

Back to the future—the Automated and Electric Vehicles Bill 2017

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TMT analysis: Recently, the UK has released the full text of the Automated and Electric Vehicles Bill 2017 which involves insurance of driverless cars. Lucy McCormick, a commercial barrister at Henderson Chambers, puts the Bill in context and considers the implications.

How does this Bill relate to previous proposals?

The Bill has already had several incarnations. In the May 2016 Queen's Speech, it was announced that a 'modern transport Bill' would be put forward, encompassing not only autonomous and electric vehicles, but also drones and spaceports. When the full draft Bill actually emerged, it had been renamed the 'Vehicle Technology and Aviation Bill' and made no mention of drones or spaceports. This Bill progressed no further due to the general election. Following the general election, the June 2017 Queen's Speech announced the 'Automated and Electric Vehicles Bill', but the text has only just been published recently. As anticipated, this new Bill is very similar to its predecessors.

What is the purpose of the Bill?

Currently, insurance law is driver-centric—all (human) 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 the proposed Bill, compulsory motor insurance will be extended, creating a single insurer model to protect victims where a vehicle causes a crash while in an automated mode. The intention behind the proposed Bill is to emphasise that if there is an accident the compensation route for the individual remains within the motor insurance settlement framework, rather than through a product liability framework against a manufacturer.

What are the key features of the Bill?

Much like its predecessor, 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 that 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
- if an accident results from the policyholder having made unauthorised modifications to the vehicle's software, or failing to install crucial 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

Are there any differences between the 'old' and 'new' Bills?

There are some differences between the old and new Bills, but these are nuanced:

- under the old Bill, a vehicle was classed as 'driving itself' if 'its operation is not being controlled by an individual'. Under the new Bill, this has become '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 recognises the need to distinguish between automated technology which is intended to be accompanied by human monitoring (like Tesla's 'autopilot') and that which is designed to allow the occupant to 'switch off' and engage in other tasks (like Audi's recently announced, 'Traffic Jam Pilot'). The difference between the two can be quite subtle, so it is excellent that this is being recognised by legislators
- a further change is that originally the insurer would have been permitted to exclude liability where the accident arose as a result of a failure to install 'software updates to the operating system.' This has now changed to 'safety-critical software updates'. The Centre for Connected & Autonomous Vehicles (CCAV) has explained this change was because the wording 'operating system' was too narrow, as an operating system is a specific aspect of software. However, it may be that this change also reflects a certain softening of stance, as it is now specifically only 'safety-critical' updates which would allow the insurer to exclude liability

- there are also some minor clarificatory changes to the transposition of the [Limitation Act 1980 \(LA 1980\)](#)

What should we expect next?

This Bill is one of a wide range of proactive steps taken by the government and, in particular, the CCAV. Looking forward, the government is considering a wide range of further reforms, including whether to update the MOT and driving test to accommodate 'driverless' technology.

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