

**Response to Law Commissions' third consultation on Automated Vehicles  
(Law Commission Consultation Paper 252; Scottish Law Commission Discussion  
Paper 171)**

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What is your name?

Mark Fowles

What is the name of your organisation?

ALBUM

Are you responding to this consultation in a personal capacity or on behalf of your organisation?

Response on behalf of organisation

**CHAPTER 4: SELF-DRIVING AND HUMAN INTERVENTION**

**Consultation Question 1 (Paragraph 4.114)**

We provisionally propose that:

(1) a vehicle should not be classified as self-driving if, with the ADS engaged, the user-in-charge needs to monitor the driving environment, the vehicle or the way it drives;

(2) it is nevertheless compatible with self-driving to require the user-in-charge to respond to a clear and timely transition demand which:

- (a) cuts out any non-driving related screen use;
- (b) provides clear visual, audio and haptic signals; and
- (c) gives sufficient time to gain situational awareness;

(3) to be classified as self-driving, the vehicle must be safe enough even if the human user does not intervene in response to any event except a clear and timely transition demand.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

Given the clarity of the definition of self driving in 3 above, the proposal for a transition period in 2c before switching from self driving to manual control as in 1 above. This definition from our perspective covers sufficiently that transition.

## **Consultation Question 2 (Paragraph 4.115)**

We welcome views on whether self-driving features should be designed to ensure that they can be used by people with hearing loss.

The whole purpose of disability discrimination is so as not to disadvantage those in society who may have less sensual or physical abilities than other members of that society.

To exclude anyone on the grounds of disability when designing a completely new mode of transport would be remiss.

## **CHAPTER 5: HOW SAFE IS SAFE ENOUGH?**

### **Consultation Question 3 (Paragraph 5.118)**

We provisionally propose that the decision whether a vehicle is sufficiently safe to “safely drive itself” should be made by the Secretary of State, as informed by advice from a specialist regulator.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

Providing that there has been compliance with every regulatory obligation in force at the time of that decision being made then initially it should be made at the Secretary of State level.

However, with time and experience the delegation of that power to a regulatory authority would appear more appropriate.

### **Consultation Question 4 (Paragraph 5.119)**

We welcome observations on which of the following standards is most appropriate when assessing the safety of automated vehicles:

- (a) as safe as a competent and careful human driver;
- (b) as safe as a human driver who does not cause a fault accident;
- (c) overall, safer than the average human driver.

[Respondents chose from the following options: as safe as a competent and careful human driver; as safe as a human driver who does not cause a fault accident; overall, safer than the average human driver; none of the above.]

Overall, safer than the average human driver

Given that this is a completely new mode being developed; why would you settle for replacement of what exists?

Surely the objective is to make that mode as safe as possible and to improve on what we already have, which is fallible humans.

### **Consultation Question 5 (Paragraph 5.120)**

We welcome observations on how automated vehicles can be made as safe as reasonably practicable.

Ultimately the real benefits will come when the majority of vehicles are automated and they can link through some grand controlling system to ensure that vehicle and pedestrian conflicts are avoided. Until that time they will have to interact with "random event generators" or humans as they are more commonly known. In that sense the speed at which automated vehicles react to developing situations will be the key to safety.

### **Consultation Question 6 (Paragraph 5.121)**

We welcome practical suggestions for how AV regulators can fulfil their public sector equality duty.

The simplest question with the most complex range of answers available to respond.

That said, the simplest answer is; "automated vehicles should not present any barriers to any citizen regardless of their physical or mental abilities."

At the very outset government should dictate. having consultation on design with interested parties, the minimum criteria acceptable for operation on UK roads and that should allow for the inclusion of the above statement in the design process.

## **CHAPTER 7: ASSESSING SAFETY PRE-DEPLOYMENT**

### **Consultation Question 7 (Paragraph 7.99)**

We provisionally propose that:

- (1) safety assessment should use a variety of techniques;
- (2) manufacturers/developers should submit a safety case to regulators showing why they believe that the automated driving system is safe;
- (3) regulators should:
  - (a) provide guidelines for what is in the safety case;
  - (b) audit the safety case;
  - (c) prepare guidance for manufacturers and developers on preferred standards; and
  - (d) carry out at least some independent tests.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

We agree with the above. That said, the minimum safety assessment and criteria for safety should be clearly set out and defined by the regulatory authorities.

