



Automated Vehicles: Consultation Paper 3 - A regulatory framework for automated vehicles

Motor Insurers' Bureau (MIB)

The MIB, established as a not-for-profit organisation in 1946, compensates victims of accidents involving uninsured and untraced drivers under agreements with the Department for Transport and aims to reduce the level and impact of uninsured driving in the UK. We are funded by all premium paying motorists via a levy on UK motor insurers. The annual levy for 2020 was £394m. Our claims handling experts manage more than 25,000 claims every year and seek to settle the claims for innocent victims fairly and promptly.

We manage the Motor Insurance Database, a central record of more than 40 million vehicles in the UK which is used by the police to identify and seize vehicles being driven without insurance. We play an instrumental role in the operation of the Continuous Insurance Enforcement (CIE) scheme, working alongside key insurance industry bodies, the Government, police and the DVLA. The CIE makes it an offence to keep a vehicle without insurance: the process links vehicle registration data with records of motor insurance to establish whether a vehicle is insured.

The MIB also acts as the UK Green Card Bureau and Information Centre for cross-border motor insurance.

Response to the consultation

We respond to questions in Chapters 10, 12, 16 and 17 as being those most directly relevant to the MIB's activities. The MIB also has a general interest in the issues raised in Chapter 13 (Remote operation: no user-in-charge vehicles) and Chapter 15 (New wrongful interference offences), and we are generally supportive of the Law Commission's proposals although we have not responded to the individual questions.

CHAPTER 10: ASSURING SAFETY IN USE

Consultation Question 17 (Paragraph 10.82)

We provisionally propose that legislation should establish a scheme to assure the safety of automated driving systems following deployment, giving scheme regulators enhanced responsibilities and powers.

Do you agree?

Yes, strongly agree. Unlike conventional vehicles, AVs will depend on safety-critical software updates and proper maintenance of related hardware, including various types of sensor, throughout their useful life. This needs to be reflected in the regulators' responsibilities and powers,

and an adequate testing regime included. This will need to go far beyond the current MOT system.

Consultation Question 18 (Paragraph 10.83)

We provisionally propose that the enhanced scheme should give regulators the following responsibilities and powers:

- (1) scheme regulators should be responsible for comparing the safety of automated and conventional vehicles using a range of measures;
- (2) to do this the regulator should have power to collect information on: (a) leading measures (instances of bad driving which could have led to harm) and (b) lagging measures (outcomes which led to actual harm);
- (3) regulators should have power to require an ADSE: (a) to update software where an update is needed to ensure safety and continued compliance with the law; (b) to keep maps up-to-date, where an AV relies on maps to ensure safety and compliance with the law; (c) to communicate information about an ADS to users in a clear and effective way, including where necessary through training.

Do you agree?

Yes, agree that the enhanced scheme should give regulators all these responsibilities and powers.

Consultation Question 19 (Paragraph 10.84)

We welcome views on the following issues:

- (1) Should scheme regulators be empowered to approve software updates that apply only within the UK, without requiring the manufacturer to return to the original type approval authority?
- (2) Should the scheme also deal with cybersecurity?
- (3) Are other powers needed? (Note that data is discussed in Chapter 17.)

(1) No. Software updates are likely to be needed to deal with the particular conditions of UK roads, traffic and legislation, and it might be tempting (in the interests of speed of implementation) to allow regulators and manufacturers the flexibility to implement updates without referring back to the original type approval authority. At least in the early stages of AV adoption, however, a more cautious approach is needed to ensure that safety-critical updates are adequately evaluated – and this will require them to be submitted to the full type approval process. This can subsequently be reviewed, and if necessary modified, as experience builds up.

(2) Yes. Cybersecurity is essential for vehicle safety and will be challenged by individuals and entities seeking to use AVs for malicious purposes. For instance:

(i) Fraud. MIB has serious concerns about the potential for the ADS to be hacked and re-set to leave a data trail indicating something has happened when in fact it has not. As an example, in a hit-and-run accident scenario a corrupted ADS could leave data indicating that the vehicle was at the scene

of an accident when in fact it was nowhere near, thereby pinning the blame on an innocent party. There are many different fraud scenarios that this could be applied to.

(ii) Terrorism. A hacked ADS might be configured to allow a vehicle to be controlled externally, and that this could allow terrorists to use it as a lethal weapon without putting their own lives at risk. This in turn could lead to a much higher incidence of horrific incidents such as the terrorist attacks on London Bridge and Westminster Bridge. Externally controlled AVs could also be used for fraud such as “crash for cash” incidents, in which the perpetrator sets up a road traffic accident in order to make a fraudulent claim against the other party’s insurance.

(3) Yes, but regulators should also be empowered to require an ADSE to disable an AV (when it is parked in a “safe harbour” situation) under certain circumstances. The MID and DVLA databases could allow for real time enforcement for software updates as well as the statutory insurance requirement. This presents an important opportunity to improve safety and combat uninsured driving, and we hope that an effective procedure for taking non-compliant AVs out of circulation will be created. We would be happy to work with the Law Commission to draw up a model for how this might work.

