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**T**he Queen travelled to parliament on 18 May in a gilded, horse-drawn coach. Hardly, perhaps, the sort of autonomous and assisted vehicle technology that Her Majesty had announced would be enabled by provisions in the Modern Transport Bill in the Queen's Speech that day.

The liability and insurance regimes that will be needed to resolve incidents that happen when cars operate autonomously will form a key part of the enabling regulatory framework. It is expected that so-called 'out of the loop' motorway driving and remote or self-parking will be among the first autonomous functions to be authorised. As that could take place as early as 2020/21, an early examination of the key issues in the second half of this year would be timely and would fit within the likely timetable of the Bill, which would ordinarily be expected to be enacted in spring 2017.

### Who's in charge?

One core question will be whether the Road Traffic Act (RTA) 1988 is fit for this new purpose? The statute currently requires insurance to cover third-party liabilities that arise out of the use of a motor vehicle. Implicit in use in this context is that the 'use' is that of a human driver and there is a wealth of case law on this precise technical meaning of 'use'. Does a vehicle operating in an autonomous mode really have a user in this sense? On the face of it, no. Therefore, this operating mode would need a new element of compulsory insurance cover, in addition to the insurance required by the RTA 1988 for conventional 'use'.

An example helps to make the point. Say a car is driven from home to the motorway network and is then switched to autonomous mode. If 'use' ends at that stage, then so would presently understood RTA cover. The car would still be capable of causing damage to people or property (due say to a malfunction in its self-driving software), so a new style of cover would need to be put in place.

This certainly seems to be the thrust of the government's current thinking. Roads minister Andrew Jones MP said the following on 25 May, just a week after the Queen's Speech: "Compulsory motor insurance will be retained but it will be extended to cover product liability, so that when a motorist has handed control to their vehicle, they can be reassured that their insurance will be there if anything goes wrong." Importantly, he added that recovery provisions will also be enacted: "Where the vehicle is at fault, then the insurer will be able to seek reimbursement from the manufacturer."



The above suggests the scope of compulsory insurance associated with driving is on the move and that it is likely to include something close to product liability cover to protect those harmed by autonomous functioning. As such persons will include the so-called disengaged driver, decisions need to be taken as to the level of protection and whether it should be the same as that afforded to passengers and external third parties? If fairness and natural justice suggest it should (which seems to be a highly outcome), then there is a market challenge of how to deliver a new product liability strand of cover with unlimited liability for damage for personal injuries? A further question is what sort of new legal rights, if any, need to be created to permit the disengaged driver to recover damages paid, in the first instance at least, via an insurance policy that he or she has arranged?

### The trolley dilemma

An interesting twist on liability may also arise under the 'trolley dilemma'. Originally, this concerned the ethics of the choice, faced by the driver of a runaway trolley bus, between doing nothing and colliding with five people

## WHAT IT MEANS FOR YOU

- On 18 May, the Queen announced: "My ministers will ensure the United Kingdom is at the forefront of technology for new forms of transport, including autonomous and electric vehicles." Relevant legislation to deal with these issues will form part of the Modern Transport Bill.
- According to the detailed material accompanying the Queen's Speech, this Bill will also include provisions setting a framework for drone operations and paving the way for commercial spaceplanes.
- Consultation about the questions above is now more likely to begin before the summer recess. If that is the case, I would expect a window of around eight to ten weeks for responses; which could take us very nearly into early October 2016.

or intervening and colliding with only one. A 21st century version of the dilemma might ask which of these choices would or should an autonomous vehicle make when faced with similar outcomes? Who or what would be liable for the algorithms and decision-making software that caused the car to go one way rather than the other?

Pre-legislative consultation on the main issues is expected over the summer or early autumn 2016. Motor insurers and product liability carriers or specialists are strongly advised to take part. ☞

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*The recently announced Modern Transport Bill will pave the way for autonomous and assisted vehicles. Alistair Kinley looks at the insurance implications...*

# A Road Traffic Act for the 21st century?