The safe introduction of autonomous vehicles: Report highlights for stakeholders

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The Law Commission of England and Wales and the Scottish Law Commission (together, the Joint Commission) have issued their final report on legal reforms to govern the introduction and ongoing safety regulation of autonomous vehicles. The proposed reforms should also be of interest to stakeholders in other jurisdictions, including Canada.

What you need to know

- The Joint Commission proposed a new authorization scheme for self-driving vehicles, involving three legal actors.
- The Joint Commission outlined the legal responsibilities of each of these three legal actors, and the scope of their potential liability, including in cases of traffic violations and non-disclosure of safety concerns.

The Joint Commission

In 2018, the Joint Commission began conducting three rounds of consultation. From 2018-2020, there were 404 written responses and over 350 meetings with interested parties, and the responses were detailed in three consultation reports (the Report). The Report focuses on "automated vehicles"[1] that can perform the dynamic driving task themselves with a Society of Automotive Engineering (SAE) Level 4 Automation and above.

The United Kingdom is a leading jurisdiction in the readiness for deployment of automated vehicles. The following are some highlights of the Joint Commission's findings in the U.K. that may be of interest to Canadian stakeholders:

- The Joint Commission proposed a new authorization scheme for self-driving vehicles, such that authorization would be required before the vehicles are allowed to self-drive. The proposed scheme involves three legal actors:
    1. **The Authorized Self-Driving Entity (ASDE)**: The ASDE the vehicle manufacturer and/or software developer is responsible for obtaining authorization from the regulatory body for the automated vehicle, and

legally responsible for the performance of the automated vehicle. The ASDE must obtain the required approval from the regulator for all self-driving features before road operation, show that it was closely involved in assessing the safety of the vehicle, and have sufficient funds to respond to regulatory action. The ASDE also has certain ongoing obligations, like issuing updates, responding to disclosure requests, and ensuring that the vehicle drives safely and in accordance with road rules.

2. **The User-In-Charge (UIC)**: The UIC is the human in the driver's seat who is legally responsible for the actions of the vehicle after a manual over-ride, or receiving a transition demand (a prompt for the human to retake control of the vehicle to address a situation the automated vehicle cannot handle). The proposed scheme allows for a reasonable amount of time for the human actor to become acquainted with their surroundings before becoming legally responsible. The UIC must be qualified and fit to drive, respond to transition demands, and report accidents. They are also responsible for the condition of the automated vehicle and any load carried.
3. **The No User-in-Charge (NUIC)**: For vehicles without a human in the driver's seat, the NUIC is the organization responsible for overseeing the driving task and responsible for the automated vehicle's actions, as well as for the condition of the vehicle and any load carried. The organization must obtain an NUIC license, be of good repute and financial health, base their operations in Great Britain, submit a safety case, and report any accidents. The NUIC will also be expected to respond to alerts from the vehicle if it encounters a problem it cannot deal with, breaks down, or is involved in a collision.

- The Joint Commission recommended the creation of an "in-use regulator" with statutory powers to evaluate the safety of automated vehicles, investigate traffic infractions, and ensure that ASDEs provide clear information to users.
- The Joint Commission proposed that in case of traffic violations that occur while a vehicle is self-driving, such as speeding or running a red light, the matter would be referred to the in-use regulator. The in-use regulator would conduct an investigation, communicate with the ASDE to establish how and why the violation occurred, and apply sanctions against the ASDE where appropriate to ensure compliance.
- Under this proposed scheme, human drivers as UICs would have immunity for offences that arise while the vehicle is self-driving. However, the human driver would remain liable for offences that occur after a driving handover (either a transition demand or user override), or if the UIC deliberately interfered with the functioning of the automated driving system.
- The Joint Commission recommended imposing a statutory duty of candour on the ASDE and NUIC to disclose information to the regulator that is relevant to safety, with heightened potential liability on "senior managers" of ASDEs and NUICs who consented to or connived in omissions or misrepresentations.
- To determine whether a self-driving feature was engaged at the time of a collision or traffic infraction, the proposed scheme requires manufacturers to record and store data for three months beyond the limitation period for automobile infractions (three years in the United Kingdom, therefore 39 months in total). It further imposes a duty to disclose that data to insurers where it is necessary to decide claims accurately.

The Joint Commission's Report is a helpful roadmap for regulatory change that could assist Canada's federal, provincial and municipal governments consider the appropriate comprehensive policy and regulatory framework to ready Canada for the deployment of higher level of autonomy vehicles on public roads.

BLG's Autonomous Vehicles Group

With broad industry experience and particular expertise in regulatory frameworks to assist with the adoption of autonomous vehicles, BLG's Autonomous Vehicles Group is here to help clients navigate the associated opportunities and challenges. For more information on AVs or anything discussed in this article, please reach out to one of the key contacts below.

[1] The Final Report uses the term "automated vehicle" to describe a vehicle that is driving itself – meaning one that is "operating in a mode in which it is not being controlled, and does not need to be monitored, by an individual" per the Automated and Electrical Vehicles Act, 2018 c 15 s. 8(1)(a) (UK).

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