Consultation Question 20 (Paragraph 10.100)

Should the authority administering the scheme to assure safety while automated vehicles are in use be kept separate from type approval authorities (as is already the case)? Alternatively, should both functions be combined in a single body?

Other bodies are better placed than MIB to comment.

Consultation Question 21 (Paragraph 10.101)

What formal mechanisms could be used to ensure that the regulator administering the scheme is open to external views (such as duties to consult or an advisory committee)?

Other bodies are better placed than MIB to comment.

CHAPTER 12: THE USER-IN-CHARGE

Consultation Question 28 (Paragraph 12.24)

We provisionally propose that that the user-in-charge:

- (1) should be defined as an individual in position to operate the controls of a vehicle while an ADS is engaged and who is either in the vehicle or in direct sight of the vehicle; and
- (2) is not a driver while the ADS is engaged, and would not be liable for any criminal offence or civil penalty (such as a parking ticket) which arises out of dynamic driving.

Do you agree?

Yes. It is essential to have a clear dividing line between the roles of driver and user-in-charge in order for there to be an unambiguous allocation of where liability lies.

Consultation Question 29 (Paragraph 12.37)

We provisionally propose that following the end of the transition demand period:

- (1) the user-in-charge should re-acquire the legal obligations of a driver, whether or not they have taken control of the vehicle; and
- (2) if, following a failure to respond to a transition demand, the vehicle stops in a manner which constitutes a criminal offence, the user-in-charge should be considered a driver and should therefore be liable for that offence.

Do you agree?

Yes, in principle. Although the ADS should ideally never allow the AV to stop in a manner which constitutes a criminal offence, in practice it seems certain that the first AVs will only be equipped to operate in that mode in highly circumscribed circumstances and it may not be possible to avoid the vehicle stopping in an irregular way if a transition demand is ignored. From a claims handling perspective, it will be essential to ensure that there is never any doubt about where responsibility lies. These rules may also deter irresponsible behaviour by the user-in-charge e.g. by failing either wilfully or through distraction to respond to a transition demand when the ADS reaches the limit of its ODD. This all assumes that the user-in-charge is able to take control; there may be mitigating circumstances in individual cases which will need to be taken into account (e.g. a heart attack or other medical crisis).

Consultation Question 30 (Paragraph 12.45)

We seek views on whether a person with a provisional licence should be allowed to act as a user-in-charge, if accompanied by an approved driving instructor in a vehicle with dual controls.

Other bodies are better placed than MIB to comment.

Consultation Question 31 (Paragraph 12.53)

We provisionally propose that legislation should create new offences of:

- (1) using an automated vehicle as an unfit or unqualified user-in-charge; and
- (2) causing or permitting the use of an automated vehicle by an unfit or unqualified user-in-charge.

Do you agree?

Yes; this might be seen as the equivalent of driving without a licence or encouraging/permitting another party to drive without a licence, and it will be necessary to create new offences.

Consultation Question 32 (Paragraph 12.59)

We provisionally propose that persons carried without a user-in-charge should be guilty of a criminal offence.

Do you agree?

Yes. Although there may be mitigating circumstances in individual cases, these would clearly be covered in the proposal at Q33 below.

Consultation Question 33 (Paragraph 12.60)

We seek views on whether the new proposed offence of being carried without a user-in-charge should only apply if the person:

- (1) knew that the vehicle did not have a user-in-charge; and
- (2) knew or ought to have known that a user-in-charge was required.

It would be fair to include such a provision to deal with cases where the offender is genuinely unaware, although it would also open a potential loophole for others to exploit.

Consultation Question 34 (Paragraph 12.66)

We provisionally propose that a user-in-charge who takes over control of the vehicle:

- (1) should be considered a driver; but
- (2) should have a specific defence to a criminal offence if, given the actions of the ADS, a competent and careful driver could not have avoided the offence. Do you agree? If not, we welcome views on alternative legal tests.

Agree in principle, although if the circumstances of the offence have been caused by the ADS there is surely a case for responsibility – and any resulting sanctions – attaching to the ADSE.

Consultation Question 35 (Paragraph 12.94)

We provisionally propose that the user-in-charge should be liable for criminal offences which do not arise from the dynamic driving task, including those related to:

- (1) insurance;
- (2) maintaining the vehicle in a roadworthy condition (including installing safety critical software updates);
- (3) parking;
- (4) duties following accidents to provide information and report accidents to the police; and
- (5) ensuring child passengers wear seatbelts.

Do you agree?

Agree that the user-in-charge should be liable for such offences, although in the case of reporting an accident there will be cases where the user-in-charge is unaware of an accident that occurred while the ADS was in control, and the legislation will have to allow for this.

Consultation Question 36 (Paragraph 12.95)

We provisionally propose that the legislation should include a regulation-making power to clarify those roadworthiness failings which are (and those which are not) the responsibility of the user-in-

charge.

Do you agree?

Yes. With safety-critical software and hardware in the vehicle set to evolve constantly, this power will be essential. Roadworthiness for AVs will be a substantially different concept from the one that drivers of conventional vehicles are used to – the mechanical aspect, tested annually under the current MOT system, will still apply but it will be complemented by the need to ensure that safety-critical software (and related hardware including various sensors) is up-to-date and fully functional. Regulations will be needed to make the user-in-charge aware and responsible, with proportionate sanctions for those who fail to comply, and they will need to be updated at regular intervals.

