

Vehicle Technology and Aviation Bill—insurance proposals for driverless cars

31/03/2017

TMT analysis: The Vehicle Technology and Aviation Bill is designed to modernise the transport system for the future. How do the policies stack up? Lucy McCormick, commercial barrister, and a specialist in connected and autonomous vehicles (CAV), at Henderson Chambers, reviews the Bill and its implications in practice.

What does the Bill say?

The Bill (see [LNB News 22/02/2017 170](#)) has been described as ‘the world’s first driverless car insurance legislation’. It proposes to extend the compulsory motor insurance requirement to include automated vehicle owners. This means that, whether a car is controlled by a human driver or in an automated mode, victims can still follow the same route for redress. The victim will have a direct right against the motor insurer and the insurer in turn will have a right of recovery against the responsible party to the extent there is a liability under existing laws, including under product liability laws.

As ever, it is the detail which is really interesting:

- if there is an accident in automated mode, the comprehensive insurer would be obliged to compensate the innocent third party victim as well as the policyholder
- however, if an accident results from the policyholder having made unauthorised modifications to the vehicle’s operating system, or failing to install software updates, the insurer will be able to exclude liability to its policyholder. However, it would still be liable to an innocent third party victim, either in the vehicle or outside of it
- an insurer or owner would not be liable to the person in charge of the vehicle where the accident that it caused was wholly due to the person’s negligence in allowing the vehicle to drive itself when it was not appropriate to do so

Do the provisions of the Bill align with the proposals in the recent response to the Department for Transport consultation?

Yes. The Centre for Connected and Autonomous Vehicles (CCAV), the joint policy unit set up by the Department for Business, Energy & Industrial Strategy and the Department for Transport, which ran the consultation—was very responsive to industry concerns.

The original proposal had been to extend compulsory motor insurance for automated vehicles to include product liability.

However, they changed this proposal in response to feedback that identified issues relating to the co-existence of product liability with the compulsory motor insurance framework. Current product liability law has inherent restrictions which sit uneasily alongside current motor insurance practice, including that:

- the terms of product liability insurance policies are not controlled in the same way as for road traffic policies
- claims can only be made against a product liability policy during the first ten years of a product’s lifespan
- the law underpinning product liability does not cover damage to the product which is caused by the product

The government considered making changes to product liability law, but concluded that this was not a ‘proportionate response at this stage...to facilitate the arrival of what will initially be a small number of automated vehicles in proportion to the whole vehicle fleet’. Instead they reached the conclusion described above, whereby there is a single insurer model, with an insurer covering both the driver’s use of the vehicle and the automated vehicle technology. This leaves insurers only ultimately ‘out of pocket’ on claims arising out of automated vehicle technology where they could not recover in turn from the manufacturer (eg if the manufacturer were to be able to successfully use the ‘state of the art’ defence under a product liability claim).

These conclusions have been reflected in the Vehicle Technology and Aviation Bill as presented to the Parliament.

Is this separate to the proposed Modern Transport Bill or is it a replacement?

It is essentially the same Bill. This package of measures was initially announced in the Queen's Speech in May 2016, under the title Modern Transport Bill. However, by the time it emerged for its first reading in the House of Commons, it had been renamed the Vehicle Technology and Aviation Bill. I understand that the change was made because it occurred to legislators that the new legislation could well be on the statute books for decades—by which point it would no longer be 'modern' at all.

What other areas of technology does the Bill address?

The Bill is wide-ranging; on top of driverless cars it addresses:

- infrastructure to support electric vehicles, including measures to increase the number of charging stations and to oblige businesses to provide easy access to information about their location, hours of operation, cost and so on
- updating the licensing framework for air traffic services
- extending the Air Travel Organisers' Licensing (ATOL) insolvency protection scheme for package holidays to include new digital business models
- making the misuse of lasers an indictable offence, with a view to protecting aircraft, vessels and other vehicles from so-called 'laser attacks'

How is the Bill likely to be received by the industry?

The Bill was designed in close consultation with the insurance industry, and its provisions have been broadly welcomed by insurers. David Williams, the head of underwriting at AXA UK (and a driverless car expert) has described the Bill in a press release as 'a positive step forward that provides clarity to insurers to ensure we design our products appropriately'.

More generally, this provision is also likely to be welcomed by manufacturers and developers working on the technology. By increasing the level of legal certainty in this fast-developing area, it makes the UK a more attractive base for testing and investment. Given that it is anticipated that the CAV industry will be worth £900bn a year globally by 2025, this is an important aim.

Is there anything missing from the Bill that you would have expected to have seen there?

As announced in the Queen's Speech, this Bill was to encompass not only autonomous and electric vehicles, but drones and spaceports. The latter provisions have not yet materialised and presumably will be included in separate legislation at a later stage.

In addition, there had been media speculation that the Bill would be used to bring in some legislation against transport strikes (such as those involving Southern rail) but again this has not materialised—and in my view this Bill would not have been a natural home for such measures in any event.

Lucy McCormick is a commercial barrister at Henderson Chambers, specialising in CAV. She has been asked to speak nationally and internationally on the legal implications of this rapidly developing area, from both an insurance and a product liability perspective.

Interviewed by Evelyn Reid.

This article was first published on Lexis®PSL TMT on 31 March 2017. Click for a free trial of [Lexis®PSL](#). The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor



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