



AUTOMATED VEHICLES BILL

Written Evidence submitted by Cycling UK for the House of Commons Public Bill
Committee Commencing 19 March 2024 (AVB01)

About Cycling UK

1. Cycling UK was founded in 1878 and has over 70,000 members. Our central charitable mission is to enable millions more people to cycle by making it safe, accessible and enjoyable. Our interests cover cycling both as a form of day-to-day transport and as a leisure activity, which can deliver health, economic, environmental, safety and quality of life benefits, both for individuals and for society.

Background

2. Automated vehicles (AVs) could either provide significant benefits – both for road safety and the environment – or serious disbenefits, depend on how they are regulated.
3. Unfortunately, the potential benefits of AVs are mostly achievable only when AVs become fully autonomous, i.e. when they can self-drive for whole journeys in all conditions, meaning there is no need for anyone in the vehicle to be capable of driving it, or even for a steering wheel. In the meantime (i.e. while AVs are still only able to self-drive under certain conditions), they are likely to pose disproportionate risks to pedestrians, people who cycle and other non-motorised users.
4. It is probable that AVs will soon surpass the ability of human drivers to avoid collisions with other motor vehicles. However it will be rather longer before they are similarly capable avoiding collisions with non-motorised road users. Bearing in mind that cycle users negotiate with human drivers through hand signals and eye contact, we believe AVs will need to be demonstrably good at recognising and responding to the ways cycle users communicate, and to situations which are hazardous for cyclists and pedestrians, before being authorised for use on ordinary urban streets and rural roads.

Key principles

5. In order to protect (and not undermine) the safety of people who cycle and other non-motorised road users, we believe the regulation of AVs must reflect the following principles:
6. The advent of AVs needs to achieve **a step-change in road safety**. At present, the risks of death or injury on our roads are significantly higher than for life in general, or indeed on other transport networks (e.g. for rail travel). Pedestrians, people who cycle and other non-motorised road users disproportionately bear the brunt of this risk, with children, older people and people with disabilities being particularly vulnerable. This [imbalance of risk](#) – between those who cause danger and those on the receiving end of it – is a significant obstacle to maximising the health, environmental and other benefits of increased walking and cycling.

7. The progression towards fully-autonomous vehicles (i.e. those which are capable of self-driving under all circumstances) needs to **start by authorising the use of semi-autonomous vehicles only on motorways and other controlled environments** where there is little or no risk of them colliding with members of the public apart from other motor-vehicle users. AVs should be authorised for use on urban streets, rural single-carriageways and other mixed-use environments only once they have demonstrated a very good track record, not just in terms of presenting a very low risk to other motor- vehicle occupants, but also to non-motorised road users.
8. The **framework for apportioning liability for injury or other damages** in the event of a collision with an AV needs to ensure that injured pedestrians, people who cycle or other non-motorised users do not have to first determine whether their injury claim should be brought against the vehicle’s insurer or a human driver – as that risks creating a huge ‘inequality of arms’ in the legal process. Instead, there should be an assumption that the manufacturer of a vehicle or its operating system is liable for injuries suffered by non-motorised road users, unless the AV’s insurer can show that another person (including the victim) was culpably at fault.

Measures we support

9. There is much in the Bill that we welcome. Specifically, we welcome the [proposals](#) to establish an **inspectorate** to *“investigate incidents involving self-driving vehicles to ensure that lessons are fed back into the safety framework”*. However we suggest that **its remit should also include investigating incidents involving Advanced Driver Assistance Systems (ADAS)**, as the technologies underlying ADAS vehicles will presumably evolve into the technologies for self-driving vehicles.
10. We also strongly support the provisions of clause 93, which empowers the SoS to require ‘traffic regulation authorities’ to **digitise traffic regulation orders and notices** (i.e. the rules which set speed limits, no left or no right turns, no entry and similar restrictions, bus or cycle lanes, parking restrictions, vehicle height, length and weight restrictions etc). This is obviously vital for AVs to be able to follow traffic rules. However it will also have much wider benefits, e.g. for satnavs and the ability of highway authorities to manage the signing and markings which are essential for communicating these regulations.

Concerns

11. Our main concern about the Bill are the **safety standard** and the associated **statement of safety principles** (in which the Secretary of State will set out the principles by which s/he will decide whether a vehicle is capable of “travelling autonomously” (a term which includes a requirement that it should be able to do so “safely” and “legally”).
12. Another issue is the process by which a person, particularly a non-motorised user, is required to **prove that an automated vehicle “caused” an “accident”** (a term we [dislike](#)) in which the victim suffered injury or property damage, before they can claim compensation.

