Written evidence submitted by Direct Line Group (VTAB 14)

Vehicle Technology and Aviation Bill

Direct Line Group (DLG) welcomes the opportunity to submit written evidence to The Public Bills Committee in relation to the Vehicle Technology and Aviation Bill 2017.

Introduction

DLG provides a wide range of general insurance products to consumers through a number of well known brands including Direct Line, Churchill and Privilege. It also provides insurance services for third party brands through its Brand Partners division. In the commercial sector, its NIG and Direct Line for Business operations provide insurance products for businesses.

In addition to insurance, DLG continues to provide support and reassurance to millions of UK motorists through its Green Flag breakdown recovery service.

DLG would be happy to assist the Committee with any of the points raised in this evidence. In the first instance, any queries should be addressed to:

Written Evidence

DLG welcomes the Bill and its aims of creating a straightforward legal framework for automated vehicle technology that provides clarity and simplicity for consumers. The underlying principle of a ‘one stop shop’ for innocent victims of accidents caused by automated vehicle technology will help to ensure that claims are settled fairly and speedily.

DLG firmly believes that the development of these technologies will bring numerous societal benefits and this Bill will enable their development and adoption.

In this evidence DLG raises a number of points for consideration which it hopes the Committee will find useful when considering the drafting of the Bill.

1 Definition of ‘autonomous’ – clause 2 (1) (a)

1.1 Is it the intention that once a vehicle is placed on the list prepared by the Secretary of State, then this Bill only applies to accidents caused by the technology that necessitated it’s addition to the list, or will all technologies on the vehicle then come under the jurisdiction of this Bill?

1.2 The definition of autonomous vehicles for the purposes of Clause 1(1) (b) refers to motor vehicles not having to be ‘monitored’ by an individual. According to clause 2 (1) (a) the insurer is liable where an accident is caused by an automated vehicle “driving itself”. The term “driving itself” is further defined as an operation “not being controlled” by an individual (7(1)(a)). The terms ‘monitored’ and ‘controlled’ are inconsistent, with the latter potentially drawing a broader set of technologies under the Bill, once a vehicle has been listed by the Secretary of State. This creates uncertainty around the types of technologies the Bill intends to cover.

1.3 Once a vehicle has technology that can be driven without ‘monitoring’, it will appear on this list and so clause 2 of the Bill will apply. Once that applies to the vehicle, this inconsistency could
lead to clause 2 applying to technologies and scenarios that were not intended and indeed exist on vehicles today.

1.4 For example, collision avoidance technology, which is intended to take temporary control of a vehicle to avoid an impending accident could easily fall within the definition of “driving itself” if only for a very short period of time. If, in the event of the vehicle (that is on ‘the list’ due to other autonomous technology) taking corrective action it actually causes an accident, then it could be argued that the insurer would be liable for injuries sustained by the driver, even though the technology applied at the time of the accident was not intended to remove any need for the driver to monitor the driving.

1.5 If the exact same scenario occurred in a vehicle that was not on the list (because it did not have additional autonomous features) then the insurer would rightly not be liable for the driver’s injuries.

1.6 DLG would respectfully suggest altering clause 7 (1) (a) to tighten the definition of “driving itself”:

“A vehicle is “driving itself” if its operation is not being monitored or controlled by an individual.” [Our emphasis.]

2 Definition of ‘damage’ – clause 2 (3)

2.1 Is it the intention that the liability placed on insurers under clause 2 in relation to the driver only extend to personal injury, and not to any property owned by that driver?

2.2 The intention appears to be to dovetail this legislation with product liability law which does not allow for claims to be made for damage to the product itself – in this instance, the vehicle.

2.3 Clause 2 (3) limits the insurer’s liability for damage to the vehicle or the insured’s property, effectively meaning that the insurer is only liable to the driver for personal injury claims. This could lead to uninsured losses that the insured would then need to seek to recover directly from the manufacturer.

2.4 By way of an example, if a vehicle is driving itself into a garage but fails to stop and causes structural damage to the insured’s house, then the insured will have no recourse to the motor insurer pursuant to the Bill. If the insured did not have house insurance in place (which is not compulsory), they would have to pursue the manufacturer directly for the damage to their house.

