

Is The Highway Code Actually Law?



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The Highway Code is primarily designed to help all road users be safe on the roads. It includes the rules and regulations on how we should use the roads as well as providing advice on making our journeys less stressful. Also, if all road users follow the rules and advice provided, it will help reduce congestion and improve the environment. The Highway Code is a set of information, advice, guidance and mandatory rules for road users in the UK. Taken alone, its contents do not equate to a legal document. However, many of the instructions contained in it are backed up by law and so have legal muscle behind them. By acting on the Code's valuable guidance, all road users should remain safe, avoid prosecution and help contribute to the overall safety of all who use today's busy highways and byways.

Is the Highway Code Actually Law?

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Introduction

Even though this article predominantly deals with the Highway Code (GB), much of its content is equally applicable to the Rules of the Road (IRL). The vast majority of drivers will have perused the Highway Code or the Rules of the Road at some time or other, but especially before undergoing the theory test or actual driving test. Once passed, many drivers then resign the Highway Code and the ROTR to the bottom drawer never to be looked at again. The Highway Code is one of Britain's most popular non-fiction books and sells about one million copies each year and has been in constant publication for more than seven decades. But is the Highway Code actually law and does its contents equate to a written legal document/instrument? ¹ Basically, the Highway Code is a set of information, advice, guidance and some mandatory rules for road users in the UK. Its objective is to promote road safety. The Highway Code applies to all road users including pedestrians, equestrians, motorists and motorcyclists etc. It also gives information on road signage, road markings, vehicle markings and road safety. The Highway Code was first published in 1931, and has been regularly updated to reflect current practices. It is prepared by the Department of Transport (DfT) and the Driver Vehicle and Standards Agency (DVSA), and is published by HM Stationery Office in both electronic form and as a printed book. The Great Britain version applies to England, Scotland and Wales. The Northern Ireland version, available in English and Irish, applies to Northern Ireland. Almost one million copies of the Highway Code are sold annually, that keeps it in the bestsellers list. It is claimed to have saved thousands of lives since its inception. Since it was first published, there were just 2.317 million motor vehicles in Great Britain. Then, each year there were over 7,000 road fatalities as opposed to 1,784 road deaths in 2018 – a significant decrease. The first edition cost just one old penny and it was the only document to carry advertisements from the Automobile Association (AA), the Autocar Magazine, the Royal Automobile Club (RAC) and Motor Union Insurance. It contained 18 pages of advice compared to 137 in today's issue. This article has an in-depth look at this popular booklet and which most learner drivers will have perused at some stage during learning to drive. It also attempts to unravel some of the various rules which are advisory and those that are compulsory.

¹ *A legal instrument is a formally executed written document. It states some contractual relationship or grants some rights. It formally expresses a legally enforceable act, process or contractual duty, obligation or right. Examples would be: deeds, wills/codicil, mortgages and trusts etc.*

It looks at rules using wording like *'must'*, *'must not'*, that is supported by law, and words like *'should'*, or *'should not'*, that act as advice, and don't have legal weighting behind them. Finally, it concludes with an overall summary.

Not a Legal Document

Taken alone, the Highway Code is not a legal document or instrument ² and therefore is not law or legally binding. But many of the instructions are backed up by law and so have legal muscle behind them. These points supported by law are clearly identified in the document by wording like *'must'*, *'must not'*, rather than *'should'* or *'should not'*. Failure to comply with the other rules of the code can't directly cause you to be fined, prosecuted or disqualified – but the advice it offers can be used as evidence in any court of law to establish liability. Certain rules in the Highway Code are legal requirements, and are identified by the words *'must'* or *'must not'*. In these cases, the rules also include references to the corresponding legislation. Offenders may be cautioned, given license penalty points, fined, banned from driving, or imprisoned, depending on the severity of the offence. Although failure to comply with the other rules would not, in itself, cause a person to be prosecuted. The Highway Code may be used in court under the Road Traffic Act 1988 to establish liability. These include advisory rules with wording *'should'* and *'should not'* or *'do'* and *'do not'*. In general, only the latest official printed version of the Highway Code should be used, but in legal proceedings, whether civil or criminal, the version current at the time of the incident would apply.

Origins of the Code

The origins of the Highway Code can be traced back to 1920 when the Department Committee on the Regulation of Motor Vehicles announced that *"a compulsory and uniform code of signals for all road vehicles is to be brought into operation"*. ³ Drivers in London had evolved a system for signaling their intentions to turn right or stop, using their arm, and this was seen to be of such benefit that it should be required and standardized as a Highway Code of behaviour across the country. The Highway Code allowed the driver to use his own arm or a dummy arm which had obvious benefits in wet weather for drivers with the luxury of an enclosed cab, or for drivers using left-hand driving vehicles, as in imported American cars. The intention to bring in the compulsory Highway Code was delayed and in successive years, the Highway Code was expanded including whip signals for horse drawn vehicles, and signals made by policemen controlling junctions.

