

Written evidence submitted by Pinsent Masons LLP (SDV0048)

Introduction

Pinsent Masons is a purpose-led professional services business with law at its core. With over 3600 people in 26 offices across 4 continents, we are one of the largest UK-headquartered legal businesses, specialising in Energy, Financial Services, Infrastructure, Real Estate and Technology, Science and Industry.

Given our depth of knowledge across these sectors, particularly in Technology, Science and Industry, we are well placed to respond to areas of interest and importance to our clients. As such, we welcome the opportunity to respond to the Committee's inquiry on 'Self-driving vehicles' and help shape the regulatory framework which will eventually facilitate the safe deployment of autonomous vehicles.

Autonomous vehicles technology is advancing at speed, and the potential opportunities it will present are endless with regards to reducing emissions, reducing accidents, enhancing productivity and boosting economic growth. Pinsent Masons is pleased therefore to see progress is being made in developing the legislative infrastructure to underpin the technology.

Overview

The Transport Select Committee ("the Committee") is scrutinising the development and deployment of self-driving vehicles for use on the roads. The Committee has asked for views on several issues, amongst which is the regulatory framework, including legal status and approval and authorisation processes.

We will use our remarks below to provide insight into the regulatory framework required for the future widespread roll out of self-driving vehicles, before setting out potential recommendations for the Committee, and, indeed, the UK Government to consider when developing the regulatory framework for this fast-evolving technology.

Our response

The recent Law Commission and Scottish Law Commission joint [report](#) ("the joint report") on automated vehicles made various recommendations on the regulatory framework required. We have identified several areas in the joint report where careful consideration, clarification and suitable guidance are

required before a functional and future proof regulatory system can be put in place, and unforeseen consequences avoided. In particular, the joint report:

- recommends the introduction of a new Automated Vehicles Act, to regulate vehicles that can drive themselves, which would draw a clear distinction between features that simply provide assistance to drivers and those that are self-driving - vehicles which can drive themselves without being controlled or monitored by an individual for at least part of a journey.
- recommends a new “authorisation” scheme to decide whether any given Automated Driving System (“ADS”) feature is or is not self-driving as a matter of law.
 - The authorisation process will require to be carefully thought through – who will be the appropriate regulator? Steps will be required to avoid unnecessary overlapping of regulatory regimes, which could lead to duplication (and hence wasted resource), confusion, complexity and the potential for omission. Appropriate and adequate resourcing of the chosen regulator will also have to be identified and available from the start, with sufficient competent personnel to meet the demands placed on them.
- recommends new roles/responsibilities
 - the human driver of an Automated Vehicle (“AV”) which has its automated driving system (“ADS”) engaged (known as the User in Charge (“UIC”)) - will no longer be responsible for dynamic driving, although they will remain responsible for some things (e.g. loading, insurance etc). The UIC must also be qualified and fit to drive. Accordingly, legislation relating to such “retained” provisions will require to remain in place; care will be needed to ensure clarity of responsibility. We query too whether there should also be a retained responsibility to make sure software updates are implemented timeously, appropriate training undertaken and for any software jailbreaks or other unauthorised modifications to the vehicle’s software or hardware which makes it potentially unsafe or operating otherwise than as intended by the manufacturer;

- Road traffic legislation will need to recognise the requirement for a cultural change in several areas for owners of these vehicles. For example, servicing of vehicles may currently be seen as an option rather than a legal requirement with the MOT the focus of a driver's attention. This will become a far more important issue with the vehicle relying on a technical interface. Similarly, drivers may currently use vehicles with low level faults or not respond to vehicle recall notices
- Authorised self-driving entity (ASDE) –the ASDE is the vehicle manufacturer or software developer who puts an AV forward for authorisation as having self-driving features. The ADSE will be responsible for vehicles which are driving themselves on GB roads and must register with the authorisation authority. Contractual pass back of liability by an ADSE will be necessary and existing contract law principles should deal with this. However, consideration will need to be given to the interaction with product liability laws and insurance.
- No User in Charge operator – some ADS features will be authorised for use without a user in charge. These are referred to as No User in Charge features (“NUIC”). When a NUIC feature is engaged on a road or public place, the joint report recommends that the vehicle is overseen by a licensed NUIC operator, which will be an organisation rather than an individual.
 - The demarcation in responsibility in such situations will need to be very clearly set out. Consideration should be given to the imposition of possible strict liability for a NUIC operator, with liability passed back via contracts (but, again, interaction with product liability laws and the insurance regime will need to be considered too).
 - What about competence requirements for the NUIC operator?

