

Introduction

The UK government has announced its intention to legislate on the use of autonomous vehicles in Great Britain.

In so doing, the key takeaways are that:

- Qualifying autonomous vehicles need to be authorised as self-driving before they can be lawfully made available for use by an authorised self-driving entity (ADSE).
- If an autonomous vehicle can be used without a so-called “user in charge” (UIC) being present, the operator needs to be licensed to oversee the operation of the vehicle.
- The ADSEs and licensed operators are to be legally responsible for issues arising out of the use of autonomous vehicles.
- The “users” of autonomous vehicles will not be legally responsible for any accidents that occur while the vehicle is operating in autonomous mode. Rather, this liability will become that of the ADSE in whose name the autonomous vehicle has been authorised (most likely the manufacturer) and, if the vehicle is capable of being operated without a UIC for any journey, the licensed operator.

However, none of this will change the position as regards the use of systems that simply assist a driver. Here, as is currently the case, the driver will remain responsible for all incidents that arise while driving a vehicle that is utilising any driver assistance systems such as any form of cruise control, lane departure systems and so on.

In all of this, the UK government wants the UK to be regarded as a global leader in the development of autonomous vehicle technology. In order to facilitate this aim, the UK government wants to create one of the world’s most comprehensive legal frameworks for self-driving vehicles, which will:

- Focus on safety
- Provide the certainty and confidence that is required to unlock research, innovation and investment in the UK in relation to this technology
- Provide a clear regulatory framework in which autonomous vehicles can be put into live operational use as soon as the technology is safe for public use

Background

Back in 2018, the Centre for Connected and Autonomous Vehicles asked the Law Commissions for both England & Wales and Scotland to investigate how the use of autonomous vehicles should be legalised and regulated in Great Britain.

As a result of the extensive consultations and reviews that followed:

- The Law Commission produced a report in January 2022 that included some 75 recommendations.
- The UK government published the Automated Vehicles Bill (the AV Bill) in November 2023.

In summary, the AV Bill sets out a new regime that will apply to those companies that manufacture and/or operate autonomous vehicles for use on British roads. The resulting legislation will set out a number of provisions that will determine:

- What constitutes an autonomous vehicle
- The safety requirements that must be adhered to before an autonomous vehicle may be authorised in the name of an ADSE – typically the manufacturer of the vehicle that incorporates self-driving features
- How the operation of autonomous vehicles that are operated without a “user in control” need to be overseen by licensed commercial operators
- The additional authorisation and/or licensing requirements for ADSEs and licensed commercial operators
- A range of sanctions and fines (including criminal liabilities) that will then arise for any vehicle manufacturer and/or other licensed operators that fail to comply
- Other matters regarding the use of autonomous vehicles

The Detail

The following notes summarise some of the key aspects of the AV Bill from the perspective of the manufacturers and operators of autonomous vehicles.

What Is an Autonomous Vehicle?

- In order to determine if the new legislation applies, it will be necessary to show that a feature of the vehicle enables the vehicle to travel “autonomously”. For the purposes of the legislation, it will be necessary to show that:
 - The vehicle is being controlled by equipment.
 - Neither the vehicle nor its surroundings are being monitored by an individual with a view to immediate intervention in the driving of the vehicle.

- The new legislation will then regulate the use of all vehicle features (be they mechanical or electronic) that are sufficiently technologically advanced to be capable of driving a vehicle for the whole or part of a journey with no human input. In so doing, such features will include a computer (including its software) that receives inputs from sensors on the vehicle, which the computer then processes to control the brakes, steering or other systems of a vehicle so that driving tasks may be performed autonomously.
- The new legislation will not apply to “driver assistance systems” that do not satisfy the criteria to be authorised as self-driving systems. Here, as is currently the case, the driver remains responsible for obeying the rules of the road at all times when using any driver assistance systems.

What Tests Must Be Satisfied?

- Any vehicle that includes any self-driving features must satisfy a “self-driving” test, which will demonstrate whether or not the vehicle operates in autonomous mode without the need of any monitoring by an individual inside the vehicle in a manner that is both safe and legal.
 - Safety will be determined by reference to some Safety Principles. As things currently stand, the AV Bill anticipates that the Secretary of State of Transport will prepare, after due consultation, a Statement of Principles that will then be used to determine if an autonomous vehicle can travel safely. This Statement of Principles must then be laid before Parliament, which then has 40 days to object. Some argue that this process is too weak and that more detail needs to be included in the final legislation regarding the safety requirements.
 - The statement of principles will also cover cybersecurity.
 - In assessing safety, the AV Bill provides that road safety must be improved by the use of the automated vehicle that is being tested and authorised. Thus, it will not be sufficient to argue that the applicable features of the autonomous vehicle will just operate to a standard that is as good as a vehicle operated by a driver.
 - Legality will be determined by an assessment that the vehicle will travel with an acceptably low risk of committing traffic offences.
- The Safety Principles can be updated at any time. This is to be expected as the technology starts to be used in real-world rather than test scenarios and as the technology develops.
- Authorisations need to be clear and sought as to the use case in which a self-driving feature may be used. For example, the use of a self-driving feature may be restricted to use on motorways, certain streets in a town or city, or at certain times of the day. In addition, the functionality may just relate to particular driving tasks, e.g. parking.
- In addition to obtaining an authorisation, all autonomous vehicles will still need type approval.

What Is the Role of an ADSE?

