

Association of British Insurers, Thatcham Research & British Insurance Brokers' Association Response to Future of Transport Regulatory Review: Modernising Vehicle Standards

About the Association of British Insurers (ABI)

1. The Association of British Insurers is the voice of the UK's world-leading insurance and long-term savings industry. A productive and inclusive sector, our industry supports towns and cities across Britain in building back a balanced and innovative economy, employing over 310,000 individuals in high-skilled, lifelong careers, two-thirds of which are outside of London.
2. Our members manage investments of nearly £1.7 trillion, collect and pay over £16 billion in taxes to the Government and support communities across the UK by enabling trade, risk-taking, investment and innovation.
3. We are also a global success story, the largest in Europe and the fourth largest in the world.
4. The ABI represents over 200 member companies, including most household names and specialist providers, giving peace of mind to customers across the UK.

About Thatcham Research

5. Thatcham Research is the motor insurers' automotive research centre. Established by the motor insurance industry in 1969, the centre's main aim is to contain or reduce the cost of motor insurance claims whilst maintaining safety standards.
6. A founding member of the international 'Research Council for Automobile Repairs' (RCAR), Thatcham Research has also been a member of the European New Car Assessment Programme (Euro NCAP) since 2004.

About the British Insurance Brokers' Association (BIBA)

7. BIBA membership includes around 1800 regulated firms, employing more than 100,000 staff. General insurance brokers contribute 1% of GDP to the UK economy; they arrange 67% of all general insurance with a premium totalling £65.1bn and 81% of all commercial insurance business. Insurance brokers put their customers' interests first, providing advice, access to suitable insurance protection and risk management.
8. BIBA receives hundreds of thousands of enquiries per year to its Find Insurance Services, online and via the telephone, which are directed to insurance broking firms.
9. BIBA is the voice of the sector advising members, Government, regulators, consumer bodies and other stakeholders on key insurance issues.

Executive Summary

10. The Association of British Insurance, Thatcham Research, and British Insurance Brokers' Association agree that regulation plays a big role in modernising vehicle standards. However, this consultation lacks specificity on how regulation is going to be changed to improve safety, security and environmental outcomes. The questions are quite broad and there are concerns that extensive regulatory powers could hamper progress and innovation. Poorly drafted or unnecessary regulation could reduce standards, affect the freedom of vehicle owners, and negatively impact competitiveness.
11. The Government should continue to consult and work with various stakeholders to develop this new framework. There is a great opportunity to modernise vehicle standards, but a more detailed view must be taken in order to implement these changes properly.

Consultation Questions and responses

Do you agree or disagree with our overall intention relating to modernising vehicle standards?

12. Agree

Overall, what are your comments on our intention?

13. Rapid changes in vehicle technology can bring about enormous benefits and regulations that do not adapt to these changes can hamper innovation and progress. The framework could be significantly improved if it explicitly defined the area of impact to contain 'whole life safety' and sustainability within its parameters.
14. Even within the issues of 'whole life safety' and sustainability, there needs to be more nuance in dealing with these issues. For example, new mobility such as e-scooters have been sold as environmental-friendly but, in reality, have a limited service life before they are scrapped thereby producing a significant amount of waste. Another example is around the importance of ensuring that there is a sufficient supply of replacement batteries given the increase in sales of electric vehicles. Without this, relatively new vehicles could be written off as uneconomical to repair after relatively minor damage to the battery. Additionally, new technologies such as over-the-air updates require different standards and monitoring processes.
15. Overall, a wider stakeholder-based process could be useful. Grouping such issues under a theme of 'whole life safety' and sustainability would provide a much clearer focus on these issues and help to ensure the new framework does not miss aspects that later prove important.

A modern framework for modern vehicles – regulating safety, security and environmental performance

Overall, do you agree or disagree with the package of proposals stated? Why and what are your comments on any of the specific proposals?

16. Agree

Why and what are your comments on any of the specific proposals?