CHAPTER 16: CIVIL LIABILITY

Consultation Question 52 (Paragraph 16.24)

We provisionally propose that the way the Automated and Electric Vehicles Act 2018 deals with contributory negligence and causation is:

- (1) adequate at this stage; and
- (2) should be reviewed by the UK Government in the light of practical experience.

Do you agree?

Yes. The Act provides a framework to deal with the introduction of AVs which will require further development in due course.

Consultation Question 53 (Paragraph 16.32)

We provisionally propose that measures should be put in place to compensate the victims of accidents caused by uninsured AVs.

Do you agree?

Provisions for victims of uninsured AVs were not included in the Automated and Electric Vehicles Act 2018. At present, there are no Agreements in place between the MIB and the Secretary of State for Transport to deal with these claims. There are important questions to be addressed around the compensation of victims in specific circumstances – for instance, if critical software has not been updated – and how it should be funded. Should the ADSE contribute and if so, how should this be structured? The MIB would welcome a debate around these issues.

Consultation Question 54 (Paragraph 16.47)

We provisionally propose that:

- (1) product liability law should be reviewed to take account of the challenges of emerging technologies;
- (2) any review should cover product liability as a whole, rather than be confined to automated

vehicles; it should not, therefore, form part of this project on automated vehicles.

Do you agree?

Product liability law should certainly be reviewed. In view of its importance to AVs and of the specific nature of the liabilities involved and of the requirements of compulsory RTA insurance, there is a strong case in our view for including a review in this project.

CHAPTER 17: ACCESS TO DATA

Consultation Question 55 (Paragraph 17.65)

We provisionally propose that:

- (1) for a vehicle to be classified as self-driving, it needs to record the location as well as the time at which the ADS is activated and deactivated;
- (2) the Government should work within the UNECE to ensure data storage systems for automated driving record these data; and
- (3) any national system to approve an ADS should require these data to be collected, subject to safeguards.

Do you agree?

Yes. From an insurance perspective, this information will be essential for claims handling and determining responsibility.

Consultation Question 56 (Paragraph 17.71)

We provisionally propose that legislation should impose a duty on those controlling AV data to disclose data to insurers, where the data is necessary to decide claims fairly and accurately.

Do you agree?

Yes. However, while it will clearly be necessary for insurers to have access to data, in our view the legislation needs to go much further than suggested by this proposal. It needs to cover:

- a) crucially, the need for insurers to have access to data in real time;*
- b) the range of accident-critical data to be disclosed (separated from the vast amounts of non-relevant data that AVs will produce);*
- c) confirmation that the software was up to date at the time of the accident;*
- d) safeguards against possible concealment or adulteration of data by an unscrupulous controller;*
- e) a framework to permit and control access by authorised parties other than insurers. There are other organisations involved at all stages in the supply chain, many of which will require access to data at different times in a process that often runs for several years. The authorisation process must include adequate data protection measures;*
- f) the possibility that the controller (usually a vehicle manufacturer or ADSE) goes out of business.*

For these reasons, the idea of accident-relevant data being sent automatically from the controller's server to a national neutral server (which we understand has been discussed in the UNECE) should be considered urgently as a pre-requisite for the introduction of AVs onto UK roads.

Consultation Question 57 (Paragraph 17.81)

We provisionally propose that:

- (1) initially, DSSAD data from self-driving vehicles should be stored for three years; and
- (2) the issue should be reviewed in the light of experience.

Do you agree?

No. To provide for the assessment of claims from individuals who were young children at the time of the accident but submit their claims after reaching adulthood, the data needs to be stored safely for up to 21 years (in other cases, where the claimant lacks capacity, data may need to be retained indefinitely). It would be impractical and undesirable to store all the data generated by the ADS, and a framework will need to be agreed for separating and storing accident-relevant data. In order to determine how long data needs to be kept, and reduce considerably the total quantity stored for extended periods, the feasibility of a system to identify and select data relating to accidents that involved victims with particular characteristics, including minors, should be considered. This reinforces the case for a national neutral server to cater for the interests and professional needs of all bodies involved in accident investigation and victim compensation.

Consultation Question 58 (Paragraph 17.95)

We provisionally propose that:

- (1) when an ADSE applies for categorisation of its vehicle types as self-driving, it should present the regulator with details on how data will be recorded, stored, accessed and protected;
- (2) the regulator should only categorise a system as self-driving if it is satisfied that that the ADSE has systems to abide by its obligations under the GDPR.

Do you agree?

Yes – with a reservation: these two requirements are clearly necessary but not, in our view, sufficient. As will be clear from our responses to questions 56 and 57 we do believe that, without substantial additional data transmission, storage and access provisions, fulfilling these two requirements alone would not provide adequate assurances around the storage and processing of data relating to the classification of self-driving vehicles for use on UK roads.

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Motor Insurers' Bureau
6-12 Capital Drive
Milton Keynes MK14 6XT

Contact:
Paul Yaghmourian

