EXPLANATORY MEMORANDUM TO

THE ROAD VEHICLES (CONSTRUCTION AND USE) (AUTOMATED VEHICLES) ORDER 2022

2022. 470

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 Regulation 109 of The Road Vehicles (Construction and Use) Regulations 1986 (S.I. 1986/1078) ("regulation 109") prohibits drivers from being in such a position as to be able to see television-receiving apparatus or other cinematographic apparatus while driving. A contravention of this is a criminal offence under section 42 (breach of other construction and use requirements) of the Road Traffic Act 1988 ("the RTA"). This instrument modifies the effect of regulation 109 to enable drivers of vehicles listed as 'automated' under the Automated and Electric Vehicles Act 2018 ("the 2018 Act") to be in such a position as to be able to see information of any sort, including information not relating to driving the vehicle, on the in-built apparatus (such as a vehicle infotainment screen) of their vehicle, provided their vehicle is driving itself and is not requesting the driver to take over control.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is made to come into force alongside a proposed amendment to The Highway Code[1], which explains the capability of automated vehicles ("AVs") and rules on their use, including driver responsibilities. These vehicles are referred to as AVs or as self-driving vehicles in The Highway Code. The proposed Highway Code amendment on self-driving vehicles reflects the effect of this instrument.

4. Extent and Territorial Application

4.1 This instrument applies to Great Britain.

4.2 This instrument extends to Great Britain.

5. European Convention on Human Rights

5.1 As the instrument is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

6.1 This instrument is made under section 44(2) (authorisation of use on roads of special vehicles not complying with regulations under section 41) of the RTA. This allows the

[1] https://www.gov.uk/government/consultations/safe-use-rules-for-automated-vehicles-av

Secretary of State to make an order which modifies the application of Regulations about the construction and use of vehicles made under section 41 (regulation and construction, weight, equipment and use of vehicles) of the RTA, to new or improved types of motor vehicles, or vehicles equipped with new or improved types of equipment.

6.2 Regulation 109 was made under section 41 of the RTA. It prohibits a person from driving, or causing to be driven, a motor vehicle on a road if a driver is in such a position as to be able to see, whether directly or by reflection, a television receiving apparatus or other cinematographic apparatus used to display anything other than certain specified information relating to driving the vehicle. Section 42 of the RTA makes it a criminal offence to contravene this regulation.

6.3 The Government has committed to enabling commercial deployment of vehicles type-approved to the United Nations Economic Committee for Europe (UNECE) Automated Lane Keeping System ("ALKS") Regulation[2] on UK roads. These systems may be capable of meeting the legal definition of an AV in section 1 of the 2018 Act (listing of AVs by the Secretary of State). Where an AV is driving itself within the definition in section 8(1) (interpretation) of the same Act, the driver is no longer required to monitor the road and so it is appropriate to set specific rules on its use.

7. Policy Background

What is being done and why?

7.1 The law is being amended to enable drivers of AVs to view content not related to driving the vehicle, through the vehicle's in-built apparatus when the AV is driving itself and not requesting the driver to take over control.

7.2 88% of road collisions are caused by human error[3]. Regulation 109 prohibits drivers from being in such a position as to be able to see television-receiving apparatus or other cinematographic apparatus while driving, to ensure the driver is not distracted and is driving with a full view of the road ahead.

7.3 AVs have the potential to reduce human error and therefore improve road safety since they must be able to at least in some circumstances, safely drive themselves without the need for a driver to monitor the road environment. AVs which are only permitted to activate the automated feature in certain conditions will be able to recognise circumstances under which they are no longer able to drive themselves and they will request the driver to take over control: this is a planned procedure, (designated as a 'transition demand' in the ALKS regulation), which allows the driver some time to gain awareness of their surroundings and the traffic situation before they take safe control and begin driving the vehicle. Drivers must remain receptive and ready to intervene when an AV issues a transition demand or similar request.

7.4 AVs will therefore change the role and responsibility of the driver and it is necessary to amend the law to ensure it does not place disproportionate requirements on drivers

[2] UN Regulation No 157 – Uniform provisions concerning the approval of vehicles with regards to Automated Lane Keeping Systems [2021/389]. See document TRANS/WP.29/343, available at:http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29fdocstts.html

[3] Bespoke calculation by the Department for Transport road safety and statistics team with data from 2020.

in the light of technological advances. A review of research[4] showed that drivers will wish to engage in other activities while AVs are driving themselves, and drivers can do so safely provided such activities do not prevent them from responding to a vehicle's request to resume control. The intention of this instrument is therefore to enable drivers to engage in such activities using the vehicle's in-built infotainment system, since this system is designed to cut out such activities when the vehicle issues a request to resume control, and so the system will assist in managing the driver's attention. The review of research mentioned above suggests that performing activities not related to the driving task through handheld devices has a marked impact on the time drivers take to respond to transition demands. Handheld devices may also continue to display information after the transition demand is issued and further distract the driver. Therefore no changes are being made to the prohibition on use of handheld devices set out in regulation 110 of The Road Vehicles (Construction and Use) Regulations 1986.

7.5 The UK is a signatory to the UNECE agreement on type approval for road vehicles. Under this agreement, Government is committed to enabling the safe deployment of vehicles compliant with certain regulations on vehicle type approval. This includes the UNECE ALKS Regulation, which came into force in January 2021 and sets out specifications for a type of automated driving system that might meet the criteria for an AV under the 2018 Act, i.e. be considered to be 'self-driving' vehicles as referred to in the proposed The Highway Code amendment[5] . The Government wishes to amend and clarify the rules on use of vehicles listed as automated before their commercial deployment in the UK.

