

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

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Any personal email addresses and phone numbers have been excluded from this document. Unanswered questions have been deleted from this document.

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What is your name?

George Kenneth Atkinson BSc (Hons) LLB

What is the name of your organisation?

My wife and I run The Livia Memorial Fund that was set up in 1998 in the aftermath of our daughter's death, aged 16, that was caused by a driver convicted of death by dangerous driving. One of its objects is the annual award for the serious collision investigators and FLOS in the roads policing unit (RTPC) of the Met Police - The Livia Award for Professionalism and Service to Justice - which gives us a platform to address road safety issues.

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

Personal response

**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.]

Other

Q.1.0

(1) No I do not agree.

The term User- In- CHARGE implies that whether the ADS is engaged or not, this person in charge is observing and accepting responsibility for the safe travel of the vehicle.

At all times the UIC must be observing the safe travel path of the vehicle and anticipating external emergencies as well as being attentive to the possibility that the ADS might / must be disengaged and responsibility for driving passed to the UIC.

To suggest that the UIC could become distracted by watching a movie or monitoring and answering emails (as suggested in the consultation paper) is unacceptable. It would take only one such fatal collision to come to the notice of the public and the whole autonomous vehicle project brought into disrepute.

Responsible people would be appalled if the safe travel of an aircraft was not being safely monitored by the pilot even when the auto pilot was engaged. The same rule must be applied to autonomous vehicles (AV) after all the current casualty rates for road vehicles is far higher than for aircraft and it is clear that the reason for this is due to the negligent and irresponsible driving decisions made by some motorists.

(2) Yes I agree, but with qualification :

(a) I do not accept that a UIC should be permitted to be distracted eg by watching an in-car movie or through interaction with their mobile phone.

The UIC must at all times remain focussed on the safe travel of the AV and be alert to the possibility that the ADS may have to be disengaged and take over.

(b) I agree

(c) I agree

(3) I agree with this section but I qualify it with reference (1) and (2)(a)

## **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.

Q. 2.0

My comments regarding the focus of the UIC apply equally to persons with hearing difficulties (see Q.1 above) and there is no reason why they should not be permitted to be a UIC of an AV.

Where the ADS transfers responsibility for driving to the UIC, notification of this intention could be via :

Changing the lighting level in the car

Providing a further in-car hazard light warning that the ADS is about to become disengaged.

Moving the UIC's seat into the driving position

Vibrating the UIC driving seat

Moving the steering wheel, whilst emitting a flashing light, into position for the UIC.

Technology has advanced sufficiently to cater for those with hearing difficulties.

## **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

3.0

I agree.

The autonomous vehicle will be viewed as an innovation but also with some trepidation by the general public. In terms of road safety, it is a 'big step in the dark'.

It is potentially a big 'cash cow' (for government ) and possibly a big employer. Therefore, the commercial aspect of the ADS / AV project must not be jeopardised by compromising safety and speeding through its introduction on to British roads - new technology is invaluable but it must not be allowed to cloud common sense.

Therefore, government (the Secretary of State) must ensure that all aspects of safety are satisfied before approval is given.

### **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.]

None of the above

Polite note.

Please do not use the word ACCIDENT. It is unnecessary and offensive to those who have been injured and/or bereaved by dangerous drivers/irresponsible road users. The words collision, crash or incident adequately replace "accident" and do not negate the presumption of innocence, in the event of court proceedings.

Further, the judiciary are (like the emergency services) beginning to give preference to the words "crash, collision" in their judgements on road traffic cases.

Further, parliament is being encouraged to do the same and are complying, to some degree.

Road safety organisations, including me, encourage the Law Commission to do the same.

Q. 4.0 Answer.

The words "competent and careful" both seem to relate to the standard of the UIC's driving and does not address the qualities required of the same when provided with notice that the ADS is to become disengaged nor does it address the qualities required when the UIC has to intervene due to some external / internal event that the ADS has failed to respond to.

It is suggested that the following wording would suffice:

AS SAFE AS A WATCHFUL, COMPETENT and CAREFUL DRIVER..

Possible other words to cover watchful are: attentive, observant or alert.

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

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

Q.5.0

(1)The UIC's responsibility must include, at all times, monitoring the safe travel path of the AV and to disengaging its ADS in the event it fails to respond to any external occurrence that threatens the safety of the vehicle and its occupants. Additionally, when the ADS transfers responsibility to the UIC, it must be accepted in a timely manner that keeps the AV on a safe travel path. Therefore, the UIC must not be engaged in any illegal in-car activity that distracts them from monitoring the safe travel path of the AV (see Q.4 above - watchfulness of UIC).

