

The Automated and Electric Vehicles Act 2018—implications for the insurance industry

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TMT analysis: On 19 July 2018, the Automated and Electric Vehicles Act 2018 (AEVA 2018) received Royal Assent. This legislation is part of the government's wider strategy to promote the development of automated and electric vehicles in this jurisdiction. Lucy McCormick, a commercial barrister at Henderson Chambers, considers the implications.

What are the key provisions of AEVA 2018?

The purpose of the legislation is twofold:

- to extend the existing compulsory third party insurance framework to cover the use of automated vehicles
- to provide infrastructure for the charging of electric vehicles

It is the former which is more radical. Historically in the UK, insurance law has been driver-centric—all drivers have to have insurance in order to provide compensation for third parties for personal injury or property damage due to a driving-related incident. Under AEVA 2018, compulsory motor insurance is extended to the automated vehicle as well as the driver. The key points are as follows:

- 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
- 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 software, or failing to install safety-critical software updates, the insurer will be able to exclude liability to its policyholder but 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

What significant changes were made as the Automated and Electric Vehicles Bill passed through the legislative process?

One notable feature of this legislation is the number of names it has had. It was first announced in the May 2016 Queen's Speech as the 'Modern Transport Bill'. However, when the draft text was released, it had been renamed the 'Vehicle Technology and Aviation Bill'. This progressed no further due to the snap general election, but the June 2017 Queen's Speech announced the very similar 'Automated and Electric Vehicles Bill'. It is this latter Bill which has this month received Royal Assent.

The proposals in relation to automated vehicles were the subject of detailed consultation with industry at an early stage. As a result, they received only relatively minor tweaks as the various Bills passed through the legislative process. Interestingly, an amendment in the House of Lords created a requirement that the Secretary of State must prepare a report to Parliament on the impact and effectiveness of the automated vehicle provisions after two years in operation.

Are the rules around compulsory insurance likely to be relevant to any vehicles currently in use?

A mechanism to determine this is included in AEVA 2018 itself. AEVA 2018 requires the Secretary of State to prepare, and keep updated, a list of all vehicles that are in the Secretary of State's opinion, 'designed or adapted to be capable, in at least some circumstances or situations, of safely driving themselves' and which can be 'lawfully' used on roads or other public places. AEVA 2018 only applies to automated vehicles which are listed in such a way. It is not clear when the first version of such a list will be produced. There are certainly some vehicles in testing on UK roads which might reasonably expect to be included on such a list. Whether any 'mainstream' vehicles—such as certain advanced Audi and Tesla vehicles—would qualify for the list is a more vexed question. Interestingly, AEVA 2018 would not apply to

automated agricultural vehicles, as these cannot be used lawfully in automated mode on public roads or other public places.

What are the implications for insurers?

The increased legal certainty in this area is good not just for road users but also for insurers and developers. Insurers had substantial input into the terms of AEVA 2018 and broadly welcome its provisions. It will enable motor insurers to develop new products in readiness for automated and partially automated vehicles coming on to the market over the next few years.

When is AEVA 2018 likely to come into force?

The commencement date is subject to appointment by the Department for Business, Energy and Industrial Strategy and updates as to implementation will be available on government websites. In practice it could well take some time before it is brought into force, given the need to progress the practicalities concerning the Secretary of State's list of automated vehicles.

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