Definitions of “safely” and “legally”, and the ‘statement of safety principles’

13. We are concerned that subclause 1(7) of the Bill defines “safely” as meaning only “to an acceptably safe standard”, while “legally” means “with an acceptably low risk of committing a traffic infraction”.
14. Subsection 2(1) of the Bill then requires the Secretary of State (SoS) to prepare a ‘Statement of safety principles’, setting out how s/he will decide whether particular AVs or AV types can be authorised as being “capable of driving safely and autonomously”. However subsection 2(2) only requires that these principles to result in:
- (a) “Authorised automated vehicles [achieving] a level of safety equivalent to, or higher than, that of careful and competent human drivers, and
 - (b) “road safety in Great Britain [being] better as a result of the use of authorised automated vehicles on roads than it would otherwise be”.
15. We have concerns about all of the elements of these definitions. We do not believe they provide adequate protection, and are highly unlikely to achieve the step-change improvement in road safety that the advent of AV technology could deliver.

“Safely” and “legally”

16. We propose amending the definitions of ‘safely’ and ‘legally’ as follows:

- (7) A vehicle that travels autonomously does so –
 - (a) “safely” if it travels to **a high standard of safety**, and
 - (b) “legally” if it travels with **a very** low risk of committing a traffic infraction.

We therefore support amendments 19 and 20 tabled by Bill Esterson MP:

19: Clause 1, page 2, line 6, leave out “an acceptably safe standard” and insert “a high standard of safety”

20: Clause 1, page 2, line 7, leave out “an acceptably” and insert “a very”

Member’s explanatory statement: This amendment is intended to probe the meaning of “acceptably” with regards to the risk of automated vehicles committing traffic infractions.

‘Careful and competent human drivers’

17. We are extremely concerned that the phrase “a level of safety equivalent to, or higher than, careful and competent human drivers” was introduced into subclause 2(2) of the Bill belatedly at Lords Report stage, to try to define the standard of driving that the statement of safety principles will require AVs to achieve. We recognise that this was a well-intentioned amendment, and that the Government [intends it to mean](#) a standard that is “higher than that of the average

driver". However, a large volume of case law suggests that, in practice, it will end up setting the bar far lower.

18. The phrase "*a competent and careful driver*" is used in the legal definitions of "*dangerous*" and "*careless*" driving". "*Dangerous*" driving falls "*far below*" that standard, whereas "*careless*" driving falls merely "*below*" (but not "*far below*") that standard. It follows that, by requiring AVs only to be able to drive to a standard equivalent to a careful and competent human driver, the Bill is setting the bar for AVs at a level just below which drivers can "*cause death by careless driving*", and be sent to prison for up to 5 years.
19. Cycling UK's 2018 report "[Failure to see what's there to be seen](#)" has documented huge variations and inconsistencies in how the terms "*careless*" and "*dangerous*" driving (and by implication, the term "*a competent and careful driver*") are interpreted by prosecutors and the courts, when cyclists are killed by drivers who later say they simply failed to see the cyclist. See also the more recent cases of cyclists [Paul James](#), [Emma Burke Newman](#), [Ian Winterburn](#), [David Jones](#) and [Darren Maironis](#), all of whom were killed by 'careless' driving, i.e. by driving which was deemed to be "*below*" but not "*far below*" the standard of a competent and careful driver.
20. Our report even includes cases where cyclists are killed by drivers who simply failed to see them (e.g. where they say they were dazzled by bright sunlight or confused by a lot of street lights on a busy street at night) without being convicted at all, or in some cases without even being prosecuted (see also the more recent cases of [Robert Cowie](#), [El Len Tham](#), [Saliya Jayaratne](#) and those listed in [this article](#) from 2014).
21. The implication is that killing cyclists by failing to see them can still fall within the standard of a "*competent and careful driver*", and that grossly excessive speeding can fall merely "*below*" but not "*far below*" this standard. We are frankly horrified at the prospect that this standard could be acceptable for AVs, according to the current draft of the Bill.
22. We therefore propose clarifying the meaning of the phrase "*careful and competent human drivers*", making it a lot less ambiguous. We suggest defining it as meaning that AVs should be able to self-drive consistently to a standard equivalent to **what is required to pass one's driving test, with no faults (not even minor ones) recorded by the examiner**. We also suggest making provision for this definition to be replaced (by statutory instrument) with quantified measures of the risk of collisions or legal infractions, once sufficient data are available to set these measures.

Whilst we support amendment 18 tabled by Bill Esterson MP, we also urge the Government to consider the above definition of "*careful and competent human driver*". It needs to be made clear that it is not merely the standard below which a human driver would be committing the criminal offence of '*careless driving*'.

18. Clause 2, page 2, line 20, at end insert—

“(2A) The statement must include the Government’s intended definition of “careful and competent human drivers”.”

Member’s explanatory statement: *This amendment would require the Government to publish a definition of “careful and competent human drivers” as part of the statement of safety principles.*

“Better ... than it would otherwise be”

23. Subclause 2(2)(b) requires the safety principles to aim to ensure that:

“(b) road safety in Great Britain will be better as a result of the use of authorised automated vehicles on roads than it would otherwise be.”

