

Law Commissions' consultation on automated vehicles: a regulatory framework for automated vehicles

OVERVIEW

This is a public consultation by the Law Commission for England and Wales and the Scottish Law Commission.

The consultation questions are drawn from our third consultation paper published as part of a review of automated vehicles. For more information about this project, visit:

<https://www.lawcom.gov.uk/project/automated-vehicles/>

In the consultation paper, we make provisional proposals for a new regulatory system, examining the definition of “self-driving”; safety assurance before AVs are deployed on the road; and how to assure safety on an ongoing basis. We also consider user and fleet operator responsibilities, civil liability, criminal liability and access to data.

We recommend that consultees read the consultation paper, which can be found on our websites:

<https://www.lawcom.gov.uk/project/automated-vehicles/> and

<https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/joint-projects/automated-vehicles>

A shorter summary is also available on the same pages.

We are committed to providing accessible publications. If you require this consultation paper to be made available in a different format please email:

automatedvehicles@lawcommission.gov.uk.

ABOUT THE LAW COMMISSIONS:

The Law Commissions are statutory bodies created for the purpose of promoting law reform. The Law Commissions are independent of Government. For more information about the Law Commission of England and Wales please visit <https://www.lawcom.gov.uk/>. For more information about the Scottish Law Commission please visit <https://www.scotlawcom.gov.uk/>.

PRIVACY POLICY

Under the General Data Protection Regulation (May 2018), the Law Commissions must state the lawful bases for processing personal data. The Commissions have a statutory function, stated in the 1965 Act, to receive and consider any proposals for the reform of the law which may be made or referred to us. This need to consult widely requires us to process personal data in order for us to meet our statutory functions as well as to perform a task, namely reform of the law, which is in the public interest. We therefore rely on the following lawful bases:

- (a) Legal obligation: processing is necessary for compliance with a legal obligation to which the controller is subject;
- (b) Public task: processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

Law Commission projects are usually lengthy and often the same area of law will be considered on more than one occasion. The Commissions will, therefore retain personal data in line with our retention and deletion policies, via hard copy filing and electronic filing, and, in the case of the Law Commission of England and Wales, a bespoke stakeholder management database, unless we are asked to do otherwise. We will only use personal data for the purposes outlined above.

FREEDOM OF INFORMATION

We may publish or disclose information you provide us in response to our papers, including personal information. For example, we may publish an extract of your response in our publications, or publish the response in its entirety. We may also share any responses received with Government. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. If you want information that you provide to be treated as confidential please contact us first, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not be regarded as binding on the Law Commissions. The Law Commissions will process your personal data in accordance with the General Data Protection Regulation, which came into force in May 2018.

Any concerns about the contents of this Privacy Notice can be directed to:
enquiries@lawcommission.gov.uk.

About you

What is your name?

Andrew Wilkinson

What is the name of your organisation?

Aviva Insurance Ltd

Are you responding to this consultation in a personal capacity or on behalf of your organisation?
(Please select only one item)

Personal response

Responding on behalf of organisation

Other

If other, please state:

What is your email address?

If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Aviva Executive Summary

Aviva is very supportive of advancing technology and autonomous vehicles as we believe this will increase mobility and safety on the UK road network. However, this must be done in a way that recognises the complexity of such a material change on our roads and the impact on end-to-end stakeholders.

For this reason, we wish to highlight the salient points from Aviva's perspective:

- The insurance industry is heavily dependent on having timely access to vehicle data (7 data points) as without this, there is potential for insurance costs to increase short term.
- We also believe that data shortcomings will substantially reduce insurers ability to correctly identify & administer claims for compensation in the manner the Act envisaged.
- Aviva believe continual reassessment of the vehicle lifecycle based on real world data is key.
- "Self-Driving" needs to be incorporated into all other elements of the mobility eco system. For example: driving tests, the Highway Code, driving licences – medical conditions, MOT's, plus the judiciary system – e.g. tampering with vehicle software, smart motorways and vehicle sales – information at point of sale including private sales.
- We would recommend a timetable for reviewing the entire motor parc over the vehicle lifecycle, not just when they are new.
- Equally the danger for insurers will be when AV's interact with our insured commercial and privately owned vehicles – recognising that some agriculture and construction vehicles are already operating AVs.
- We believe that Automated Lane Keeping Systems (ALKS) should be classified as driver assistance systems and not be listed as automated under AEVA.

The definition of self-driving (Chapters 2 to 5)

Consultation Question 1

We provisionally propose that:

- (1) a vehicle should not be classified as self-driving if, with the automated driving system (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?