2.5 Another less extreme example would be an insured’s laptop worth £1k in the vehicle that was damaged in an accident when the vehicle was driving itself. Again, under the Bill the insured would have no recourse from the motor insurer under the liability section. Whilst it is likely (but not certain) that the insured would have comprehensive cover in place, any claim is likely to be limited to a fairly low level of cover (typically between £250 - £500) again meaning that the insured would not be adequately compensated by the motor insurance policy and would need to seek recovery themselves from the manufacturer.

2.6 This clause appears to extend the limitation that currently exists within product liability law, leading to the outcomes in the examples provided. DLG would question whether this is at odds with the spirit of the Bill, which is to ensure that claims are dealt with speedily and fairly when the automated technology fails.

3 Contributory negligence - clause 3

3.1 Clause 3 (2) aims to restrict liability in instances where the insured should not have used the technology, effectively meaning that they were negligent in doing so. DLG welcomes this clause but feels that the phrase “when it was not appropriate to do so” is too vague, in that it does not specifically state that the technology should only be used only when it is permitted by the relevant regulations.
3.2 It is possible that certain autonomous driving features could exist on vehicles before regulations permit their use and it could be argued in certain circumstances that it was ‘appropriate’ to use them – e.g. on a clear motorway at 3am. Equally, it could be argued that until regulations allow the use of an autonomous driving function then it would never be appropriate to use it. To remove any uncertainty DLG would respectfully suggest amending clause 3 (2) to read:

“The insurer or owner of an automated vehicle is not liable under section 2 to the person in charge of the vehicle where the accident that it caused was wholly due to the person’s negligence in allowing the vehicle to drive itself when it was inappropriate or illegal to do so.” [Our emphasis].

4 Hacking

4.1 Is it the intention that large scale catastrophe events caused by systematic hacking or other external interference be covered by clause 2 of the Bill?

4.2 Clause 2 (1) of the Bill places a liability on the motor insurer for damages incurred when the vehicle was driving itself. Clause 2 (6) specifically precludes an insurer from limiting its liability in any way other than that permitted by clause 4. Clause 4, however, only permits liability to be excluded where there is some form of intervention or interference by the insured, either by making alterations or not applying relevant updates (4 (1)). What clause 4 does not deal with, however, is events caused by interference by third parties, such as hacking.

4.3 DLG’s understanding is that the intention of this Bill is to allow and enable the adoption of autonomous vehicles by placing a liability on insurers when the technology goes wrong and causes an accident. DLG believes that it is not unreasonable that insurers could be required to cover localised events caused by hacking of an individual vehicle. It is anticipated that these risks would be similar in nature to risks that exist today such as theft and joyriding. However, the government need to consider how large scale catastrophic events of a criminal nature should be treated.

4.4 For example, if a terrorist or other criminal organisation or individual managed to hack into every particular make or model of vehicle at once this could cause an unprecedented disaster. DLG would question whether it is not unreasonable that insurers could be required to cover localised events caused by hacking of an individual vehicle. It is anticipated that these risks would be similar in nature to risks that exist today such as theft and joyriding. However, the government need to consider how large scale catastrophic events of a criminal nature should be treated.

4.5 DLG would welcome the opportunity to work with the government to consider how these risks should be handled within the UK.

5 Limitation - clause 5

5.1 If there are multiple claims for any given event, does the 2 year limitation period reset for each new claim arising from that event?

5.2 It is DLG’s understanding that clause 5 sets the limitation period for insurers to recover damages from manufacturers at two years "from the date of settlement". In principle DLG has no concerns with this as the two year time period starts only once a claim has been settled. Following an accident, however, multiple claims can be brought, each at different times. DLG would welcome clarity that each claim attaching to any accident will be considered separately for the purposes of limitation.

5.3 For example, a person’s claim is settled by the insurer three months after an accident and the insurer successfully recovers that claim from the manufacturer. Two and a half years after the accident a second claimant presents a claim to the insurer which is settled a further one year later. In this instance DLG would expect the insurer to have a further two years within which to
begin proceedings against the manufacturer for this second claim. In this example, this would be up to five and a half years after the accident occurred. DLG would appreciate clarification that this would be the case.

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