

E-SCOOTERS: THE CURRENT FRAMEWORK - PART 1



The Queen's speech 2022 has confirmed what has been widely anticipated by the media and the legal sector – e-scooters will now become a permanent feature on public roads and new legislation is expected under the Transport Bill.

E-scooters have been subject to a series of trial schemes implemented in 2020, with around 20,000 e-scooters currently in use across various cities in England. The current trials are expected to end on 30 November 2022. The Department for Transport ('DfT') pledged to produce a report evaluating the use, availability and accidents/injuries in "late Spring 2022". Not surprisingly, this report is still awaited at the time of writing this article.

This article forms one part of a series on e-scooters looking at how the law may develop to deal with various personal injury claims which might arise from the use of e-scooters. This article will consider the background regulations and present insurance position.

Existing regulations

The *Electric Scooter Trials and Traffic Signs (Coronavirus) Regulations and General Directions 2020* (SI 2020/663) provides the current legal framework for the use and regulation of e-scooters.

The key feature of the current law around e-scooters is that they fall within the definition of a motor vehicle and more specifically are labelled "powered transport" under the Road Traffic Act 1988. Thus owners and/or riders are expected to comply with the same laws and requirements that apply to motor vehicles, including insurance and licensing, but with some exclusions and amendments to various other regulations and laws.

E-scooters made available under the government trials were subject to certain requirements as seen below, such as a speed limited to 15.5mph and automatic lights. What is defined as an "electric scooter" is explained in more depth in the Regulations as follows:

- "(a) is fitted with an electric motor with a maximum continuous power rating not exceeding 500 watts;*
- (b) is not fitted with pedals that are capable of propelling the vehicle;*
- (c) has two wheels, one front and one rear, aligned along the direction of travel;*
- (d) is designed to carry no more than one person;*
- (e) has a maximum weight, excluding the driver, not exceeding 55 kgs;*
- (f) has a maximum design speed not exceeding 15.5 miles per hour;*
- (g) has a means of directional control through the use of handlebars which are mechanically linked to the steered wheel;*
- (h) has a means of controlling the speed through hand controls; and*
- (i) has a power control that defaults to the 'off' position"*

E-scooters provided under the various pilot schemes likely comply with these requirements. The providers will ordinarily have 'fleet insurance' for their scooters, therefore satisfying the legal requirement to have insurance. Training for using e-scooters is encouraged, but again, not mandatory.

It is also worth highlighting that there is no legal requirement for riders to wear helmets or other safety gear such as fluorescent clothing, although naturally this is encouraged via government guidance.

As to where e-scooters should be used, it is important to note that in general “powered transporters” should not be used on the pavement, as to do so would be in breach of section 72 of the Highway Act 1835, thus constituting an offence. Nor are they permitted for use on cycle tracks, cycle lanes or bridleway ways. However, as part of the trials, e-scooters are permitted to use the same road space as cycles and other electrically assisted pedal cycles (EAPCs), thus allowing e-scooters to be used in cycle lanes and tracks. It is for local authorities to ensure that traffic regulation orders sufficiently allow for e-scooter use. It should go without saying that e-scooters are not permitted on motorway.

It is perhaps concerning that there remains no mention of e-scooters in the Highway Code and there is no real consideration as to the interplay between e-scooter riders and other road users, including more vulnerable road users. However, it is evident that the Highway Code remains a useful and important tool in assessing the liability of riders in civil claims.

Private e-scooters

E-scooters that are privately owned are not legally permitted on public roads and are confined to use on private land. This is expected to change with the more recent government announcement, and it is expected that all e-scooters sold will have to meet certain requirements including speed restrictions and lighting in a bid to crack down on scooters which do not meet regulatory standards. Latest statistics from the DfT indicate that there are around 750,000 private e-scooters owned in England.

Private e-scooters (i.e. those not part of the pilot schemes) can only be used on private land with the permission of the landowner and not on public roads, cycle lanes or pavements. If caught, riders may face legal sanction including fines and penalty points. We are now beginning to see test cases play through the courts. One such example is of a private e-scooter rider who was injured in a collision with a bus on a busy London road. It is argued in that case that, despite the fact he was travelling on the road illegally, the rider should be no less protected in his right to obtain compensation than an uninsured cyclist. The obvious question is whether the illegal use of the e-scooter will give rise to a successful defence of *ex turpi causa* or if it is more appropriately dealt with by a reduction for contributory negligence.

A key question for the court will be whether *ex turpi causa* can or will be made out in circumstances where the claimant’s illegality had no connection with the alleged negligence of the defendant. When considering the decisions of the courts in cases such as *Clark v Farley & MIB* [2018] and *Kyriancou v Finch* [2021] it would seem perverse if the courts adopted a more robust approach in cases where the mere fact the e-scooter was being ridden illegally, and not necessarily dangerously or negligently, bears no connection to the defendant’s negligence.

There is a clear but not entirely rational distinction drawn between those which are illegally used on roads in the form of private e-scooters and those that are legalised through the medium of rental e-scooters which are part of the DfT’s approved trials.

Insurance position

The starting point is whether there is a policy of insurance in place, riders may find themselves insured as part and parcel of the cost of hiring an e-scooter, others may obtain this directly. Many of the companies that offer e-scooters as part of the approved trials have fleet insurance which will, in all likelihood, cover liability to third parties for bodily injury or damage to property. The general position is that the insurance will cover the e-scooter throughout the duration of hire and therefore is not necessarily restricted to when the e-scooter is being ridden. In straightforward cases, where the e-scooter rider is insured and/or the identity of the rider is known then it is often the insurer and/or rider who should be pursued.

In cases where an individual has sustained injury from being hit by an e-scooter and the rider does not have insurance these have historically been covered by the Motor Insurers’ Bureau (‘MIB’). This is particularly relevant when considering privately used e-scooters. It is helpful to consider the statement made by the Motor Insurer Bureau in 2020, “*The government’s failure to implement relevant EU laws since 2014 has left the MIB bearing the costs for compensating victims who are hit by e-scooters.*”

The MIB made clear that legalising e-scooters beyond the trials should come with a requirement of compulsory insurance. The MIB in this statement is referring to the EU decision of *Vnuk v Zavarovalnica Triglav* (2014) which resulted in a clash between domestic law and the interpretation of Article 3(1) of the Council Directive (EEC) 72/166 as to what is meant by the term “use of vehicles”. This decision undoubtedly resulted in a dramatic expansion of circumstances in which the MIB may be liable to compensate. On a more general note, it is understood the government finally expressed the intention, in 2021, to remove the effect of *Vnuk* from domestic law, which may in turn reduce the number of claims which can be directed to the MIB, including for e-scooters.

At present, the MIB remains in some circumstances responsible for claims involving the illegal use of e-scooters on roads and public places and uninsured use on private land.

Where are we now?

The e-scooter trials remain in place until later this year, by which time it is expected that new, or additional legislation will be implemented, regulating the use of e-scooters, setting out mandatory specifications for e-scooters for sale, and confirming the insurance position.

The Department for Transport is acutely aware of, and is closely monitoring the number of reported injuries, and accidents from the use of e-scooters. It is expected this will play a heavy role in setting out future regulations for riders and scooters.

As to the insurance position, at present, insurance is often in place when riders 'hire' the scooter via one of the pilot/trial schemes. It is also evident there is scope to redirect claims to the MIB under current law. This is seen when considering accidents involving privately used uninsured e-scooters whereby the MIB can end up footing the bill.

The next article in this series will look at the potential liability of e-scooter riders in road traffic accidents.