The manufacturers and developers then have prior knowledge of the minimum standard.

### **Consultation Question 8** (Paragraph 7.100)

We seek views on whether an approval authority that intends to use a scenario database as part of the testing procedure should consult road user groups on the range of scenarios to be included.

The biggest issue that automated vehicles will face is public acceptance.

Not to include road user groups would be a huge mistake in building public confidence.

We believe it would be essential that groups are both consulted and involved in the development of such processes/scenarios.

## **CHAPTER 8: INITIAL APPROVALS AND CATEGORISATION – PROPOSALS**

### **Consultation Question 9** (Paragraph 8.17)

We provisionally propose that:

- (1) unauthorised automated driving systems should be prohibited; and
- (2) this should be subject to an exemption procedure by which the Secretary of State may authorise unauthorised systems to be used in tests and trials.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

This brings us back to the public confidence/acceptance issue.

For the unauthorised automated driving system testing to be acceptable to the public there should be full understanding of what the test and trials are. There should have been prior engagement with appropriate interested parties so that there is a wider understanding of the trial and testing with "engagement and approval" before the Secretary of State authorisation.

### **Consultation Question 10** (Paragraph 8.25)

We provisionally propose that:

- (1) the Government should establish a domestic scheme to approve automated driving systems (ADSs) for use on roads in Great Britain (a "national ADS approval scheme");
- (2) manufacturers should have a free choice to apply for approval under either the UNECE system of international type approvals or through the national scheme;
- (3) developers should be able to submit an ADS for national approval, even if they are not responsible for manufacturing the whole vehicle.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

Providing that the domestic scheme meets the criteria set out during the engagement and approval process described in our earlier responses.

### **Consultation Question 11** (Paragraph 8.43)

We provisionally propose that:

- (1) an ADS approval scheme should be established through regulation under the Road Traffic Act 1988, without further legislative reform;
- (2) an ADS should be defined as a combination of software, hardware and sensors, which can be installed in a “type” of vehicle;
- (3) when an ADS is approved, the approval should be accompanied by specifications for:
  - (a) the type of vehicle in which it can be installed; and
  - (b) how the ADS is installed within the vehicle;
- (4) where an ADS is installed in a pre-registered vehicle, an example vehicle should be submitted to the regulator for approval of the installation.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

No

Given the potential enormity of the physical mental and economic impact such systems are going to have on our cityscape, economy, employment. This requires a whole new definition of new mode of transport to tag it on to an existing act is to not recognise the enormity of the impact this technology will have on our society.

### **Consultation Question 12** (Paragraph 8.44)

We invite observations on the appeal process in regulation 19 of the Road Vehicles (Approval) Regulations 2020, including:

- (1) how it works in practice; and
- (2) how well it is suited to the proposed national ADS approval scheme.

This is a process more aligned with manufacturers and designers we have no comment to make.

### **Consultation Question 13** (Paragraph 8.71)

We provisionally propose that:

- (1) once an ADS has received type approval at either international or domestic level, an Automated Driving System Entity (ADSE) would need to submit the vehicle to the UK safety regulator for categorisation as able to safely drive itself;

(2) the safety regulator should make a recommendation to the Secretary of State for how the vehicle should be classified;

(3) it should be open to the safety regulator to recommend that an ADS-enabled vehicle is classified in one of three ways: as not self-driving but driver assistance; as self-driving only with a user-in-charge; or as self-driving without a user-in-charge;

(4) the safety regulator should only recommend classification as self-driving (either with or without a user-in-charge) if it is satisfied that:

(a) an ADSE is registered as taking responsibility for the system;

(b) the ADSE was closely involved in assessing safety and creating the safety case; and

(c) the ADSE has sufficient funds accessible to the regulator to respond to improvement notices, to pay fines and to organise a recall.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

We totally support the process as outlined.

#### **Consultation Question 14** (Paragraph 8.77)

We provisionally propose that a new legislative framework should provide regulation making powers to specify:

(a) who should assess whether a vehicle is capable of self-driving;

(b) the procedure for doing so; and

(c) criteria for doing so.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes We agree; this supports our argument outlined in response to question 11 for a totally new act to deal with the introduction and approval of such vehicles.

