

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

AUTOMATED AND ELECTRIC VEHICLES BILL

Fourth Sitting

Thursday 2 November 2017

(Afternoon)

CONTENTS

CLAUSES 2 AND 3 agreed to.

Adjourned till Tuesday 14 November at twenty-five past Nine o'clock.

Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 6 November 2017

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The Committee consisted of the following Members:

Chairs: † MR ADRIAN BAILEY, SIR EDWARD LEIGH

† Argar, Edward (<i>Charnwood</i>) (Con)	† Mann, Scott (<i>North Cornwall</i>) (Con)
† Brown, Alan (<i>Kilmarnock and Loudoun</i>) (SNP)	Rodda, Matt (<i>Reading East</i>) (Lab)
† Duffield, Rosie (<i>Canterbury</i>) (Lab)	† Stephenson, Andrew (<i>Pendle</i>) (Con)
† Efford, Clive (<i>Eltham</i>) (Lab)	† Stewart, Iain (<i>Milton Keynes South</i>) (Con)
† Foxcroft, Vicky (<i>Lewisham, Deptford</i>) (Lab)	† Tracey, Craig (<i>North Warwickshire</i>) (Con)
† Hayes, Mr John (<i>Minister for Transport Legislation and Maritime</i>)	† Turner, Karl (<i>Kingston upon Hull East</i>) (Lab)
Jones, Graham P. (<i>Hyndburn</i>) (Lab)	† Western, Matt (<i>Warwick and Leamington</i>) (Lab)
† Kerr, Stephen (<i>Stirling</i>) (Con)	Farrah Bhatti, Mike Everett, <i>Committee Clerks</i>
† Knight, Sir Greg (<i>East Yorkshire</i>) (Con)	
† Letwin, Sir Oliver (<i>West Dorset</i>) (Con)	† attended the Committee

Public Bill Committee

Thursday 2 November 2017

(Afternoon)

[MR ADRIAN BAILEY *in the Chair*]

Automated and Electric Vehicles Bill

Clause 2

LIABILITY OF INSURERS ETC WHERE ACCIDENT CAUSED
BY AUTOMATED VEHICLE

Amendment proposed (this day): 9, in clause 2, page 1, line 22, at end insert—

“or by an automated vehicle when transitioning between driving itself and being driven by a person.”—(*Clive Efford.*)

This amendment would ensure that the liability for accidents caused by an automated vehicle that is transitioning between driving itself and being driven by a person would be the same as the liability for accidents caused by an automated vehicle when driving itself.

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing amendment 10 in clause 2, page 2, line 6, at end insert—

“or by an automated vehicle when transitioning between driving itself and being driven by a person,”

This amendment would ensure that the liability for accidents caused by an automated vehicle that is transitioning between driving itself and being driven by a person would be the same as the liability for accidents caused by an automated vehicle when driving itself.

Sir Oliver Letwin (West Dorset) (Con): My right hon. Friend the Minister rightly admonished me earlier in our proceedings for not making clear right from the beginning how the remarks I was making related to the structure of the Bill as it is and how it is trying to make progress without trying to solve all the problems.

In responding to the amendment of the hon. Member for Eltham, I want to ensure that I make clear why I am raising the point that I am raising about the Bill as drafted. I take it that the point of clause 2, which is one of the major points of the Bill, is precisely to ensure that the insurance industry has a clear and legally certain basis for proceeding. That is a restricted but very important ambition. The point that the hon. Gentleman raises in his amendment is very material from the point of view of realising the Minister’s ambition.

The way that the Bill is constructed, without the hon. Gentleman’s amendment or something like it, does not provide certainty for the insurance industry. The insurance industry has failed to recognise that the Bill does not provide that certainty. When the industry realises that it does not, it will blame us and the Minister for that and say, “Why on earth did you not give us certainty?” My whole intent is to ensure that the Minister can do what he is trying to do. I hope he will accept what I am saying in that light.

We had an interesting exchange in the course of the moving of the amendment about tier 3 and tier 4. To tell the truth, I do not have any faith in the tiers. They are a figment of a group of manufacturers’ imaginations. They are as good as we are going to get at the moment as a broad description of how things will go, but it is likely that all sorts of different things will be produced that are variously describable as tier 3-plus and tier 4-minus and God knows what else. I think the Minister has already agreed with what I think is certainly a true proposition: there will be at least a period in which people are experimenting with kinds of automation that involve significant opportunities for transition between the machine and the person. For that purpose, it does not matter whether we are talking tiers 3, 3-plus, 4-minus, 4 or, indeed, 4-plus.

There will possibly come a moment when drivers just fall out of the equation and there are not any drivers any more, just machines that take us to where we programme them to go. At that halcyon moment, probably decades from now, clause 2 would work fine, but the problem is that it will not work fine during what is likely to be the very long passage where there is a rather messy scene of vehicles that in varying circumstances are taken over by a driver or handed by the driver to the automation system. We were told in the evidence sessions with great certainty that it would take 10 seconds or less to hand over. We were also told that if a failure in the handover from the machine to the person occurred, all was well because the machine would find a way of stopping itself. I have learned, as I expect many members of the Committee have, always to take with a strong pinch of salt any assertion by assertive technologists that they know exactly how long it will take for something technological to happen in all circumstances. They do not know any such thing; they are speculating. They may prove to be entirely right—they certainly know a lot more about it than me—but it is perfectly possible that they will prove to be completely wrong.

