



2022 motor transport forecast: trends and future risks

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Foreword

The road transport landscape is changing, with disruptive technology as well as social, economic and environmental factors all influencing the direction of travel.

The UK Government's [Future of Transport Programme](#) has observed that “electrification, connectivity, automation, and real-time data collection and analysis are driving the development of new modes of travel and new ways to do business”.

In addition, we are seeing the emergence of technology that “will drive radical changes in transport in the next 10 years”. From electric vehicles, to micromobility vehicles and early vehicle automation, along with the development of policy and the regulatory framework to support it.

Maintaining its focus on technological innovation, the Government continues to strive to ensure the UK is at the forefront of emerging automated technology with regard to the improved safety aspects, as well as the commercial and environmental benefits that such technology can bring. To that end we have seen a number of important developments in the policy space.

Throughout the pandemic we have also seen a socially distanced commuting public accelerate the role that micromobility vehicles may play in the future. In particular, there has been a marked increase in the use of e-scooters, which by their nature are single-user vehicles.

Alongside this, the growth of the electric vehicles market in the UK is expected to accelerate ahead of the ban on new petrol and diesel car and van sales from 2030, announced by the Government in November 2020.

New technologies, however, bring opportunity and risk, both of which are most often finely balanced. Success or otherwise is largely dependent on the impact on the particular ‘ecosystem’ in which that technology will operate.

What is clear is that an ever-evolving road transport system will require a legal and regulatory framework that can respond to change and adapt with developments in technology.

Changes to that framework are underway. Here we look at the recent steps that have been taken and, as part of this evolving landscape, we then go on to consider a number of associated emerging risks and challenges for insurers and other key stakeholders, with a focus on e-scooters and electric vehicles.

Legal and regulatory developments

2021 saw a number of significant developments that will shape the future legal and regulatory road transport framework in the UK. 2022 promises much of the same. Here, we highlight the key developments around micromobility, autonomous vehicles, the transition to zero emission vehicles, a proposed Road Collision Investigation Branch, and the Motor Vehicles (Compulsory Insurance) Bill.

Micromobility: e-scooters

Whilst the gradual easing and eventual lifting of all COVID-19 restrictions in England on 21 February 2022 has seen an increase in those returning to public transport, the pull towards alternative means of transport, particularly for the first and last mile, is strong.

Recognising the potential role for micromobility vehicles, the UK Government is currently undertaking rental e-scooter trials. Brought forward as a result of the pandemic and expanded in scope across the country, they are currently available in approximately 30 areas.

However, several trials have been curtailed or cancelled by local authorities due to misuse or abandonment of e-scooters. Originally due to conclude in July 2021, the trials have been extended until November 2022.

Under the existing regulatory regime most, if not all, micromobility vehicles are considered motor vehicles. As such they require registration, licensing, testing, plating, an appropriate level of driving license and critically, mandatory third-party motor insurance cover.

On 4 July 2020 legislation introduced by the Department for Transport (DfT) - The Electric Scooter Trials and Traffic Signs (Coronavirus) Regulations and General Directions 2020 - came into force to enable trials of rental e-scooters across the UK, with their use permitted on public roads and cycles only.

Outside of those trials, and despite it being illegal to do so, an increasing number of privately owned e-scooters are being used on public roads and in public places. This indicates that users are unaware of the current law and regulatory framework, or choose to ignore it.

Enforcement of the law appears sporadic. Very few users of e-scooters take out third-party liability insurance - the proverbial genie is out of the bottle.

With e-scooters capable of causing significant or fatal injury, and/or damage to other road users and adjoining properties, the spotlight is firmly on how micromobility vehicles should be classified for regulatory purposes.

Figures published by the DfT on 25 November 2021 provided some insight into e-scooter collision and casualty trends. The UK Government estimated there were “253 seriously injured and 675 slightly injured casualties” during the 12-month period ending June 2021.

