

Department for Transport
The Highway Code Review



A response by the Association of Personal Injury Lawyers

October 2020

Introduction

APIL welcomes the opportunity to respond to the Department for Transport's (DfT) review of The Highway Code (THC). The proposals to amend and make additions to THC are long overdue and in APIL's view, are practical and reflect reality. APIL is particularly in support of the focus and recognition of causative potency within the amendments and additions. We also welcome the safe passing distances and speeds which are necessary to ensure the safety of vulnerable road users.

In addition to the amendments and additions to THC, it is crucial that the new hierarchy system, safe passing distances and safe passing speeds are implemented through continual education and enforcement. Education throughout individuals' lives for all road users is essential to maintain road safety and road awareness from a young age. It is fundamental to continually educate all road users of THC amendments and additions to protect vulnerable road users and ensure that these are communicated through advertising and other means. This will ensure that all road users are aware of the rules and their rights on UK roads. Often people are aware of the existence of THC and are broadly aware of the rules, however will not have physically read it. According to a YouGov survey, only 27% of UK adults who do not drive have read the pedestrian rules of THC¹. This highlights the importance of ensuring all road users are aware of the rules and rights that apply to them. Re-education is therefore critical when implementations are made to THC because road users will then be able to implement the rules themselves when using the roads and shared spaces. Education of this sort also needs to move with the time. Using social media platforms such as Twitter and Instagram will reach a wide range of road users and is a modern and forward-thinking way of ensuring information on the new rules within THC are acknowledged.

The aim of the consultation is to ensure that THC is kept in line with transportation advancements and the increase in use of technology and new vehicles. The amendments and additions however, fail to include the influence of micromobility vehicles such as e-bikes and e-scooters. We have recently seen the trial in Coventry suspended because of safety concerns because users had been riding on pavements and in shopping areas which are both banned². In light of the significant risk that these vehicles pose on the roads, it is to APIL's disappointment that they are out of the scope of this consultation.

In addition, APIL is disappointed that the issue of the use of cycle helmets is out of the scope of this consultation. Cycle helmets should be made compulsory in order to ensure that

¹ YouGov opinion polling commissioned by Association of Personal Injury Lawyers. Total sample size was 2184 adults. Fieldwork was undertaken between 28th - 29th May 2020. The survey was carried out online. The figures have been weighted and are representative of all UK adults (aged 18+).

² The Times 'E-scooter trial hits the brakes after complaints from walkers' September 15 2020 < <https://www.thetimes.co.uk/article/coventry-puts-brakes-on-e-scooter-trial-q3l0jintv?shareToken=2f0fbc1ca064c1d1a9e98774b005a34e> >

cyclists, as vulnerable road users, are protected as much as possible in the event of a collision with another road user. APIL maintains that this should be a mandatory requirement rather than simply an encouragement.

APIL's response will take a section by section approach.

Hierarchy of road users

APIL deems it unnecessary to delete the pre-amble in the introductory section of the hierarchy for road users. This section outlines which road users are vulnerable and highlights the requirement for all road users to be considerate to one another at the outset. Rather than move this part to the end of the introductory section, APIL proposes that it should remain where it is.

Rule H1

APIL is concerned on the distinction that larger vehicles such as vans and lorries are more dangerous than smaller vehicles such as cars. In terms of litigation, this distinction allows for a potential different threshold for vans and lorries in comparison to cars purely due to the size of the vehicle which seems unfair. Ultimately, the size of a vehicle should not detract from any road user's potentially poor behaviour or judgement whilst driving. For example, a lorry with a driver behaving responsibly may not cause as much damage as a car whose driver is acting irresponsibly. Therefore, the distinction between larger and smaller vehicles is misleading.

We are disappointed that micromobility vehicles are not included within the hierarchy. They are now being trialled in the UK and due to their increased presence on UK roads, their vulnerability and the potential to cause an increase in collisions, this should have been made a priority.

