

EXPLANATORY MEMORANDUM TO
REVISION OF THE HIGHWAY CODE RULES TO IMPROVE SAFETY FOR
DRIVERS USING MOTORWAYS AND HIGH-SPEED ROADS.

2021

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 revision

- 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 Secretary of State’s Smart Motorway Evidence Stocktake and Action Plan (“the Stocktake”) published in 2020, principally so as to improve the guidance for drivers using motorways.

- 2.2 In relation to motorways the proposed alterations to The Code improve the guidance provided on many aspects of motorway driving including preparing for journeys, knowing how to use motorways, recognising motorway signs and signals and understanding what to do in the event of a breakdown or incident. Other proposed alterations affect the provisions concerning:

- Rules for drivers and motorcyclists
- General rules, techniques and advice for all drivers and riders
- Driving in adverse weather conditions
- Waiting and parking
- Breakdowns and incidents
- Roadworks

- 2.3 The proposed revisions would alter rules which relate to legislation and also rules which are advisory. The proposals are to alter thirty three existing rules, add two new rules and make some changes to the additional information and annexes within The Code.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None. The Code is not a statutory instrument or other instrument falling within the terms of reference of the Joint Committee on Statutory Instruments.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The Code is not an instrument so Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business are not relevant.

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 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 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.
- 7.2 Highways England, on behalf of the Department, has developed the alterations to The Code from their analysis and understanding of the risks of motorway driving. To achieve this, Highways England initially consulted key stakeholders from various interest areas and subsequently carried out public consultation. Section 10 provides more information regarding the consultation.
- 7.3 The proposed revision of The Code is to improve driver safety and awareness principally in response to the Stocktake but also extends to other high-speed roads and to other factors which contribute to incidents on these roads in particular such as driver fatigue, the condition of vehicles and the manner in which they are driven.
- 7.4 In relation to motorways and other high-speed roads, the proposals are for significant revision of rules 256 to 258 (signs and signals), 261 (speed limits), 264 (lane discipline) and 269 (hard shoulder) and the inclusion of a new rule concerning the use of emergency areas. Minor revision is proposed of rules 253 (prohibited vehicles), 255 (signs and signals), 262, 263, 266 and 270 (driver fatigue, manner of driving and stopping).
- 7.5 In relation to roads more generally, the proposed revisions to The Code are in respect of-
- a) rules for drivers and motorcyclists including journey preparation, towing and loading (significant revision of rules 97 and 98 and minor revision of rule 91);
 - b) general rules, driving technique and advice for drivers and riders including speed limits, overtaking and stopping distances (significant revision of rules 124 and 126 and minor revision of rule 138);
 - c) driving in fog (minor revision of rule 234);
 - d) stopping or parking (minor revision of rule 240);
 - e) breakdowns and incidents (significant revision of rules 275 to 278 and 283 and the inclusion of a new rule concerning places of relative safety and minor revision of rules 279 to 282 and 286);
 - f) road works (significant revision of rules 288 to 290);
 - g) additional information on signs and signals and in relation to useful websites and further reading; and
 - h) Annex 4 (the road user and the law) to clarify that references in the Code to “emergency areas” mean an “emergency refuge area” as defined in legislation.
- 7.6 The proposals also include revision of the rule numbering between rules 270 and 280 to accommodate the two new rules (emergency areas and places of relative safety) and the merging of four existing rules into two (rules 275 and 277, rules 279 and 280).
- 7.7 Some of both the proposed significant and minor revisions are to provisions of The Code which relate to legislation rather than simply being advisory.

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 A public consultation was held during March 2021 entitled “Review of The Highway Code to improve safety on motorways and high-speed roads”. The amendments to The Code are part of a wider action plan designed to improve the safety of smart motorways to address concerns raised by MPs, stakeholders and the public.

- 10.2 Electronic copies of the consultation can be found online at:

<https://www.gov.uk/government/consultations/review-of-the-highway-code-to-improve-safety-on-motorways-and-high-speed-roads>

A hard copy of the consultation document can be obtained from Highways England upon request, using the contact details in section 15.1.

- 10.3 The consultation response report detailing the response to the consultation entitled ‘Review of The Highway Code to improve safety on motorways and other high-speed roads: Response to the Consultation’ was published in June 2021.

Electronic copies of this document can be found online at:

<https://www.gov.uk/government/consultations/review-of-the-highway-code-to-improve-safety-on-motorways-and-high-speed-roads>

Hard copies can be obtained from Highways England upon request at the contact details provided in section 15.1.

- 10.4 A total of 3,210 responses to the consultation were received. 2,162 responses were received during the first four days of the consultation.
- 10.5 Within the consultation responses, 19,849 written comments were received. All have been reviewed and, where relevant, taken on board. 2,634 comments concerned matters that were beyond the scope of the consultation, such as smart motorway standards and general roads policy. These have not been considered in the analysis of the consultation and this has been explained in the consultation response report with Highways England’s position on these issues.
- 10.6 Support for the proposed revisions ranged from 85% to 99% when responses beyond the scope of the consultation are excluded.
- 10.7 Some respondents suggested textual changes; each was considered and informed the final proposals.

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 (EANDCB) 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 revision is expected to lead to improvements in road safety without any disproportional 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 Malcolm Wilkinson at Highways England Telephone 0300 470 4286 or e-mail malcolm.wilkinson@highwaysengland.co.uk can be contacted with any queries regarding the proposed revision.
- 15.2 Danny Trup, Deputy Director for the Strategic Roads Directorate 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.