An interim report on the data collected from the trials so far is awaited, with a final report to follow, providing an evaluation of the trials and any next steps. It is also worth noting these statistics do not distinguish between incidents relating to privately owned and rental e-scooters.



Autonomous vehicles

2021 was the year the Government had targeted for fully self-driving vehicles to be on UK roads, an objective set out by the then Chancellor Philip Hammond in the Autumn 2017 Budget.

Although this ambitious plan is yet to be realised, 2021 saw significant strides towards making it a reality with the Government restating its commitment “to supporting the development and deployment of automation in road vehicles”.

Automated lane keeping system technology

The introduction and roll-out of [automated lane keeping system](#) (ALKS) technology could potentially be the vanguard to autonomous technologies being deployed on a wider scale across the roads of Great Britain.

Outcome of DfT Call for Evidence on ALKS technology

Having launched a Call for Evidence on the use of this ‘lane keeping’ technology on Great Britain’s motorways in August 2020, the DfT [published its findings](#) on 28 April 2021.

The consultation asked for views on the safe use of ALKS in heavy traffic conditions at speeds of up to 37mph, along with exploring its potential application at up to

70mph.

On the use of ALKS up to 70mph, a “small majority of respondents opposed the idea of allowing ALKS vehicles to drive up to 70mph, many because they consider ALKS to be unsafe and that current technology does not support safe operation at higher speed”.

Other respondents pointed out that the ten second period to respond to a transition demand may be “too long for operation at a higher speed”.

The DfT’s Call for Evidence was recognised by the then Parliamentary Under-Secretary for the Department of Transport, Rachel Maclean as an important milestone in the UK’s journey to implementing self-driving vehicles. Recognising the need to ensure the new tech is deployed safely, the Minister said:

“ This is a major step for the safe use of self-driving vehicles in the UK, making future journeys greener, easier and more reliable while also helping the nation to build back better. ”

The next steps include commissioning research “to scope the technical requirements needed for enabling motorway-based automated driving systems to operate at higher speed and change lanes”.

Highway Code to be AV ready

One corollary of the technological advances in road transport is the need to adapt road rules to address the use of artificial intelligence. Proposed changes to the Highway Code are an acknowledgment of this.

DfT consultation on proposed additions to the Highway Code

Alongside the outcome of the Call for Evidence for ALKS, on 28 April 2021 the DfT also launched a consultation on proposed additions to the Highway Code “to ensure the first wave of this technology is used safely and responsibly”.

Recognising the merit in adapting the Code, Kennedys has called for [some adjustment to the proposed wording](#) in respect of the level of attention to the vehicle and road required by users of automated vehicles when in autonomous mode.

This, we believe, is particularly important in the context of being properly cognisant of (and able to respond to) transition demand signals and to take back control in a reasonable time period.

The consultation closed on 28 May 2021 and the DfT are currently analysing the feedback.

“It is all too easy to see how, unless properly informed by a public education information campaign, users may assume, for example, that an intelligent cruise control system or assisted lane keeping system is ‘fully autonomous’.

This assumption risks reducing their attention and involvement in the driving of the vehicle in error, when the vehicle was not in fact capable of fully autonomous mode.”

Niall Edwards, Partner, Sheffield

Law Commissions: a new legal and regulatory framework

Whilst we have the [Automated and Electric Vehicles Act 2018](#), this was very much a first step, and further legislation and regulatory regimes are now expected.

Arriving slightly later than expected, another important milestone was reached on 26 January 2022. Following a three-year review, the Law Commission of England and Wales and the Scottish Law Commission published their joint report on the legal and regulatory framework necessary for the [safe introduction of self-driving vehicles](#).

The report - a culmination of three very detailed consultation papers published between 2018 and 2020 - provides 75 recommendations, including the introduction of a new Automated Vehicles Act “setting out new regulatory schemes and new legal actors”.

The recommendations also reflect that consultees “expressed a strong desire for a clear bright line between systems which require attention and those that do not, to minimise the potential for confusion between the two”.

