

LAW COMMISSION AND SCOTTISH LAW COMMISSION Consultation Paper 3 A regulatory framework for automated vehicles

Submitted 17 March 2021.

Resources

6-page [overview document](#)

P49-54 of [summary](#) document.

Full [consultation paper](#). The most relevant chapters are 16 (Civil liability) and 17 (Access to data).

1st consultation response (Feb 2019) <https://www.actuaries.org.uk/documents/automated-vehicles-preliminary-consultation-paper>

2nd consultation response (Feb 2020) <https://www.actuaries.org.uk/documents/automated-vehicles-passenger-services-and-public-transport-second-joint-consultation-paper>

IFoA responses

Q41 6.22 We provisionally propose that legislation should include a regulation-making power by which some or all of these duties could be transferred to the registered keeper or owner, if it was shown that it was appropriate to do so. Do you agree?

In response to Q20 (2) of Consultation paper 2, we expressed concern about transferring certain duties to individuals. For example, we noted that failure to install safety-critical updates could have quite significant consequences regarding the right of insurers to recover from those at fault.

We stated that in our view a statement accepting responsibility signed by a lessee might waive the lessor's liability but could fall short of a legal document that safely transfers onerous obligations.

In relation to passenger-only vehicles, we suggested it may be premature to think about transferring all of these duties from a lessor to a lessee, since the lessor will not have a clear picture of what these duties entail until passenger-only vehicles have been up and running for a while.

Q52 9.5 We provisionally propose that the way the Automated and Electric Vehicles Act 2018 deals with contributory negligence and causation is: (1) adequate at this stage; and (2) should be reviewed by the UK Government in the light of practical experience. Do you agree?

We noted in response to Q17 (1) of the first consultation that the wording of section 3(1) of the Act could be confusing by treating the liability of a person and an automated vehicle as being the same.

We have also identified one potential case of contributory negligence in which establishing liability could be difficult - the case of hacking of an automated vehicle. We agree that an insurer should not be able to exclude liability in such a case, since a hacked vehicle would essentially be out of the driver's control through no fault of their own (similar to a stolen vehicle). However, the liability could be unclear if the owner was negligent in maintaining the security systems within the automated vehicle technology and this gave an opening for the car to be hacked.

Regarding causation, we envisage that it may be difficult to establish whether an accident was the direct result of altering or failing to update software, particularly if different parties (such as manufacturers and insurers) have different levels of access to relevant data.

Q53 9.9 We provisionally propose that measures should be put in place to compensate the victims of accidents caused by uninsured AVs. Do you agree?

The IFoA considers that the fair and smooth compensation of victims of road traffic accidents is an important part of any legislation introducing reforms in relation to civil liability.

We therefore agree that measures should be put in place to compensate the victims of accidents caused by uninsured AVs.

It is important that such measures do not lead to unnecessary delay in the delivery of compensation. The level of compensation should be the same as that received by victims of road traffic accidents in other circumstances.

The IFoA does not have a view on who should fund the compensation, but careful thought should be given to the intended and unintended impact on the AV eco system of the selected funding mechanism.

Regarding 'untraced persons', as mentioned in section 10 (e.g. 10.5 and 10.7) it may not be possible to use EDR and DSSAD to help in identifying untraced AVs involved in an AV 'hit and run' incident, although future technology advances may make this possible.

Q54 9.13 We provisionally propose that: (1) product liability law should be reviewed to take account of the challenges of emerging technologies; (2) any review should cover product liability as a whole, rather than be confined to automated vehicles; it should not, therefore, form part of this project on automated vehicles. Do you agree?

As we stated in our response to Q18 of the first consultation, we would not support a change to the legal operation of product liability to give different treatment for autonomous vehicles, unless a case can be made that automated vehicles are fundamentally different from other products and require different treatment.

However, the risk of creating a compensation gap could justify extending the Consumer Protection Act to cover damage to company-owned vehicles. We gave the example of a person driving a company car which is hit by a driver in a semiautonomous vehicle using some of the autonomous features. The company car driver should be able to claim against the other driver's insurance policy. If that policy included product liability cover, the injured party would be fully compensated including damage to their company car. It would then be for the insurer to decide if the manufacturer was at fault, and if so to seek the recovery from the manufacturer. A potential concern would be if a gap emerged, where the manufacturer's liability could not meet the threshold test of 'negligent' and hence the insurer for the driver refused to pay out the repair costs for the third party company car.

Q56 10.19 We provisionally propose that legislation should impose a duty on those controlling AV data to disclose data to insurers, where the data is necessary to decide claims fairly and accurately. Do you agree?

We agree that there should be such a duty as it is important to decide claims fairly and accurately. However, such data transfer should be limited to what is necessary. A lot of work will be needed to decide what data is necessary to settle claims, and there will be related issues to resolve, such as

who else has access to the data, how long it is kept, and what other uses it may be put to. In addition the registered keeper / owner / user-in-charge should be made aware of what information the controller of their AV data may be required to disclose in the event of an insurance claim.