#### **Consultation Question 15** (Paragraph 8.78)

We seek views on whether the new legislation should include provisions for appeals against a categorisation decision. If so, should these be similar to those in regulation 19 of the Road Vehicles (Approval) Regulations 2020?

Categorisation should be against a defined criteria. it would appear that if this is the case then the appeal decision as outlined in regulation 19 of the Road Vehicles (Approval) Regulations 2020 would be sufficient to accommodate such appeals.

#### **Consultation Question 16** (Paragraph 8.83)

We seek views on whether the regulator that classifies vehicles as self-driving should have power to allow their deployment in limited numbers, so as to gather further data on their safety in real world conditions.

We totally agree with this and would go so far as to say that this should be a prerequisite before full approval is granted for any vehicle type.

## **CHAPTER 10: ASSURING SAFETY IN USE**

### **Consultation Question 17** (Paragraph 10.82)

We provisionally propose that legislation should establish a scheme to assure the safety of automated driving systems following deployment, giving scheme regulators enhanced responsibilities and powers.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

Without such framework there is no standard by which "success" can be assured.

### **Consultation Question 18** (Paragraph 10.83)

We provisionally propose that the enhanced scheme should give regulators the following responsibilities and powers:

(1) scheme regulators should be responsible for comparing the safety of automated and conventional vehicles using a range of measures;

(2) to do this the regulator should have power to collect information on:

(a) leading measures (instances of bad driving which could have led to harm) and

(b) lagging measures (outcomes which led to actual harm);

(3) regulators should have power to require an ADSE:

(a) to update software where an update is needed to ensure safety and continued compliance with the law;

(b) to keep maps up-to-date, where an AV relies on maps to ensure safety and compliance with the law;

(c) to communicate information about an ADS to users in a clear and effective way, including where necessary through training.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

There should be an absolute power invested in the regulators but an emphasis, possibly in law which places a responsibility on the supplier.

### **Consultation Question 19** (Paragraph 10.84)

We welcome views on the following issues:

(1) Should scheme regulators be empowered to approve software updates that apply only within the UK, without requiring the manufacturer to return to the original type approval authority?

(2) Should the scheme should also deal with cybersecurity?

(3) Are other powers needed? (Note that data is discussed in Chapter 17.)

1. Yes, approval should be a developing process, not regressive enforcing a step back to origin at every change.
2. There should be an emphasis on cyber security but the onus should be on the supplier
3. No comment at this time.

### **Consultation Question 20** (Paragraph 10.100)

Should the authority administering the scheme to assure safety while automated vehicles are in use be kept separate from type approval authorities (as is already the case)? Alternatively, should both functions be combined in a single body?

[Respondents chose from the following options: single body; separate bodies; other.]

Separate bodies

These two areas require different competency skills if an organisation is too large dealing with differing powers they can lose focus.

### **Consultation Question 21** (Paragraph 10.101)

What formal mechanisms could be used to ensure that the regulator administering the scheme is open to external views (such as duties to consult or an advisory committee)?

Not just open to external views but also open to external reviews duties to consult should be set out in their governance.

## **CHAPTER 11: INVESTIGATING TRAFFIC INFRACTIONS AND COLLISIONS**

### **Consultation Question 22** (Paragraph 11.24)

We provisionally propose that a statutory scheme to assure AVs in-use should:

- (1) investigate safety-related traffic infractions (such as exceeding the speed limit; running red lights; or careless or dangerous driving);
- (2) investigate other traffic infractions, including those subject to penalty charge notices;



(3) if fault lies with the ADSE, apply a flexible range of regulatory sanctions.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

Should be part of a review process; identify, analyse, rectify and implement.

These should be the cornerstones of every infraction.

### **Consultation Question 23** (Paragraph 11.53)

We provisionally propose that the regulator which assures the safety of AVs in-use should have powers to impose the following sanctions on ADSEs:

(1) informal and formal warnings;

(2) fines;

(3) redress orders;

(4) compliance orders;

(5) suspension of authorisation;

(6) withdrawal of authorisation; and

(7) recommendation of attendance at a restorative conference.

Do you agree?

[Respondents chose from the following options: informal and formal warnings; fines; redress orders; compliance orders; suspension of authorisation; withdrawal of authorisation; recommendation of attendance at a restorative conference.]