For an automated driving system (ADS) feature to be self-driving, the Law Commissions have recommended that:

“The authorisation authority must be satisfied that it can control the vehicle so as to drive safely and legally, even if an individual is not monitoring the driving environment, the vehicle or the way that it drives.”

The Law Commission of England and Wales and the Scottish Law Commission



The report adds that a new ‘authorisation’ scheme to determine whether “any given ADS feature is or is not self-driving as a matter of law... will distinguish between good (possibly very good) driver assistance features and those which are safe enough to allow the vehicle to drive itself”. Alongside this, the report highlights the important distinction in how vehicles with different systems are marketed.

Kennedys partner Niall Edwards stated that “it is right for the Law Commissions to highlight the important distinction to the way vehicles that are ‘driver assisted’ rather than ‘self-driving’ are marketed. The public need to fully understand the differences and a harmonisation of terminology is essential. Ultimately, underpinning any successful implementation of self-driving vehicles will be public confidence”. He added that:

“The Law Commissions should be congratulated for their thorough work over three consultations leading now to the practical recommendations for self-driving vehicles in this report. The devil, of course, will be in how the details are developed by government.”

Niall Edwards, Partner, Sheffield

With the report having been laid before the UK and Scottish Parliaments, it is now for the UK, Scottish and Welsh Governments to consider and determine whether the recommendations are accepted and if so, to introduce the legislation required.

Transition to zero emission vehicles

As part of its Future of Transport regulatory review programme, the Office of Zero Emission Vehicles [launched a consultation](#) on new primary legislation that would introduce, “a statutory obligation to plan for and provide charging infrastructure”.

One option proposed is for that duty to be placed on the Local Authorities in England & Wales. Alternatively, the duty could rest with the charge point operators or energy companies.

The consultation is part of the wider review that included consultations on maritime autonomy, the future of flight, and modernising vehicle standards. It aims “to address areas of transport regulation that are outdated, a barrier to innovation, or not designed with new technologies and business models in mind”.

A Government response to the consultations is awaited, with indications being that substantive legislative reform will be required.

While it is imperative that regulation adapts to technological advancements, caution must be exercised in light of the potential additional risks to insurers arising from the current proposals.

Proposed Road Collision Investigation Branch

In October 2021 the DfT sought views on creating a [Road Collision Investigation Branch](#) (RCIB), described as “a dedicated body to investigate causes of road traffic collisions.”

The primary aim of the RCIB would be to carry out thematic investigations and probe specific incidents of concern to establish the causes of collisions and make independent safety recommendations to help improve road safety across the country.

It is proposed that the RCIB should cover all manner of road vehicles, in order to keep pace with the changing technological landscape on our roads.

Setting up a counterpart for the branches that already exist for rail, air and maritime accidents could mean greater cooperation and unified thinking that lead to the roll-out of preventive measures.

However, with regard to the remit of the proposed RCIB, we consider any suggestion that would enable it to make determinations of blame or liability as problematic and potentially unworkable. The principle that a RCIB should be a neutral body whose aim is to focus on the learning and adoption of safety lessons, would be compromised if it were seen to be involved in apportioning blame.

We have recommended that the proposed RCIB’s constitution and culture be carefully designed, with an appropriate legal underpinning, to ensure that neutrality and no-blame lesson learning be enshrined and protected.

The outcome of the consultation is awaited.

“If the proposed RCIB is fully resourced and the limits of its powers sensibly and properly delineated, it could well be a positive step for all road users and those involved in the wider motor industry.”

Naomi North, Partner, Birmingham

Motor Vehicles (Compulsory Insurance) Bill: removing the effects of *Vnuk*

On 21 February 2021, the UK Government announced its decision not to follow the Court of Justice of the European Union (CJEU) decision in [Vnuk v Zavarovalnica Triglav dd \[2016\]](#).

The Government’s decision was widely welcomed by the UK insurance market and the Motor Insurers’ Bureau (MIB). Following *Vnuk*, a wider range of vehicles could have fallen within the scope of compulsory insurance requirements had the CJEU’s decision been enshrined into UK law.

