

EXPLANATORY MEMORANDUM TO

THE REVISION OF THE HIGHWAY CODE INTRODUCTION AND RULES TO IMPROVE ROAD SAFETY FOR CYCLISTS, PEDESTRIANS AND HORSE RIDERS

2021 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This explanatory memorandum concerns the proposed revision of The Highway Code (“The Code”) by making alterations in the provisions of The Code in response to the Review of The Highway Code to improve road safety for cyclists, pedestrians and horse riders.

2.2 The alterations seek to improve road safety for cyclists, pedestrians and horse riders who are the most at risk when using the road and provide clarity, particularly on driver responsibility, on existing guidance.

2.3 The proposed alterations to The Code improve the guidance provided on many aspects of driver interaction with those most at risk on the road, tackling the safety issues that the most vulnerable groups face, or perceive to face, when travelling on our roads. The proposed alterations affect the Introduction to The Code and provisions concerning:

- Rules for pedestrians (Rules 1, 5, 8, 18 & 19)
- Rules about animals (Rule 52)
- Rules for cyclists (Rules 59, 61 – 63, 66, 67, 69 & 71 – 82)
- General rules, techniques and advice for all drivers and riders (Rules 125, 140, 144 & 151)
- Using the road (Rules 160, 163, 167, 170, 178, 183, 186, 187, 192, 195 & 199)
- Road users requiring extra care (Rules 204, 206, 211 – 213 & 215)
- Waiting and parking (Rule 239)
- Annexes
 - Annex 1. You and your bicycle
 - Annex 6. Vehicle maintenance, safety and security

2.4 The proposed revisions would alter rules which are advisory only.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments OR the Select Committee on Statutory Instruments OR the Sifting Committees

3.1 None. The Code is not a statutory instrument.

4. Extent and Territorial Application

4.1 The territorial extent and application of The Code is Great Britain.

5. European Convention on Human Rights

- 5.1 As The Code is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Legislative provisions relating to the revision of The Code are set out in section 38 of the Road Traffic Act 1988 (“RTA”).
- 6.2 The Code does not itself create legal rights and obligations; a failure to observe its provisions does not in itself make a person liable to criminal proceedings. But such a failure can be relied on as evidence in civil or criminal proceedings (section 38(7) of the RTA).
- 6.3 Section 38(2) of the RTA provides that the Secretary of State may from time to time revise The Code by revoking, varying, amending or adding to the provisions of The Code in such manner as the Secretary of State thinks fit.
- 6.4 Where the Secretary of State proposes to revise The Code by making any alterations in the provisions of The Code (other than alterations merely consequential on the passing, amendment or repeal of any statutory provision) he must lay the proposed alterations before both Houses of Parliament and must not make the proposed revision until after the end of a period of forty days beginning with the day on which the alterations were so laid (section 38(3) of the RTA). In reckoning any period of forty days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days (section 38(9)(c) of the RTA).
- 6.5 If within that period either House resolves that the proposed alterations be not made, the Secretary of State must not make the proposed revision (section 38(4) of the RTA).
- 6.6 Before revising The Code by making any alterations in its provisions which are required to be laid before Parliament, the Secretary of State must consult with such representative organisations as he thinks fit (section 38(5) of the RTA). Section 38(3) of the RTA provides for any alterations that are consequential on the passing, amendment or repeal of legislation to be made without the need for consultation or laying before Parliament.

7. Policy background

What is being done and why?