(2)Software modifications impinging on safety must be classified, approved, implemented and formal verification of implementation sought.

(2) (a)Annual safety certificate to be issued in conjunction with the AV's roadworthy MOT - this could be used to establish that all safety modifications involving the ADS / AV (including software and hardware) have been implemented.

(2)(b)Where illegality associated with the ADS / AV is proven, suspected, the police Automated Number Plate Recognition system should prove very useful for informing the roads police to get the vehicle off the road.

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

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

6.0 Do not feel qualified to answer this question..

## **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

Q.7

- (1) I agree in principle but see (2) below.

I will assume that the Law Commission will ensure that the majority of testing will cover roads of all categories and standard of maintenance in all types of weather conditions.....and that it will adhere to speed limits, traffic lights, public crossings and to warnings of schools and will recognise and take the appropriate action when coming across vulnerable road users etc.

- (2) The safety aspect that I wish to focus on concerns software algorithms.

Of great concern are the 'life and death' decision-making algorithms in emergency situations. For example, the AV is faced with the prospect of a head on collision with another vehicle or hitting a pedestrian crossing the road or mounting the pavement and colliding with other pedestrians. What path would the AV be programmed to take and why?

Who is responsible for monitoring the writing of these algorithms and involved in their approval? The process must be fully examined and transparent and must involve representatives from road safety organisations such as Roadpeace, Brake and myself.

### **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.

Q. 8.0

Yes. I refer you question 7 and below.

It is clear that the production of software will involve people making life and death decisions regarding the path of the AV in emergency situations. The algorithms associated with such software must be approved by a body that involves road safety risk assessors (with the Department for Transport), emergency services (involved in clearing up road traffic collisions) and most importantly representatives from a road safety organisation such as Road Peace / Brake and myself.

## **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

Q.9

I Agree absolutely .

Does this include authorised systems that are illegally modified or is this too to be implied?

### **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

Q. 10.0

1.0 Yes, in establishing minimum standards for hardware and software, we are ensuring that quality and safety standards are maintained at a known and acceptable level. Further, we will also build up good knowledge of expertise on the ADS / AV and its associated parts.

2.0 No.

Once manufacturers are provided with an option, their final decision on where to seek approval may involve cost, lead time and convenience and any one of these may compromise safety of the ADS / AV. If manufacturers seek and get international approval, they must also seek separate approval from the UK authority.

3.0 Yes. Many of the manufacturers will want to buy in approved systems (such as the ADS) and carry out the final assembly of the AV. By doing this, they may be able to reduce costs and lead time for production and for getting approval.

If the ADS is purchased abroad, it must be further submitted for approval in the UK.

### **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.]

Yes

Q.11

(1) Yes.

(2) Yes.

(3) Yes.

(4) Any approved ADS that is subsequently modified to a level that will change its original function would require further approval.

Many of the ADS will be manufactured by ADS specialists and sold on to AV manufacturers /assemblers some of which may specialise in bespoke vehicles. The ADS installed must be compatible with the AV it is being assembled into. Therefore, further approval from the UK Regulator will be required.

### **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.

Q.12

(1) I have no knowledge on how the regulation works in practice but on viewing the regulation, it is found to be brief and covers the necessary requirements of an appeal procedure.

(2) However, what would be the response of the UK appeals authority, if the appellant succeeded in getting international approval for their AV / ADS after failing at the appeals stage in the UK?

Thus, in regulation 19, it must be stated that the UK appeals procedure is the final authority on the validity / classification etc. of the ADS / AV and cannot be overruled by any other approval body unless the anomalies, identified at appeal, have been addressed and the product resubmitted for approval.

### **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

Q.13.0



Yes.

No further expansion needed.

#### **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

Q.13.0

Yes.

No further expansion needed.

#### **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?

Q.15.0

Yes.

See my remarks in question 12.

#### **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.

Q.16

Yes.

However, not without seeking approval from the Secretary of State and notifying the public in the areas where they are being tested.

The AVs should also be clearly marked so that they can be identified by other road users including the police.

