

FOCIS

The Forum of Complex Injury Solicitors

**The Forum of Complex Injury Solicitors
(FOCIS)**

Response to

**Department for Transport Consultation on a
review of the Highway Code**

October 2020

About Us

FOCIS members act for seriously injured Claimants with complex personal injury and clinical negligence claims, including group actions. The objectives of FOCIS are to:-

1. Promote high standards of representation of Claimant personal injury and medical negligence clients;
2. Share knowledge and information among members of the Forum;
3. Further better understanding in the wider community of issues which arise for those who suffer serious injury;
4. Use members' expertise to promote improvements to the legal process and to inform debate;
5. Develop fellowship among members.

See further www.focis.org.uk

Membership of FOCIS is intended to be at the most senior level of the profession, currently standing at 22 members. The only formal requirement for membership of FOCIS is that members should have achieved a pre-eminence in their personal injury field. Seven of the past presidents of APIL are members or Emeritus members of FOCIS. Firms represented by FOCIS members include:

Anthony Gold	Hugh James
Atherton Godfrey	JMW
Ashtons	Irwin Mitchell
Balfour + Manson	Kingsley Napley
Bolt Burdon Kemp	Leigh Day
Dean Wilson	Osbornes
Digby Brown	Potter Rees Dolan
Fieldfisher	Prince Evans
Fletchers	Rix & Kay
Freeths	Stewarts
Hodge Jones & Allen	Thompsons NI

FOCIS members act for seriously injured Claimants with complex personal injury and clinical negligence claims. In line with the remit of our organisation, we restrict our responses relating to our members' experience, practices and procedures relating to complex injury claims only. We will defer to others to respond on the impact relating to other classes of case.

Introduction

FOCIS welcomes the opportunity to respond to the Department for Transport Consultation on a review of the Highway Code and the acknowledgment that more is required to improve safety for vulnerable road users, including cyclists and pedestrians. We anticipate that to be effective there will need to be a concerted and visible education and publicity campaign to change driver habits.

Response to Consultation

We respond with reference to the three main changes proposed in the consultation as below, together with relevant related questions:

1. 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;
2. Clarifying existing rules on pedestrian priority on pavements and that drivers and riders should give way to pedestrians crossing or waiting to cross the road;
3. Establishing guidance on safe passing distances and speeds when overtaking cyclists or horse riders, and ensuring that they have priority at junctions when travelling straight ahead.

In principle, we are strongly supportive of each of the three points above, which are likely to improve road safety. Driver education will be key in ensuring these new measures result in long term changes in driver behaviour. We note that the paper stresses that whilst the most responsibility rests with vehicles which can do the greatest harm¹, it is important that this intention within the new Highway Code does not 'detract from the requirements for everyone to behave responsibly' and we agree that the new 'H' rules go some way to clarifying that concept. Whilst outside the scope of this consultation, it should not go un-noticed that E-scooters, micromobility vehicles must ultimately be incorporated within any vehicle hierarchy.

Taking each change broadly in turn, we comment as follows

1. Hierarchy of road users (rules H1, H2, H3)

Do you agree with the introduction of new Rule H1 (hierarchy of road users)?

Is the proposed wording easy to understand?

Do you agree with the introduction of new Rule H2 (stronger priorities for pedestrians)?

The new Rule H2 that drivers should give way to pedestrians at junctions, including those waiting to cross, may be difficult to implement and enforce. The previous rules were based on pedestrian rights of way, but if the pedestrian is waiting to cross and a vehicle is turning into a junction (where the junction type is not considered further in the rules), the burden upon the driver is high given the pedestrian has not yet moved into the road.

We support the introduction of higher priority for pedestrians and their safety at junctions, but we query whether the rule should apply to traffic light controlled junctions. Where traffic lights signal to drivers to turn into a junction, and a pedestrian is waiting to cross at the side of the

1 New Rule H1 which confirms 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.

road, application of Rules H1 and H2 may be confusing and could even lead to rear end collisions. We would suggest filtered traffic in this sense, should not necessarily have to afford right of way to a nearby pedestrian waiting to cross. If, however, the pedestrian has started to cross then the driver should give way. It is accepted that vehicles turning in and out of junctions should remain vigilant and travel slowly. Driver education will be crucial together with guidance on junctions to which the rule applies.