Motor Vehicles (Compulsory Insurance) Bill

A [ministerial statement](#) published on 29 June 2021 reiterated the government’s commitment “to remove the effects” of the *Vnuk* decision and its intention to continue exploring “bringing forward the necessary legislation as soon as parliamentary time allows”.

In that context, reference was made to the introduction of a Private Member’s Bill. The [Motor Vehicles \(Compulsory Insurance\) Bill](#) “aims to deliver the necessary legislative change”, with the statement noting that its passage will be followed “with interest” by the Government.

The Bill was introduced to Parliament on 21 June 2021, and having completed the



various stages of review in the House of Commons, the committee stage line by line examination of the Bill took place in the House of Lords on 29 March 2022.

In Northern Ireland, motor insurance is a devolved matter. Following completion of the legislative passage of an equivalent Bill (of the same name) in March 2022, compulsory insurance requirements will remain confined to the use of motor vehicles on roads and other public places. It is anticipated the NI Bill will be enacted by May this year, which perhaps increases the likelihood of the equivalent UK Bill being successfully passed.

“ Whilst it is questionable whether legislative change is required to counteract the impact of *Vnuk* (bearing in mind the Road Traffic Act 1988 had not been amended to comply with the CJEU’s decision in the first place), legislative change should bring clarity.

This ministerial statement also further reiterates the government’s willingness to divert from EU law, something which is unlikely to have been feasible but for Brexit. ”

Rachel Moore, Partner, London

This trend for regulatory reform and the themes prioritised in 2021 look set to continue throughout 2022.

Key topics to watch in 2022

Having looked at the key legal and regulatory developments, we now consider a number of the associated emerging risks, with a focus on e-scooters and electric vehicles.

E-scooters: where will Government land on regulation?

In the coming months of 2022, we may have greater clarity on how e-scooters will be classified and therefore what regulation they will be subject to.

Classification more akin to electrically-assisted pedal cycles or bicycles and less akin to mopeds or motorbikes would remove the need to carry mandatory third-party insurance cover.

The existing mechanisms and frameworks that provide a safety net for innocent parties injured in road traffic accidents caused by uninsured and/or untraced drivers would not provide protection. The fear of there being no insurer of last resort for innocent parties in those circumstances is a very real one.

First and third-party cover has been afforded to the various hire companies now trialling e-scooters under test conditions. Insurtech companies are likely to play an important role in providing insurance products in this space.

It remains to be seen to what extent household or motor insurers will offer bespoke insurance or will extend and provide gap insurance to cover first and third-party loss on privately owned e-scooters.

Whilst it seems unlikely that existing household policies would extend to cover third-party cover for privately-owned e-scooters, it is at least possible this could happen if e-scooters are categorised as a non-motor vehicle.

With the future direction of regulation as yet to be determined, insurers will certainly need to check to ensure their primary or add-on products do not unintentionally extend to cover e-scooters.

Other stakeholders will equally have concerns. Local authorities will be wary of the implications of mass introduction of e-scooters to urban centres and the related infrastructure costs, the potential requirement for wider provision of and capacity for lane segregation of micromobility vehicles.

Whilst many e-scooters will be charged in public areas, some larger employers will need to start to address charging and storage facilities on-site and will need to risk assess the potential public and employer liability claims that may follow.

Electric vehicles (EVs): emerging risks

As with any new technology, there are several multifaceted [potential risks](#) which are likely to present challenges in establishing where liability, and ultimately responsibility for recompense, rests. Liability insurers and their insureds will need to give careful consideration to these emerging risks and related potential claims.

“ Although product liability insurance is likely to be the main focus for EV related losses, other types of liability insurance (such as employers’, public, cyber, motor, property and environmental) could also be affected.

