

INSURTECH TASTER COMPULSORY INSURANCE FOR DRIVERLESS CARS

The Government has sought to provide clarity to the public, manufacturers of automated vehicles and insurers around the basic insurance requirements that will apply to such vehicles when they become available in the market. This Insurtech Taster looks at the outcome of the Government's response to its consultation on changes needed to the compulsory insurance system to assist with the adoption of the first wave of fully automated vehicles.

Mirror

Looking back at 2016, the Government reaffirmed its support for making Britain the leader in developing driverless technology and announced a programme of reforms to make the roads ready for advanced driver assistance systems (ADAS) and driverless technologies. The Government also launched a consultation on proposals to support automated vehicles (AVs) and ADAS, which included holding-up a mirror to current compulsory motor insurance laws to determine what changes are needed to ensure that victims of incidents involving AVs will still have suitable rights to compensation when the vehicle is under the full control of technology and not the human driver.

The current compulsory motor insurance laws prohibit a person from using a vehicle unless there is a compliant policy of insurance in place that covers certain third party risks in relation to the use of the vehicle by that person. The Motor Insurers' Bureau (MIB) acts as a potential backstop for damage suffered because of an uninsured or unidentified driver and also aims to ensure that victims of foreign registered vehicles are not disadvantaged. Under its current rules, compensation is only payable by the MIB where fault can be established.

With conventional cars, it is a sensible public policy to make the driver primarily responsible for damage caused by the use of a vehicle. With AV however, it is envisaged that when engaging the automated driver function (ADF), the driver will hand full control and therefore responsibility, to the vehicle's technology, meaning the risk shifts from human error on the part of the driver, to a product liability issue, which ought to sit with the AV manufacturer. Consumers and insurers will be reluctant to shoulder responsibility for defects in technology and the Government was concerned that without intervention the market for adopting truly driverless cars will be stifled, which led to the consultation last Summer on changes to the insurance system to take into account automated vehicle technology.

Signal

The principal objective of the Government is to ensure that the use of AVs is insured, so that innocent victims involving automated vehicles receive compensation quickly and do not have to take the AV manufacturer to court themselves. In its consultation paper, the Government stated its intention to only make incremental changes to motor insurance laws at this stage, rather than a wholesale rewrite of the insurance system. The Government also signalled that it is not mandating any

particular model of insurance product and wants to give insurers and manufacturers time to develop insurance products that will be ready when truly automated vehicles are introduced to the market.

In its consultation, the Government took the current compulsory insurance model as a starting point and proposed: (i) to extend compulsory motor insurance obligations so that the vehicle owner must also ensure there is an insurance policy in place that covers the manufacturers' and other entities' product liability (although some argue the statutory requirement already addresses product liability issues), with motorists (or the insurer) relying on the courts to apply existing laws on product liability and common law negligence principles, to determine where fault should lie; (ii) to require this compulsory product liability insurance to cover a not-at-fault driver as well as passengers and third parties; and (iii) to develop a system to classify automated vehicles so that manufacturers, insurers and motorists know which vehicles the compulsory requirements apply to. However several respondents to the consultation commented that current product liability law and insurance practice are not readily compatible with the Government's policy objectives and following the consultation, the Government altered its original proposal.

Manoeuvre

Following the consultation, the Government has proposed to supplement compulsory motor insurance requirements to cover AVs and establish a “single insurer model”, where an insurer covers both the driver’s use of the vehicle in the ordinary way and when using AV technology, with payouts made to both third party victims and not-at-fault drivers if the ADF is activated. The insurer could exclude liability for certain acts or omissions of the motorist (e.g. failing to install updates), but the terms of the cover must prevent an insurer from excluding compensation if the AV caused the crash as a result of being hacked. Where the manufacturer is found to be liable, the insurer will be able to recover against it under existing common law and product liability laws. The latter situation does not sound that appealing for insurers, but as highlighted in the response to the consultation, the Government expects that commercial priorities will force manufacturers and insurers to develop processes to handle claims in a fair manner. For example, insurers might stop providing cover for a manufacturer’s vehicles if it fails to cooperate with insurers to determine liability. The aim of the Government’s intervention is to take a light touch approach and leave the industry to make its own decisions about the insurance products insurers are prepared to offer and the arrangements needed between insurers and manufacturers to handle the determination of liability and leaves the door open for manufacturers to offer to take full liability for their technology. The Government also proposed that the MIB would be extended to cover the new mandatory product liability regime for AVs to ensure victims are in no worse a position whether injured by an automated vehicle or a more conventional vehicle.



Looking Ahead

The Government’s proposals will be taken forward into the Modern Transport Bill but as an interim solution designed to manage the arrival of the first wave of autonomous vehicles. Future reforms to the motor regulatory framework will be needed to facilitate the adoption of new technologies as they evolve and become available.

The Government has provided a framework for insurers and manufacturers to deal with the arrival of AVs, but a number of issues relevant to motor insurance cover and claims processes still need to be investigated and solutions developed. For example:

- Insurers will need access to the data necessary to apportion fault which will mean agreements need to be reached around ownership of data about a vehicle and a driver’s behaviour and the transmission and storage of such data. Standards on recording and retention of data sets may need to be agreed at an international level and there are already efforts underway to agree such standards, but it will need car manufacturers,

insurers and regulators/governments to cooperate to make this a reality.

- As already highlighted by industry associations in the UK, the changing risks of AVs means insurers need clarity over their rights of subrogation against a vehicle manufacturer, to ensure that insurers can fully price-in the risk that they are unable to subrogate claims that they underwrite. The Government said it is not currently proposing to make changes to the existing product liability framework but this may need to change as discussions take place between insurers and manufacturers on where liability lies for product defects and as the technology of AVs develops and the Government may need to look again at product liability laws to make sure that insurers are able to recover from manufacturers in a way that supports the provision of insurance cover for motorists.

and some of these matters may require further Government intervention with solutions put on a statutory footing to ensure consistency for motorists and the public more generally.

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