Informal and formal warnings, Fines, Redress orders, Compliance orders, Suspension of authorisation, Withdrawal of authorisation, Recommendation of attendance at a restorative conference

They collectively provide the framework for compliance and safety.

### **Consultation Question 24** (Paragraph 11.54)

We provisionally propose that the legislation should provide the regulator with discretion over:

(1) the amount of any monetary penalty; and

(2) the steps which should be taken to prevent re-occurrence of a breach.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No comment; clear enough

**Consultation Question 25** (Paragraph 11.69)

We provisionally propose that a specialist incident investigation unit should be established:

- (1) to analyse data on collisions involving automated vehicles;
- (2) to investigate the most serious, complex or high-profile collisions; and
- (3) to make recommendations to improve safety without allocating blame.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

See earlier answer to Q 23

**Consultation Question 26** (Paragraph 11.82)

We provisionally propose that the UK Government should establish a forum for collaboration on the application of road rules to self-driving vehicles.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

Having as many representative bodies present to establish the framework on applicable rules should form part of establishing an ongoing forum.

**Consultation Question 27** (Paragraph 11.83)

We welcome views on:

- (1) the issues the forum should consider;
- (2) the composition of the forum; and
- (3) its processes for public engagement.

1. interactions between AV's, interactions between AV's and manual driven vehicles, interactions between AV's and pedestrians and not forgetting interactions between AV's and animals they may encounter on the road, horses, etc.

2. government, research units, industrial bodies, user groups, rights groups (disability etc).

3. National structure with specialist feed in groups

## **CHAPTER 12: THE USER-IN-CHARGE**

### **Consultation Question 28** (Paragraph 12.24)

We provisionally propose that that the user-in-charge:

(1) should be defined as an individual in position to operate the controls of a vehicle while an ADS is engaged and who is either in the vehicle or in direct sight of the vehicle; and

(2) is not a driver while the ADS is engaged, and would not be liable for any criminal offence or civil penalty (such as a parking ticket) which arises out of dynamic driving.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No Comment

### **Consultation Question 29** (Paragraph 12.37)

We provisionally propose that following the end of the transition demand period:

(1) the user-in-charge should re-acquire the legal obligations of a driver, whether or not they have taken control of the vehicle; and

(2) if, following a failure to respond to a transition demand, the vehicle stops in a manner which constitutes a criminal offence, the user-in-charge should be considered a driver and should therefore be liable for that offence.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Other

This is an area which has many pitfalls. The start and end of the Transition Demand period would need in some way to have the ability to recognise that the user-in-charge had firstly, acknowledged that a Transition Demand period had commenced and at present that is not clear to me how this would be acknowledge and commence/end.

### **Consultation Question 30** (Paragraph 12.45)

We seek views on whether a person with a provisional licence should be allowed to act as a user-in-charge, if accompanied by an approved driving instructor in a vehicle with dual controls.

Yes, agreed, just as now for provisional driving.

### **Consultation Question 31** (Paragraph 12.53)

We provisionally propose that legislation should create new offences of:

(1) using an automated vehicle as an unfit or unqualified user-in-charge; and

(2) causing or permitting the use of an automated vehicle by an unfit or unqualified user-in-charge.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add

### **Consultation Question 32** (Paragraph 12.59)

We provisionally propose that persons carried without a user-in-charge should be guilty of a criminal offence.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Other

That would very much depend on circumstances; i.e. was the person(s) carried led to believe that there was a user-in-charge on board at the time they were carried.

### **Consultation Question 33** (Paragraph 12.60)

We seek views on whether the new proposed offence of being carried without a user in-charge should only apply if the person:

- (1) knew that the vehicle did not have a user-in-charge; and
- (2) knew or ought to have known that a user-in-charge was required.

Yes agreed, see answer to Q32.

### **Consultation Question 34** (Paragraph 12.66)

We provisionally propose that a user-in-charge who takes over control of the vehicle:

- (1) should be considered a driver; but
- (2) should have a specific defence to a criminal offence if, given the actions of the ADS, a competent and careful driver could not have avoided the offence.

Do you agree? If not, we welcome views on alternative legal tests.

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add.

