

HOW TO REGULATE SELF-DRIVING VEHICLES: LAW COMMISSIONS' RECOMMENDATIONS

As far back as 2018, the Centre for Connected and Automated Vehicles asked the Law Commission of England and Wales and the Scottish Law Commission to examine options for regulating automated vehicles (**AVs**) in Great Britain. The long awaited [joint report](#) was published at the end of January. With any new area of law comes a new set of terminology, which we have highlighted in bold type.

As you would expect, the full report is lengthy and detailed, taking into account three rounds of consultations, 404 written responses and the feedback from 350 interviews. We summarise the key recommendations coming out of the report in this article:

GENERAL

- Defining '**Self-Driving**'. Any new law should include a test a vehicle must pass to the satisfaction of an authorisation authority demonstrating it can control itself so as to drive safely and legally without monitoring.
- The UK Government should set the safety standard of AVs, but the overall use of AVs should be safer (causing fewer deaths and injuries) than British human drivers.

REGISTRATION & APPROVAL PROCESS

- The vehicle manufacturer, or the technology company putting forward a vehicle for authorisation as an AV, would be the Authorised Self Driving Entity (**ASDE**). The ASDE must demonstrate it was closely involved in assessing the safety of the AV. The ASDE must also be of suitable financial standing to make sure AVs are always compliant with British traffic laws, respond to regulatory action and organise a recall should issues arise.
- An AV would need to obtain type approval either from the existing United Nations Economic Commission for Europe (**UNECE**) or from the new UK-specific approval scheme operated by the Vehicle Certification Agency. In each case, the vehicle type must achieve the new GB Whole Vehicle Approval (replacing the EU Whole Vehicle Approval).
- Having gained type-approval, an AV would need to be authorised to drive itself (and doesn't simply have driver assistance) to distinguish between AVs and regular vehicles for legal purposes. This process would include:
 - a safety case (a nominated person within the ASDE would be responsible for this and face criminal sanctions if they failed to exercise due diligence to ensure that the information submitted was correct and complete).
 - an equality impact assessment (demonstrating that the technology has been adequately tested taking into account the needs of vehicle users and others on the road to ensure that no one is treated unequally on the basis of protected characteristics); and
 - explaining how data will be recorded, stored, accessed and protected.



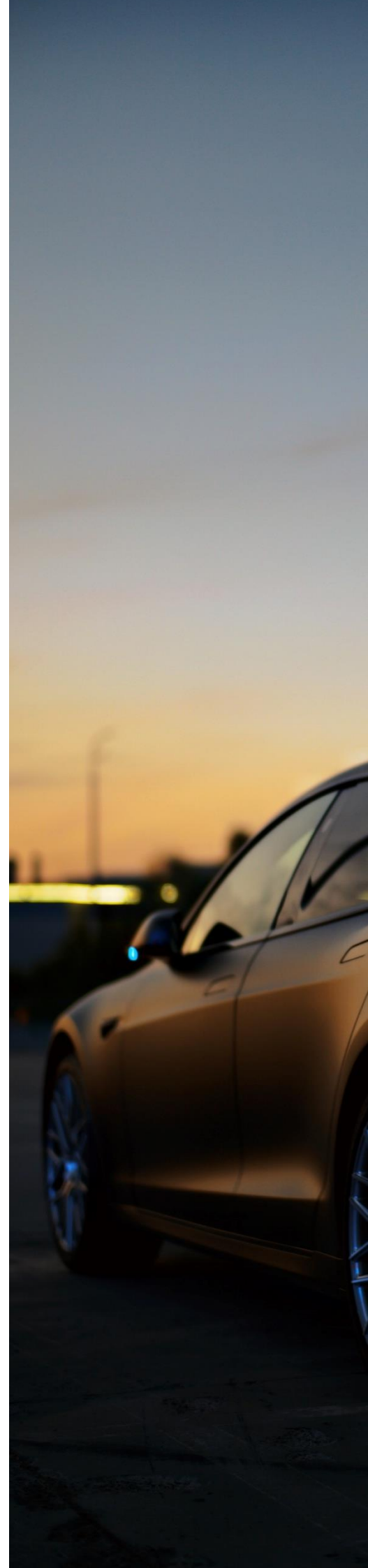
- The Vehicle Certification Agency would be the most likely body to be responsible for authorising a vehicle as an AV and for registering the responsible ASDE.
- The Autonomous and Electric Vehicles Act 2018 would need amending to include the above process.