The hon. Member for Eltham raised one circumstance in which the technologists could be very wrong. It may well be that the machines are so designed that they go to great lengths to wake up drivers who have gone to sleep when they have stopped driving and handed over to the machine. There may be rules enforced that say they must not go to sleep, but human beings are human beings, and they might go to sleep and it might take a lot longer than 10 seconds to wake them up. I happen to be married to someone who takes a lot longer than 10 seconds to wake up; I have no reason to suppose that every human being sitting next to the machine is going to be in full functioning order in 10 seconds. There could be quite long periods during which that transition is occurring.

The reason I say all that to my right hon. Friend the Minister is that we are not here talking about angels on pins; we are not talking about milliseconds that are just a figment of legal imagination. It is quite likely that, in real life, there will actually be some accidents that occur during periods of transition between machine and mankind. There is no reason we should be afraid of that; there are plenty of accidents on our roads now, and we are not entering into a new terrain in which there will be thousands more accidents—probably there will be thousands fewer. Nevertheless, some accidents might occur during transition. The Bill currently contains a binary choice. Either, as in clause 2(1),

“an accident is caused by an automated vehicle when driving itself”

or it is not. There is no allowance for the possibility of transition.

If a piece of legislation does not admit of a possibility, and that possibility comes about in real life and there is a court action about it, the court looks at the statute and it says to itself, “Blow me down! Once again, Parliament has been extremely stupid. There is nothing in the statute about this situation.” What does an English court do, thank goodness, under such circumstances? It invents the law. That is what it will do. It is not the case that there is a sort of legal black hole. Where there is statute and statutory construction does not lead to the answer to the case, the judge will invent the answer.

The Minister for Transport Legislation and Maritime (Mr John Hayes): I take it that my right hon. Friend is speaking about fault. In those circumstances, what would be at question is where fault lies and what caused the accident. If that is the case, I direct him, without wishing to engage in a long debate about it, to clause 3(1), which deals with partial responsibility and therefore fault.

Sir Oliver Letwin: No, I am not raising the question of fault. I am raising the question of legal certainty about the circumstance. Clause 2 says that if the “accident is caused by an automated vehicle when driving itself” it is clear that

“the insurer is liable for that damage.”

It is equally clear, therefore, as a binary choice, that if the vehicle is not being driven by the vehicle itself, but by the driver, the driver is liable. Those two positions are perfectly clear. The insurer of the driver, who may or may not be a separate body from the insurer of the vehicle, takes on responsibility when the driver is driving. We are dealing here with the situation in which some combination of driver and vehicle has been the cause of the accident, during a transitional period from one to the other. The question arises, which of the two insurance policies is the relevant one? I do not believe that there is anything in clause 3 that solves that problem. If the Minister can point out something about the wording of clause 3, I hope you will allow him to do so, Mr Bailey, because it is definitely relevant to the point that the hon. Member for Eltham and I are raising.

My own view is that there is nothing in clause 3 that solves the problem, and therefore the courts will invent a solution. There is nothing wrong with that in general—the courts are very wise and may come up with a perfectly good solution—but the Minister’s purpose is not to say, “Let the courts invent a solution”. If that was his purpose, he would not need the Bill in the first place, because we have a common-law system. If there were no Bill, and if automated vehicles were to proceed and things were to go to court, the courts would find a solution. We would not need the Bill in the first place, if we were going to rely on the courts. The reason for having the Bill is to create legal certainty so that we are not simply trying to find out later, *ex post*, what the courts will make the law be. We are trying to make the law in advance, so that the insurance industry and the automated vehicle industry know how it will work. For that purpose to be realised, we have to be clear that the law covers all

the possible circumstances—when there is a driver driving the vehicle, when the vehicle is driving the vehicle, and the circumstances between the two when somebody is handing over to the vehicle or the vehicle is handing over to the driver.

My point is that at the moment there is a gap; the Bill does not say what happens during that period. Incidentally, I do not think it matters terribly what the decision is; there just needs to be a decision, so that a case does not revolve around who the relevant insurer is under the circumstances of transition.

Clive Efford (Eltham) (Lab): I know we are not debating clause 3, but since the Minister referred to it, let me point out that clause 3(2) makes it the driver’s responsibility if a vehicle is unsafely allowed to be driven automatically. A driver could be at fault if they cause an accident at the moment of transition by failing to respond when the vehicle tells them to take over, so clause 3 could actually make things worse for the driver.

Sir Oliver Letwin: Actually, I think the hon. Gentleman understates the problem with clause 3(2), which the Committee will consider in due course. During our consideration of clause 1 this morning, I made the point that unfortunately clause 3(2) contains the word “wholly”. It is therefore completely unclear what happens if an accident is not wholly due to the driver or to the vehicle, but is partly due to each, as it would be during the transition. That is a muddle, and the whole point of the Bill, which I applaud, is to avoid muddle. Muddle encourages courts to base decisions on common sense or common law, because the statutes do not tell them how to handle the circumstances. That is not what we are trying to achieve; we are trying to clarify and make certain.

We therefore need clause 2 to set out clearly the three possible situations. If the driver is driving, the driver’s insurer is liable. If the car is driving, the car’s insurer clearly has strict liability, novel though that concept is. But we need a decision—I do not really care what, so long as it is clear, definite and permanent—about what happens during periods of transition, however long they may be and under whatever circumstances they may arise. We cannot tell in advance how long the transition periods will be, and we should not take any advice from the industry that they will be only for 10 seconds and will always work perfectly—they will not.