- 7.1 One of the greatest barriers for people choosing to cycle or walk is safety, and perceptions of safety. In line with the government’s ambition to increase the number of people choosing to travel on foot or by bike, the proposed alterations seek to improve safety for cyclists, pedestrians and horse riders when using the highway. The changes will clarify responsibility, improve safety, and give pedestrians and cyclists priority in certain situations.
- 7.2 The proposed revisions of The Code encompass three key concepts:
- 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 and that drivers and riders should give way to pedestrians crossing or waiting to cross the road;
 - Establishing guidance on safe passing distances when overtaking cyclists or horse riders, and ensuring they have priority at junctions when travelling straight ahead.
- 7.3 We have concluded a formal public consultation on these proposed alterations. Section 10 provides more information regarding the consultation.
- 7.4 The proposals are to amend the Introduction of The Code, forty-seven existing rules, and two annexes. The proposals also include revision of the rule numbering through merging existing rules between rules 61 and 82 to accommodate four new rules providing advice for cyclists on:
- safe road positioning;
 - safe cycling at junctions and when going straight ahead;
 - safe use of shared space.
- 7.5 Those rules being merged are:
- Rule 63 merged with Rule 61;
 - Rule 72 merged with Rule 74;
 - Rule 73 merged with Rule 76;
 - Rule 81 merged with Rule 82.
- 7.6 The proposed revisions are to provisions of The Code which are advisory in nature.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.7 The Code sets out directions for the guidance of road users. It was originally issued under section 45 of the Road Traffic Act 1930 (now repealed) and continues to have effect under section 38 of the RTA under which it may be amended.

Why is it being changed?

- 7.8 The Cycling and Walking Investment Strategy Safety Review Call for Evidence, published in March 2018, identified the need to review The Code to improve safety for cyclists, pedestrians and horse riders. Working with an expert stakeholder group, The Department has developed the alterations to The Code through a review of the rules. This was followed by a public consultation on the proposed wording of the rule changes.

What will it now do?

- 7.9 The amended Code will help keep our roads safer, particularly for the most vulnerable road users. This includes pedestrians, particularly children, older adults and disabled people, cyclists and horse riders. It is important that these groups feel safe in their interactions with other road users. Promoting walking and cycling could reduce air and noise pollution from car use, mitigate traffic congestion, increase levels of physical activity and lead to more sustainable communities. Safety is a key factor in determining that choice.

8. European Union Withdrawal and Future Relationship

- 8.1 The revision of the Code does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 No consolidation is being carried out.

10. Consultation outcome

- 10.1 The consultation on the proposed cycling and walking changes to The Code was launched on 28 July 2020 and ran for 12 weeks before closing on 27 October 2020. The Department received nearly 21,000 responses from a range of respondents including government, public and business.

Electronic copies of the consultation can be found online at:

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

Electronic copies of the government response document can be found online at:

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

- 10.2 The questions asked in the consultation were largely binary in nature e.g. do you agree or disagree with the proposed new wording. The majority of respondents to the consultation were in favour of each of the different changes proposed. Overall, percentages of those respondents agreeing with the changes were high and ranged from 68% to 96% agree.
- 10.3 Respondents were only asked for comments if they disagreed with the proposed rule change to enable us to understand wider issues and concerns. Therefore, the feedback was largely negative in nature, providing comments only on why the proposed changes should not be implemented. These comments have been considered proportionately to balance against the higher number of respondents who agreed with the rule changes but were not invited to provide a comment.
- 10.4 We have undertaken a full analysis of the ‘disagree’ comments and note that there were some valid points raised that needed to be considered. Through consultation with our expert stakeholders and policy officials, we have discussed the issues at length and introduced some amendments to the rules where significant concerns were identified. These have informed the final proposals. Some of the key changes following consultation analysis are:
- Some respondents thought that the hierarchy of road users will lead to vulnerable road users, particularly cyclists, taking more risk. Freight and haulage companies were concerned about being held automatically liable in the event of a road collision. We have reordered the text in the introduction under Hierarchy of Road Users and at H1 to emphasise the point that all road users have responsibility for their safety.
 - The proposed change to introduce an obligation for drivers to give way to pedestrians waiting to cross at a junction raised considerable concern with drivers wondering how they would know their intention. We considered whether to review this proposed change, but have concluded that we should not make any further amendments to this proposed alteration for the following reasons:

- There are already many situations in The Code where drivers have to use their judgement. Through these alterations, we have introduced the concept of drivers giving way to pedestrians waiting to cross at a zebra crossing and this received a high agree rate (95%). If drivers can make the judgement in that situation as to whether someone intends to cross it seems reasonable to expect them to do so when pedestrians are waiting to cross at a junction;
 - This new concept will reduce the risk to pedestrians, particularly older and disabled people (who would otherwise have to wait for a suitable gap in traffic) when crossing at non-signalised junctions, and therefore improves safety and inclusivity.
- Some respondents requested greater emphasis that cycling side-by-side is not wrong and can be an important part of building confidence for people new to cycling and for adults cycling with children. It is often safer to cycle two-abreast as cyclists are more visible and it is easier for drivers to overtake small groups rather than a long line of single file cyclists. We have amended the text at Rules 66 and 213 to reinforce this message;
 - Cyclists passing to the left of large vehicles raised considerable concerns with respondents stating this was dangerous in certain situations. We have strengthened the wording at Rules 67, 76 and 163 to ensure cyclists are aware of the dangers, particularly at junctions, and to proceed with caution;
 - Respondents said that the introduction of safe passing distances and speeds at Rule 163 was too complicated, so we have simplified the guidance;
 - Some respondents suggested that 0.5 metres is not enough space to pass parked cars as people often swing doors open widely. We have amended the guidance at Rule 67 to a passing distance of 1.0 metres which is more in keeping with a car door width;
 - We have strengthened Rule 239 on creating trip hazards with vehicle charging cables.
- 10.5 Since launching our Review of The Highway Code to improve road safety for cyclists, pedestrians and horse riders, Highways England have undertaken a Review of The Highway Code to improve safety on motorways and high-speed roads <https://www.gov.uk/government/consultations/review-of-the-highway-code-to-improve-safety-on-motorways-and-high-speed-roads>
- There were three areas which overlapped: Rule 97, the speed limits table at Rule 123, and Rule 124. Highways England laid their proposed changes before Parliament in June and these were approved in September, so we do not intend to make any further amendments to these Rules.
- 10.6 Effective communication of the changes was a common theme throughout the consultation responses. If these alterations are approved, we will implement a robust education and behaviour change campaign ensuring the changes are effectively communicated to the public.
- 10.7 Many of the comments received were outside of the scope of the consultation and general views on governments policy position. For example, the consultation did not seek opinions on the use of cycle helmets, insurance, infrastructure improvements etc. Many of the issues raised have already been considered in depth as part of the initial Cycling and Walking Investment Strategy Safety Review. The Department has not reported on any feedback received on those topics which were not within the range of the consultation.

11. Guidance

11.1 No guidance is required.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for the proposed amendments to the Code. However, a De Minimis Assessment has been completed which confirms the changes proposed would have an Equivalent Net Annual Direct Cost to Business within the +/- £5m threshold appropriate for this type of assessment. This is because The Code already exists, and this review is an extension of those guidance directions. The revisions seek to strengthen responsibility and ensure the most vulnerable road user groups have priority, leading to improvements in road safety without any disproportionate impact.

13. Regulating small business

13.1 The proposed alterations to The Code apply to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the impact on small businesses as the amendments do not impose unnecessary burdens.

14. Monitoring & review

14.1 The Department keeps The Code under review to ensure it is up to date and aligned with road traffic legislation.

15. Contact

15.1 xxxxxxxxxxxxxx, Head of Vulnerable Road Users at the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR, Telephone: xxxxxxxxxxxxxx or email: HighwayCodeReview2020@dft.gov.uk xxxxxxxxxxxxxxxxxxxx can be contacted with any queries regarding the amendments.

15.2 xxxxxxxxxxxxxx, Deputy Director for Road User Licensing, Insurance and Safety at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Vere of Norbiton at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.