17. A regulatory system that fosters innovation is important when considering the urgent need to decarbonise transport and improve road safety. The proposal to modernise vehicle standards would in theory allow the Government to quickly adapt the regulatory framework to respond to advancements in vehicle technology and facilitate the development of new vehicle categories that were not envisaged when the retained EU legislation was drafted. However, it is of even greater importance that appropriate standards for safety and environmental performance are applied.
18. Certainty and harmonisation can offer benefits to industry, and this includes innovative and disruptive companies. If the framework is continually adjusted or specific requirements are applied to certain vehicle 'types' or 'categories,' then it can become very difficult and expensive for manufacturers to comply.
19. Furthermore, applying UK-specific requirements that differ from the international norm can make products comparatively expensive and potentially have a detrimental impact on the competitive nature of the UK's automotive market.
20. Overall, there are certainly advantages to developing powers to allow more deviation from retained EU standards in relation to innovative vehicles, but there are also risks. Greater care needs to be taken to develop a framework to govern how these powers are exercised by the Government.

What aspects or potential applications of the proposed powers do you think:

Are particularly important for us to take forward and why?

21. We understand the desire to amend relevant retained sections of the law to ensure that there are powers to nationally approve new types of vehicles that are not adequately covered by EU regulations. For example, extending regulations to cover a 'whole life approach' for vehicles is increasingly important for connected and automated vehicles. This would include regulations that could potentially cover software updates related to the safety and performance of vehicles.
22. It would also be important for the Government to use these powers to ensure stringent, but cost-effective maintenance requirements are met. The independent repair sector has been crucial in the UK in terms of keeping the costs of servicing, repair, and insurance down. This competitive market helps to control costs and raise quality. It is vital that rules don't disadvantage this process to the detriment of the consumer.
23. At present, UK insurance rates are amongst the most accessible in Europe compared with other markets where vehicle manufacturers control the majority of repair and maintenance processes. Recently, there has been a trend towards vehicle manufacturers and original equipment manufacturers taking maintenance and repairs inhouse. The Government could potentially use these powers to ensure that robust, independent repair networks can contribute to lowering the cost of repair and maintenance which would likely be reflected in the cost of insurance.

Could create difficulties and why?

24. Powers to amend the requirements of retained EU legislation could create difficulties if the full consequences are not considered. For example, such powers could be used to increase safety standards over and above those in the EU. While this would be favourable in theory, it may increase costs or decrease choice for mass produced vehicles if they are required to comply with high UK-specific requirements.
25. A more concerning difficulty would be if they were used to reduce safety or environmental standards. One example where this could occur would be to facilitate a trade deal with a country with comparatively lax regulatory standards.

Could be excessively costly for industry to meet and why?

26. This question is difficult to answer without understanding the details of the framework.

What data or evidence can you provide, or direct us to, that would allow us to assess the potential costs and benefits of the proposals put forward?

27. Not for the ABI, Thatcham, and BIBA to answer at this stage.

Are any of the proposed requirements expected to:

Give rise to challenges and why?

28. The proposal states that "the term 'vehicle' includes not only passenger and goods vehicles, but also trailers, 2- and 3-wheeled vehicles and quadricycles, agricultural and forestry tractors and their equipment." While we understand the need for a broad definition, we would stress that legislation needs to differentiate between the types of vehicles as much as possible in the policymaking process and therefore in the design of the regulatory framework. One of the main benefits of diverging from the EU system was the stated removal of the impacts of *Vnuk* on British law. Functionally, this allows for a specific regulatory scheme for, for example, e-scooters and we believe that these

differentiations between vehicle types needs to be considered when drafting the overall framework.

Be excessively costly to comply with and why?

29. This question is difficult to answer without understanding the details of the framework.

A flexible, proportionate, and responsive approach to regulating safety, security, and environmental performance of vehicles

Overall, do you agree or disagree with the package of proposals stated? Why and what are your comments on any of the specific proposals?