- makes it clear that safety assurance will rely heavily on information provided by the ASDE and NUIC operator to the regulator, both in their safety cases and in subsequent discussions.
 - Safety case requirements will have to be clear and given well in advance of implementation with sufficient inspectors available and associated guidance issued.
 - Blackbox and access to data therein will be key, as well as access to ADSE/NUIC systems (questions have been raised over whether Uber and Tesla gave full access and data sets to investigators following accidents in the US). Consideration should perhaps be given to the creation of director offences for obstructing/refusing full access/misleading investigators (see below).
- recommends specific criminal offences where misrepresentations and non-disclosure by ASDEs and NUIC operators have implications for safety.
 - Consideration and clarification/guidance will have to be given on what evidence can be adduced of this; eg is it state of knowledge at the time of authorisation? There will be a duty to keep safety updated but clarity will be required on the extent of this duty and where change is required on transition periods. In urgent matters a safety recall process will be required.
 - The recommendation also needs careful consideration against the backdrop of current product liability law and “state of the art” defence.
- recommends it should be a criminal offence to (1) fail to provide information to the regulator; or (2) provide information to the regulator that is false or misleading in a material particular where that information is relevant to the evaluation of the safety of the vehicle. The ASDE or NUIC operator would have a “due diligence” defence if it could show that it took reasonable precautions and exercised all due diligence to prevent the wrongdoing.

- Considerable care will be required here to make it clear what is required of duty holders, with appropriate guidelines and to ensure there is no duplication with other obligations.
- There will need to be detailed guidance on what amounts to a “material particular” and what is relevant to the evaluation of safety. Similarly with the due diligence defence.
- makes recommendations in relation to senior manager liability.
 - Again, care will be needed here – regard should be had to the problems with the consent and connivance definition and the identification doctrine in other regulatory regimes (see for example the recent publication of the Law Commission’s options paper on Corporate Criminal Liability).
 - Care will also be required in the definition of senior manager.
- recommends a different rule would apply to the “nominated person” who signs the safety case. The nominated person would be required to take active steps to ensure that the information submitted to the regulator is correct and complete and should be required to establish a due diligence defence.
 - Will there be insurance for this?
 - Competence issues?
 - Issues with safety case – need for clarity/guidelines on its requirements (as with building safety).
- makes some provision for transition demands
 - Considerable care/clarity will be required here eg what will be the consequences if the transition demand is not accepted/actioned? Will there be a reaction time limit? Will there be a shift of responsibility once issued/immediately on issue/a certain (what?) period after

issue? It is easy to foresee difficulties here, some of which may well be covered in the authorisation process.

- This aspect will present significant challenges for L3/L4 technology and in particular in the development of a set of guidelines and case law for what is a reasonable delay in regaining control of a vehicle where it is not fully self-driving.
- There must also be a duty on manufacturers here not to give vehicle functions/technology misleading names that misrepresent a system as being able to drive completely safely without any requirement on the user to retake control (although this may be dealt with in the authorisation process).
- Consideration will require to be given to the potential for cyber attacks and the consequences thereof on roles and responsibilities.

The stated aim of the recommendations in the joint report is to promote a no-blame safety culture that learns from mistakes, achieved through a system of regulatory sanctions, with criminal sanctions for ASDEs and NUIC in some circumstances.