Rule 13 introduces some amendments regarding shared cycling routes, which states cyclists should respect pedestrian safety but the pedestrian should also take care not to obstruct or endanger them when doing so. We agree with the premise that whilst pedestrians may share use of a cycle lane, they must be careful when doing so. This is a further issue to reinforce via public education as many pedestrians appear unaware that they are risking a collision by wandering into cycle lanes without checking for approaching cyclists.

Cyclist's Priorities and right of way (Rule H3):

Do you agree with the introduction of new Rule H3 (cyclist's priorities and right of way)? Is the proposed wording easy to understand?

We agree that Rule H3 is long overdue in clarifying that drivers should not cut across cyclists going straight ahead when turning, in the same way the vehicle would not cut across another vehicle. The rule clearly sets out scenarios where the driver should wait for a safe gap to proceed and is easy to understand. The Rule should reduce collisions where a cyclist has not been afforded care and attention on the roads, but the reality of cars cutting across cyclists and other motorists remains a common occurrence. However, we suggest the rule should be expressed in mandatory terms, so "You must not cut across cyclists..." rather than the softer direction that "You should not..."

2. Clarifying existing rules on pedestrian priority on pavements and drivers giving way to pedestrians crossing or waiting to cross the road

Do you agree with the proposed change to give way to pedestrians waiting at a:

- Junction?

- Zebra crossing?

Is the proposed wording easy to understand?

Do you have any further comments about other changes to the rules for pedestrians?

We note the new Rule H2 introduces a new responsibility for drivers and riders to give way to pedestrians waiting to cross a side road or junction and we have responded on this point above. It is important that both pedestrians and motorists are aware of the rules around priorities on crossings.

We note that the revisions to Rule 19 on Zebra crossings confirms that drivers and riders 'should' give way to pedestrians waiting to cross and 'MUST' give way to pedestrians on zebra crossings, as well as advising the pedestrian to keep attention, and consider this appropriate. In addition the government could consider driver education as to presence of cyclists on parallel crossings, which should be treated like a zebra crossing for bicycles. It is important that both motorists and pedestrians are aware of those rules (now at revised Rule 195) and the requirement to give priority to cyclists where safe and appropriate to do so. We note the update to Rule 195 now includes parallel crossings specifically, which we welcome.

3. Guidance on safe passing distances and speeds when overtaking, giving cyclists and horse riders priority at junctions

Do you agree with proposed change to Rule 63 (guidance for cyclists using shared spaces)?

We agree with the proposed change to Rule 63. The Rule suggests cyclists ring their bell or call politely to notify pedestrians of their presence, whilst noting that a pedestrian may be deaf, blind or partially sighted. It should not be ignored that a pedestrian may also be distracted by their mobile phone or ear phones which impacts on their awareness of approaching danger also. In any event, cyclists should ensure they are aware at all times of pedestrians nearby as it is not unusual for pedestrians to step into the cyclists' path. Some cycle lanes are so narrow that it may be impossible to avoid passing pedestrians or horses closely, so we propose the "or" be changed to "and" in the penultimate sentence.

Is the proposed wording easy to understand?

Do you agree with the proposed change to Rule 72 to ride:

- in the centre lane of your lane on quiet roads?**
- in the centre lane of your lane in slower moving traffic?**
- in the centre of your lane when approaching junctions?**
- at least 0.5 metres away from the kerb on busy roads?**

We note the changes to Rule 72 in relation to positioning of cyclists in the centre of the lane or at least 0.5m away from the kerb on busy roads. However, there may be scenarios where it is not safe (nor expected) for a cyclist to be travelling in the centre of a lane. On country roads for example, the cyclist may be putting themselves in more danger by cycling in the centre of the lane where there is a risk of occasional high speed traffic. Conversely in busier inner city roads with speed limits of 20 or 30mph it may be more appropriate for a cyclist to take a centre lane position. We suggest that the likely speed of passing traffic should be the determining factor rather than whether a road is "busy" or "quiet", both of which are terms that are difficult to measure objectively. We also suggest the reference to 0.5m from the kerb be changed to reflect that as a recommendation as there may be occasions where the hazards are lesser by cycling at say 0.4m from the kerb. So rather than stating "you should adopt..." this rule should say "cyclists are entitled to adopt..."