30. We believe that a package of proposals intended to allow innovative industries to develop new vehicles could be beneficial to road safety, contribute to decarbonisation, and advance social mobility. However, we have reservations about how these proposals would be implemented given the lack of detail in the consultation.
31. There are considerable advantages to giving the power to offer guidance in the interpretation and extension of approval standards in certain cases. For example, this could be helpful in situations where an existing regulation was not intended to cover a new technology in question.
32. In other jurisdictions where the Government has powers to issue guidance in the manner proposed in this consultation, the power is limited to interpretations of the regulation. These interpretations are not meant to result in substantive changes to the meaning of any statute or regulation and they cannot be used to adopt a new position that is irreconcilable with existing regulations. We believe that this type of interpretation should be possible.
33. However, it is already possible for Government to issue guidance to supplement existing regulation without the need for new regulation by, for example, amendments to the Highway Code or the issuance of Code of Practices. We agree that those documents are more useful as guidance than as regulations and support the use of that sort of guidance in the context of new technologies.
34. It is not entirely clear what the consultation is asking when it seeks to create a power for the Secretary of State for Transport to issue guidance covering matters which may not be suitable for secondary legislation and how this is different from what is already possible.
35. The current rules on registering prototype vehicles already allows exemption from roughly two-thirds of the current construction and use regulations. (These regulations cover “Motor vehicles and trailers which are new or improved types constructed for tests or trials, or which are equipped with new or improved equipment or types of equipment”). Vehicle Special Orders can allow exemptions to any of the requirements on construction, weight, equipment and use of vehicles as defined by Section 41 of the Road Traffic Act for vehicles constructed for special purposes (e.g., for tests or trials, for use outside of the UK, for improved equipment, or for the carriage of loads of exceptional dimension.)
36. As such, existing legislation already gives substantial powers to allow the registration and use of vehicles that do not comply with current regulations. The Department’s consultation document does not make it clear what aspects of these existing powers are found to be restrictive for industries looking to develop innovative vehicles and, therefore, what specific problems the new powers are meant to solve.
37. It is clear from the document that one aspect to the proposals is to make it administratively easier to exercise those powers because prototype registration and Vehicle Special Orders will generally apply to a single vehicle. Explicitly extending

powers to apply special orders to groups of vehicles, certain vehicle types, or all vehicles operated by a specific company in a specific location could reduce the administrative effort involved in larger scale trials. We support the reduction of administrative effort but recommend some form of meaningful limit to the numbers that can be permitted on the road in this way, such that it doesn't undermine the main approval standards.

38. Manufacturers may still view compliance with construction and use requirements for prototype vehicles as restrictive. For example, a bi-directional automated pod would need to have both front and the rear brake lights. However, the rules on prototype vehicles would not exempt this vehicle from the prohibition of presenting red lights on the front of the vehicle. Clearly, such requirements should not be a barrier to testing on public roads. In this case, interpretation of the regulation could define that the front of a vehicle was relative to the direction of travel rather than a fixed point on the vehicle and the use of Vehicle Special Orders could resolve the issue.
39. However, if, for example, the additional exemption requested related to a brake performance that was lower than the regulatory standard on the grounds that an automated vehicle could avoid the need for harsh braking on the public road, then it is a measure that is much more difficult to support.
40. As such, it is critical that new proposals are robust in ensuring high safety and environmental standards alongside additional flexibility. If the requirements are too weak then it may become a race to the bottom in terms of standards and undermine the existing mainstream market.
41. "Car-like" quadricycles are an example of this in practice. Manufacturers started evolving motorcycle designs to add bodywork and weather protection to attract a wider demographic of users. Other manufacturers soon realised that they could effectively build a car but approve it as a motorcycle without any of the costly safety protections and sell it at a vastly reduced cost. It is imperative that the system is designed such that it is not possible for an 'innovative' manufacturer to exploit the rules to create a business selling significant numbers of "prototypes", or beta test versions for a public trial while not meeting the safety standards that would be required of any other road vehicle.
42. Similarly, there will also be a need for ensuring consistency in the application of order making powers such that an individual manufacturer would be favoured over another for any reason other than offering a better product.

