

# Life in the automated lane

The legal & regulatory landscape surrounding automated vehicles is taking shape: David Mason considers the questions still to be answered



## IN BRIEF

► The implementation of Pt 1 of the Automated and Electric Vehicles Act 2018 opens the door for fundamental changes to the civil liability of drivers and insurers.

With the recent implementation of Pt 1 of the Automated and Electric Vehicles Act 2018 (AEVA 2018), the government has taken the first steps towards the lawful use of vehicles on our roads which are controlled by technology, not the driver.

AEVA 2018 is not concerned with the driver assistance devices now commonly available on cars, such as active cruise control or lane monitoring. The legal position is clear so far as they are concerned: the driver remains in charge and fully responsible for the operation of the vehicle.

AEVA 2018 introduces a new class of vehicle—the ‘automated vehicle’—and new concepts of liability for their drivers, and crucially, their insurers.

## What’s automated?

An automated vehicle is one which is listed by the Secretary of State under AEVA 2018, s 1. To be listed, a vehicle must be capable of ‘safely driving itself at least in some circumstances or situations’. Vehicles must be on the list to be lawfully used autonomously. At the time of writing, no vehicles have been listed.

A vehicle is capable of driving itself safely if it is being operated without being controlled and without the need for it to be monitored. That is the leap forward. Current technology requires constant monitoring and leaves the driver in control of and responsible for the actions of the vehicle.

SAE International, a US-based internationally recognised technology institute, has since 2014 provided the recognised categorisation of levels of automated driving vehicles, giving five levels of capability:

- Driver assistance
- Partial driving automation
- Conditional driving automation

- High driving automation
- Full driving automation

The intention is that vehicles to be listed at present under AEVA 2018 will fall within level three. This means that the vehicle will carry out the driving function with a requirement that the ‘driver’ can take back control independently or when required to do so by the system. The vehicle does not require monitoring or control, but requires a driver to be present and able to take over the driving task when required.

In 2020, the UK ratified UN regulations setting out requirements for automated lane keeping systems for vehicles. These will be the basis for UK regulation of the first stage of authorising self-driving vehicles.

The regulations require that the system will apply only to vehicles moving at up to 60km per hour (37mph) on roads where the traffic moves in only one direction and is separated from traffic moving in the opposite direction. They require pedestrians to be excluded from the road. This will limit use of the system to motorways at low speeds.

There are strict requirements for the transition of the driving function from the vehicle to the driver and for monitoring the ability of the driver to intervene. Vehicles will be required to have a black box to monitor the use (and misuse) of the system by the driver.

Consultations over amending the Highway Code are underway. The proposed amendment confirms that the driver is not responsible for how the vehicle drives while the system is operating and is not required to pay attention to the road. The driver must be in the driving seat and not so distracted as to be unable to take back command when required.

The Law Commission has carried out extensive consultations over the civil and criminal issues raised by automated driving, and should give its final recommendations by the end of 2021.

## Question marks remain

AEVA 2018 opens the door for fundamental changes to the civil liability of drivers and insurers. Where an accident is ‘caused’

by a vehicle operating in automated mode, the insurer will be strictly liable for injury or damage. There are provisions for the insurer to claim contribution from third parties.

Criminal liability for the use of a vehicle being used in automated mode is not spelled out in AEVA 2018. It is assumed that while the vehicle is properly operating autonomously, the driver will not be criminally liable for the vehicle’s actions. The Law Commission is looking at this vital topic.

The government is upbeat over automated driving technology, as would be expected. It is claimed that the technology will be greener and safer, and will eliminate the main cause of accidents: human error.

The legal and regulatory landscape is taking shape, but there is a lot still to resolve. For instance:

- In what legal sense can a vehicle be said to have ‘caused’ an accident?
- What role will lawyers have in claims involving automated vehicles?
- Will manufacturers, car dealers, and repairers be liable for faulty systems?
- How will insurers react to strict liability and at what cost?
- What criminal liability will attach when the vehicle is operating autonomously? For instance, will drivers still be ‘in charge’ of a vehicle in automated mode?
- Will vehicle operators be vicariously liable for misuse by authorised users?

Drivers are usually keen to have the latest technology, so we have to assume that this advance will catch on. Some vehicles have the technology already. The new legal regime will allow manufacturers to give drivers access to it.

Motoring began with a two-mph speed limit and a man with a red flag walking in front. Lawyers and petrol heads will look on with interest as a possible new motoring world opens as it did then, and as the regulatory and legal landscape becomes clearer. **NLJ**

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