APIL proposes that although some pedestrians may have impaired sight, hearing or mobility, often pedestrians are simply distracted. Pedestrians are often found to be looking at their phones or using their earphones and not listening to traffic. This lack of attention can cause collisions. One in three phone users specifically admit that sometimes they are so engrossed in their phone that they fail to pay attention³ and 72% of drivers say they often see pedestrians step into the road whilst distracted by their mobile phones⁴. Perhaps to acknowledge this within THC, there should be another addition to the wording in Rule H1 which warns road users of pedestrian distractions and look for signs that they are failing to pay attention. This is a clear risk for all road users and therefore THC should reflect this.

Rule H2

APIL is concerned with the new wording stating that drivers should give way to pedestrians waiting to cross at *junctions*. Firstly, we are uncertain which junctions the wording is referring to. This may mean all junctions, for example at roundabouts or any corner. This means that pedestrians waiting on a corner to cross a road should be allowed to cross. This may give pedestrians the perception that at every junction they have the right of way, meaning that they may assume vehicles will stop if they step onto the road. Usually, pedestrians would

³ Joe Mellor, The London Economic, Tech & Auto 'Smombies' glued to smartphones pose increasing menace to motorists and cyclists' < <https://www.thelondoneconomic.com/tech-auto/smombies-glued-to-smartphones-pose-increasing-menace-to-motorists-and-cyclists/01/08/> > August 2018

⁴ Laura Laker Roac.cc 'AA warns of 'zombie' pedestrians and cyclists' < <https://road.cc/content/news/184997-aa-warns-zombie-pedestrians-and-cyclists> > April 2016

wait for a break in traffic to cross over a junction, however the new wording suggests they should not have to wait for a break in traffic. This may result in further risk to already vulnerable pedestrians and an increase in collisions, especially if pedestrians think they have right of way. Perhaps some wording should be included within Rule H2 to encourage pedestrians to use pelican crossings or other safe crossings where they are available in the vicinity rather than crossing the road anywhere. This would further contribute to their safety as vulnerable road users.

Rule H3

APIL believes Rule H3 is a good and clear addition to THC because this is a common type of accident experienced by our members. This will be useful in road traffic accident cases. APIL supports the fact this is entrenched into the main part of THC and highlights the position on ensuring that cyclists are not cut off and have right of way at the outset. APIL is however concerned that motorcyclists also experience this risk due to not being seen by drivers wanting to turn off the road. Therefore, when cyclists are mentioned within this section, we believe it should be further amended to read “cyclists and motorcyclists” for example:

“you should not cut across cyclists *and motorcyclists* going ahead when turning into or out of a junction or changing direction or lane”.

This would ensure that drivers are not only looking out for cyclists in these circumstances, but are also looking out for motorcyclists who may also be at risk of being cut off.

Rules for pedestrians

As mentioned above, APIL is concerned with the issue of pedestrians’ perception of their right of way when waiting at a junction or a side road. Compared to Rule 19 regarding zebra crossings, Rule 8 fails to emphasise caution that must be taken by pedestrians in crossing junctions and roads. Rule 19 highlights that a pedestrian should give traffic plenty of time to see and stop before they start crossing and wait for traffic to stop prior to stepping onto the crossing. This wording should be implemented to Rule 8 to ensure that pedestrians are fully engaged in paying attention to the traffic and ensuring that motorists have seen and anticipate pedestrians crossing before they do so. This will encourage pedestrians to use extra caution prior to crossing a road and junction and in turn reduce the risk of collisions.

APIL is otherwise happy with the wording proposed in this section.

Rules about animals

APIL supports education on road safety for horse riders should be encouraged within THC. Due to the number of accidents that occur on UK roads which involve horse riders, education for horse riders as well as other road users is fundamental because of the increase in leisure riding and traffic on the roads. Education on horse riders is crucial for all because often motorists put themselves, as well as the rider and horse, at risk when they make unsafe decisions due to lack of awareness of the consequences or simply impatience.

Perhaps in addition to the recommendation on taking the Ride Safe Award from the British Horse Society, THC should also recommend The Pony Club certificates and educational awards for road safety because the Ride Safe Award is only suitable for those 11 years old and above. Horse riders are of all ages and due to the placement of horse yards and lack of

off-road tracks, it is almost always necessary for horse riders to ride on the road at some point. Therefore, recommending The Pony Club awards for children will give crucial knowledge of road safety and awareness of dangers that they may encounter at a young age.