What further provisions, beyond those proposed, relating to prototype vehicles or vehicle orders would better enable the registration and use of innovative vehicles?

43. Insurers need to understand the risks they are covering to underwrite and price policies. The current system of registering prototypes or applying Vehicle Special Orders is not transparent and this information is difficult for the public to access.
44. Extended powers to permit innovative vehicles to be exempt from aspects of regulation could therefore be balanced by increasing transparency in terms of what vehicles are affected, how many will be in circulation, what aspects of the regulations could not be met, and how the vehicle would still offer an equivalent level of safety or environmental protection. This could significantly benefit insurers in terms of understanding and pricing risks, increase public trust, and provide a mechanism that would help ensure consistency of application of orders.

Are there any areas of type approval where you think it may be appropriate to issue technical guidance in place of, or to supplement, secondary legislation? What type of approvals and why?

45. Guidance could be useful in any area of regulation where the knowledge of the safety risks or the methods used to demonstrate compliance are likely to change. For example, automated lane keeping systems (ALKS) are an entirely new technology, and the regulation was written with high-level safety goals in mind that would in theory oblige safe behaviour in all circumstances. Guidance could be used to supplement the regulation if, eventually, user experience identified a specific problem where ALKS did not function well. Guidance could then be immediately issued which would require all manufacturers to prove that the vehicle meets the high-level safety goals of the regulation. Regulations would ideally be updated in due course, but given the legislative timeframes, guidance could be used as a stopgap for those issues.

What data or evidence can you provide, or direct us to, that would allow us to assess the potential costs and benefits of the proposals put forward?

46. Not for the ABI, Thatcham, and BIBA to answer at this stage.

Are any of the proposed requirements expected to:

Give rise to challenges and why?

47. Please see our answer above.

Be excessively costly to comply with and why?

48. This question is difficult to answer without understanding the details of the framework.

Tackling tampering

Overall, do you agree or disagree with the package of proposals stated? Why and what are your comments on any of the specific proposals?

49. Overall, there needs to be further clarity about what the scope of these new offenses would entail. While we agree in principle, it is also important not to unnecessarily constrain a vehicle owner's freedom to customise their vehicle in a way that does not materially impact safety, security, and environmental performance. For example, vehicle owners may wish to install an accessibility ramp, tow bar, or even an aesthetic modification and that freedom should not be unnecessarily curtailed. Furthermore, we seek clarity if an aftermarket tuning company would be subject to these requirements.

We define a system, part or component as 'software and/or hardware that impacts on the environment, road safety or security'. This would include examples such as those which assist or fulfil the driving task, control power, speed or emissions, protects road users or protects the vehicle from tampering.

Do you agree or disagree with this definition? If you disagree, why and how would you define it?

50. Agree.

For our purposes, the scope of the measure is tampering with a system, part or component of a vehicle or NRMM. Provide any information on how widespread tampering is.

51. Not for the ABI, Thatcham, and BIBA to answer at this stage.

What if any other:

Services could be inadvertently affected by the proposals on tampering?

52. Not for the ABI, Thatcham, and BIBA to answer at this stage

Products could be inadvertently affected by the proposals on tampering?

53. Not for the ABI, Thatcham, and BIBA to answer at this stage.

Exemptions should we consider on tampering?

54. This question is difficult to answer without understanding the details of the framework.

What data or evidence can you provide, or direct us to, that would allow us to assess the potential costs and benefits of the proposals put forward?

55. Not for the ABI, Thatcham, and BIBA to answer at this stage.

Are any of the proposed requirements expected to:

Give rise to challenges and why?