7.6 In January 2022, The Law Commission for England and Wales published a joint report[6] with recommendations for a new legal framework for AVs, which requires new primary legislation. Government is currently considering the recommendations but, since commercial deployment of AVs is expected to take place before a new legal framework can be created, measures such as this instrument are needed in the interim.

What will the instrument now do?

7.7 The instrument makes a limited modification to regulation 109 to enable drivers to be in such a position as to be able to see any kind of non-driving related information, on the in-built apparatus of an AV, so long as it is driving itself and is not requesting the driver to resume control. This would otherwise be prohibited under regulation 109. Such apparatus is designed to stop displaying this kind of prohibited content when the vehicle requests the driver to resume control, so this will assist in managing the driver's attention and response to such requests.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

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[4] https://www.gov.uk/government/consultations/safe-use-of-automated-lane-keeping-system-on-gb-motorways-call-for-evidence/outcome/annex-a-research-on-the-safe-performance-of-other-activities-in-conditionally-automated-vehicles

[5] See footnote to paragraph 3.1.

[6] Automated vehicles: Joint Report, published on 25 January 2022 at https://www.lawcom.gov.uk/project/automated-vehicles/. ISBN 978-1-5286-3149-5

9. Consolidation

9.1 The instrument modifies the application of regulation 109, rather than amending it. Therefore, there is no intention to carry out a consolidation of the instrument at present.

10. Consultation outcome

10.1 A public call for evidence (CfE) on the Safe Use of Automated Lane Keeping System was published in August 2020[7], and a summary of responses was published in April 2021. In total, 186 responses were received, from individuals, manufacturers, insurers, road safety organisations, local government, enforcers, academia and legal firms.

10.2 In the ALKS CfE, stakeholders were asked if drivers should be allowed to perform other activities when ALKS is activated if they must only be ready to respond to transition demands. 45% of respondents said no, 32% said yes, and the remainder did not respond or said 'don't know'. Many stakeholders who said no justified their position with concerns about the safety of ALKS technology and which led them to propose that the driver should remain attentive to the road at all times to mitigate safety concerns. Some expressed concerns about the impact of performing other activities on the ability of drivers to respond to transition demands in time. However some respondents noted that enabling use of the vehicle infotainment apparatus could assist in managing driver attention and timely responses to transition demands because it stops displaying prohibited non-driving related content after a transition demand. A considerably larger proportion of respondents were against allowing drivers to perform other activities in vehicles with ALKS technology if these vehicles are not listed as automated.

10.3 Government responded to the comments received by announcing that it expects vehicles with ALKS technology to meet the definition of an AV in the 2018 Act, although such decisions will be made on a case by case basis after considering the evidence available for each system. Government also considered it reasonable to allow drivers to perform other activities only in AVs which are driving themselves, provided the in-built apparatus enabling the other activities to be performed cuts out when the vehicle requests the driver to take over control, and undertook to carry out a longer term review of regulation 109. However, due to the imminent commercial deployment of vehicles with ALKS technology, a limited modification to the effect of regulation 109 is justified until the review is completed.

11. Guidance

11.1 A proposed amendment to The Highway Code[8] to clarify driver responsibilities and rules on use of AVs, including the effect of this instrument, is being laid in parliament and will be communicated to road users and enforcers. Government is working with stakeholders to develop and disseminate messages on driver responsibilities and rules on the use of AVs before their commercial deployment, which will also explain the legal position on drivers performing other activities while these vehicles are driving themselves.

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[7] https://www.gov.uk/government/consultations/safe-use-of-automated-lane-keeping-system-on-gb-motorways-call-for-evidence

[8] See footnote to paragraph 3.1.

12. Impact

12.1 Since the measure is deregulatory there will be no significant costs for businesses, charities, voluntary bodies or vehicle and other road users. The instrument applies to all vehicles listed as automated under the 2018 Act, so will cover listed vehicles compliant with the ALKS Regulation (including its future amendments). A de minimis impact assessment (DMA) was conducted on the costs to businesses related to the amendment of regulation 109 to enable the use of infotainment system in self-driving vehicles when the user is not in charge of the driving task. As the estimated cost was below the DMA threshold of £5m per year the Better Regulation Unit was able to approve the DMA.

12.2 The main benefit of this instrument arises from drivers being able to use the vehicle's in-built infotainment apparatus for either leisure or work (which may be very helpful for professional drivers). This will make AVs more desirable, driving faster uptake and development of the technology. There are also potential benefits for all companies which develop solutions for performing activities through infotainment apparatuses.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The legislation enables drivers of AVs to use the infotainment system when they are not responsible for driving the vehicle, and this will be the same for all AV manufacturing businesses regardless of size. Given this instrument primarily impacts on consumers, and does not significantly impact on any businesses, it is not thought appropriate to exempt small businesses, or that they require special provisions.

14. Monitoring & review

14.1 Since this is new technology, Government will monitor how it is used, and consider whether new legislation on use is required.

15. Contact

15.1 Bruno Viegas at the Department for Transport, Telephone: 07971144149 or email: Bruno.Viegas@ccav.gov.uk can be contacted with any queries regarding the instrument.

15.2 Isobel Pastor, Deputy Director for Connected and Autonomous Vehicles, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.