## **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

Q17

As in any digital system, software updates will be unrelenting (ref the governments own digital projects - Universal Credit and even more recently -Track and Trace). Hardware modifications, while just as important, are not expected to be as frequent. However, a lack of control on verifying the implementation of SAFETY modifications would surely test the public's trust in this venture.

Therefore, a regulatory body (the Regulator) should be appointed and have responsibility, amongst other things, for providing the final approval and categorisation of ADS / AV before these products are allowed on to our roads.

Included in the Regulator's remit will be the setting up and maintaining of a data base for the registration and controlling of the safe functioning of these products.

This will include any modification(s), their safety (urgency) classification and whether the modification affects only new manufacturers or whether it must be implemented in ADS/AV in general circulation. The data base would also contain AV collision / incident details which will require the Regulator having access to the Department For Transport's (DFT) casualty computer base.

The regulator should also have access to the current police Automated Number Plate Recognition system to draw police attention to AVs that are subject to an urgent and outstanding modification or to AVs that are suspected of having illegal software modifications. In this case, any AV would be flagged up, on the police ANPR system, and the UIC given the appropriate advice, etc.

The Regulator should also have responsibility, in conjunction with the MOT authority for verifying that all safety modifications have been implemented by way of issue of an annual safety certificate .

### **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

Q.18

(1.0) Yes.

See also Q.17 above.

(2.0) Yes.

The DfT maintain a road traffic casualty data base that incorporates the use of the police reporting system CRASH. The casualty figures and their categorisation provide a wealth of knowledge that is used internationally and could be modified to accommodate AVs incidents.

The Regulator should seek support from the MOT authority in order to verify that all urgent modifications had been implemented and that AVs are safe to be used, a confirmatory note would be added to the MOT certificate, on behalf of the Regulator.

The Regulator should also seek access to the police Automatic Number Plate Recognition system for the event that an urgent recall of AVs or a specific AV and where it is necessary for the vehicle to be stopped and the driver advised or apprehended.

All AVs with an approved ADS must carry in view an identification disc (ADS).

3.0 (a) Yes. See also Q.17.0 and section Q.18 (2) above.

All software modifications need to be kept and maintained on the Regulator's data base.

The extent of the modification will need to be classified - does it affect only current manufacturers or does it impinge also on all ADS / AVs in circulation.

(b) Yes. See 18(3)(a) above.

(c) Yes.

Especially when it comes to defining the responsibilities of the UIC and ensuring that all modifications of an urgent nature are implemented and the procedure for reporting all collisions occurring whilst the ADS is engaged.

### **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.)

Q.19.0

1.0 Yes.

Once type approval has been given for an AV to be used safely on the road it makes sense that the same authority should monitor the safe functioning of these vehicles and be responsible for the approval of any software changes and for verifying their implementation.

2.0 Yes.

Although cybersecurity is a highly specialised area it is important that the Regulator builds up experience and has the necessary resources for protecting the integrity of the ADS /AV computer systems and advising on how such systems can best be protected from criminal 'hackers'.

3.0 Access to and support from MOT and ANPR authorities. See Qs 17 and 18 above.

### **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.]

Single body

Q.20

Answer - Single body.

See also my response in Q.19 (1) above.

### **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)?

Q. 21.0

Just as the HM Inspectorate reports on the effectiveness of policing and other bodies so the Regulator should come under similar scrutiny. Further, the Regulator will be of great interest

to a Parliamentary Select Committee, their presence and actions closely monitored and challenged by road safety organisations.

## **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.]

Other

Q.22.0

(1) The Statutory scheme must provide assurance for any safety breaches of the AV whilst the ADS is engaged. This is a minimum requirement.

Whilst many of these infractions will be reported by other road users, and the actual event may be picked up by new roads technology, most will be reported by the UIC. This supports the argument (see also Q.1, 4 & 5) that the UIC must be watchful, at all times, of the AV travel path and must be held responsible for the timely disengagement (or by way of automatic disengagement) ) of the ADS in an emergency situation.

(2) Yes.

(3) Yes.

### **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, Recommendation of attendance at a restorative conference

Q.23.0

Suspension or withdrawal of an ADSE's licence should require the approval of the Secretary of State.

#### **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

Q,24.0

The Regulator should also have powers to refer a case to the police where there is evidence that a UIC or ADSE has been criminally negligent.

#### **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.]

Other

Q.25.0

1.0 Yes.

2.0 Yes.

3.0 To make recommendations to improve safety but with the authority to refer the matter to the police in the event that evidence shows that the ADSE or UIC should be held criminally responsible for the safety breach.