If drivers are not made aware of these changes through driver training, we would be concerned that a cyclist attempting to ride in line with the new rules could be at more danger on the roads, than a cyclist within the current regime. This rule as currently drafted may be skimmed over by non-cyclists as being irrelevant to them. It ought to be rephrased to make it clear that other motorists ought to expect cyclists to be adopting these road positions; we note that the revisions to Rule 213 do go some way to informing drivers to be aware of the potential for cyclist to ride in the centre of the lane, to give them space for their own safety and suggests the cross reference is noted within the new Code for clarity.

Do you agree with the proposed change to Rule 73 at junctions with:

- Special cyclist facilities?**
- No separate cyclist facilities?**

The proposed change to Rule 73 is sensible and makes allowance.

We would again stress the importance of road user education.

Do you agree with the proposed change to Rule 76 (clarifies priorities when cyclists are travelling straight ahead)?

We agree with the proposed change to Rule 76, clarifying priorities when cyclists are travelling straight ahead. If the cyclist 'is going straight ahead at a junction' the cyclist 'has priority over traffic waiting to turn into or out of a side road, unless road signs or markings indicate otherwise' and to 'watch out for drivers intending to cross' their path. We agree with the change as cyclists should be afforded priority in such scenarios, but it is crucial that drivers are aware of this as any failure in an education campaign could again cause more accidents, at least in the short term, on the roads.

Do you have any further comments about other changes to the rules for cyclists?

No.

4. Other responses to questions raised in the consultation:

a) General rules, techniques and advice for all drivers and riders

We agree with the changes to Rules 123 and 124 reflecting the reality of some local speed limits and the changes to Rule 140 confirming the difference between cycle lane and cycle track, though the terminology itself may be misleading, as a 'track' suggests an off road area, whereas it is simply a route for cyclists which is protected or located away from traffic, other than when they cross side roads, and can also be shared with pedestrians.

Using the road

Do you agree that cyclists may pass slower moving traffic on their right or left as detailed in Rule 163?

Yes as it is common for cyclists to manoeuvre to the right or left of a vehicle in slow moving traffic so we consider that this rule reflects reality of what may happen on the road.

Do you agree with the proposed speed limits detailed at Rule 163 for overtaking: - motorcyclists?

- cyclists?

- horse riders?

- horse drawn vehicles?

Do you agree with the proposed passing distances detailed at Rule 163 for overtaking:

- motorcyclists?

- cyclists?

- horse riders?

- horse drawn vehicles?

Is the proposed wording easy to understand?

We agree with APIL that this guidance on passing distances would ideally be aligned, because different requirements for different vehicles may be confusing to road users and hence harder to crystallise in the minds of all road users. In our view, the distance should be 2 metres, where possible. The passing distance would only be as much as possible in a given place, for example, passing a cyclist on a single lane country road may not allow 2 meters, but that is in keeping with this being expressed as a guide. Whilst the setting out of speeds and distance is a useful guide, enforcing it within a complex road regime within a hierarchy of users will be difficult and we suggest a consistent approach to both distance and speed.

There is a danger that by expressing these distances as a guide they may be ignored but some road users and difficult for the police to enforce. Consequently we suggest the 2m passing space be expressed as a requirement, unless the width of the road does not allow safe passing at that distance. In that event the driver of the passing vehicle should either wait until there is space or, if there is no such space in sight, then reduce their speed significantly when passing at less than 2m.

Public education and police enforcement action will be required to change the culture of drivers who do not give this regard to vulnerable road users.

Do you agree with the proposed changes to Rule 186 that:

- you do not overtake cyclists within their lane?

- you allow cyclists to move across your path?

- cyclists may stay in the left lane when continuing across or around the roundabout?

- horse riders may stay in the left lane when continuing across or around the roundabout?

- horse drawn vehicles may stay in the left lane when continuing across or around the roundabout? Is the proposed wording easy to understand?

The revisions to Rule 186 appear sensible. Drivers must afford cyclists space and time to manoeuvre across a lane to take their exit on a roundabout. We suggest that the direction to not overtake cyclists within their lane ought to be supplemented by a direction to not overtake them if they are changing lane. It should be accepted by the rules that cyclists will adopt different positions on a roundabout, depending on their confidence and the presence of traffic as they approach the roundabout.

Other comments

We do not comment specifically on the other rule revisions, save to say that we broadly agree with the updates to the Code, which should improve road safety for all and will more readily align with modern road use.

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27 October 2020