² Legal document – A document that states some contractual relationship or grants some rights.

³ *Code of signals for road vehicles*. Dundee Evening Telegraph. 5 October 1920. P2.

Driving skills can only be applied with a framework of knowledge and understanding of the rules, regulations and procedures outlined in the Highway Code. Drivers or potential drivers should clearly understand the purpose of the Highway Code and of its relevance to establishing or negating liability in a court of law. Where drivers have a poor understanding of the Highway Code's rules and procedures, or have a superficial attitude towards them i.e. if they think it is only something which must be learned in order to pass the driving test, this will almost certainly be reflected in their response to rules, signs and traffic situations. Drivers should attempt to develop proper attitudes towards signs and Highway Code rules with particular emphasis on the safety of pedestrians at junctions, traffic lights, pedestrian crossings and near schools etc.

The Road Traffic Act (GB) 1988 states:

“A failure on the part of a person to observe a provision of The Highway Code shall not of itself render that person liable to criminal proceedings of any kind but any such failure may in any proceedings (whether civil or criminal, and including proceedings for an offence under the Traffic Acts, the [1981c.14] Public Passenger Vehicles Act 1981 or sections 18 to 23 of the [1985c.67] Transport Act 1985) be relied upon by any party to the proceedings as tending to establish or negate any liability which is in question in those proceedings”.⁴

Knowing and applying the rules contained in the Highway Code could significantly reduce the number of deaths and injuries that occur on our roads every day is a responsibility we all share. The Highway Code can help us discharge that responsibility. The Highway Code sets out everything the motorist needs to know to safely navigate the various highways and byways – but is it law? It also contains strict instructions on what road users can and cannot do. So, is the Highway Code a legal document and is it legally binding, or is it a simple set of guidelines recommended for motorists to follow? According to the Royal Automobile Club (RAC), the Highway Code itself is not a legal document and the rules outlined in it are not official road laws. But that doesn't mean you can't be fined if you break one of the 307 regulations set out in the Government book. A number of the points outlined in the Highway Code are backed up by official traffic laws, meaning you can be fined, prosecuted, disqualified if you ignore them.

⁴ “Road Traffic Act 1988. (c.52), s 38 (7)” Office of Public Sector Information. Retrieved 3 August 2006.

Legally supported sections of the Highway Code include: Rule 175 – junctions controlled by traffic lights -

- ***You must stop behind the white ‘STOP’ line across your side of the road unless the light is green.***

Supported by Laws RTA 188 s36 (Roads Traffic Act 1988) and Regulations 10 and 36 (The Road Signs Regulations and General Directions TRSGD 2002).

Not legally supported - Rule 185 – Roundabouts:

- ***When reaching the roundabout you should give priority to traffic approaching from your right, unless directed otherwise by signs, road markings, or traffic lights.***

Any rule using wording like ‘***must***’, ‘***must not***’, is supported by law, which will usually be referenced at the bottom of the sub-section. Road users who ignore these guidelines could find themselves slapped with numerous traffic offences including careless driving, and be prosecuted under the laws they are associated with. Guidelines in the Highway Code using the words ‘***should***’, or ‘***should not***’, act as advice, and don’t have legal weighting behind them. But these sections can still be used as supporting evidence in court. Where there has been an incident on the road which goes against the ‘***should***’, ‘***should not***’, advice of the document, these can be used to establish who is liable for the incident.

Case Law

Even though the following court case concerns the Rules of the Road (ROTR) (IRL) and not the Highway Code, it highlights the issue where the pedestrian was negligent and totally at fault and where the ROTR were applied. A pedestrian who was struck by a car on an N road in Co. Longford had his personal injuries claim against the driver dismissed in the High Court. Stating that the case turned on the application of the ROTR, as described in ***Carr v O’Las & Anor [2012]***⁵ Mr. Justice Keane stated that the ROTR was:

“An administrative document which in places endeavours to summarise in non-legal language the requirements of the Road Traffic Acts while also giving practical advice and exhortation to drivers as how best to drive safely”.

Mr. Justice David Keane said obiter (dictum), that if the pedestrian had followed the advice in the ROTR, the accident could not have happened. Here, the ROTR was an invaluable asset to the judge in determining the case.