Mr Hayes: May I welcome you to the Chair, Mr Bailey? Our discussion this morning was lively, but productive and wholesome. I am keen to make progress, as I am sure other Committee members are. The amendments tabled by the hon. Member for Eltham relate to issues that we have already addressed, but with further consideration of the transition between autonomous and human driving. Clause 3(2) states:

“The insurer or owner of an automated vehicle is not liable...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 begin driving itself when it was not appropriate to do so.”

I am conscious that much of the debate on these amendments relates to clause 3, so I must be careful not to stray into premature consideration of a clause that the Committee has not yet reached. Nevertheless, in

[Mr John Hayes]

resisting the amendments, it is pertinent for me to refer the hon. Gentleman and my right hon. Friend the Member for West Dorset to the Road Traffic Act 1988. If the driver has some role in the accident—if the vehicle is not self-driving, either during or before the transition—the current framework, which is set out in the Act, will apply.

It is also worth saying that if a driver negligently decides to hand over control of the vehicle, clause 3 will apply, which is why I said we would end up debating clause 3 if we were not careful. If it is partly the driver's fault, subsection (1) will apply; if it is wholly their fault, subsection (2) will apply. For example, if the driver of a vehicle designed only for self-driving on a motorway is injured after putting it into self-driving mode on a rural road, the insurer's liability will be reduced under the contributory negligence principle. If a court finds the driver to be wholly at fault, the insurer will pay only the third parties involved in the accident. Partial responsibility is therefore addressed in the Bill and the transition, to which my right hon. Friend the Member for West Dorset paid particular attention, is dealt with in as much as we have an existing framework that of course insurers have built their current products around, which is drawn from the Road Traffic Act 1988 and other national and international regulations.

2.15 pm

Alan Brown (Kilmarnock and Loudoun) (SNP): I apologise for not understanding, but will the Minister explain further how the Road Traffic Act 1988 covers the specific example of an automated vehicle transitioning from automatic to driver mode, or vice versa?

Mr Hayes: I will be happy to do that when further inspiration reaches me. In the interim, while I wait for that inspiration, I will say that we recognise the need to ensure that the transition controls are safe. It is of value to emphasise that research, including some being carried out in the UK, will help to determine a safe transition process to inform international safety standards of the kind I mentioned earlier. In essence, therefore, the field is a developing one in which those international standards are being built on. Research is taking place here and elsewhere.

The research that we spoke briefly about in the witness sessions is such that it includes the development of software to take account of endless eventualities that might occur while a vehicle is being driven or driving itself. The work being done is to simulate a range of road conditions and circumstances in which any car might find itself at any point in time on any kind of road. That is of course as numerous as might be imagined, but the aim is to have software that is clever enough to deal with all kinds of driving circumstances. The work is not complete but ongoing, and is being done on London roads as we speak—trials on London roads in real time.

I am therefore confident that the further work will lead to an outcome where the software that in the end allows us to see the further development of automated vehicles will be able to replicate circumstances that drivers find themselves in. That, by the way, relates to a

debate we had earlier about the judgments that might be made by a human being replicated by the software given all kinds of different challenges.

Sir Oliver Letwin: Will the Minister focus his mind on a specific example? We are in a case in which the car has been driving itself on a motorway. It is programmed to turn off the motorway, but it is not judged by the Secretary of State to be a car of a kind that would be safe to drive off a motorway. It has therefore been programmed to hand over to the driver when it leaves the motorway—this is one of the situations on which the amendment of the hon. Member for Eltham is focused—and the driver is profoundly asleep, having been asleep all the way from London to Bristol on the motorway. The machine tries to hand over to the driver.

I am sure the Minister is right, that the software will be highly developed and it will try to hand over quickly, as far as it can, and that if it does not hand over quickly it will take all sorts of other sensible evasive action to prevent an accident occurring in such circumstances. If we could be absolutely certain that the software was perfect, we could all relax. The Minister would not need the Bill because there is no need to insure things that are absolutely perfect; they never have any accidents so there are no risks and no need for the law.

In introducing the Bill, however, the Minister rightly envisages that the software will not be perfect because things invented by human beings never are, unlike things invented by the Almighty that the Minister believes in. There will be circumstances in which the software goes wrong, such as if it tries to take evasive action having tried to hand over to a driver who was asleep and who it has failed to wake up. We have a prolonged transition period during which this magnificent software is trying and failing to get the driver to wake up and somehow does not do everything perfectly, and then there is an accident. Under clause 2(1)(a), is the vehicle driving itself in those circumstances or not? I do not know and a court will not know. It is trying not to drive itself—it is programmed not to be—but it has failed not to be driving itself. Somehow or other, that circumstance needs to be covered here. If the Minister can explain how the Road Traffic Act, which I looked at when it came up in the oral evidence sessions—

The Chair: Order. I remind you that this is an intervention, Sir Oliver.

Sir Oliver Letwin: I do apologise. If the Minister can explain how the Road Traffic Act solves that problem, I am all ears.

Mr Hayes: I had forgotten for a moment that it was an intervention. Those who seek perfection on earth are invariably either extreme zealots or delusional, or both. Perfection exists only in heaven, as my right hon. Friend knows. The insurance industry does not claim that there would be no accidents in any circumstances as a result of automated vehicles, but it told us in the oral evidence sessions that it thought there would be fewer. It said that that would have an effect on the insurance marketplace because of the effect on safety—that is the exchange we enjoyed earlier—that comes about because the fallibility of men and women as drivers means that 95% of accidents, or a figure close to that, are caused by human error of one kind or another. We are clear about that.

