALKS clearly is very promising and has the potential to reduce this tragic statistic.

However, it also potentially raises a myriad of issues of determining criminal liability in the event of an accident, primarily who the driver is, i.e. "who was in control of the vehicle"? Will it be possible to truly distinguish between those cases where the vehicle is driving itself and where the driver retains some element of control or is expected to intervene when prompted? Will a defence be available to the human driver in these circumstances? Whilst the technology presents many exciting possibilities, it also raises a plethora of legal questions that remain, as yet, unanswered.

In late 2020, the Government plans to launch a public consultation on the detail of any changes to legislation and The Highway Code that are proposed, which will include a summary of responses. We await that publication with interest.

¹ Grant Shapps, Secretary of State for Transport-
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/910221/safe-use-of-automated-lane-keeping-system-alks-call-for-evidence.pdf

Mike Hawes, SMMT Chief Executive, said: *"Automated technologies for vehicles, of which automated lane keeping is the latest, will be life-changing, making our journeys safer and smoother than ever before and helping prevent some 47,000 serious accidents and save 3,900 lives over the next decade."*²

Look both ways- Changes to the Highway Code

*"Everyone has an equal right to use the road, and we want to make certain they do so in a safe, considerate and responsible manner. The Highway Code is essential reading for all road users. It helps to keep our roads safe by setting out rules, techniques and advice for all road users."*³

The DfT has launched a consultation⁴ seeking views on proposed changes to the Highway Code to improve safety for vulnerable road users, particularly the groups of:

- cyclists
- pedestrians
- horse riders

The main changes to the code being proposed are:

- introducing a "hierarchy of road users" which ensures that those road users who can do the greatest harm have the greatest responsibility to reduce the danger or threat they may pose to others;
- clarifying existing rules on pedestrian priority on pavements, to advise that drivers and riders should give way to pedestrians crossing or waiting to cross the road;
- providing guidance on cyclist priority at junctions to advise drivers to give priority to cyclists at junctions when travelling straight ahead;
- establishing guidance on safe passing distances and speeds when overtaking cyclists and horse riders.

The new hierarchy system is not set to give priority to pedestrians, cyclists and horse riders in every situation but will ensure a "mutually respectful" and "considerate culture".

The new rules will also better protect cyclists, stating that drivers cannot cut across cyclists when turning into a junction or changing lanes in the same way as they would not turn across the path of a motor vehicle. The changes will also recommend the "Dutch Reach" concept where drivers should check whether a cyclist is in their blindspot when opening their car door.

The DfT said:

"Everyone suffers when road collisions occur, whether they are physically injured or not. But those in charge of vehicles that can cause the greatest harm in the event of a collision bear the greatest responsibility to take care and reduce the danger they pose to others."

"This principle applies most strongly to drivers of large goods and passenger vehicles, followed by vans/minibuses, cars/taxis and motorcycles. Cyclists, horse riders and horse drawn vehicles likewise have a responsibility to reduce danger to pedestrians."

The RAC praised the changes but asked for more detail on some of the proposals, pointing out that it is vital that every change made to the Code is well communicated so motorists are not caught out.

Head of roads policy, Nicholas Lyes said:

"But we do feel there is some detail that needs to be looked at more closely. For example, we need to consider just how practical, and indeed safe it is to advise drivers to give way to pedestrians waiting"

² Department for Transport- Pathway to Driverless Cars report

³ Baroness Vere of Norbiton-

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/904038/consultation-on-a-review-of-the-highway-code.pdf

⁴ <https://www.gov.uk/government/consultations/review-of-the-highway-code-to-improve-road-safety-for-cyclists-pedestrians-and-horse-riders>

to cross a road at a junction when traffic from another direction may be approaching.”

The Road Haulage Association was particularly highly critical of the proposal to introduce a hierarchy of road users, which seeks to put more responsibility for other road users onto the user of the largest vehicles, saying, "This undermines the simple principle that we are all responsible for safety...It lessens the responsibility of some road users and increases liability and responsibility of others".⁵

The consultation closes on 27 October 2020 and a further update will follow.

Pulling your weight – Update on vehicles testing

We previously reported on the Driver & Vehicle Standards Agency's (DVSA) announcement to restart heavy vehicle testing from 4 July, except for at some Authorised Testing Facilities (ATFs) in Scotland.⁶

The DVSA has now announced how the roadworthiness testing of trucks and trailers will be managed in the coming months, confirming previously announced roadworthiness test date extensions until August will continue.⁷

In summary:

- From September 2020 to March 2021 a 3-month extension will apply for all vehicles and trailers.
- A new 12-month exemption is possible for “Low Risk” vehicles under 2 years old or operators with Earned Recognition or “Green” operators that meet a DVSA score target.
- Certificates of Temporary Exemption (CTEs) will be issued for vehicles and trailers due for test up to March 2021.