⁵ [2012] IEHC 59

Other Cases

In *Hernandez v Acar [2019]*,⁶ the defendant pulled out of a minor road into a major road – which was a one-way street. The claimant was riding a motorcycle on the major road, and hit the front offside wing of the defendant’s car. He was thrown from his motorcycle rendering him a paraplegic. Mr. Hernandez made a claim against the defendant and the defendant counterclaimed in respect of psychiatric injury. The question whether a road user has failed to drive with reasonable care is fact sensitive. The trial judge, Master Davison considered the relevant findings of the High Court, and cited the court of appeal case *Heaton v Herzog [2008]*,⁷ that a driver emerging onto a major road, from a minor road has a duty “to take extreme care before doing so and when doing so”.

Evidence of negligence may be gleaned from the following sources – The Highway Code, Rules of the Road, statutory duties relevant to motoring convictions, the DVSA driving manuals and other specialist publications. In addition, there are certain cases where the circumstances themselves imply negligence. In such cases, the principle of *res ipsa loquitur*⁸ may apply. In principle, a breach of the Highway Code may be relied upon as tending to establish or negate any liability that is in question in proceedings. In practice, if a party fails to comply with the provisions of the Highway Code, it is likely that the court will conclude that there has been a breach of the duty of care. This is for good reason: the Highway Code is accepted good practice and represents the accumulation of many years’ experience since it was first published in 1931.⁹

In *Wakeling v McDonagh [2007]*,¹⁰ Mackie J. said: (*relying on Powell v Phillips [1972]*), that a breach of the Highway Code, if established, did not create a presumption of negligence but was merely a factor to be taken into account when considering the issue. In *Davies v Swan Motor Company Limited [1949]*,¹¹ Lord Denning, relying on the Highway Code said that in considering contributory negligence in the part of a pedestrian, the appropriate test was said to be: “*When a man steps into the road he owes a duty to himself to take care of his own safety*”. The facts in *Davies* were as follows: *Davies* was standing on the steps at the side of a dust lorry. When meeting a bus on a narrow road he fell off and was killed.

⁶ Enrique Hernandez v (1) Emre Acar (2) EUI limited.EWCH 72.

⁷ EUI Ltd 21019 EWHC 72

⁸ *Res ipsa loquitur* means “the thing speaks for itself”. There are some cases where the “thing speaks for itself” and where they may be no other evidence to prove negligence.

⁹ lexisnexis.co.uk

¹⁰ Berrymans Lace Mawer. Pedestrian Claims. blmlaw.com

¹¹ 2 KB 291, Court of Appeal

The judge held that that *Davies* was himself one-fifth responsible because of his negligence in standing upon, and being upon the side of the dust lorry. His damages were reduced accordingly.

In the initial case, Bucknill L.J. said:

“When one is considering the question of contributory negligence, it is not necessary to show that the negligence constituted a breach of duty to the defendant. It is sufficient to show lack of reasonable care by the plaintiff for his own safety.”

In June 2017, even the Queen broke Rule 99 of the Highway Code by not wearing her seatbelt. Her Majesty was reported after one beady-eyed viewer noticed that the Queen had forgotten to wear her seatbelt, as she travelled to the State Opening of Parliament. Even though, it is compulsory to wear a seatbelt at all times whilst travelling in a vehicle, the Queen is immune from any civil or criminal proceedings.¹²

Conclusion

The Highway Code is primarily designed to help all road users be safe on the roads. It includes the rules and regulations on how we should use the roads as well as providing advice on making our journeys less stressful. Also, if all road users follow the rules and advice provided, it will help to reduce congestion and improve our environment. We are all road users - whether we are walking, riding in a jitney or driving a car – and need to be aware of, and follow, the rules that are there to help the whole community. All adults, especially the parents of young children, should know about the contents of the Highway Code even before they are aiming to become a driver, but learner drivers will need to study the contents in order to pass their driving test, obtain a license; and then become safe and considerate drivers. The Highway Code includes all the information you will need to know about traffic rules and regulations, traffic signs, signals and road markings. The Highway Code also provides guidance on maintaining your vehicle, what to do in the event of a breakdown or being involved in an accident and some useful advice on first aid. It also provides detailed guidance on how to go about passing your driving test - both the written knowledge part and the on-road practical test. So, even though the Highway Code is not a legal document/instrument *per se*, the advice contained therein is invaluable not just for learner drivers but for all motorists.

¹² Grazia. 24 June 2017. graziadaily.co.uk

Taken alone the Highway Code is not a legal document or instrument ¹³ and therefore not law or legally binding. But many of the instructions are backed up by law and so have legal muscle behind them. Also, in the event of a vehicle crash where the parties go to court, the judge (as in Mr. Justice Keane above) may well rely on its provisions to give some guidance. By acting on the Highway Code's valuable guidance, it should help all road users remain safe, avoid prosecution and help contribute to the overall safety of all who use today's busy highways and byways.

¹³ Legal document – A document that states some contractual relationship or grants some rights.