We can also be clear that the Bill is welcomed by the industry because we were told so by Mr Howarth in the oral evidence sessions. He said:

“I think it is very clear that the legislation and broadly the development of automated driving are something that insurers are genuinely enthusiastic about.”—[*Official Report, Automated and Electric Vehicles Public Bill Committee*, 31 October 2017; c. 7, Q11.]

The insurance industry thinks that the Bill is an important first step, of the kind I described earlier, in establishing a framework, but it is a framework and further changes will be necessary as technology develops. Those changes will have to be dealt with in a regulation or subsequent measures.

Karl Turner (Kingston upon Hull East) (Lab): Will the right hon. Gentleman give way?

Mr Hayes: I will, but I want to finish this bit otherwise I will get mixed up in my responses.

In respect of the intervention by the hon. Member for Kilmarnock and Loudoun, to be clear, the Bill covers only cars in autonomous mode, because there is an existing insurance framework born of the Road Traffic Act that triggers insurance when the driver is at least partly at fault and establishes liability. I dealt with this issue earlier. Insurers look at what the causation is, the causation is linked to establishing fault and insurance kicks in accordingly. That is why the Road Traffic Act is relevant because that is where we are already. If we did not have a framework, we would not have a series of insurance products—they would be based on nothing. They are based on the existing law.

Karl Turner: Is not the right hon. Member for West Dorset making a point about interpretation? The Bill as currently drafted could be a lawyers' charter. Lawyers will be scrapping in court, arguing about various definitions, because the Bill simply is not clear enough on those points.

Mr Hayes: That is a good point. As the hon. Gentleman is a lawyer, I would not want to second-guess him.

Karl Turner: I have never been that type of lawyer.

Mr Hayes: A former lawyer, I should say. Of course Governments always look during scrutiny at the wording of Bills and at what can be tightened, changed or improved. That is part of the business that we are engaged in today. That is why we are having these debates; that is why we believe in the parliamentary process; that is why I started by saying that my intention was not to blindly drive the Bill through unaltered, but to listen, consider and reflect. That is the approach that I adopt.

The risk in this particular case, and with this kind of Bill, lies in trying to do too much. My right hon. Friend the Member for West Dorset will say, “Yes, but it has to be sufficient,” and of course he is right. The point that he made at the beginning of his remarks was that if we are seeking clarity—and the case that we are making for the Bill is clarity—we cannot end up with something that is not clear. Otherwise, ipso facto, we are not fulfilling our ambitions. This debate is about that clarity.

Let me put this on record and see if it helps. It is likely that the first automated vehicles to reach the market will be usable in automated mode only in specific situations or use cases; we talked about that previously. They will probably be used, in the first instance, on motorways, for obvious reasons. In those terms, to put it in a way that most of us should find easy to grasp—I certainly find it easy to grasp, and if I find it easy, that is fair enough—it is a bit like a combination of what we have now. We have cruise control, which we might use on a motorway, but we probably would not use on a small side road in a rural area. We might use other driver-assist mechanisms currently available that are not automated, but have been developed over time to make driving more straightforward. We use assisted parking only when we are parking or reversing. There is a relationship between developing technology and actual use. That, I think, is how it will be at the beginning of the process—the journey, the road, the mountain; I do not mind which simile I use—that we are embarking on.

Alan Brown: Will the Minister give way?

Mr Hayes: I will give way in a moment; I just want to complete this thought. Manufacturers have spoken about creating geofenced vehicles that would operate in defined parts of the city; others have spoken about systems that would operate on motorways and other high-speed roads. It is likely that the relevant global regulations that will be used to type-approve automated vehicles will reflect such limited-use cases. It is also possible that the regulations will contain requirements that the vehicle be able to detect where it is so that the system cannot be used in other situations.

Therefore, it is not clear that we need to make matching regulatory changes in our domestic framework. If necessary, we can use existing powers—this relates to what I said earlier—in the Road Traffic Act 1988 to revise existing or create new road vehicle construction and use regulations to reinforce the global regulations. That is exactly the point that I would make to my right hon. Friend the Member for West Dorset. If that legal power exists, and as long as the Bill does not counter it—it is a useful addition, but it does not negate any of that—it seems to me entirely possible to deal with those technological changes.

Sir Oliver Letwin *indicated dissent.*

Mr Hayes: My right hon. Friend looks thoroughly unconvinced, so I will happily give way.

Sir Oliver Letwin: I do not think that anybody could possibly be convinced by that, because it does not address the issue. The issue is when the insurer of the vehicle will be liable. It does not matter what regulations are made; they will have no impact on that question if the primary legislation says what it says now and no more. It will remain unclear what will happen in circumstances where it is not clear whether the automated vehicle is driving itself according to the terms of clause 2(1)(a), because it is in transition but failing to transition. That is a problem that the Minister cannot address through regulation; he must address it in the primary legislation if he wants the court to be clear about who is liable.

2.30 pm

Mr Hayes: If it is helpful to explain to the Committee in greater detail and in more technical detail, if I can put it that way, the relationship between the Road Traffic Act and the Bill, I am happy to do so, and to do so in particular relation to the point that my right hon. Friend has just made about responsibility and liability, because he is right that if such a contradiction occurred, the purpose of the Bill would not be fulfilled. So, I am happy to reflect and write on that, and given what the hon. Member for Kilmarnock and Loudoun has said, perhaps that will be beneficial in dealing with his query, too.