The general public will not tolerate death and serious injury being caused by a negligent / irresponsible driver and neither will they tolerate the same by a negligent / irresponsible ADS / AV manufacturer

### **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

Q.26.0

Yes, this would be expected by the road safety organisations.

The forum should involve road safety experts from the DFT, Local Authorities, RAC, AA, Automotive industry, Academics etc. However, it must also involve road safety organisations and certainly have representation from someone who has been injured and/or bereaved because of a road traffic crash.

### **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.

Q.27

There are many issues that will need addressing. I offer three:

(1) (a) Address the scope of the responsibility of the UIC when the ADS is engaged and whether there is a need for this person to remain watchful of the travel path of the AV at all times or that they may engage , for example, with in - car entertainment system(s).

(see 1,4,5)

(b) How to build public confidence in the introduction of AVs to UK roads and most certainly their interaction in built- up areas with vulnerable road users.

(c)Whether on dual carriageways / motorways AVs should be restricted to the inside lane, whether the ADS is engaged or not

(2) See Q.26.0

(3) No opinion on this but road safety organisations must be part of the process.

## **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.]

Other

1.0 Yes.

2.0 No. The term User- In-CHARGE implies that this person is observing and accepting responsibility for the safe travel of the vehicle whether or not the ADS is engaged. Common sense dictates that one cannot be a UIC if engaged in watching a movie or monitoring and answering emails. These same distractions would not be permitted in a commercial aircraft whilst it was on autopilot and should not be permitted in AVs.

Any UIC found to be distracted from focussing on the direction of travel of the AV would be liable for a criminal offence.

Currently, crashes involving drivers who become distracted by in-car sound systems, mobile phones etc. are responsible for many deaths and serious injuries on our road and the problem is increasing. We must not let the UICs lower their focus both internally and external to the AV even when the ADS is engaged.

### **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.]

Yes

Q.29.0

1.0 Yes. Additionally, if the UIC has found an illegal way to bypass the transition period and keep the ADS engaged, the UIC should be liable for a separate criminal offence that is subject to a substantial banning order.

2.0 Yes.



**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.

Q.30.0

Yes. No further expansion required.

**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

Q.31.0

Yes. to 1 & 2 . No further expansion required..

**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.]

Yes

Q.32.0

Yes. No further expansion required.

**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.

Q.33.0

Yes to both.

No further expansion required..

**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

Q.34.0

(1) Yes.

(2) Yes. However, the burden of proof must be on the UIC to prove that he was/had been a watchful, competent and careful driver and that the ADS had malfunctioned. If the incident is reported to the Regulator, as it should be, the driver would potentially have their support, subject to its findings.

**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.]

Yes, the user-in-charge should be liable for all offences not arising from the dynamic driving task

Q.35.0

Yes to all 5..

**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

Q.36.0

Yes. Re Safety Modifications: The regulatory bodies should work in conjunction with the MOT agency re the road worthiness of vehicles and ensure that all software modifications have been installed and where not, place an embargo on such vehicles until the software changes have been implemented. (see Q17 and answer)

**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

Q.37.0

Yes.

No further expansion required.

**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

Q.38.0

Yes.

No further expansion required.

#### **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

Q.40.0

Yes.

No further expansion required.

#### **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

Q.41.0

Yes.

No further expansion required.

## **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.]

Yes

Q.44.0

Yes.

No further expansion required.

### **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.

Q.46.0

Yes.

No further expansion required.

## **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

Q.47.0

Yes.

No further expansion required.

### **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.

Q.48.0

Yes. Any interference that could jeopardise the type classification of the AV or its safety or the safety of other vehicles or road users, must be a criminal offence.

### **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

Q. 49.0

Yes.

No further expansion required.

### **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.]

Other

Q. 50.0

In this case the burden of proof should be placed on the defendant to prove that they were not interfering with the vehicle, road or traffic equipment..

## **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

Q.52.0

Yes.

No further expansion required.

### **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

Q.37.0

Yes.

Also see Q4.0 - Polite Note.

### **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.]

Yes

Q.54.0

Yes.

No further expansion required.

## **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

Q.55.0

Yes.

No further expansion required.

### **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

Q.56.0

Yes.

No further expansion required.

**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.]

Yes

Q.57.0

Yes.

No further expansion required.

**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

Q.58.0

Yes.

No further expansion required.