

AUTOMATED VEHICLES – NO TIME TO BE ASLEEP AT THE WHEEL

On 26 January 2022, the Law Commission of England and Wales, and the Scottish Law Commission (together, the 'Commissions') published a joint report (the 'Report') on their proposed legal reforms required for the safe and responsible introduction of automated vehicles ('AVs') on UK roads. The Report is the result of a wide-ranging three round consultation process, incorporating feedback from hundreds of relevant stakeholders.

Over the past decade there has been a notable increase in availability of driver-assistance features that are designed to support human drivers, such as adaptive cruise control, lane assist and self-parking technologies. The Commissions anticipate that driver-assistance features may soon be sufficiently sophisticated to allow AVs to be able to drive themselves, without requiring a human to pay attention to the road.

The Commissions contend that it would be inappropriate for legal accountability to rest primarily with human drivers, and instead propose that this burden shift to those in control of the self-driving systems within the AVs. To achieve this, the Commissions recommend the introduction of a new Automated Vehicles Act to clearly identify the distinction between self-driving and driver-assistance features, and set out a new system of legal accountability supported by the introduction of new regulatory schemes.

Distinction between self-driving and driver-assistance technology

The Commissions propose that there should be a clear dividing line between self-driving vehicles and vehicles that contain driver-assistance features. In order to be authorised as self-driving, the Commissions recommend that the vehicle must be safe in the absence of an individual monitoring the driving environment, the vehicle itself, or the way that it drives. Therefore, driver-assistance features such as automatic braking would not trigger the application of the proposed self-driving rules.

Self-driving is compatible with 'transition demands' which could be issued by the automated driving system, requiring the person in the driving seat of the vehicle to take control. The Commissions recommend that such transition demands should occur in the form of a notification using vibrations, light and noise, and should be designed to give the individual sufficient time to process what is happening around them. Also, the AV should be able to mitigate the relevant risks by at least coming to a stop safely in the event that the human onboard is unable to take control following a transition demand.

While the AV is driving itself, the Commissions propose that the human in the vehicle should not be obliged to respond to events unless there is a transition demand. As such, it is proposed that a vehicle should only be authorised as self-driving if it can recognise problems that it cannot deal with and is able to issue a transition demand in response to such problems.

Revised system of legal accountability

The Commissions propose that when vehicles are authorised as having self-driving features, and a self-driving feature is engaged, legal accountability should shift from the individual in the driving seat of the vehicle to the party that is in control of the relevant automated driving system. It is suggested that the person in the driving seat would no longer be classified as a 'driver' and would become a 'user-in-charge' during the period in which the vehicle is driving itself. The Report recommends that users-in-charge should not be exposed to prosecution for offences arising directly from the driving task unless they have taken steps to override the automated driving system.

Instead, the Commissions propose that every AV should be backed by an Authorised Self-Driving Entity (an 'ASDE'). If the vehicle drives in a manner that would have been deemed to be criminal if performed by a human, a new in-use

regulator will be able to take action against the ASDE. Generally, the ASDE of a vehicle would be the manufacturer or software developer that submits the application for self-driving authorisation for that vehicle.

It is suggested that some features could be authorised for use with no user-in-charge ('**NUIC**' features). Here, the legal responsibility for overseeing the journey would rest with a company licensed as an NUIC operator and any occupants of the vehicle would simply be passengers.

It is proposed that the Automated and Electric Vehicles Act 2018 should apply with regards to civil liability, meaning that victims suffering injury or damage caused by an AV would be compensated directly by the insurer, without having to prove that anyone was at fault. This reinforces the trend of moving towards strict liability in this area of law.

Revised regulatory schemes

The Commissions recommend the introduction of two new regulatory schemes to deal with AVs. Firstly, they propose that an authorisation authority should decide whether a particular feature meets the legal threshold for self-driving, and whether such a feature can be used with or without a user-in-charge.

Additionally, the Commissions recommend the introduction of a second regulator to monitor the AVs while they are in use. The in-use regulator would be responsible for evaluating AV safety, investigating incidents and ensuring that users are provided clear information about AVs.

Duty of candour

Generally, it is suggested that a system of regulatory sanctions would be more appropriate in relation to AVs rather than simply replicating the criminal sanctions that apply to human drivers. The Commissions envisage such regulatory sanctions would range from fines and redress- or compliance- orders to safety recalls. In the case of NUICs, it is advised that there should be additional sanctions available including suspension or withdrawal of authorisation. However, where there would be safety implications arising from a misrepresentation or non-disclosure by an ASDE or NUIC operator in relation to information that is required to be provided to the proposed regulators, specific criminal offences may be desirable.

Setting a safety standard

While there is a consensus that AVs should be safer than human drivers, it is unclear precisely how high the relevant safety standard should be. Therefore, the Commissions suggest that the Secretary of State for Transport should publish a safety standard against which the safety of AVs can be measured. This standard should require AVs not to cause greater risks to identifiable groups of road users, such as cyclists and wheelchair users.

Misleading Marketing

There is a risk that some may market driver-assistance features as self-driving features, which could have significant legal implications for users of such driver support features in the event of an incident giving rise to liability. As such, the Commissions recommend that safeguards should be introduced against misleading marketing of this kind.

What does this mean for the logistics industry?

In the near future, we could see self-driving technology used to control freight vehicles on the motorway during the 'middle miles' of their journeys. Given that motorway driving occurs at controlled speeds and involves infrequent turns or lane changes, this will be the simplest area to develop the relevant artificial intelligence to be deployed in AVs.

Self-driving technology will allow AVs to travel at the optimum speed, apply the optimal level of braking, and select the most efficient delivery routes, all of which will have the effect of reducing fuel costs and emissions in the logistics industry. Automation will also have the dual effect of economising on personnel costs while simultaneously minimising the impact of the current driver shortage in the UK.

A prime example of the advantages of automation can be found in the recent developments in convoy technology, whereby one driver operates a lead truck and the truck behind uses self-driving technology to simply follow the leader while its driver rests onboard. After some time, the trucks would then swap positions and the first driver would be able to rest for this section of the journey; this allows for a longer period of continuous transportation of goods, allowing for savings in relation to both time and costs.

The industry has the opportunity to be dynamic and innovative in its utilisation of self-driving technology. In the long term, it is possible that NUICs monitored from remote control rooms could form the backbone of the industry sector, being utilised at many stages of the supply chain, from shunting within distribution centres, main-haul trunk haulage through to end customer delivery.

What next?

The proposals outlined in this article have been laid before the UK, Scottish and Welsh Governments for consideration. It is vitally important for the legislature to advance at the same pace as the relevant technological developments in order to prevent regulation inhibiting development in this area, and to allow for the maximum benefits to be safely gained from AV technology in the freight sector as well as the passenger sector.

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