This is already being recognised with the emergence of bespoke policies to address these risks, helping to facilitate the transition to EVs and the benefits they offer. ”

Karishma Paroha, Legal Director, London

Lower noise levels

A sound generator known as an Acoustic Vehicle Alert System (AVAS) – activated at speeds below 12mph to alert visually impaired pedestrians and assist other vulnerable road users - has been mandatory for all new electric and hybrid vehicles (HVs) registered in the UK from 1 July 2021.

However, concerns remain that drivers might be able to pause their AVAS, thereby switching off the sound.

While all new electric vehicles registered in the UK from 1 September 2023 will be prohibited from installing an AVAS pause switch, there have been calls for this change to be implemented sooner and for older vehicles to be retrofitted.

Software malfunctions and cyber attacks

As the technology, software and systems employed within EVs become increasingly sophisticated, connected and automated, this is likely to give rise to increased potential for cyber risks, including software malfunctions and also malicious cyber-attacks on EVs and their charging stations, targeting for example their operating systems and user billing details.

Fire hazards

Views are divided on the different types of EV batteries. Both nickel manganese cobalt and lithium-ion phosphate batteries can potentially overheat with the risk of intense fire. These batteries also store substantial amounts of energy that could give rise to an explosion if not dealt with correctly, even after being discarded.

Workplace hazards

The Health and Safety Executive (HSE) has identified that EVs and HVs also introduce hazards into the workplace in addition to those normally associated with general repair and maintenance. These include the presence of high voltage components capable of delivering a fatal electric shock, even when a vehicle is switched off, and that vehicles may move unexpectedly due to magnetic forces within the motors.

There are also manual handling risks associated with battery replacement, given their weight and the potential for the release of toxic liquids/chemicals and explosive gases if batteries are damaged or incorrectly modified. The HSE has also highlighted the potential for the electrical systems of EVs to affect medical devices such as pacemakers.

In similar terms to the concerns that e-scooters may present to employers who provide storage and charging facilities, the fire and workplace hazards highlighted here present the risk of potential claims, as well as reputational damage.



Skills shortage

A shortage in the motor mechanic workforce qualified to service and repair EVs – at least in the short and medium term – presents a further workplace hazard, should attempts be made to work on EVs by mechanics/technicians that have not had the requisite training. This skills shortage is also impacting repair delays and motor accident claim costs.

“ Insurers expense ratios are changing, particularly as a result of the challenges presented in connection with the repair of EVs following collisions. Whilst there are a large number of mechanics that specialise in the repair of combustion engine vehicles, there are far fewer specialists who deal with repairs of EVs, leading to longer delays and consequently increased costs for insurers through replacement hire charges.

Pressures on fuel costs may lead to a greater acceleration towards the uptake of electric vehicles. ”

Ian Davies, Partner, Birmingham

This acceleration towards EVs may in turn exacerbate the impact on insurer expense ratios - at least until there is a sufficient increase in the number of specialist mechanics.

Highway authority and street charging: potential claims

For drivers with street parking only, the [On-street Residential Charge Point Scheme](#) allows EV owners to ask their local authority to install charging devices. However, charging an EV is not ideal for those with no off street parking. Many vehicle owners will need to run a cable across a footpath/pavement – something which is already being seen – which raises the question of who will be liable if a pedestrian trips and falls over the cable?

“ Where vehicles are being charged in a public place, owners must ensure they are not creating a hazard to the public. Whilst a claim is likely to be brought against the vehicle owner for injury caused by tripping, it may be that the local authority is pursued, as highway authority, in the hope of a better chance of recovery. ”

Mandy Williams, Senior Associate, Sheffield

“ In the UK, a specific electric vehicle policy isn't required to cover an EV. However, some insurers have developed bespoke EV insurance policies. These bespoke EV policies include risks associated with charging cables, although the coverage of the cables will vary from policy to policy. ”

Caroline Elson, Senior Associate, Leeds

Key contacts | get in touch

If you would like to discuss any of the issues raised in this report in more detail, please reach out to your Kennedys client relationship partner or get in touch with any of the contacts listed below.

To find out more about our services, expertise and key contacts, please [visit our website](#).

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