Alan Brown: Further explanation might help, but the Minister also said that he could use the Road Traffic Act to create regulations that could deal with this issue, because he said that the Bill is to do with fully autonomous vehicles. However, it still seems logical that, if this is a new Bill to deal with autonomous vehicles, we should deal with the scenario that we know exists—it is a scenario that we have already heard evidence about. There is already what is called the tier 3 or level 3 mode of operation, whereby a vehicle already makes that transition from driving to automated, so it seems logical that we deal with this issue while we are considering the Bill.

Mr Hayes: No, I do not think that I agree with that. We are all, to a lesser or greater extent, experienced legislators, or most of us are, and therefore we know that when a Bill is introduced and then becomes an Act, it certainly needs to be synergistic and compatible with the other, pre-existing measures to which it relates. I am not sure that it always needs to replace them; if that was the case, every Bill would have to be immensely ambitious in its scope.

So I do not think it is impossible to reach a position where, if we can accommodate the requirements of my right hon. Friend the Member for West Dorset, we can end up with an Act that is compatible with existing regulation and that fits—knits, if you like—with it, in as much as the insurance industry can rely on the existing legal framework for the products that it already sells and that the public enjoy—or endure, depending on which way people look at it—and there can be a new set of products that relate to the new technology and that build on the framework that this Bill, which hopefully will ultimately become an Act, delivers. So I am not sure that I agree with the hon. Gentleman.

Alan Brown: The amendment provides clarity, though.

Mr Hayes: The hon. Gentleman intervenes from a sedentary position. Yes, but what I described does not suggest a lack of clarity. It simply says that the existing legislation is obviously clear, because it has given rise to an insurance marketplace that works; the new legislation needs to be clear, as my right hon. Friend the Member for West Dorset; and then the relationship between the two needs to be clear. We have achieved one objective, which has been achieved since 1988 at least; of course, there was legislation before that, but we do not need to deal with that legislation now.

So, I am not sure that those things cannot be squared; in fact, I am certain they can be squared and it is my job to do so. Because it is my job to do so, I am not sure that

I can accept the amendment—although it is entirely understandable, well-argued and designed to help; I know that—not least because it is too detailed for the level of development of the technology and could constrain more appropriate subsequent regulation of the kind that I have described.

Also, ultimately the amendment would not help with the process of determining and apportioning liability in the event of an incident, which will remain the same as it is now, with the courts making judgments based on the facts. I am not sure that the amendment really helps with that, and for that reason I invite—not just invite but recommend—the hon. Member for Eltham to withdraw it.

The Chair: Before I call the next speaker, I gently remind Members that in debates of this nature they may speak more than once on the same amendment. If you are making an intervention, keep it short; if you wish to make long comments, it may be better to do so as a separate speech. Equally, will Members stand to make interventions rather than making them from a sedentary position? That helps both me and, I am sure, the Minister.

Clive Efford: Welcome back to the Chair, Mr Bailey. Do you intend to have a stand part debate? Should I forego my response and just contribute to that debate, or make my response now?

The Chair: Unless you want to cover something that has not been debated to date, you might as well do so now so that we do not need to have a stand part debate. If you want to go in a totally new direction, do not respond now and we will have a stand part debate.

Clive Efford: I will make my points now and then we can move on.

We need to go back to what we are attempting to do with the Bill. Why have it at all? Why not just let the insurance industry decide which vehicles they want to insure and make it up as they go along? We are not doing that; we are actually trying to create a framework to protect the public when these new types of vehicles go on to our roads. We have accepted in principle that we have to legislate to accommodate those vehicles, which are different from the vehicles that we currently have on our roads. The Bill must not allow insurance companies to determine what types of vehicles go on our roads. That is for us; that is why we are here. If the Bill offers the insurance industry too wide a scope, we may end up with vehicles on the roads about which people ask us, “Why did you allow this to happen?”

We heard conflicting comments from witnesses. Mr Wong told us that in an Audi, after a minimum of 10 seconds alarm bells would go off and, if the driver did not respond, the vehicle would eventually bring itself to a halt. That was a description of tier 3. Mr Gooding told us that we should not accept tier 3—we should not have it at all. Mr Boland told us that the service vehicles that he would test on city roads would be fully autonomous but, in the experimental stage, would have a steering wheel and a driver, who would take over immediately with no transitional period whatever, which research tells us is not possible. Even the pointy-headed technocrats who came to talk to us told us conflicting things about transition and how the technology works.

We have to be clear about the vehicles we enable to go on to our roads and the dangers that they may create. The transition issue is important, because the evidence is that it creates dangerous situations.

Mr Hayes: I think—to sound like a script from “Dad’s Army”—that the hon. Gentleman is going into the realms of fantasy a bit. His first point was that we need the Bill because the existing Road Traffic Act is not fit. I did not say that the existing Road Traffic Act was fit for the future, because it does not mention autonomous vehicles. The whole point is that it is fit for what it does but we need the Bill because autonomous vehicles are a growing reality and are likely to become so, as a result of research, at some speed in the coming years.

Secondly, of course it is true that the insurance industry has been involved in the work that led to the Bill; its representatives told us so in the evidence sessions. They not only welcomed the Bill; they have been involved through extensive consultations on what is necessary to build the framework to put the products in place. I think we can be clear about the fact that we need the Bill and that the insurance industry has helped create it, and likes it.