### **Consultation Question 35** (Paragraph 12.94)

We provisionally propose that the user-in-charge should be liable for criminal offences which do not arise from the dynamic driving task, including those related to:

- (1) insurance;
- (2) maintaining the vehicle in a roadworthy condition (including installing safety critical software updates);
- (3) parking;
- (4) duties following accidents to provide information and report accidents to the police; and
- (5) ensuring child passengers wear seatbelts.

Do you agree?

[Respondents chose from the following options: yes, the user-in-charge should be liable for all offences not arising from the dynamic driving task; the user-in-charge should be liable for some but not all of the offences listed; no, the user-in-charge should not be liable for any offences; other.]

The user-in-charge should be liable for some but not all of the offences listed

The only point of disagreement is point 1. it maybe that the user-in-charge may not be the insurer as this function may lie elsewhere given the developing nature of this new mode of travel.

### **Consultation Question 36** (Paragraph 12.95)

We provisionally propose that the legislation should include a regulation-making power to clarify those roadworthiness failings which are (and those which are not) the responsibility of the user-in-charge.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add.

## **CHAPTER 13: REMOTE OPERATION: NO USER-IN-CHARGE VEHICLES**

### **Consultation Question 37** (Paragraph 13.67)

We provisionally propose that:

- (1) where an individual is exercising latitudinal and longitudinal control (steering and braking) over a vehicle remotely, that should not be regarded as a form of “self-driving”; and
- (2) where lateral and longitudinal control are exercised by an ADS, all other forms of remote operation should be regulated as “self-driving”.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add.

We welcome views on whether the current definition of when a vehicle “drives itself” under the Automated and Electric Vehicles Act 2018 should be amended to deal with some forms of remote operation which may involve a degree of “monitoring”.

This would very much depend upon the degree of monitoring as it would not be reasonable to expect or want to have remote monitoring /operation by individuals or groups on individual vehicles you may as well just have a driver.

### **Consultation Question 38** (Paragraph 13.86)

We provisionally propose that:

(4) the regulation of self-driving vehicles should distinguish between an Automated Driving System Entity (which vouches for the design of the system) and an operator (responsible for the operation of individual vehicles);

(5) all vehicles authorised for use on roads or other public places with no user-in charge should either:

(a) be operated by a licensed operator; or

(b) be covered by a contract with a licensed operator for supervision and maintenance services;

(6) it should be a criminal offence to use a NUIC vehicle on a road or other public place unless it is operated by a licensed operator or is covered by a contract with a licensed operator for supervision and maintenance services.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add.

### **Consultation Question 39** (Paragraph 13.92)

We welcome views on whether NUIC operators should be required to demonstrate professional competence through a safety management system, as set out in a safety case.

This should be an absolute necessity with clear defined monitored and inspected systems performance being remotely monitored for transgressions.

### **Consultation Question 40** (Paragraph 13.108)

We provisionally propose that, irrespective of the nature of the vehicle, a licensed operator should be under a duty to:

- (1) supervise the vehicle;
- (2) maintain the vehicle;
- (3) insure the vehicle;
- (4) install safety-critical updates and maintain cybersecurity; and
- (5) report accidents and untoward events (as defined by the regulator).

Do you agree?

[Respondents chose from the following options: yes, a licensed operator should be subject to all the listed duties; a licensed operator should be subject to some but not all of the listed duties; no, a licensed operator should not be subject to any of the listed duties; other.]

Yes, a licensed operator should be subject to all the listed duties

No further comment to add.

#### **Consultation Question 41** (Paragraph 13.109)

We provisionally propose that legislation should include a regulation-making power by which some or all of these duties could be transferred to the registered keeper or owner, if it was shown that it was appropriate to do so.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add.

#### **Consultation Question 42** (Paragraph 13.116)

We welcome views on how accessibility standards for Highly Automated Road Passenger Services (HARPS) might be developed.

This is an absolutely critical area to define. In many, if not all, instances HARPS will be designed from the drawing board and hence we as a society have an opportunity to design in from the very beginning equality. as a very minimum vehicles should have no impediments to physical access, restrictions on sound, sight, touch or movement.

Failure to address this now, at the outset, before anything hits the road is absolutely crucial if we as a society are to avoid building in discrimination.