Rules for cyclists

Firstly, in relation to the rules for cyclists, APIL argues that where a bell for a bicycle is recommended, this should in fact be made mandatory. A bell for a bicycle is inexpensive and therefore requiring a bell would not discourage individuals from cycling. There should however be further education on what a bicycle bell should be used for. Often cyclists use them in the wrong context which may come across aggressively. A bicycle bell should be used as a warning and the education on the use of a bell would be beneficial so not to frustrate other road users and instead be informative to warn other road users of their presence when using the same space. This may decrease the number of collisions involving cyclists and improve other road users' attitudes towards them.

As explained in the introduction of this response, APIL's position is that cycle helmets should be made compulsory to ensure that cyclists are as safe as possible. Therefore, in Rule 59, APIL is concerned that the word 'should' is used as opposed to 'must'. Ultimately, APIL would like to see a primary legislation change to make helmet use compulsory for cyclists.

APIL is also concerned with the wording in New Rule 75. These two stage turns are uncommon and the way in which they are described makes it confusing for the reader to comprehend. APIL therefore recommends that a diagram be provided within the new rule to ensure that the wording is used alongside an example to make it less confusing for the reader.

Rule 72

APIL is concerned that the proposed change of informing cyclists that they should position themselves in the centre of their lane on quiet roads could be dangerous. Quiet country roads often have wide bends and blind corners which may give cyclists and motor vehicles little time to react when coming across another road user in the middle of the road, either going the same way or in the opposite direction. If a cyclist remains at the side of the road, subject to potential hazards at the side of the road for example potholes, it gives drivers more options on how to react because there would be more space on the road. Cycling in the centre of their lane may also present more risk for cyclists due to the implementation of safe passing distances. On quiet, country roads, there may not be sufficient space to pass the cyclist if they are in the middle of their lane. In addition, consistency is required in cyclist positioning on roads whether quiet or busy.

APIL is also concerned that Rule 72 proposes for cyclists to position themselves in the centre of their lane when approaching junctions. This presents a risk to the safety of road users if a cyclist pulls into the centre of a lane unexpectedly due to an upcoming junction as this may cause a collision with a motorist that may be attempting to pass the cyclist at a safe passing distance. Therefore, education for all road users on this new requirement for cyclists is crucial to ensure that motorists are aware of a cyclist's intention when approaching a junction. Education of this sort may take a lot of time to become established and in the meantime, it may cause further negative attitudes towards cyclists and potentially result in unsafe passing distances and speeds.

APIL supports the fact that cyclists should position themselves in the centre of their lane in slower moving traffic. This would be safer than being either side of motor vehicles in stop-start traffic.

The wording of Rule 72 is quite contradictory. The following does not seem to make sense:

“1. Ride in the centre of your lane, to make yourself as clearly visible as possible, in the following situations:

- In slower moving traffic move over to the left if you can do so safely”,

yet the question within the consultation asks whether we agree that a cyclist positioning themselves in the centre of their lane in slower moving traffic is a good addition. Therefore, the wording should be changed to ensure that cyclists are in fact staying in the centre of their lane in slow moving traffic rather than moving to the side as the current contradictory wording states.

Rule 73

The suggestion that if cyclists feel unsafe to cycle across a junction, that they may dismount and wheel their bicycle across instead, poses some concerns. This may be practical and sensible advice; however, it encourages a negative attitude towards cyclists and may irritate motorists which can cause accidents occur. This suggestion is also not appropriate at traffic lights due to the irritation and frustration it causes to motorists that cyclists do not have to wait at traffic lights.

Rules for drivers and motorcyclists

This section poses some practical concerns around technology and mobile phone use. Firstly, this section should remain realistic. Expressing that drivers should turn their mobile phones off prior to driving is archaic. Often people do not use satnavs and instead use their phone to navigate the roads through for example, Google Maps. It would be impossible to be able to use the satnav on one's phone if it is turned off and therefore the proposal to amend Rule 97 seems unreasonable in the modern day.