Clive Efford: I accept that the insurance industry is a necessary part of our transport system—we have to have properly insured vehicles—but what the Minister has said alarms me a bit. We have the poachers, not the gamekeepers, in charge of the legislation. Of course the insurance industry would not like to be tied up in knots and would want to be as free as possible to insure the vehicles that they choose to put on our roads, but I would argue that we should have more say.

The issue of transition is important. The right hon. Member for West Dorset put it well—I am in danger of saying that someone put a case for my amendment more eloquently than I am doing myself, but his point is important. At the point of transition, when the driver does not respond to all the warnings that Mr Wong talked about in his evidence, does it then come to the point when the people insuring the technology will say that the technology worked perfectly, but there was an accident, therefore it must be the driver’s fault? That scenario is not improbable and could come about. We would be wrong if we did not recognise that in the legislation.

The Minister also spoke about human error. It is quite right that everyone said that more than 90% of accidents are caused by human error, but it is an obvious point. As all vehicles are currently driven by humans, it is highly likely that when accidents occur, they are caused by humans. Some 5% are down to mechanical error. Although I accept that the safety aspect may reduce the number of accidents, when asked, the witnesses could not defend the suggestion that the proportion of accidents caused by mechanical failure—the failure of technology—will increase, and that 5% will go up. They were silent. We are dealing with an area of safety on our roads that is going to grow as a proportion of the accidents that occur.

The Chair may call me to order, but we have not dealt with the issue of platooning and connected vehicles. Which vehicle is going to take responsibility if an accident is caused by a vehicle in a platoon of vehicles going down a motorway and the vehicle that is behind them is insured by another company? We were told in

the evidence that it is the lead vehicle that guides the other vehicles. There is a whole area to do with connected vehicles and vehicles transitioning between human control and computer control that will need regulating. The Bill is silent on that, which is a flaw. I do not intend to press my amendments to a vote, but I am sure that on Report—

Mr Hayes: Given what the hon. Gentleman has just said, it would perhaps be helpful to repeat what I said in response to him and to my right hon. Friend the Member for West Dorset. I am happy to clarify the issue of transition.

Moreover, at its very heart the Bill will not put vehicles on to the road that are not safe and appropriate, because that is part of what the regulatory environment guarantees. Furthermore, of course, the Bill obliges the Secretary of State to draw up a list of vehicles. The hon. Gentleman, in withdrawing his amendment, can be assured that a good deal of what worries him—and I understand those worries—will be dealt with in the way I have set out.

2.45 pm

Clive Efford: I am grateful to the Minister. I am not convinced, but I will wait for further information from him. I will not push my amendment to a vote today, but these are subjects that we can return to on Report and possibly at even greater length in the other place, as is the tradition of this place. I beg to ask leave to withdraw the amendment.

The Chair: Before we do that, the hon. Gentleman said that the poachers were driving this legislation. In view of the geographical location of the Minister’s constituency, I hope you are not implying that he is the Lincolnshire Poacher?

Amendment, by leave, withdrawn.

Clause 2 ordered to stand part of the Bill.

Clause 3

CONTRIBUTORY NEGLIGENCE ETC

Karl Turner: I beg to move amendment 2, in clause 3, page 3, line 4, at end insert—

“(3) The Secretary of State may by regulations define when it is and is not appropriate for a person in charge of the vehicle to allow the vehicle to drive itself.”

This amendment requires the Government to provide regulatory guidance for when it is and is not appropriate for a person to allow an automated vehicle to drive itself.

It is always a pleasure to serve under your chairmanship, Mr Bailey. I do not intend to keep the Committee terribly long on this issue. As the Bill is drafted, the “insurer or owner of an automated vehicle is not liable” where the event was caused by a person allowing the vehicle to drive itself

“when it was not appropriate to do so.”

The Bill does not define when it is and is not “appropriate to do so”. Our amendment requires the Government to provide regulatory guidance on when it is and is not appropriate for a person to allow an automated vehicle to drive itself.

This goes to points made previously by members of the Committee, not least the right hon. Member for West Dorset. It would clearly not be appropriate in some circumstances for vehicles to drive themselves. For example, early automated vehicles might be deemed

[Karl Turner]

safe to use only on motorways and not on some urban roads; or, for example, a software issue might arise such that using the automated function at that point would be absolutely inappropriate. It appears to me that the true intent of subsection 2 was to focus on bimodal vehicles, because it does not seem to apply to fully automated vehicles. Perhaps the Minister can clarify the position in his response.

One of the primary purposes of part 1 of the Bill is to provide a framework to give insurers, manufacturers and potential users greater clarity, providing confidence and encouraging progress on automated vehicles. However, it is still not clear from the Bill what the Government have in mind about when use of those vehicles would be inappropriate. I do not propose to press the amendment to a vote at this stage; I think the Minister has got the point I am making. It has been made and reiterated several times by members of the Committee. We are simply asking for regulations that better define those circumstances to be brought forward, because we cannot afford any confusion here. People must be absolutely clear where their obligations lie if we are to see the growth of the industry, which is something we all want. We do not want to leave these issues hanging over us.