Hence the application of these principles is only intended to achieve a marginal improvement in road safety, rather than the step-change which we believe is needed. This is particularly concerning from the perspective of organisations representing the safety of pedestrians, cycle users and other non-motorised road users. After all, **a slight improvement in overall road safety** could actually **mask a worsening in safety for pedestrians, cycle users and other non-motorised road users**, providing this is offset (even if only slightly) by an improvement in safety for motor vehicle occupants. We do not believe this is acceptable.

24. We have also noted previously that AVs are likely to surpass the ability of human drivers to avoid collisions with other motor vehicles, some time before being better at avoiding collisions with pedestrians, cycle users and other non-motorised road users. Hence it may be desirable initially to restrict their use to motorways or other controlled environments where there is very little risk of them endangering non-motorised road users.

25. Taking account of both these points, we therefore support amendments 21 and 22 tabled by Bill Esterson MP:

21. Clause 2, page 2, line 15, at end insert *“and, if so, the locations, types of location or circumstances in which those criteria are met.*

(1A) The principles must set out how the Secretary of State will assess the potential safety impacts on different types of road user when assessing the locations, types of location or circumstances in which a vehicle is capable of travelling autonomously and safely, having particular regard to the safety of those road users who might be most at risk.”

22. Clause 2, page 2, line 19, leave out *“better”* and insert *“significantly better for all road users”*

Who bears the burden of proof that an AV was driving itself and “caused” a collision?

26. We seek an additional clause in this Bill to address the ‘inequality of arms’ that will be faced by road users (particularly pedestrians, cycle users and others who are not required to have insurance) in seeking compensation for injury or property damages arising from collisions involving AVs.
27. [Section 2 of the Automated and Electric Vehicles Act 2018](#) already provides that the insurer of an AV will be liable for injury or property damage suffered by another road user due to an “accident” that is “caused by an automated vehicle when driving itself on a road or other public place in Great Britain”. However as things stand, the burden of proof that the AV was driving itself at the time, and that it “caused” the collision, would still rest with the injured victim, potentially someone who has been maimed for life.
28. We support New Clause NC5, tabled by Bill Esterson MP, which would avoid the need for anyone who has suffered injury or property damages in a collision with an AV to prove that the vehicle was driving itself at the time. However, that still leaves them having to prove that the AV “caused” the “accident”.
29. This can be particularly difficult for those injured as pedestrians or cyclists, particularly children, for the following possible reasons:
- They are significantly more likely to suffer injuries (which may be life-changing) as a result of any collision, which may affect their ability to recall how the collision occurred;
 - By contrast, the entity responsible for insuring the vehicle would have access to all of the data recorded by the AV’s sensors, cameras or other equipment;
 - The manufacturer of the vehicle and/or its automated features would have strong incentives to avoid disclosing possible safety flaws in their vehicles or safety features.
30. We therefore propose that, where a non-motorised road user suffers injury or other ‘damages’ as a result of a collision involving an AV, **the insurer of the AV should be assumed to be liable to pay compensation unless they can demonstrate that another person (including the victim) was culpably at fault.** Where that is the case, it should not be difficult for the manufacturer or the vehicle and/or its operating system to prove this, using the data recorded by the vehicle’s cameras, sensors and other equipment.

In Schedule 2 subclause 5(4) (amendments to section 2 of the Automated and Electric Vehicles Act 2018), at the end insert:

“(8) When a person on a road or other public place in Britain suffers damage as a result of an accident involving an authorised automated vehicle and the person was not at the time the driver or rider of a motor vehicle, it shall be assumed for the purpose of this section that the authorised automated vehicle caused the accident unless proved otherwise.

(9) For the purpose of this section, a “motor vehicle” is a vehicle that is to be treated as a motor vehicle for the purpose of the Road Traffic Acts in accordance with sections 185 and 189 of the Road Traffic Act 1988.”

Explanation: This amendment provides that, where a pedestrian, cyclist, equestrian or other non-motorised road user suffers damages as a result of a collision with an authorised automated vehicle, the vehicle can be assumed to have “caused” that collision for the purpose of determining liability (in accordance with section 2 of the Automated and Electric Vehicles Act 2018), unless proved otherwise.

The remit of the safety inspectorate

31. We noted earlier that we welcome the proposal (in clauses 60 and 61 of the Bill) for the Secretary of State to appoint “*inspectors of automated vehicle incidents*”, whose main purpose will be “*identifying, improving understanding of, and reducing the risks of harm arising from the use of authorised automated vehicles on roads in Great Britain*”. We hope that this inspectorate will in due course become part of the [Road Safety Investigation Branch](#) that the Government committed to set up in June 2022, following a consultation that was [strongly supported by Cycling UK](#) and other road safety organisations.
32. In the meantime, we urge the Government to expand the remit of these inspectors. Rather than limiting them solely to investigating incidents involving AVs, we suggest they should **also investigate incidents involving vehicles with Advanced Driver Assistance Systems (ADAS)**, such as adaptive cruise control or lane changing features, which assist the driver but do not enable the vehicle to ‘drive itself’. These features are in effect early versions of the technologies that will enable automated driving. Hence it is essential to understand any potential pitfalls of these systems at an early stage.

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