

GREEN LIGHT FOR NEW AUTOMATED AND ELECTRIC VEHICLES ACT

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Legal Briefings - By **Phil Pfeffer, Tony Dempster and James Allsop**

On 19 July 2018, the Automated and Electric Vehicles Bill received Royal Assent and became an Act of Parliament. The new Automated and Electric Vehicles Act represents the first legislative step towards the UK Government's aim of establishing the UK as a world leader in the development and deployment of driverless car technology and creating "*the most advanced regulatory framework for driverless cars in the world.*"

This briefing considers the key provisions of the Act relating to automated vehicles.

KEY PROVISIONS

The Act extends compulsory motor vehicle insurance to include the use of automated vehicles. The key provisions in this respect are as follows:

- For the purposes of the Act, an "automated vehicle" is defined by reference to a list required to be created and maintained by the Secretary of State of motor vehicles deemed to be "*designed or adapted to be capable, in at least some circumstances or situations, of safely driving themselves*" and which may "*lawfully be used when driving themselves, in at least some circumstances or situations*".
- Liability for damage caused by an insured automated vehicle when driving itself will sit with the insurer of the vehicle.

- Where an automated vehicle is not insured at the time of an accident, the owner of the vehicle will be liable for any damage caused.
- Where primary liability sits with the insurer, the injured party (which includes the human driver of the vehicle) will be able to claim compensation in line with existing practices.
- The insurer has a statutory right to claim against any other person who was liable for the accident under existing common law and product liability laws.

The Act provides that an insurer's or vehicle owner's liability for an accident may be reduced under the Law Reform (Contributory Negligence) Act 1945 to the extent an accident, or the damage resulting from it, was caused by the injured party. Further, the Act provides that:

- Insurers and owners of automated vehicles will not be liable to the person in charge of the vehicle where the accident it caused was wholly due to the person's negligence in allowing the vehicle to drive itself when it was inappropriate to do so.
- An insurance policy may exclude or limit an insurer's liability for damage suffered by an insured person arising from an accident occurring as a direct result of (i) software alterations made by the insured person (or with their knowledge) that are prohibited under the policy or (ii) a failure to install safety-critical software updates that the insured person knows, or ought reasonably to have known, are safety-critical.

DEFINITION OF AUTOMATED VEHICLES

For the purposes of the list of automated vehicles that the Secretary of State is required to produce and maintain, a vehicle is defined as "*driving itself*" if it is "*operating in a mode in which it is not being controlled, and does not need to be monitored, by an individual*". This definition clearly catches vehicles with Level 4 and Level 5 automated capabilities on the SAE International J3016 Standard (the "**SAE Standard**"). However, as previously noted (see [link](#)), the position with respect to Level 3 vehicles is arguably unclear.

This uncertainty was raised when the Bill was debated in the House of Lords and it was proposed that the Act adopt the definitions used in the SAE Standard. Baroness Sugg, Parliamentary Under Secretary of State for Transport, made clear that the Act does not apply to Level 3 vehicles. She stressed that it applies only to highly and fully automated vehicles and not to vehicles with lower levels of automated technology or utilising advanced driver assistance systems, no matter how sophisticated.

With respect to the SAE Standard, Baroness Sugg explained that the Act does not define automated vehicles by that Standard on the basis that it lacks the precision needed for type approval and regulation; providing only broad descriptions of capabilities which can change over time.

LACUNA SURROUNDING LEVEL 3 VEHICLES

By excluding Level 3 vehicles from the scope of the Act, there appears to be a risk of a lacuna developing as regards recovery by third parties involved in accidents with Level 3 vehicles. For example, if a Level 3 vehicle is operating with active cruise control and something goes wrong with the system, the driver might not have the opportunity to react before there is an accident. Ordinarily, the injured third party would have an action in negligence against the driver. However, the driver may be able to successfully demonstrate in this case that he/she was not negligent because he/she did not have an opportunity to react when the active cruise control failed. In such a scenario the law of negligence may be of little assistance to the injured third party. Instead, the injured third party may be left facing the prospect of a product liability claim against the manufacturer; precisely the situation that the Act seeks to avoid with respect to highly and fully automated vehicles.

ASSESSMENT OF THE IMPACT AND EFFECTIVENESS OF THE CLASSIFICATION OF AUTOMATED VEHICLES

Following an amendment proposed by the House of Lords, section 7 of the Act requires the Secretary of State to prepare a report assessing (a) the impact and effectiveness of classifying automated vehicles by way of a maintained list, and (b) whether the Act ensures that appropriate insurance or other arrangements are made in respect of vehicles that are capable of safely driving themselves. That report is required to be laid before Parliament no later than two years after publication of the first list of automated vehicles.

ACCESS TO DATA

Automated vehicles will generate, collect and process enormous quantities of data. That data is likely to be critical for establishing the cause of an accident and the attribution of liability. It is for this reason that countries such as Germany have passed legislation requiring automated vehicles to be fitted with 'black boxes' that will record whether the human driver or the system was in control of the vehicle at all times. Significantly, the Act is silent both on vehicle data capture and access.

The fact that these issues are left unresolved was noted by a number of industry commentators as the Bill made its way through Parliament. It was also raised by the House of Lords during the Bill's Second Reading. The explanation for the Act's silence appears to be a concern on the part of the Government to avoid adopting a position that is contrary to that ultimately taken at the international level. In a letter to the House of Lords in March 2018, Baroness Sugg indicated that it is expected that 'black boxes' will be regulated on an international basis and that it would be against the UK's interests to act unilaterally before decisions have been taken at the international level.

CONCLUSION

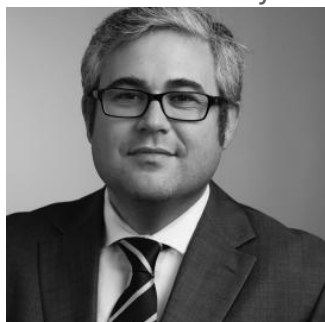
The establishment of an insurance framework for automated vehicles is an important step towards the creation of a regulatory framework for this dynamic and rapidly evolving sector. However, in keeping with the Government's stated preference for incremental regulation, the Act is deliberately narrow in scope and leaves a number of important issues unresolved. These issues must be addressed if the Government is to achieve its aim of creating the most advanced regulatory framework for driverless cars in the world.

In this respect, the Government commissioned a detailed review of UK driving laws by the Law Commission in March this year. The Commission is due to issue an initial scoping paper by the end of 2018.

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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