ON THE ROAD

- There should be an 'in-use safety' regulator (likely to be the existing Driver and Vehicle Standards Agency) to ensure the continuing safety and legal compliance of AVs whilst in use. It will have powers to impose regulatory sanctions. The regulator would be empowered to collect safety data and compare this against the safety standard set by UK government.
- Whilst **Users-in-Charge** (the human in the driving seat while a self-driving feature is engaged) of an AV are able to engage in other activities when the AV is driving, they should:
 - only be able to use a screen for non-driving activities if it cuts out at the start of a **Transition Demand** (a request from the vehicle to hand control of the vehicle back to the User-In-Charge); and
 - not be allowed to sleep in the AV whilst it is Self-Driving.
- The Police would continue to levy traffic infractions (such as speeding tickets) against the registered owner of a vehicle. Such owner would need to inform the Police if the vehicle was in autonomous mode at the time. Once established that this was the case, the in-use regulator would investigate and resolve the issue.
- A specialist independent investigator should be established to investigate road collisions involving AVs. It makes sense that this would be the same Road Collision Investigation Branch proposed to be formed by the RAC, as many collisions will include non-autonomous vehicles.
- A forum should be established to consider development of road rules and other traffic laws, making recommendations to UK Government.
- No additional mandatory training will be imposed on drivers / users-in-charge for using an AV on the assumption that these will be intuitive. A user-in-charge must, however, be fit and qualified to drive; meaning they must have a valid driving licence and must not be under the influence of alcohol or illegal substances. It would become a criminal offence to be in charge of an AV while unfit or unqualified as it is for a conventional vehicle.

LIABILITY OF USER-IN-CHARGE

- Whilst an AV is in autonomous or Self-Driving mode, the user-in-charge will be immune from liability for traffic law infringements.
- Once there has been a completed handover of control from the AV back to the user-in-charge, the user-in-charge would become a driver of the AV and the existing road rules and laws would apply as for conventional vehicles. The exception to this would be for infractions occurring immediately after a handover of control, where the AV caused the infraction, and a competent and careful driver could not have avoided it.
- Failing to respond to a transition demand / notification of handing over control by the AV will be an offence, and the driver's immunity from responsibility for the AV shall cease from the point where control is handed back. Failing to respond to such an instruction may result in the AV coming to a stop in the road which would cause a hazard to other road-users. This would be a criminal offence akin to 'driving without due care and attention'.





DRIVERLESS AVS

- For operations of an AV where no user-in-charge (**NUIC**) is present in the AV, a remote operator (**NUIC operator**) should have oversight of the AV's activities. The NUIC operator must respond to alerts from the AV if it encounters a problem it cannot resolve, breaks-down or is involved in a collision.
- A NUIC operator must be licenced by a regulating body (likely to be the Vehicle Certification Agency) having demonstrated it is of good repute, has appropriate financial standing, conducts its operations within Great Britain, and is professionally competent to run the service. The application process would include:
 - submitting a safety case; and
 - explaining how it will maintain connectivity, train and supervise staff, avoid staff becoming bored and inattentive from simply viewing the autonomous activities of the AV.
- As it is envisaged that the ASDE and the NUIC operator will be the same entity, the Law Commissions recommend a streamlined process for joint applications.

DRIVERLESS PASSENGER SERVICES

- In the short term, interim permits will have to be issued to permit passenger services (whether taxi or bus services) to be provided by an AV under NUIC operator supervision.
- In the longer term, the relevant taxi and bus regulation should be updated to explicitly cover AV solutions.