Sir Oliver Letwin: I will address the points the shadow Minister has raised in a moment. Before I do, I want to come back to a fundamental point about the drafting of clause 3(2)—if you will allow me to do so now, Mr Bailey, rather than in a stand part debate—because it is relevant to the rest of the question. My concern relates to the word “wholly” in subsection (2). We discussed this point earlier today. My right hon. Friend the Minister said to me and the Committee that clause 3(2) was meant to solve the problem that I am worried about, which is that there are circumstances under which strict liability for the insurer of the machine is inappropriate, because the driver may do something either immediately before or some while before handing over to the machine that means he or she should not have handed over to the machine. Those are the very circumstances that the shadow Minister is also concerned about.

The Minister directed my attention to clause 3(2) as the solution. I pointed out then—I will now expand on the point—that if subsection (2) is intended as a solution, it is in desperate need of redrafting. The word “wholly”, which I assume has been inserted mindfully by parliamentary counsel, has a very definite meaning: it means “wholly”. Courts know perfectly well what to do with that when they come across a statute that very unusually—this is not something that we normally find—says that a contributory agency is not contributory, but absolute, and the person in question is wholly responsible. The court will interpret that very strictly, and rightly so, otherwise what on earth are we doing drafting Bills and Acts of Parliament?

There could be a circumstance under which the driver was wholly the cause of the accident. Incidentally, I cannot quite think what that might be. It is a pretty remote circumstance, and I would be interested to know whether the Minister can think of an example, but I accept the possibility of such a thing. Most of the time, however, it will be jolly tricky to work out who is actually responsible.

Let me go back to my example of leaving the motorway, but this time the driver was awake and flicked a switch that specifically made the machine take over. Let us imagine that the technology allowed that—it might or might not, we heard conflicting evidence on that, but suppose that it did—and the driver thought that the circumstances were such that the machine could take over and the machine thought, and that is probably an appropriate word to use, given that it is artificial intelligence, that it was appropriate for the machine to take over. However, they were both wrong. The machine was not good at handling the circumstance and it crashed. The machine got it wrong because it should not have taken over, and the driver got it wrong because they should not have asked the machine to take over. Who has caused the accident? I do not know. I am absolutely sure that there are people who will make millions and millions of pounds, and they are the QCs who will argue such cases in court, along with the rafts of solicitors and the enormous apparatus that goes with that. They will all be arguing about who is responsible.

If we lose the word “wholly”, we eliminate that argument, which I assume is the point of putting it in, because, as clause 3(2) is drafted, it says, “If there is the slightest doubt about whether the machine was in any scintilla of a way responsible for the crash, the driver is not wholly responsible and therefore the machine is wholly responsible, so there is strict liability for the insurer of the machine.” It may be that that is what the Minister wants to do, but it is a very odd thing to do, because the costs of insuring these machines would go up compared with what they would otherwise be. Under circumstances in which the driver was a heavy contributor to the cause of the accident by handing over inappropriately, the insurer of the machine would nevertheless be strictly liable because the machine made one millionth of the contribution to the cause of the accident. That is the effect of clause 3(2) as drafted, and I do not believe that that can be the Minister’s intention. That needs looking at.

Turning to the point made by the shadow Minister on regulations and clarification, I agree that it should be perfectly possible to handle the question of when it is appropriate or not to hand over through secondary legislation. I suspect that it will not be the kind of secondary legislation that we have been used to in the main hitherto. It will be very complicated legislation, because it may have to specify processes rather than results. I do not believe that the technology is likely to develop in a way that will make it obvious to the driver in advance, by reading some kind of guide, when the driver is meant to hand over and when not. I suspect that will be interactive and dynamic, and I suspect that the Minister’s successors—the Secretaries of State who will do such things in regulation—will have to find some way of compelling the manufacturers to create an apparatus that tells the driver in a dynamic and interactive way, as they are driving along, whether, as a matter of fact, it is safe to hand over to the machine or not.

One way in which that could happen is the way we were presented with in the evidence sessions. The machine invites the driver to take over and then there is a simple double rule: only machines that invite drivers, as opposed to giving them instructions, are allowed on the road—and, while we are at it, only those certified by the Secretary of State as being safe when they offer the chance to take

over are allowed—and, moreover, the driver is never allowed to hand over to the machine except when it does offer that. That is a possible configuration. That would be quite a complicated piece of secondary legislation, because it would have to be accompanied by a series of quite complicated technical codes that ensure that it is put into practice and that the cars manufactured fulfil all those requirements.

There are of course many other models, but it is terribly important to recognise that if the Minister wants to achieve clarity here—as I think he does, and rightly so—as well as getting the drafting of clause 3(2) right, so that it is clear under what circumstances there really is liability for the insurer of the machine when there is a mixture of causation, he needs to recognise that there will need to be either a quite large superstructure of regulation that gives us clarity about the circumstances under which handover is appropriate or, at least, processes that make it unnecessary to have such clarity in a set of rules. I hope that he will recognise in his closing remarks that even if the Bill does not give new powers to do that—because he believes he has somehow got them already—he will consider all those questions anon, as well as looking at the drafting of subsection (2).

Mr Hayes: My aim is to do that a lot more quickly than you might imagine, Mr Bailey. I accept entirely that there will be a need for a regulatory framework to ensure both the safe deployment and safe use of automated vehicles. The autonomous insurance measures in the Bill are part of that, but the subsequent regulations that ensue will be part, too. They will be—necessarily—dynamic and, I suspect, quite complex, because this is a complex and evolving field. The reason that it is better done in regulations is obvious: we cannot keep bringing primary legislation to the House in such a highly dynamic set of circumstances. It is therefore absolutely right that it is done in a regulatory framework down the line.