General rules, techniques and advice for all drivers and riders

APIL supports the amendments under Rules 123 and 124 because they reflect the reality of speed limits in specific areas.

APIL is however concerned with the use of the term “inappropriate” when referring to speed in Rule 125. There is no clarification within this Rule as to what speed is considered inappropriate. The appropriateness of speed is also subjective. For example, arguably a motorist driving the speed limit is driving at an appropriate speed, however may not be in certain circumstances like passing cyclists and horse riders. In light of this, an example may be beneficial to clarify the appropriateness of speed.

In addition, Rule 140 fails to differentiate between a cycle lane and a cycle track. Perhaps this should be properly defined within THC and be supplemented with diagrams so that motorists are able to physically see the difference for their own benefit and the benefit of other road users.

Using the road

Rule 163

In considering the proposed changes to Rule 163, APIL has no specific comments on the proposed safe passing speed limits, however there should be consistency in the proposed passing distances. Ensuring different distances at different speed limits will be confusing, especially for those learning to drive. Considering the Covid-19 pandemic, a two-metre distance is well known to the public and therefore this should be implemented when passing any of the vehicles mentioned in Rule 163 at any speed. This would ensure consistency at all speeds and in all circumstances and reduce the complexity. By doing this, it will improve the wording in Rule 163 because a list of different circumstances will not be required.

Often the biggest danger that horse riders encounter is motorists passing too fast and too close. This is specifically dangerous due to the ability of a horse to turn in seconds which can put all parties at risk. This is highlighted through the fact that 315 horses and 43 humans have died from November 2010 – March 2019⁵, with two horses dying per week on UK roads⁶. The implementation of 15mph speed limits and 2 metre distances when passing horse riders within THC will be fundamental in ensuring the safety of all road users and mirrors the Pass Wide and Slow Campaign. Education, especially for motorists who can be impatient when driving behind horse riders, is critical in ensuring these implementations are followed to protect horse riders as vulnerable road users.

APIL is concerned on the simultaneous undertaking and overtaking highlighted in Rule 163. Perhaps the proposed changes should focus on cyclists only passing one side of motor vehicles in slow moving traffic rather than both sides to ensure consistency in motorists knowing where to look for cyclists.

Rule 186

APIL are concerned with which lane cyclists, horse riders and horse drawn vehicles should use when going across or around a roundabout. These road users remaining in the left lane may experience collisions from motorists entering and exiting the roundabout, especially when a car from the inner lane is attempting to exit the roundabout straight on when one of these road users is in the left-hand lane going around. It may either cause a collision with the vulnerable road user or with other motorists due to being forced to stop or slow down mid-roundabout. However, it is also extremely dangerous to expect one of these vulnerable road users, who are often travelling at a slower speed, to be able to exit the roundabout if they are in one of the inner lanes due to the lack of priority junctions.

This is particularly troublesome with regard to horse riders and horse drawn vehicles, because the proximity to the motorists on a roundabout could scare horses. Allowing horse riders and horse drawn vehicles to remain in the left lane whilst proceeding across or around a roundabout is the only safe option due to the significant danger posed to horse riders attempting to exit the roundabout if they are in an inner lane. In order for this implementation to be effective in protecting vulnerable road users, motorists will require education on hand signals used by horse riders so that they can safely proceed around the roundabout in the

⁵ British Horse Society, Our Work, Safety and Incidents Road Safety Campaign. 'Dead? Or dead slow?' < <https://www.bhs.org.uk/our-work/safety/dead-slow> >

⁶ Motoring Research, 'How to pass horses safely on the road' < <https://www.motoringresearch.com/advice/how-pass-horses-safely-road/#:~:text=%20According%20to%20The%20British%20Horse%20Society%2C%20these,if%20possible%204%20Drive%20slowly%20away%20More%20> > 7 August 2019

left lane. Motorists need to be sensible in the speeds they use and be patient when following horses around roundabouts, to ensure that they are not cutting across their path.