- With regard to any vehicle that contains any self-driving features, the vehicle must have a registered ADSE, which will be responsible for the way in which the vehicle drives. Typically, the ADSE is expected to be the manufacturer of the vehicle or, at least, an entity appointed by the manufacturer to assume such responsibilities.
- The ADSE will be responsible for:
 - Obtaining an authorisation for its autonomous vehicles in relation to each self-driving feature (whether in relation to an individual vehicle or as to all vehicles of a particular type)
 - Ensuring that the authorised vehicle continues to satisfy the self-driving test by virtue of the authorised automation features.
- The ADSE must also be able to demonstrate that it is of good repute, good financial standing and that it is capable of discharging its obligations. In so doing, it will need to show that it has adequate insurance in place.
- Vehicle authorisations will need to consider the following by reference to each self-driving feature:
 - If the mode of operation for each feature is UiC or “no user in charge” (NUiC).
 - How the feature is engaged and disengaged. In this respect, detailed provisions are set out in the AV Bill with regard to the safety of the transition process. In so doing, if the self-driving system will only work on certain roads or in certain conditions, tests will need to be satisfied as regards how the self-driving systems will transition control to a UiC or as to how the use of the self-driving vehicle can be contained within the environments in which it is designed to operate.
 - In which locations and circumstances the autonomous vehicle satisfies the self-driving test by virtue of the feature in question.
- It is expected that many vehicles that are equipped with self-driving features will still require a user, who is capable of operating the driving controls in certain circumstances, to be in the vehicle.
- When a self-driving feature is engaged (assuming that it is safe to do so), that user will have no responsibility for the way the self-driving vehicle drives when the feature is engaged. However, as an exception to this principle, a person will commit an offence if that person engages a self-driving feature in circumstances where it would be obvious to a careful and competent user that the current state of the vehicle would make it dangerous to use in the way that it was being used.
- With regard to those self-driving systems that may need to hand back control to a human inside the vehicle, that individual in question must be fit to take control of the vehicle at any time (i.e. the individual must be awake, sober, not on the phone, and qualified to drive). Such individuals will be regarded as the UiC. In addition, all UiCs will always remain responsible for ensuring that the vehicle is insured, is used for legal purposes, is not overloaded, that all passengers are wearing seat belts and so on.

- A fee may be payable by each ADSE for the grant of and for the continuation of an automated vehicle authorisation.
- If issues arise with a self-driving system, it will be possible for an authorisation to be varied, suspended or withdrawn, either following discussion with an ASDE or, in serious cases, unilaterally.
- All Regulated Entities will have ongoing obligations to keep the vehicles for which they are responsible safe and ensure that they continue to drive in accordance with all applicable British laws. In so doing, each Regulated Body will need to comply with all other relevant laws, including data protection and environmental protection legislation.

What Is the Role of a NUiC Operator?

- If the self-driving vehicle can operate with no user being in a position to take control (i.e. it can drive itself while empty or without a “responsible user” who is capable of taking control of the vehicle), the operation of the vehicle will be required to be overseen by a licenced NUiC operator.
- The NUiC operator must:
 - Have oversight of the vehicle at all times
 - Know where the vehicle is at any time
 - Be responsible for maintenance, insurance and the general safe operation of the vehicle
 - Be able to detect and respond to problems that arise during a NUiC journey
- A licensing scheme (with fees) will be established for NUiC operators.
- If the vehicle carries passengers, the NUiC operator will also need a permit for automated passenger services.
- It is also anticipated that authorisations may be varied, suspended and withdrawn, both with and without the agreement of the Regulated Entity. Some grounds may be exercised on a unilateral basis, particularly if the vehicle has committed a traffic infraction.
- Each Regulated Entity will be required to make information available to all applicable Regulators, both in initial safety cases and while any self-driving vehicles are in operation, while misrepresentation and nondisclosure that affect vehicle safety will be criminal offences. The extent of these obligations will be set out in subsequent regulations.
- Each regulated entity will need to designate an individual who is responsible for ensuring that all information that is supplied to the Secretary of State of Transport is accurate, and relevant information must not be withheld. Such individuals will also be liable, along with the regulated entity, for any breaches in relation to the information provided/not provided.
- Investigators will be entitled to seek warrants to search the premises of all regulated bodies if sufficient cause arises.

How Will the New Laws Be Enforced?

- Inspectors will conduct no-blame investigations with regard to incidents that involve self-driving systems and will make recommendations to inform and shape the ongoing safe development and deployment of self-driving systems.
- Those responsible for the self-driving systems are to be held to account while any self-driving systems are in use. In so doing, fines, civil penalties and criminal penalties will apply if any Regulated Entities (being an ADSE and/ or any NUiC Operator) – rather than an individual user – fail to meet their obligations. As such, once authorised, any Regulated Entity will be liable for issues that arise in relation to how such vehicles operate when being used in self-driving mode.
- In particular, it will be an offence to use, cause or permit another person to use a vehicle without a driver and, in the NUiC scenario, without licensed oversight. Additional offences will arise in relation to causing death and serious injuries.
- It will also be a civil and criminal offence to market a vehicle as self-driving when this is not the case. In so doing, to be marketed as self-driving, the vehicle must be an authorised self-driving vehicle.
- As things stand in the AV Bill, subsequent Regulations are expected to determine the fines that may be made against Regulated Bodies that do not comply with any regulatory requirement, or if the Regulated Entity fails to comply with any information, interview, compliance or redress notices that it receives.
- All traffic signage information, notices of road closures and the like are to be made available by the relevant public authorities digitally and in a common format for use in self-driving systems.

Conclusion

In conclusion, all entities that are involved in the development, operation and promotion of autonomous vehicles will need to take careful account of the AV Bill in its current form and as the proposed legislation processes through Parliament. In addition, a good deal of the detail regarding matters such as the safety principles and the licensing of ADSEs and NUiC operators will be developed after the AV Bill has been enacted as the AV Act later in 2024.

We will be keeping a careful eye on all of these developments and will be issuing appropriate guidance as the law in this area develops.

Simon Jones, partner, 25 January 2024