- Vehicles are eligible for a 3-month Certificate of Temporary Exemption if they have not previously had an exemption.
- 12-month exemptions will be applied from 24 August 2020.
- All Temporary Exemptions will be applied automatically.
- For those vehicles defined as “Low Risk” by DVSA 12-month Temporary exemptions will apply.

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 • Vehicles or trailers up to 2 years old 	September 2021
3-month exemption	Not previously had an exemption and not eligible for a 12-month exemption (see above)	December 2020

⁵ <https://www.rha.uk.net/getmedia/7a605bdf-52f7-4ba1-af9f-26d4d3a383a0/200821-Highway-Code-Cons-summary-fin1-1.pdf.aspx>

⁶ <https://www.clydeco.com/en/insights/2020/07/covid-19-uk-safety.-health-and-environment-regulat>

⁷ <https://www.rha.uk.net/getmedia/41229345-f9e4-41a8-b827-5301a3d442ec/Roadworthiness-2-0.pdf.aspx>

- Vehicles given a 3-month exemption in March 2020
- Vehicles given a 3-month exemption in June 2020

DVSA has given ATFs guidance on the vehicle tests they should prioritise. The highest priority are those vehicles and trailers which legally need a test, including:

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

However, DVSA has not advised how it proposes to deal with the backlog of tests that will occur from September. Unless further exemptions are issued, there will be a requirement to process a much higher volumes of tests from then onwards.

The ATF Operators Association (ATFOA) has repeatedly called for the introduction of delegated testing, where ATF staff would carry out the test. It has also made other suggestions as to how a disruptive backlog could be mitigated.

The Road Haulage Association (RHA) has welcomed the clarity this announcement provides for operators, but remains concerned about the availability of roadworthiness tests.⁸

A long shift ahead? EU drivers' hours changes announced

The Department for Transport (DfT) has announced that EU drivers' hours and tachograph rules are changing from 20 August.⁹

The new rules will include:

- More flexibility on the scheduling of the rest periods for some drivers on international carriage of goods.
- A requirement for drivers' to 'return home' every 4 weeks.
- A ban on taking regular weekly rest periods in the driver's vehicle.
- New provisions for rests and breaks for drivers when journeys involve transport by ferry or by rail.
- A new requirement to keep a full record of all other work.
- A new definition of 'non-commercial carriage'.

Breaks and rest

The main points of EU rules on breaks and rest are that an operator must take:

- at least 11 hours rest every day – this can be reduced to 9 hours rest 3 times between any 2 weekly rest periods;
- an unbroken rest period of 45 hours every week – this can be reduced to 24 hours every other week;
- a break or breaks totalling at least 45 minutes after no more than 4 hours 30 minutes driving;
- weekly rest after 6 consecutive 24-hour periods of working, starting from the end of the last weekly rest period taken.

The DfT advises operators and drivers to review the changes to the EU driving rules and prepare to follow them.

There is updated guidance for goods vehicles¹⁰ and guidance for passenger vehicles¹¹ to help drivers and operators comply with the new rules.

⁸ <https://www.rha.uk.net/news/press-releases/2020-07-july/dvsa-announces-future-roadworthiness-testing-plans>

⁹ <https://www.rha.uk.net/news/2020-08-august/eu-driving-rules-changing-from-20-august>

¹⁰ <https://www.gov.uk/guidance/drivers-hours-goods-vehicles>

¹¹ <https://www.gov.uk/guidance/drivers-hours-passenger-vehicles>

Rebalancing the North-South divide- investing in the North's economy post-Covid-19

"Investment in our transport network has long been vital to rebuilding our region's economy and is imperative in the wake of the coronavirus pandemic." ¹²

Transport for the North (TfN) has set out its initial plans for a Northern Infrastructure Pipeline (NIP), a 30-year investment plan of infrastructure projects to underpin greener Northern growth. ¹³ The NIP contains key projects that will make an immediate difference to residents and businesses, creating 20,000 jobs, some of which could be started over the next 6-18 months.

The NIP underpins TfN's proposed Economic Recovery Plan (ERP) recently agreed by the North's business and civic leaders. The ERP is aimed at accelerating delivery of infrastructure projects to help "rebuild and transform the North" by making transport more accessible and inclusive, and decarbonising the economy in the years to come.

