

## UPDATES TO THE HIGHWAY CODE - 2022



### 2022 UPDATES TO THE HIGHWAY CODE

January 2022 saw the long-awaited changes to the Highway Code take effect. Three entirely new rules were introduced (H1, H2 and H3) along with amendments to over thirty existing rules. The changes are intended to improve safety for all road users but with a particular focus on vulnerable road users such as cyclists and pedestrians. The legislation underpinning the Highway Code remains unchanged; per s38(7) of RTA 1988 (see also *Goad v Butcher* [2011] EWCA Civ 158) breach of the Code may be relied upon as evidence of negligence. However it remains the case that there is no strict liability; breach does not prove negligence, nor does the absence of a breach absolve a road user.

### HIERARCHY OF ROAD USERS

Rule H1 details the new hierarchy for road users. The rule effectively codifies the long-established principle that where accidents occur, the courts will impose a greater level of responsibility upon those who can cause the greatest harm. Over twenty years ago in *Lunt v Khelifa* [2002] EWCA Civ 801 the Court of Appeal recognised that the courts have "*consistently imposed on the drivers of cars a high burden to reflect the fact that a car is potentially a dangerous weapon*", as compared to other road users such as cyclists and pedestrians. Previous editions of the Code and RTA protocol rules have of course already identified vulnerable road users; rule H1 simply provides clarification of those established categories.

### PEDESTRIAN PRIORITY

Perhaps most widely reported is the new rule H2 requirement that drivers *should give way to pedestrians crossing or waiting to cross a road into which or from which [drivers] are turning*. This key addition is also reflected in the amended wording of rules 170, 195 and 206. The previous rule 170 stated only that drivers must "*watch out for pedestrians crossing a road into which [drivers] are turning*". There is now a positive obligation imposed on drivers to give way to pedestrians and to do so not only when pedestrians are already on the road but when pedestrians are stationary, on the pavement and waiting to cross. Failing to give way is highly likely to give rise to driver liability. The rule has been criticised for ignoring the practical difficulty drivers face in such circumstances; drivers may not have a clear view of the pavement until already starting to navigate the junction bend. Defendant practitioners will therefore be partially reassured to note the amendments to rule 8 which require pedestrians for the first time to "*cross at a place where drivers can see you*". This new provision is likely to aid drivers where accidents occur in junctions in built up areas, particularly with parked vehicles on the road side.

### CYCLISTS

Rule H3 provides that drivers should not cut across cyclists or horse riders when turning into or out of a junction or changing direction or lane, "*just as you would not turn across the path of another motor vehicle*". Drivers are not to "*turn at a junction if to do so would cause the cyclist, horse rider or horse drawn vehicle going straight ahead to stop or swerve*" and new guidance is provided on safe passing distances when overtaking cyclists.

Two key amended rules will come into play for cyclists injured by car doors; accidents which cause approximately 500 cyclist injuries and 60 cyclist deaths annually.

It is a criminal offence to open a car door so as to injure or endanger anyone (Roads Vehicles (Constructions and Use) Regulations 1986) and the courts have historically been slow to make findings of contributory negligence against cyclists in such circumstances. New rule 239 places a further onus on drivers and others exiting vehicles by requiring them (where possible) to use the "Dutch reach", i.e. to open the car door using the hand on the opposite side of the door being opened. The idea behind the Dutch reach is that it encourages those exiting vehicles to turn and look behind them first, thereby minimising the likelihood of accidents. Failure to open a door in this manner is likely to be relied upon as evidence of negligence.

Notwithstanding the above amendments to rule 239 and the new codified hierarchy of road users (rule H1), a key amendment to rule 67 is highly likely to result in more findings of contributory negligence against cyclists injured by car doors. Rule 67 has been amended to require cyclists for the first time to *"take care when passing parked vehicles, leaving enough room (a door's width or 1 metre) to avoid being hit if a car door is opened"*. The onus will be shifted to cyclists to explain why the requisite space was not left (by default, it cannot have been if a collision occurs) and failure to give a plausible explanation will attract deductions for contributory negligence not routinely seen to date.

## PAVEMENTS AND E-SCOOTERS

Regrettably, the new Code has neglected any mention of e-scooters despite the steadily increasing number of scooter-related accidents. Rule H2 indirectly benefits pedestrians injured by e-scooters by confirming that only pedestrians may use pavements ("pedestrians" including wheelchair and mobility scooter users). The Code however remains altogether silent on the issue of the use of e-scooters on roads. There is no provision for e-scooters under the H1 hierarchy of road users and it is unclear whether they should be considered more or less vulnerable than cyclists. It is not known whether the new amendments on road positioning for cyclists and rules on giving way to cyclists on junctions apply equally to e-scooter users. In the absence of any reference in the Highway Code it appears practitioners will have to wait some time for a binding judgment to be handed down to get any clarity on the issue.