LIABILITY OF ASDE AND NUIC

- The AV liability regime for ASDEs and NUICs will be based on the 'duty of candour'. It will be a criminal offence for the ASDE or NUIC operator to fail to provide information to the regulator; or provide information to the regulator that is false or misleading, in each case where that information is relevant to the evaluation of the safety of the AV. The only defence would be demonstrating it took reasonable precautions and exercised all due diligence to prevent the wrongdoing.
- Those who play a significant role in:
 - the making of decisions about how the ASDE or NUIC operator is managed or organised; or
 - the management of the safety assurance process,will have the potential for criminal liability if an offence took place with their "consent or connivance" i.e., turning a blind eye to the wrongdoing.
- The nominated person signing the safety case submitted as part of the registration process must demonstrate they have taken active steps to ensure that the information submitted to the regulator is correct and complete. The only defence to such nominated person is to establish that on the balance of possibilities they took reasonable precautions and exercised all due diligence to prevent the wrongdoing.
- The report recommends a three-part test where a senior manager or corporation has committed an offence. That offence should be aggravated where the misrepresentation or non-disclosure:
 - related to an increased risk of a type of adverse incident; and
 - an adverse incident of that type occurred; and
 - the adverse incident caused a death or serious injury.

UNINSURED VEHICLES

- The protections provided by the Motor Insurer's Bureau as insurer of last resort to victims of uninsured vehicles should be extended to uninsured AVs.

WANT TO KNOW MORE?

Join us for a round table dinner in London with other leaders in this market to discuss how we unlock the opportunities relating to driverless cars. Contact us for more details.

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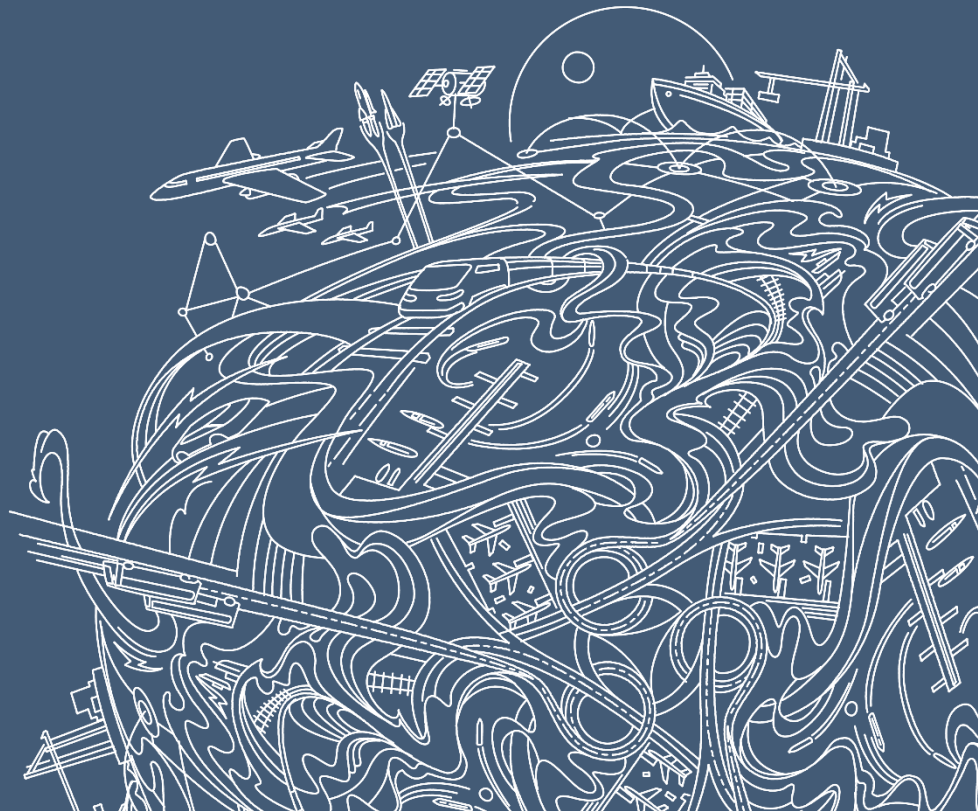
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