It is split into the key areas of:

- Schemes that can be delivered within 6-18 months: Immediately supporting jobs and the region's recovery.
- Schemes that can start construction within 2-4 years: Supporting longer term economic recovery and rebuilding.
- Schemes where immediate investment in accelerating the development of projects would support jobs, boost confidence and maintain an ongoing Northern Infrastructure Pipeline to transform the North.

It is also aimed at rebuilding and transforming the capacity and resilience of the North's rail network and laying the groundwork for projects like Northern Powerhouse Rail to futureproof the region's railway for generations to come.

It highlights the need for accelerating the green transition, including pilots of hydrogen and battery powered trains, as well as rolling out essential charging infrastructure from electric vehicles.

Barry White, Chief Executive at Transport for the North, said:

"Our focus must be on rebuilding the North's economy, which was already at an economic disadvantage to the South before COVID-19 hit. Our Economic Recovery Plan outlines quick-fire ways to rapidly invest in shovel-ready infrastructure projects and initiatives, helping rebuild and transform the North over the next few years."

Local authorities to fine motorists- a step too far in road traffic enforcement?

"The Department for Transport has decided to extend enforcement powers to other local authorities, but we believe guidance should be issued setting out where enforcement should be targeted and the types of signs that must be used to make drivers aware that enforcement cameras are operating, and for what type of moving traffic offence." ¹⁴

The Government has revealed new enforcement powers that will allow local authorities, rather than the police, to enforce against moving traffic offences such as disregarding one-way systems or entering mandatory cycle lanes. ¹⁵ However, already concerns have been raised as to whether this is an effective way to promote road safety or simply a means by which cash-strapped authorities can generate revenue.

¹⁴ Nicholas Lyes, RAC head of roads policy

¹⁵ <https://www.fleetnews.co.uk/news/fleet-industry-news/2020/07/28/councils-to-get-new-powers-to-enforce-traffic-offences>

The only local authorities currently with the power to enforce these offences in England and Wales are Transport for London, the London boroughs and Cardiff Council. Everywhere else, they are enforced by the police.

In London, early reports suggest the powers have significantly reduced police workload on traffic offences, allowing officers to prioritise more important matters, while also improving enforcement.

The Government is proposing that motorists be issued with a warning letter for a first offence, and fines for subsequent offences.

An analysis by RAC showed revenue from moving traffic offences was £58.2million in 2018-19, as a million penalty charge notices were issued in Cardiff and London alone, up 25% on the £46.7million raised in 2016-17.¹⁶ The number of motorists fined increased by 34% compared with two years earlier.

Of all the offences that raised money for councils and local authorities, yellow box junctions were by far the most lucrative, bringing in a massive £31.4m in 2018/19. This can be contrasted with the £22.3m earned from 'no turn' offences and £4.4m from 'no entry' contraventions.

Hammersmith and Fulham made the most from yellow box junctions. Redbridge, meanwhile, earned £2.4 million from 14 enforced junctions. However, the highest taking from a single junction was the £333,295 earned from 4,595 PCNs at a yellow box junction in Westminster.¹⁷

Nicholas Lyes, RAC head of roads policy, said:

"It's plain for all to see that London boroughs, Transport for London and Cardiff are generating phenomenal sums of money from the enforcement of moving traffic offences."

Pavement parking

Motorists also face £70 fines for parking on

pavements under plans to promote walking in towns and cities.¹⁸

The DfT said it could extend a complete ban on mounting the kerb, which is in place in London, to the rest of the country. In London, parking on the pavement has been banned since 1974, although councils can permit cars to mount the kerb in certain circumstances. Outside the capital, cars can be parked on the pavement unless it is specifically prohibited by a traffic regulation order.

The DfT said that three options would be considered:

1. Extending the London ban, which would typically allow local authorities to levy fines of £70 on those who flout the rules, similar to the charge for parking on double yellow lines.
2. Streamlining existing powers for councils to make it easier for them to impose "traffic regulation orders"- legal notices to regulate vehicles on certain streets. These have been criticised in the past for being overly bureaucratic.
3. Create a civil offence of "unnecessary obstruction", allowing councils to penalise the worst kinds of parking, including drivers who blocked footpaths completely, without issuing an all-out ban.

The Scottish government is already legislating for a ban to come into effect next year and the Welsh assembly has said that it will address the issue.

Grant Shapps, the transport secretary, said:

"Parking on pavements means wheelchair users, visually impaired people and parents with pushchairs can be forced into the road, which is not only dangerous, but discourages people from making journeys..."