56. This question is difficult to answer without understanding the details of the framework.

Be excessively costly to comply with and why?

57. This question is difficult to answer without understanding the details of the framework.

Improving compliance, safety and security

Overall, do you agree or disagree with the package of proposals stated? Why and what are your comments on any of the specific proposals?

58. We are supportive of this package of measures in principle but have concerns about the lack of detail and explanation in the consultation document as to how the proposed powers exceed those already in existence. The UK already has a vehicle recall scheme under the General Product Safety Regulations 2005 through which Government can force a vehicle recall. This regulation applies across a range of products, not just vehicles, and consequently the definition of a dangerous product is very general and may not capture all defects that represent a lack of compliance with vehicle type approval.

59. A vehicle-specific recall scheme may make it easier to prove that a recall is justified and to use it to correct a wider range of non-compliances. However, the definition of a defect must also be general enough to ensure that recalls can be considered for designs that are compliant with approvals at one stage but are later found to be substandard. Additionally, existing recall regulations generally apply to 'off the shelf' consumer products and not for specialist vehicles built under a contract where the end customer has a role in design or approval (e.g., by specifying acceptance tests in a contract). This could be highly relevant where an operator of a fleet of automated vehicles is involved in specifying what they want from a vehicle supplier and are arranging acceptance tests to demonstrate that their contractual requirements are met. This should not allow the manufacturer to escape from a duty to ensure the final product meets safety, security, and environmental standards.

What, if any, barriers or reasons exist that prevent manufacturers from recalling certain vehicles and which we should consider when setting minimum recall rates?

60. Not for the ABI, Thatcham, and BIBA to answer at this stage.

What data or evidence can you provide, or direct us to, that would allow us to assess the potential costs and benefits of the proposals put forward?

61. Not for the ABI, Thatcham, and BIBA to answer at this stage.

Are any of the proposed requirements expected to:

Give rise to challenges and why?

62. This question is difficult to answer without understanding the details of the framework.

Be excessively costly to comply with and why?

63. This question is difficult to answer without understanding the details of the framework.

Public Sector Equality Duty

Supply any data or evidence you have about any of the proposals discussed that you think would positively or negatively impact on individuals with protected characteristics.

64. Not for the ABI, Thatcham, and BIBA to answer at this stage.

Final comments

Any other comments?

65. We have addressed the questions to the best of our understanding, but we have concerns that the proposals do not explicitly define what the existing powers allow, what problems they may create, and how the new proposals are designed to solve those problems. Our interpretation of that is:

- A UK type approval system that can approve innovative new technologies before they are fully defined and regulated internationally.
- The flexibility to deviate from both the new UK and retained EU approval standards for new technologies where it can be demonstrated that safety, security and environmental standards exceed those from traditional UN or EU processes.
- Extending the ability to ensure approval standards are met for as long as a vehicle “type” is sold and through the life of each individual vehicle sold.

66. In particular, the last subject may bring in elements that are currently part of type approval (e.g., market surveillance) alongside the enhanced recall powers but also the ability to introduce guidance and orders, currently all contained under different headings and in different regulations and acts.

67. For example, it may be extremely valuable for the UK to be able to duplicate National Highway Traffic Safety Administration’s (NHTSA) power to issue an order that all manufacturers must report collisions involving vehicles equipped with SAE Level 2+ assistance or automation and then produce guidance on the solution to problems found. It could also bring in potential new requirements on sustainability or begin to address how regulations on roadworthiness should be adapted to deal with innovative vehicles, which are not mentioned in this consultation.

68. Sustainability needs must also be considered. There needs to be provision not only around functional safety but also to ensure that these systems can be repaired and maintained throughout the vehicle life. The need for self-aligning crash avoidance sensors and integrated battery cell health checking for instance promotes a sustainable economy and would prevent unnecessary wastage and landfill. However, such elements must be regulated and enforced through a type approval and life cycle monitoring process to ensure environmental goals and safety goals can be realised.