The Victorians, made this mistake with railway platform heights and we are still living with the legacy more that a 150 years after they had an opportunity to build in accessibility and missed it.

We provisionally propose that:

(1) an accessibility advisory panel should be formed to include:

- (a) the Equalities and Human Rights Commission; and
- (b) representative groups for disabled and older persons;

(2) the Secretary of State should be obliged to consult with the accessibility advisory panel prior to setting any national minimum standards on HARPS;

(3) there should be a duty to periodically re-consult the accessibility advisory panel at set intervals to ensure requirements keep pace with developing evidence of technical feasibility and changing needs.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

Absolutely !

We welcome views on what the set interval for periodically re-consulting the accessibility advisory panel should be.

There should be no defined timeframe it should be an ongoing development that when opportunities to improve arise, then action is taken.

### **Consultation Question 43** (Paragraph 13.133)

We welcome views on who should administer the operator licensing scheme.

Whilst DVSA and the Traffic commissioners spring to mind I am doubtful that they have either the skill sets or administrative capability within their current structures to enable them to undertake such a task. that said a new function within either could do so.

## **CHAPTER 14: CRIMINAL OFFENCES BY ADSES AND THEIR SENIOR MANAGERS**

### **Consultation Question 44** (Paragraph 14.107)

We provisionally propose that:

(1) it should be a criminal offence for an ADSE to omit safety-relevant information or include misleading information when putting a vehicle forward for classification as self-driving or responding to information requests from the regulator;

(2) the offence should apply to senior managers (where it was attributable to the manager's consent, connivance or neglect);

(3) the offence should not apply to more junior employees;

(4) the offence should carry a higher sentence if it is associated with a death or serious injury;



(5) the offence should be prosecuted in England and Wales by either the regulator or the Crown Prosecution Service and in Scotland by the Procurator Fiscal.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Other

1. Agreed

2. Agreed

3. No, this would depend on the level of culpability and/or the deliberate omission of critical information by a junior employee when passing information to a senior

colleague.

4. Agreed

5. Agreed

#### **Consultation Question 45** (Paragraph 14.108)

We seek views on the following proposed offences.

Offence A: non-disclosure and misleading information in the safety case

When putting forward a vehicle for classification as self-driving, it would be a criminal offence for the ADSE to

(1) fail to provide information to the regulator; or

(2) provide information to the regulator that is false or misleading in a material particular

where that information is relevant to the evaluation of the safety of the ADS or the vehicle.

The ADSE would have a defence if it could show that it took reasonable precautions and exercised all due diligence to prevent the wrongdoing.

The penalty would be an unlimited fine.

Offence B: non-disclosure and misleading information in responding to requests

When a regulator requests specific information from an ADSE (whether before or after deployment), it would be a criminal offence for the ADSE to

(1) fail to provide information to the regulator; or

(2) provide information to the regulator that is false or misleading in a material

particular

where that information is relevant to the evaluation of the safety of the ADS or the

vehicle.

The ADSE would have a defence if it could show that it took reasonable precautions and exercised all due diligence to prevent the wrongdoing.

The penalty would be an unlimited fine.

Offence C: offences by senior management

Where offence A and/or offence B committed by a body corporate is proved—

(3) to have been committed with the consent or connivance of an officer of the body corporate; or

(4) to be attributable to neglect on the part of an officer of the body corporate,

then that officer is guilty of the offence.

An officer includes any director, manager, secretary or other similar officer or any person who was purporting to act in any such capacity.

We see this as equivalent to offences under the Human Medicines Regulations 2012 and General Product Safety Regulations 2005, which carry a penalty of a fine and/or a maximum two years' imprisonment.

Offence D: aggravated offences in the event of death or serious injury following non-disclosure or provision of misleading information to the AV safety regulator

Where a corporation or person commits Offences A to C, that offence is aggravated where the misrepresentation or non-disclosure:

(5) related to an increased risk of a type of adverse incident; and

(6) an adverse incident of that type occurred; and

(7) the adverse incident caused a death or serious injury.

We see this as equivalent to the offence of causing death by dangerous driving, which carries a penalty of an unlimited fine and/or a maximum of 14 years' imprisonment.

Agree with the proposals as laid out.

**Consultation Question 46** (Paragraph 14.109)

We welcome views on whether an ADSE should be under a duty to present information in a clear and accessible form, in which safety-critical information is indexed and signposted.