¹⁶ The Daily Telegraph- New rules may see councils use motorists as 'cash cows'

¹⁷ <https://uk.motor1.com/news/439493/london-cardiff-58m-fines-motorists/>

¹⁸ The Times, 31 August 2020- £70 fines aim to curb pavement parking

it is vital that we make the pavements accessible for everyone".

However, the AA said it opposed an outright ban, arguing that it could turn motorists into cash cows, and adding "While councils have always had the powers to tackle problem parking, it would be typical if the only time they act is when there is fines income to be had from it".¹⁹

One year on... Attorney General considering 'virtual trial' over fatal crash

One year since Harry Dunne died after his motorbike was involved in a collision with a car driven by Anne Sacoolas outside a US military base in Northamptonshire on 27 August 2019, the Attorney General is now considering a virtual trial against his alleged killer.

Following the crash, Ms Sacoolas, the wife of a US intelligence official, raised diplomatic immunity and returned to the US. She was charged with causing death by dangerous driving in December 2019 but an extradition request was rejected by the US Secretary of State in January 2020.

Justice Minister, Robert Buckland QC, has written to MP Andrea Leadsom in response to her letter on 10 August 2020 asking for the government to consider the possibility of Ms Sacoolas standing trial while she is still in the US. He confirmed in his response that the options of "holding a trial virtually or in absentia are...being considered" by the Attorney General. Mr Buckland confirmed his "officials stand ready, however, to assist in any way they can".

Following Mr Buckland's response, Harry Dunne's mother commented "my family and I have not been able to grieve this year without justice and closure. It is doing us real harm and I can't believe how cruel the US government are being. They should be in no doubt – my

family and I are going nowhere until we fulfil that promise to Harry". The family have confirmed that they will take no objections to a trial in the UK, with Ms Sacoolas attending virtually.

The government have gone on to state "the government's deepest sympathies remain with Harry's family. We are doing everything we can to achieve justice and the case continues to be raised at the highest levels".

Radd Seiger, the family's adviser, commented:

"You do not get to kill someone in a rules based society, no matter who you are, and just walk away".

Nowhere to hide: Roll out of bodycams for DVSA frontline enforcement staff

The DVSA has announced that its staff will start to wear body worn cameras on roadside checks and site visits in a move to reduce physical and verbal assaults.

The move will bring the DVSA in line with many other enforcement bodies such as the police who have been using 'bodycams' for a number of years in their frontline work.

'Bodycams' are small devices slightly larger than a credit card which are usually worn on the chest, and record video and audio much like a personal CCTV device.

The DVSA said:

"We take a zero-tolerance approach to physical and verbal assaults and the bodycams will act as a deterrent. They will also enable us to manage, support and respond to any assaults that take place."

¹⁹ Jack Cousens, head of roads policy

Caught on camera! Dashcam footage used for rogue drivers

“We know that members of the public can get frustrated when they see drivers getting away with offences that can place them and other road users at risk...This portal allows us to effectively deal with digital footage and photos of traffic offences in a safe and secure way.” ²⁰

Dashcam footage submitted by members of the public to the police has seen more than 100 motorists prosecuted for driving offences. ²¹

Since Operation Snap was launched last year, more than 500 submissions have been received by Dorset Police. Of these, 128 drivers have been prosecuted, sent on a driver education course or received a warning letter. ²²

The majority of prosecutions are for drivers not paying due care and attention to other road users, but also include using a mobile phone at the wheel, driving through a red light and crossing solid white lines.

Chief Inspector Steve Lenney, head of roads policing for Dorset Police, said the force wanted to encourage more members of the public to submit examples.

“Operation Snap is a great initiative allowing motorists to share their footage with us for consideration of prosecution in addition to the fantastic work of our roads policing and No Excuse officers challenging poor driver behaviour daily.”

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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²⁰ Chief Inspector Steve Lenney, head of roads policing for Dorset Police

²¹

<https://webcache.googleusercontent.com/search?q=cache:Q5cHVlwVkJ:https://www.bournemouthcho.co.uk/news/national/18684091-motorists-prosecuted-offences-caught-dashcam/+&cd=3&hl=en&ct=clnk&gl=uk>

²² <https://webcache.googleusercontent.com/search?q=cache:pv7OjV-EuloJ:https://cardealermagazine.co.uk/publish/august-29-round-up-lockdown-second-wave-plan-dashcam-prosecutions-santander-and-revolut-issues/201390+&cd=6&hl=en&ct=clnk&gl=uk>

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