



Informing Progress - Shaping the Future

FOIL UPDATE 21st March 2022



Automated Vehicles (AVs): Law Commission Update

This event was hosted by the Law Commission and the Scottish Law Commission and took place both virtually and in-person on 15th March 2022. A series of presentations summarised the joint report published on 26th January 2022, which can be found at [Automated Vehicles | Law Commission](#), together with a summary of its contents and other relevant documents. The talks were supplemented by Q&A sessions.

It was stressed that the report had taken into account all of the views and representations received by the working party, but it was merely a launch pad for the next phase of what is clearly an evolving process.

1. Automated Driving System (ADS)

ADS systems will be authorised only if they are safe without being monitored. The requisite safety standards will be set by the Secretary of State for Transport. The person in the driving seat is the 'user in charge' but they have no responsibility for anything that happens when an ADS feature is engaged: this is a complete change in responsibility.

There will be two new legal entities: the manufacturer or developer who puts a vehicle forward for authorisation and takes responsibility for its actions (Authorised Self-Driving Entity or ASDE); and an organisation that oversees vehicles without a user in charge (the NUIC operator). If there is no user in charge, an NUIC must oversee the vehicle.

All of this will require primary legislation and the creation of new offences.

Approval and authorisation

There will be two routes for approval of a vehicle: the UNECE international approval system; or the domestic approval scheme (stage 1). The vehicle or vehicle type will then require whole vehicle approval via the GB type schemes. Stage 2 involves authorising the use of the vehicle either as not self-driving or as authorised with self-driving features.

At the heart of these processes is ensuring that the AV can drive itself safely. This requires proof that it is safe and that its ongoing safety can be maintained through support by a reputable body, with sufficient financial resources. The ADS must allow the vehicle to be driven safely, even if not monitored.

The regulatory authority will decide whether the ASDE is able to keep the vehicle compliant.

A vehicle with UNECE approval will probably secure GB approval and authorisation. There may, however, be certain vehicles that are developed in GB, which follow the domestic scheme and then go for GB type approval of the self-driving features,

If a small developer does not want to take on the whole responsibility for obtaining approval, it may work in partnership with another body and together become an ASDE.

Q&A

Given that the government is not comprised of engineers, it will not develop a specific standard for approval but will set broader guidelines.

It is conceivable that the work being undertaken for vehicles could cross-over into other areas, such as marine and aviation, with one sector borrowing experience from others.

The regulations developed will require issues of equality, vulnerability, disability, etc to be fully addressed by ASDEs and NUICs. This is a real concern to the regulator.

Where there is a user in charge, but authorised ADS functions are available, the user in charge would not be responsible once the ADS function was engaged. Once the function was engaged, the authorisation would need to provide for dealing with the situation if anything went wrong.

The conditions of operating licences will not be one-size-fits-all. Responsibilities will need to be shaped on a case-by-case basis.

Where there is a joint partnership, liability will be joint and several, but the application will need to show that there is a solid integration between the parties.

It is hoped that GB type approval will be accepted elsewhere, but that is not a given.

The user in charge will be responsible for ensuring that the vehicle is insured. This could be a NUIC in some cases. Insurance costs may well vary according to the type of use.

The Law Commission will be recommending legislation to address various issues arising from AVs but will not be too specific. It wants to allow for AVs, rather than say how they will come fully into play.

If an NUIC ceases trading, either another company would need to take over responsibility, or the AV may no longer be authorised. There is no provision for a provider of last resort.

There will be two new criminal offences to ensure that vehicles described as self-driving have that capability and are not simply described as such.

2. In use safety and in use regulation

Authorisations will require operators to collect and keep data; investigate incidents; and rectify technical issues.

Two scenarios were considered. The first involved the user in charge receiving a notice of intended prosecution for speeding. The issue could be whether ADS was engaged and if it was, why the vehicle did not comply. The ASDE would be required to explain what happened and whether it was faulty information provided to the system or a technical issue. A variety of sanctions would then be available, ranging from a warning to withdrawal of authorisation.

The second scenario was a fatal accident (FAA) collision. This would involve the existing procedures (inquest/FAA enquiry) and civil remedies; an in-use regulator's enquiry; and an independent road traffic collision enquiry, leading ultimately to a decision as to what the in-use regulator needed to do to improve safety (or the possibility of authorisation being withdrawn).

In both scenarios, a restorative conference would be encouraged (but particularly in FAA and other serious cases) to consider what happened, why and what safety improvements could be made.

Civil Liability

The proposal is to leave existing civil law pretty much as it is, including the provisions of the Automated and Electric Vehicles Act 2018. There would be a duty on those controlling AVs to keep relevant data for 39 months and provide it to those entitled (including insurers).

Q&A

A police officer was concerned about the concept of the ASDE effectively being left to report itself. The Law Commission is of the view that the police are already busy enough and the ASDE has a criminal duty to self-report. In any event, the prosecuting authority may already be involved (e.g., the speeding scenario above).

The use of AVs on the road would be monitored by the engagement/disengagement of ADS being date and time stamped and also the location noted.

At this stage it is impossible to say how quickly the regulator will be able to respond to incidents. Adequate powers will be provided within a basic structure.

In response to an expression of concern about more vulnerable road users and evidential issues in some cases, it was acknowledged that existing road networks may not be able to stay the same.

It was suggested that the European system should be adopted whereby there is a rebuttable presumption of fault on the part of a driver where, for example, a cyclist is hit. In response, reference was made to the provisions of the 2018 Act, where an accident occurs when an AV is driving itself. It was agreed that future users (such as e-scooters) may need further consideration.

It was also recognised that a system that may be safe when authorised, may become unsafe later and must be kept safe.

3. No user in charge (NUIC)

An NUIC operator must oversee vehicles where there is no responsible person on board. The NUIC operator will need to establish that they are of good repute and financially robust; and they will be subject to the power of the in-use regulator. The licence issued will set the conditions to be adhered to, which will depend on where the vehicle is deployed. This could vary from a valet parking service to a regional bus service.

Interim Passenger Permits (IPPs)

Initially, only IPPs will be issued, so that NUIC operators can gather evidence on issues such as accessibility and safeguarding; local licensing consent; consultations with highway authorities and emergency services.

All IPPs will be subject to conditions. A safety case will be required to show that the operation is safe.

Where the carrying of passengers is involved, there will need to be trialling with a driver, in addition to the remote operator. The applicant will need to provide evidence of matters such as accessibility, routing and ticketing.

Ultimately, regulation will depend on the lessons learned from situations where there is no driver.

A representative of the Centre for Connected and Autonomous Vehicles (CCAV) spoke briefly but was non-committal. She confirmed that work is ongoing on the necessary legislation but is dependent on Parliamentary time. In the interim a flexible regulatory system will develop on a case-by-case basis, with updates also to the Highway Code.

Q&A

Consideration is still being given as to who should be able to access the data collected.

IPPs will need to address the difficult issue of what happens when an accessible bus stop is moved because, for example, a local authority wishes to carry out road works. There will be no driver to make decisions on how to solve any problems created. These and other issues will form part of the authorisation process.

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