Yes No Other

Please expand on your answer

Consultation Question 1

(1) Agree

(2)

a. Agree

b. Agree

c. Agree in principle, however safe timescales need to be agreed before this technology is deployed on UK roads.

(3) Agree. There should be a continual assessment on this classification throughout the lifecycle of the vehicle.

Additional points re text preceding Question 1:

(1.4) Consideration is needed as to the legal interpretation of what constitutes a vehicle to be classified as 'self-driving' beyond the element of human intervention in response to an event, but should include the requirement for the 'software' to be maintained. Whilst this may be obvious and implied, it should be clear when any proposal is made as to a vehicle's classification.

(1.6)(1) We believe that the automated driving system entity (ADSE) should be a single recognisable entity rather than partnership. For example, a vehicle manufacturer or a technology supplier who has supplied standalone equipment is fitted to the vehicle which provides the capability. We further believe that the European New Car Assessment Programme (Euro NCAP) nomenclature and taxonomy should be applied to ensure consistent and accurate use of terms.

(2) "Other Driver Responsibilities" needs to be defined, with clarity provided on both permitted and non-permitted tasks. New technology may mean this needs regularly reviews.

(2.2) & (2.3) "Driving Itself" is not a sufficient definition because it can include both autonomous and automated driving.

(2.4)(1) There needs to be a specified list of permitted tasks, which is clear, common, and available to the public. This list of permitted tasks may vary by degree of vehicle automation and would need regular reviews as vehicle technology develops. Insurance could be void due to non-compliance, or carrying out a non-permitted task by the user-in-charge.

(2.4)(2)(a) Insurers would need access to data in order to compensate victims. Insurers have identified a minimum of seven data items which need to be captured, for every collision, in the ABI's ["Defining Safe Automated Driving"](#) document.

(2.6) Clear differentiation is required between driving modes and this mode needs to be visual when being used.

(2.11) Replace "exit from the motorway" with the correct terminology - "exit from the operational design domain (ODD)".

(2.12) Not all vehicles will come to a slow stop in lane. Some will keep the vehicle moving at a very low speed until an obstacle is reached. This makes the vehicle more detectable to other autonomous vehicles, as well as providing a safer driving environment for the driver to re-engage and take over the driving task if able to do so.

(2.16) In our view numerous collisions take place with no braking applied. Therefore, the driver can only be expected to brake if engaged or at least monitoring the driving task.

(2.22) It is essential that permitted tasks are through the vehicle's built in infotainment suite only with legal repercussions. Users will want to use personal devices such as mobile phones and tablets. Whilst this should remain a criminal offence, vehicles will not be able to prevent this and the temptation for the user-in-charge will be greater than when driving manually.

(2.23) A driver monitoring system should be compulsory as a driver that falls asleep might not respond to any of these actions.

(2.27) It is impossible to determine a position on Consultation (1)(3) above if we are unable to define a suitable minimum transition period. Similarly, we believe it is irresponsible to push this problem into the post launch period which may put the public at risk during the monitoring period. We need to define these timescales prior to launch.

(2.30) The suggestions that the driver should respond to “extraordinary external conditions” such as soft brush collisions, does not align with the user-in-charge being allowed to perform secondary tasks.

Consultation Question 2

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

Please share your views below

All automated and assisted technology vehicles must provide totally clear multi-sensory engagement with the driver or user-in-charge in terms of vehicle mode status and transition requirements. Driving modes need visual and haptic alerts to transition demands with a countdown to a planned transition. Consistency of alerts is needed across various user experiences to prevent confusion when operating different automated driving systems.

Consultation Question 3

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?

Yes No Other

Please expand on your answer

We believe the Secretary of State should be guided by a specialist regulator that has the knowledge and experience necessary to make such an important decision. The Secretary of State should not be able to overrule the specialist regulator if they find empirical evidence that a vehicle is not able to “safely drive itself”. As previously indicated, this decision may also need to be revisited over the full lifecycle of an ADS.

There needs to be a comprehensive understanding about what the criteria is for a vehicle to ‘make the list’. Minimum standards will be required for vehicle manufacturers at production but what considerations are being proposed to manage the risk for the life cycle of the vehicle?

(2.39) & (2.40) Any ADSE that is found to be at fault needs to be made accountable in a similar way to an at-fault driver receiving a custodial sentence today. This may prove difficult when dealing with a corporate entity.

Consultation Question 4

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.
- none of the above

Please expand on your answer

We believe the measure of one driver to another is subjective. We need safety to be constantly improving and developing with technology. The comparison should not be made against a careful and competent human driver, driving a vehicle with no driver assistance fitted, as this would represent a step backwards in overall safety.