This should be an absolute obligation.

## **CHAPTER 15: NEW WRONGFUL INTERFERENCE OFFENCES**

**Consultation Question 47** (Paragraph 15.10)

We provisionally propose that legislative amendment should clarify that the tampering offence in section 25 of the Road Traffic Act 1988 applies to anything that is physically part of a vehicle and any software installed within it.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add.

#### **Consultation Question 48** (Paragraph 15.11)

We welcome views on whether the tampering offence should apply to external infrastructure required for the operation of the AV.

Yes if it forms part of the safety critical systems and is under the control of the AV operator.

#### **Consultation Question 49** (Paragraph 15.53)

We provisionally propose that there should be an aggravated offence of wrongfully interfering with an AV, the road, or traffic equipment contrary to section 22A of the Road Traffic Act 1988, where the interference results in an AV causing death or serious injury, in:

(1) England and Wales; and

(2) Scotland.

Do you agree?

[Respondents chose from the following options: yes, in both England and Wales and Scotland; in neither jurisdiction.]

Yes, in both England and Wales and Scotland

No further comment to add.

#### **Consultation Question 50** (Paragraph 15.55)

We provisionally propose that the appropriate mental element for the aggravated offence is intent to interfere with a vehicle, the road or traffic equipment.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add.

#### **Consultation Question 51** (Paragraph 15.62)

We seek views on whether an approved work defence for repair or maintenance operations authorised by a vehicle manufacturer or Automated Driving System Entity is desirable.

If there is demonstrable compliance with approved maintenance procedure then this should be admissible as a defence. The complexity of these vehicles will in all probability be beyond most operators other than through approved maintenance and repair processes. If an operator is compliant with that then there should be a defence.

## **CHAPTER 16: CIVIL LIABILITY**

### **Consultation Question 52** (Paragraph 16.24)

We provisionally propose that the way the Automated and Electric Vehicles Act 2018 deals with contributory negligence and causation is:

- (1) adequate at this stage; and
- (2) should be reviewed by the UK Government in the light of practical experience.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add.

### **Consultation Question 53** (Paragraph 16.32)

We provisionally propose that measures should be put in place to compensate the victims of accidents caused by uninsured AVs.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

There should however as a result of non insured vehicles be punitive action against the uninsured operator/owner.

### **Consultation Question 54** (Paragraph 16.47)

We provisionally propose that:

- (1) product liability law should be reviewed to take account of the challenges of emerging technologies;
- (2) any review should cover product liability as a whole, rather than be confined to automated vehicles;

it should not, therefore, form part of this project on automated vehicles.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

No

Given the complexity of these vehicles product liability will be key to developing the market giving users, operators and owners a degree of peace of mind. There should be specific liabilities associated with the manufacture, supply and use of these vehicles.

## **CHAPTER 17: ACCESS TO DATA**

### **Consultation Question 55** (Paragraph 17.65)

We provisionally propose that:

(1) for a vehicle to be classified as self-driving, it needs to record the location as well as the time at which the ADS is activated and deactivated;

(2) the Government should work within the UNECE to ensure data storage systems for automated driving record these data; and

(3) any national system to approve an ADS should require these data to be collected, subject to safeguards.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add.

### **Consultation Question 56** (Paragraph 17.71)

We provisionally propose that legislation should impose a duty on those controlling AV data to disclose data to insurers, where the data is necessary to decide claims fairly and accurately.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add.

### **Consultation Question 57** (Paragraph 17.81)

We provisionally propose that:

(1) initially, DSSAD data from self-driving vehicles should be stored for three years; and

(2) the issue should be reviewed in the light of experience.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Other

Surely the data should be stored for the period of time that a claim is allowed for under insurance / offence limitations.

**Consultation Question 58** (Paragraph 17.95)

We provisionally propose that:

(1) when an ADSE applies for categorisation of its vehicle types as self-driving, it should present the regulator with details on how data will be recorded, stored, accessed and protected;

(2) the regulator should only categorise a system as self-driving if it is satisfied that that the ADSE has systems to abide by its obligations under the GDPR.

Do you agree?

[Respondents chose from the following options: yes; no; other.]

Yes

No further comment to add.