

E-Scooters: The Legal Road Ahead

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Patrick West looks at the potential impact of the introduction of e-scooters on UK roads.

The last time a totally new type of electric vehicle appeared on our roads in January 1985 it was the Sinclair C5.

Although it looked like a space-age solution to traffic congestion and pollution by Christmas it had bombed and retailers were selling them at a 65% discount.

The British Safety Council tested the C5 at Sinclair Vehicles' headquarters in Warwick and issued a highly critical report to its 32,000 members. Sinclair threatened to sue BSC chairman, James Tye, for defamation after Tye told the press: *"I am shattered that within a few days 14-year-old children will be allowed to drive on the road in this Doodle Bug without a licence ... without insurance and without any form of training."*

Later, Tye described himself as "the man entirely to blame for the failure of the Sinclair C5."

There were of course technical problems too with a number of the C5s prematurely whirring to a halt at its launch at Alexandra Palace in January 1985 (even Formula 1 legend Stirling Moss was left high and dry by a failed battery).

The new kid on the block is the e-scooter. Around the world their advent has been met with both delight and concern.

Last week the Government signalled the start of on-road e-scooter trials in the UK (excluding Northern Ireland). Previously e-scooters were illegal on the road.

The Electric Scooter Trials and Traffic Signs (Coronavirus) Regulations and General Directions 2020 amends the Road Vehicles (Registration and Licensing) Regulations 2002 came into force on 4 July 2020. It adds e-scooters to the list of

road vehicles (Reg 4) although it restricts the use of e-scooters on the road to “e-scooters being used in a trial”. Privately owned and operated e-scooters remain illegal on the road.

Protective headgear will be required by the newly amended Reg 4 of the Motorcycles (Protective Helmets) Regulations 1998.

In addition, users will be permitted to drive the e-scooters involved in the trials if they have a provisional licence (Reg 5 of the Motor Vehicles (Driving Licences) Regulations 1999).

Other measures introduced in the amended Traffic Signs Regulations 2016 permit the e-scooters in the trial to use cycle lanes and shared spaces such as pedestrian/cycle pavements (but not ordinary pedestrian-only pavements).

The Department for Transport anticipates that “training of some sort will be offered” by the rental firms participating in the trials although it does not specify how much training or what form the training will take.

The DfT also intends to conduct an impact assessment in due course.

The legislative history of electric vehicles is not straightforward and the outlook for e-scooters is no clearer.

The C5 was manufactured with a 250W electric motor and under the Electrically Assisted Pedal Cycle Regulations 1983 it was not a motor vehicle within the meaning of the Road Traffic Act 1988 and therefore required no tax and no insurance. The same regulations apply to EPACs today although most EPACs now have a more conventional appearance as electric bicycles with two wheels and a normal bicycle frame.

Under the present trial e-scooters are required to have insurance. Other than that it is hard to see much difference between the C5 and the e-scooter.

The C5 had a top speed of 15 mph. E-scooters in the trial are limited to a top speed of 15.5 mph. In Europe some countries permit scooters to reach up to 18 mph on the road. E-scooters which are not regulated (i.e. legal only on private land) can reach speeds of up to 60mph but it seems unlikely that such machines would ever be legally allowed on the road.

Both the C5 and the e-scooter are relatively flimsy vehicles with the obvious potential for harm to the rider. In addition due to their electric motors it's hard to hear e-scooters coming. The Royal National Institute for the Blind has raised serious concerns about the danger e-scooters pose to blind pedestrians.

The C5 was cheap to buy (about £200 in old money). E-scooters currently retail for between £100 - £1000 and it is assumed rental rates will be competitive for a mass market.

All this suggests e-scooters will become popular and that UK roads will see a very substantial increase in e-scooter road users very quickly. For example, in August 2018 Tel Aviv allowed the introduction of rental e-scooters to its notoriously congested road network and within a year there were 7,500 of the vehicles scooting about. Interestingly, one negative impact there was the way users abandoned them almost anywhere after they had finished using them. It is anticipated that there are already 200,000 e-scooters already in use in this country (off road).

Given the similarities of the C5 and the e-scooter and that electric bikes are not required to have cover it is hard to see how the Government will be able to justify the insurance requirement for long. No doubt commercial entities will be lobbying ministers in that respect too.

So it may well be that the insurance requirement for e-scooters in this country is a temporary restriction. In fact, the Department for Transport has said it may eventually treat the e-scooter as an EAPC just like the C5 removing the need for cover.

Where does that leave us lawyers? Well, notwithstanding the Government's optimistic statement about training e-scooter riders, it's almost certain we will soon be seeing road traffic collisions involving e-scooter users.

The difference between the C5 and the e-scooter is that Sinclair's velocipede never killed or seriously injured anyone (probably as it was not on the roads long enough). Unfortunately, the e-scooter has already become associated with a risk

of serious accidents partly due to the death of the 35 year-old TV presenter Emily Hartridge last year in Battersea while riding an e-scooter.

It is not difficult to anticipate the potential for serious if not catastrophic head injury cases or indeed pedestrians who might be seriously injured if hit by a scooter driven by a larger rider. The Regulations permit the weight limit of e-scooters on the road to be 55kg rather than the earlier planned limit of 35kg and power will be 500W rather than 350W. All this increases the risk of hospitalisation to anyone struck by one.

There are likely to be individuals who do not use the helmets provided, raising the prospect of a new type of *Froome v Butcher* style pleading of contributory negligence by defendants.

The question of liability will of course revolve around the tortious standard of care of the reasonably competent driver. Given the likely popularity of the e-scooter with the young and the fact that only provisional licences are required it seems inevitable that plenty of users will fall below that standard in causing accidents.

There is strong potential for e-scooters to come into conflict with other e-scooters, cyclists and pedestrians bearing in mind they are free to range in cycle lanes and other mixed-use areas.

As to insurance issues, Part VI of the Road Traffic Act 1988 requires motor insurance to be in place for liabilities arising from the use of "a motor vehicle on a road or other public place".

Under S 151 a road traffic insurer will have contingent liability even if they are not liable under the policy.

What the new Regulations suggest is that the insurance will be to the full extent (unlimited) cover required by the Road Traffic Act and provided by an authorised motor insurer.

Short-term insurance or pay as you go style policies purchased by the same App used to hire the e-scooter or another App will probably be used.

One issue for claimants injured by e-scooter riders may be that the riders are drunk or under the influence of other illegal substances. That will no doubt result in them not being indemnified by the insurer in question.

However, it seems reasonably clear that the current definition of rental e-scooters in the trial as motor vehicles will bring them within the scope of cover under the MIB Agreements in cases of uninsured or untraced drivers who cause accidents.

If, as seems likely given the above indication from the DfT, we face a situation in the future where e-scooters are permitted on roads without insurance claimants injured by allegedly negligent e-scooter riders will face much greater problems.

There may be cover for the rider in the shape of home insurance and other policies although it may not be unlimited.

There is also the frightening prospect of the “man of straw” defendant scenario where an e-scooter rider has no cover, no assets and no real prospect of satisfying a high value judgment against him or her.

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