The rationale here is that most modern vehicles have a variety of inbuilt safety mechanisms. This should be the established base line with which to make the comparisons. However, it is also important to not create a sense of complacency. We do not want to foster a system where drivers over-rely on the capabilities of a vehicle.

Currently the DVSA sets standards for driving and the DVLA sets standards of licensing that meet the requirements of the DVSA. As ADS become more widespread, we would expect these organisations to set minimum standards for these systems as well.

For ADS to progress as intended it is essential that there is also consumer and public understanding and 'buy-in'. Therefore it must be clear that when inevitably these vehicles are involved in collisions, the safety standards are clear and can be justified, and also evidenced to the public and the victims.

Consultation Question 5

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

Please share your views below

Focus is needed on how AV vehicles and systems are sold. This will drive clarity on what is and is not an approved, legal AV system and when it is appropriate to use such systems. This will empower consumers and not leave them to make their own decisions.

Focus needs to include the effect of AVs on vulnerable road users such as cyclists and pedestrians. They need to be aware that an AV is driving in an automated mode, enabling a much safer integration with traditional road users and new users such as micro mobility.

A rigorous testing regime that is transparent could form the basis of UK type approval. If this was in the public domain, this could be used to promote consumer awareness and understanding of this technology forming a transition towards the integration of automation

onto UK roads. The testing infrastructure should also establish a system for assessing a vehicle over its lifetime including software updates.

It is important that any vehicle classified as automated needs to be able to make a minimum risk manoeuvre that allows it to change lanes and find the hard shoulder or side of the road. Simply stopping in lane is not sufficient.

Second-hand owners should have access to communications and continuing support from the ADSE. If an ADSE is unable to support their customers for whatever reason, they would still need some form of consumer protection to provide any security updates etc.

Technology will be needed to help AVs to recognise roadworks with the possibility of road markings being temporarily removed. ADS sensors and cameras need expert programming so as not to cause confusion. We are not convinced that this technology has been developed yet.

Consultation Question 6 (Paragraph 5.121)

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

Please share your views below

Consumers that are not physically able or do not want to drive due to a form of disability have the potential to benefit from AVs. So AV regulators need to find ways to make this possible but remain safe.

Safety assurance before deployment (Chapters 6 to 8)

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?

Yes No Other

Please expand on your answer

- (1) Agree.
- (2) Agree; but safety must be prescriptive, structured, and formulaic. Likewise, it must be clear, transparent, and should be a unified approach. For example, in the past we have witnessed Vehicle Manufacturers get round emission tests, or in the case of Electric Vehicles, they demonstrate X no of miles charge, but in real life where you are not driving perfectly and its slightly colder this drops right off . When we are talking safety we believe there should not be any loop holes.
- (3) (a) We support a set of strengthened rules with guidelines to help improve the quality of self-driving safety cases.
 - (b) Agree, but specification is needed on how this will be achieved adequately, by whom, and with what qualifications.
 - (c) Agree but need something stronger than guidelines.
 - (d) Mandatory defined tests need to be agreed by the regulator for the AV to be deemed legal. We also need to ensure 'real world experience' gets fed back into these tests.

My think is that where

In addition, we make the following points in response to the summary text leading up to Consultation Question 7:

(3.2) UK standards should be set to ensure our high level of safety standards are consistent and representative.

Consultation Question 8

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.

Please share your views below

A data driven approach is paramount in addition to qualitative and quantitative methods to establish a testing procedure. It is vital for insurers to be able to assess and measure risks from this data. Public consultations could provide a less biased opinion to road user groups.

Consultation Question 9

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?

Yes No Other

Please expand on your answer

(1) Agree

(2) Tests and trials could be used but they would need to still meet type approval standards.

Consultation Question 10

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 United Nations Economic Commission for Europe (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?

Yes No Other

Please expand on your answer

- (1) Fundamentally agree, but feel wider consideration is need in terms of the practical application. Would this be public domain information? Also how is it envisaged to operate for the life of the vehicle including subsequent resale.
- (2) Disagree. There should not be a free choice to choose the least taxing route to approval.
- (3) Disagree.

Consultation Question 11

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?

Yes No Other

Please expand on your answer

- (1) Agree that a regulatory framework is required but we are not best placed to provide insight on that.
- (2) Not recognising ‘aftermarket’ or ‘retrofit’ systems may be remiss as the reality is they have already come to market. We have exposures in construction, plant and agriculture already which need to be brought under the same considerations.
- (3) Whilst we agree with the sentiment, “installed” is the wrong terminology. ADS need to be integrated into the vehicle at the point of manufacture. This is not technology which should be made available for retrospective or aftermarket fitment. We would suggest that

the definition of ADS should include not just the hardware and software but also the specification of the domain for which it has been designed.