In light of the above, in order to protect these vulnerable road users on roundabouts, the introduction of vulnerable road users remaining in the left lane is the safest option. Perhaps most importantly, there needs to be further education on this to ensure that vulnerable road users are as safe as possible and promote patience in these circumstances.

Rule 195

APIL supports the additions to Rule 195 to give way to pedestrians and cyclists waiting to cross at a parallel crossing.

Road users requiring extra care

APIL is concerned with advising cyclists to ride 0.5 metres from parked cars. Considering people can often swing their door open quite widely and at speed, cyclists should leave more space between themselves and a parked car to take further precaution for car doors opening.

APIL also supports Rule 213 which encourages cyclists to ride in the centre of the lane where it is for their *safety*. However, we reiterate that making this mandatory on quiet roads as discussed earlier presents significant safety risks. APIL commends the thought that has gone into this rule to ensure that cyclists can choose to position themselves to feel safe if necessary.

APIL supports the addition to Rule 215 encouraging motorists to be patient around horse riders and horse drawn vehicles and the importance of ensuring not to scare the horses which can be extremely dangerous. Horse riders regularly experience impatience from motorists who pass too fast, too closely and cut in too quickly. This implementation will make motorists think twice about the consequences prior to overtaking horse riders and horse-drawn vehicles which will result in improved safety for horse riders as well as their horses. Perhaps within Rule 215, further information should be provided regarding the purpose and extent of horse riders' and horse drivers' signals, which can be useful on blind corners to protect the safety of all road users, especially a potential motorist driving behind.

Waiting and parking

The proposed addition to Rule 239 that individuals should use the Dutch Reach technique when opening the car door, in turn encouraging individuals to check that it is clear to do so, is one supported by APIL, this will ensure pedestrians and cyclists are not hit and subsequently injured by car doors. It is important to acknowledge that some people, such as the elderly or those who are pregnant, may not be medically or physically able to do so and that should be provided for in THC. It is crucial that for the Dutch Reach technique to be implemented properly, education on the technique is widespread, especially for children who tend to open car doors without thinking of the consequences. This would also be a great way of getting children involved in road safety from a young age and make them more aware of THC.

In Rule 239, hand-held parking devices are mentioned, stating that you must remain in control when using one. Perhaps in order to ensure that THC is moving at the same pace as technology, it would be beneficial to also include automated parking systems. Although

these are automated and should be able to proceed without intervention from the driver, if something is to malfunction, it may be a significant risk to other road users. Therefore, it is essential that although it is an automated system, the driver must be able to gain control if something was to go wrong.

Annexes

Annex 1

In reiterating as mentioned previously within this response, a bell fitted to bicycles should be made compulsory.

Annex 6

APIL agrees with the recommendation to complete daily walkaround checks for commercial vehicles.

Further comments

As mentioned, APIL is disappointed that e-scooters and e-bikes are not being included in THC wording and the new hierarchy to ensure that the roads can be as safe as possible. The introduction of e-scooter trials in certain areas of the country for example, will result in uncertainty for other road users on how to deal with and treat these new vehicles in shared spaces due to the lack of education surrounding this mode of transport. Micromobility vehicles use the same space as other road users and the nature of the vehicles present a significant additional risk of collisions on UK roads. E-scooters for example are designed to travel long distances and at high speeds without independent propulsion. The design of micromobility vehicles arguably makes the users even more vulnerable than cyclists. This is exacerbated by the fact helmet use is not compulsory in order to protect the users from serious injury as a result of a collision, thus increasing their risk of injuries. Micromobility vehicles therefore present a significant risk to other road users and themselves. Their presence on the road and in shared spaces should be reflected in THC which will provide crucial information like passing distances and speeds which are being proposed. In order for THC to incorporate transportation and technological advancements, micromobility vehicles such as e-bikes and e-scooters should be included within the hierarchy and THC generally to reflect reality.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,000 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

Any enquiries in respect of this response should be addressed, in the first instance, to:

Meyer Hazard

Legal Policy Assistant

APIL 3, Alder Court,

Rennie Hogg Road,

Nottingham,

NG2 1RX

Tel: 0115 958 0585

e-mail: meyer.hazard@apil.org.uk