


Insurance and the Automated and Electric Vehicles Act 2018, a radically different approach to liability

28 September 2023  Tim Johnson

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The Automated and Electric Vehicles Act 2018 (“the Act”) came into force in April 2021. In this article, we look at the implications of the Act for the insurance of automated vehicles (“AVs”).

As readers will know, the key tenet of the compulsory motor insurance regime in the UK is to ensure that an innocent victim of a road traffic accident (“RTA”) is protected and that they are compensated quickly and fairly. However, as AVs have the ability to drive partly or entirely unaided by a human driver, RTAs will occur where the human ‘driver’ is entirely blameless.

So how will the law deal with those situations?

Part 1 of the Act focuses on insurance for self-driving or AVs. As currently drafted, Part 1 will apply only to a list of specified AVs, which will be published by the Secretary of State. The list has not yet been published. However, the Law Commission has suggested the current listing process should instead be replaced by a new authorisation process. The Government supports this view and has stated it intends to legislate to this effect. It remains to be seen whether the Secretary of State will authorise an AV and publish a list prior to the introduction of a new authorisation process.

How does that Act deal with ‘no fault’ RTAs?

In the absence of the Act the only recourse available to a victim of an accident that was not caused by human error might be to bring an action against the vehicle manufacturer (if, for example, the self-driving function failed). Clearly that could lead to difficulties for RTA victims who may not know (or, frankly, care) whether an accident was caused by human or technical error. To circumvent this issue, the Act imposes a new form of direct liability. Under the Act, the insurer is initially liable to pay compensation to victims in the event of an injury or damage caused by an insured AV. The insurer may then seek to recover its outlay from the liable party, for example under existing product liability laws.

What about injuries to the ‘driver’ themselves?

The Act also extends compulsory motor vehicle insurance to cover an injured ‘driver’ who legitimately hands over control to the AV. For non-automated vehicles there is no obligation for an insurer to pay compensation to injured drivers; their obligation only extends to third parties. However, if an accident is caused **wholly** by the negligence of the person in charge of the vehicle by allowing it to begin driving itself in circumstances when it was not appropriate to do so, the insurer will not be liable for any injury to the person in charge of the vehicle. However, they will remain liable to other parties for injury and property damage. If an accident is partially caused by the person in

charge of the vehicle, they can still receive compensation from the insurer, however insurers have a right to reduce their liability for contributory negligence.

What is the position for semi-autonomous vehicles?

Before we see fully AVs on our roads, where a driver does not have to actively engage in driving at all, it is likely that automated driving will be an option for particular driving tasks, such as for motorway driving, driving in traffic jams or parking.

The Law Commission has recommended that the provisions of the Act concerning civil liability should apply to any vehicle authorised as having self-driving features, whilst using such features. This could potentially extend the regime beyond cars where all control can be handed over to the vehicle. Many cars on UK roads already have what could be described as self-driving features, for example lane positioning systems, adaptive cruise control and park assist. In the UK [55.5% of new cars already have adaptive cruise control](#) - which automatically adjusts speed to keep a safe distance from vehicles ahead.

Schedule 1 paragraph 19(3) of the Act inserted words into section 145(4) of The Road Traffic Act 1988 to clarify that section 145(4)(a) of The Road Traffic Act 1988 does not apply where the vehicle is automated. Section 145(4)(a) of The Road Traffic Act 1988 says that cover is not required for damage/ death/ injury arising out of and in the course of employment.

Considerations for Insurers

Insurers may wish to prepare their existing products and innovate new products in advance of the approval of the first AVs on our roads (of course some types of vehicles, such as planes, have been automated for a long time) and take note of the potential for provisions in the Act concerning liability to apply more widely to cars with self-driving features. For example, if an insurer provides conventional vehicle insurance which offers 'Drive Other Cars' insurance a consumer could potentially drive an AV. Have underwriters factored in that risk?

The emergence of AVs will also give rise to pricing challenges as it is impossible to foresee the full range of circumstances around accidents involving AVs and there is only limited information available in relation to historic claims and losses. It is difficult to predict how the courts will apply the law to real life factual situations which have not yet occurred, including in relation to issues such as causation and contributory negligence.

It is likely that insurers will need to rely heavily on vehicle generated data to resolve claims fairly, however those in control of AV data currently have no statutory duty to share data with insurers. In the absence of a statutory duty those in control of such data, such as vehicle manufacturers, may be hesitant to release relevant data to insurers, especially as they may be concerned about insurers using that same data to bring claims against them.

As a final observation, the amendment to The Road Traffic Act 1988 regarding the use of AVs in the course of employment potentially points to a break up of the historic distinction between work and leisure vehicle insurance. For AVs at least, this could signify a move to insuring the vehicle rather than the driver.

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