Let me try to deal with the “wholly” issue, because it is important that we do so. If the driver is partly negligent, clause 3(1) applies, and contributory negligence would therefore also apply. Clause 3(2) is there to pick up the limited circumstances in which the driver is wholly at fault—that is, contributory negligence does not apply because it is clear that fault lies with the driver. If we did not include “wholly”, there would be a gap in the scope of the clause, as subsection (1) covers only contributory negligence. That is why the word “wholly” is in the Bill.

Sir Oliver Letwin: I am in a slightly odd position because it is the Minister’s Bill, so I would expect him to understand it better than I can, but I have to say that if that is his intent, the plain words of the text do not do the job. In clause 3(1)(b), it is perfectly clear on the face of it that the accident has to be, to some extent, “caused by the injured party”.

That is not the circumstance we are talking about. We are talking about a circumstance in which the accident is wholly caused by some combination, but unknown, of driver—ex or to be—and machine, not by the injured party, so I do not see how clause 3(1) solves the problem of clause 3(2) having a hole in it.

3 pm

Mr Hayes: My right hon. Friend will understand that the injured party might include the driver; an injured party does not mean an injured third party.

Sir Oliver Letwin: It might, but it might not.

Mr Hayes: Yes, but clause 3(1)(a) says that “an insurer or vehicle owner is liable under section 2 to a person (‘the injured party’) in respect of an accident”, so it covers both the driver or another party. That is repeated in paragraph (b). I do not understand what my right hon. Friend’s problem is.

Sir Oliver Letwin: The Minister is being very patient. Perhaps I am misunderstanding, but I beg the other members of the Committee to read the text:

“Where...an insurer or vehicle owner is liable...to...an injured party...in respect of an accident”.

The injured party is someone who has been injured—that is the reason for the reference to an “injured party”—but if I am the driver and in this case I am not injured, the insurer is not liable to me. I have just handed over control of the vehicle and it has injured somebody else, so I am not an injured party, and the injured party has not contributed to the accident, so clause 3(1)(b)—

“the accident, or the damage resulting from it, was to any extent caused by the injured party”—

does not apply. Clause 3(1) therefore does not apply in such circumstances, so it cannot solve a problem in clause 3(2) because it does not apply to the circumstances that we are talking about under clause 3(2)—or at least not to the circumstances that are worrying the Committee and that we have been talking about more or less all day, which is the question of what happens when I am handing over.

The Chair: Order. That was meant to be an intervention.

Mr Hayes: I am comfortable with the idea that the driver might be the injured party, and my right hon. Friend comfortable with that too. We are clear on the issue of whether the car was being driven by the driver or was in autonomous mode. Is my right hon. Friend concerned therefore about another party, unrelated to the vehicle, who might be affected by the accident? Is that what he is getting at? I do not understand.

Sir Oliver Letwin: I hope that with your indulgence, Mr Bailey—

The Chair: Make it short.

Sir Oliver Letwin: I will try to make it as short as I can, but I am trying to advance the cause of understanding between us by answering the Minister’s question. We are envisaging circumstances in which a driver hands over to the vehicle and the vehicle takes over, but it turns out that it was arguably not safe or sensible for the driver to have done that. The driver was not injured and is not the injured party—the insurer is liable not to the driver, but to someone else who got damaged. That is the injured party. Clause 3(1) does not apply. That is the problem and that is the reason why clause 3(1) cannot solve the problem of clause 3(2).

Mr Hayes: I will reflect on that. It is clear to me when clause 3(1) and clause 3(2) do apply, but it is a reasonable question to ask where the clause does not apply—as my right hon. Friend has described—and what would apply in those circumstances. I am perfectly prepared to reflect and to come back with a clear answer. I am now certain to what he was referring, and that will help in the process of trying to satisfy him.

[Mr John Hayes]

I was not able to be as short as I had hoped—I began this brief contribution by saying just how brief it would be. In respect of the shadow Minister, I think I have been clear that it is likely that the first autonomous vehicles will be used, as I said, in particular circumstances—earlier I talked about geofencing. It is likely that the global regulations that will be used to type approve autonomous vehicles will reflect those limited cases. It is therefore not yet clear that we will need to make matching regulatory changes in our domestic framework, as I have also said.

We do have the powers under the Road Traffic Act, as I said in response to an earlier intervention, to revise or create new road vehicle construction and use regulations. In that sense, the amendment would duplicate existing powers so really it is superfluous. Its intention is good, because it intends to do what I have just described, but I am not sure that for this purpose it is the right vehicle—I hesitate to use that term because, as so often in the

debate so far, we are speaking about roads, journeys and vehicles. None the less, I am confident that we have enough powers and are taking enough powers, through the application of the regulations that I have said will ensue, to satisfy what the hon. Member for Kingston upon Hull East intends. On that basis, I hope that he will withdraw the amendment.

Karl Turner: I am happy to confirm that I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 3 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.
—(Andrew Stephenson.)

3.6 pm

Adjourned till Tuesday 14 November at twenty-five past Nine o'clock.

Written evidence reported to the House

AEVB 07 British Vehicle Rental and Leasing Association
(BVRLA)

AEVB 08 IAM Roadsmart
AEVB 09 Association of Convenience Stores (ACS)
AEVB 10 Joint submission from academics at the
University of Exeter and Koç University