For this to be achieved, it might be useful to draw on some of the lessons from the building safety regime –e.g. accountable person, and the airline industry in relation to data sharing of aircraft defects/accident causes. In particular, as we have mentioned above, care will be needed to set out roles and responsibilities clearly and avoid duplication of effort. Black boxes will be key in order to diagnose the root cause of an accident (e.g. camera, sensor, software glitch, telecoms outage, etc.) and insurance will be necessary. In addition, the Automated and Electric Vehicles Act 2018 may require building out (particularly for NUIC).

Recommendations

- The joint report provides a solid blueprint for further legislation. However, there is an awful lot to evaluate, formulate and implement. For the stated aim to be achieved, a coordinated approach across multiple government departments and other industry stakeholders will be required. For example:

- Government: DfT, BEIS, CCAV, VCA, DVLA, etc.
 - Parliament: Commons/Lords/Cross Part working groups and committees, together with Prime Ministerial commitment to the economic and social benefits and to support this legal transition.
 - Stakeholders: Law Commission, Insurance/Thatcham, SMMT, Auto Council, Industry, etc.
- It will require project management and champions driving forward different workstreams and coordinating inputs from stakeholders. Key themes include those below:

Common focus areas of AV laws internationally

Legal definition ADAS/AV	Operational design domains	Legal actors (vehicle owner / passenger)	Vehicle classification
Testing and approval	Vehicle registration and licensing	Maintenance and inspection	Accidents: liability and investigations
Insurance	Data	Cyber security	Suspension and revocation

Assess Current Landscape > Identify Needs > Create Frameworks/Plug Gaps

- This will involve significant complexity as the task will need to cover various modes of transport across the different Society of Automotive Engineers International (“SAE”) levels. Including:

Regulatory Matrix

	Car	Van	Heavy Goods Vehicle	Bus	Pod	Shuttle	Other: Agriculture	Other: Rail	Other: Marine	Other: Air
L1										
L2										
L3										
L4										
L5										

- Potential for varying regulation across all SAE levels / vehicle types (above list is non-exhaustive)
- Sensible to take one mode of transport at one SAE level to agree process to follow for others
- Prepare overarching principles of regulations (heads of terms) before developing full text

- Based on the recent announcement by the Government in relation to its Connected and Automated Mobility (“CAM”) strategy, it is a positive move for the UK’s CAM sector that the Government is now looking to introduce legislation that regulates the use of CAM vehicles on the UK road network. The announcement will provide organisations with confidence that frameworks will be put in place to permit the deployment of advanced transport and mobility technologies at scale and enable new products and services to be made available.
- However, the scale of the task is huge. There will need to be new legislation introduced to expressly deal with a wide range of issues that CAM creates – including vehicle approvals, liability for accidents, cyber security and the use of personal data (see list above for further examples). In addition to this, existing laws may need amending or repealing altogether in order to remove obstacles to the deployment of technologies which were not in existence at the time they were drafted. Fortunately, the efforts of the Law Commission and the Scottish Law Commission over the past few years provide a sound blueprint for what a future regulatory system might look like in the UK.
- The challenge will now be allocating the resource within Government to support the drafting and introduction of the required laws and amendments to realise the UK’s CAM ambitions. Due to the UK’s parliamentary system this will take time and require inputs and approvals from a wide range of stakeholders which may result in a protracted process from the point of inception to the time of

implementation and enactment. To add to this, as the laws are being created the technology those laws are designed to regulate will be evolving at pace so legislators will essentially be trying to “shoot a moving target”. This could bring about further challenges for the Government but, irrespective of the challenges, the move towards a formal regulatory framework for CAM is welcomed and will provide a boost to the UK’s established automotive, transportation and technology sectors.

- The Government needs to consider how the regulatory process can be more agile to track against developing technologies (this creates a delicate balance of safety vs. stifling innovation). The Law Commission has laid the foundations for the future regulatory system but the key challenge now is developing a road map for “how” we introduce these new concepts and laws so the UK remains an attractive location for global businesses wishing to test, develop and commercialise self-driving vehicle technologies.

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