(4) We disagree with any retrospective or aftermarket fitment of ADS systems. We do not believe that every vehicle should be capable of automated driving and it would be next to impossible to test how every aftermarket ADS would interact with each different make and model. If the entire system is not integrated at the same time by the manufacturer, there is increased risk of some adverse interaction between the ADS and the vehicle itself. For example, while an ADS might work well on one vehicle, the mechanical characteristics like steering and braking could be vastly different on other vehicles. It would also not be economically viable to adapt every vehicle to have all the other requirements as well as have additional approval processes for each different permutation of aftermarket ADS and vehicle.

The reality is that aftermarket systems already exist and are being fitted to vehicles particularly for special types, including Plant and Agricultural equipment (less so for private cars).

Consultation Question 12

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.

Please share your views below

We do not believe that there should be an appeal process. Vehicle manufacturers should take the feedback from the approval process and return when the required improvements have been made.

In the long term, this could be reviewed once technology and vehicle form has significantly advanced or there are issues with the type approval processes.

Consultation Question 13

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?

Yes No Other

Please expand on your answer

<p>(1) Agreed</p> <p>(2) Agreed</p> <p>(3) We believe that if an ADS does not meet the standard of being classed as automated, there should not be an automatic fallback to classification as assisted. We believe the three categories should be: a) self-driving only with a user-in-charge; b) self-driving without a user-in-charge; and c) not self-driving.</p> <p>(4) Agreed, although ADSE should be read as the vehicle manufacturer only, not a tier 1 supplier or software provider. There is also an additional requirement for indemnity to cover the professional negligence of the assessment body/regulator.</p>
--

Consultation Question 14

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?

Yes No Other

Please expand on your answer

Agreed

Consultation Question 15

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?

Please share your views below

There should be no appeals process. We would suggest a framework of retest once the failings have been addressed. If an appeals process does materialise, it must uphold the fundamentals of 'safety first'.

Consultation Question 16

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.

Please share your views below

Testing on UK roads could be beneficial if conducted under the right circumstances with appropriate controls and management. It could provide greater benefits and learning before a full product Beta test is tried in sterile testing environment. Without road testing there is a risk that safety cases are not fully developed for real life situations and safety issues fall between the gaps. We believe limited deployment or Beta testing may be seen as a method to get approval based on minimal product or testing regimes.

Assuring safety in use (Chapters 9 to 11)

Consultation Question 17

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?

Yes No Other

Please expand on your answer

(4.1) We are convinced that this is true.

(4.2) We cannot agree with the statement that “One cannot be sure that AVs are safe until they have been observed under real world conditions.” The minimum level of safety applied must be United Nations (UN) type approval, plus UKSA on all vehicles. In addition, we believe that the automated driving related functionality needs to be maintained throughout the lifetime of the vehicle, including annual checks - perhaps as part of a revised MOT test.

(4.6) The UK Safety Assurance is separate and applies to pre-market assessment. A bespoke UK testing regime to monitor vehicles deployed on UK roads would be required.

(4.9) We believe the solution described is unworkable. In our view where this situation occurs, UK Safety Assurance would need to raise a non-compliance notice with whichever UN authority provided the original type approval. This would then feed back to the vehicle manufacturer (via the established market surveillance process). The vehicle manufacturer (VM) would need to make the required changes and resubmit the vehicle for renewed type approval with the original approval authority. The required changes would need to have a clear classification taxonomy, such as ‘critical’, ‘major’, or ‘minor’, which would dictate the required course of action.

(4.11) We believe cybersecurity needs to be maintained by the UN process. Cybersecurity needs to be included in the UK Safety Assurance and should consider feedback and identified weaknesses.

(4.14) Yes. Overseen by a formally structured UK assessment and followed up via feedback loop. The vehicle manufacturer must declare non-compliance, map changes and inform where these have been implemented.

(4.17) We believe vehicle manufacturers must provide in-vehicle training to all users, to include driver acknowledgement prior to access to ADS being granted. Vehicle manufacturers (VMs) must name system functionality clearly, making the limitations of the systems very clear. In this instance, VMs must not market ALKS technology as fully automated, due to the clear system limitations.

(4.20) Vehicles must record and collate incident data, including minor crashes and near misses. This data must include location data. This needs to be transparent and used to inform system upgrades and further testing requirements. A dedicated UK authority to look at automated driving safety in addition to incident investigation needs to be considered.

Consultation Question 18

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?

Yes No Other

Please expand on your answer. In particular, if you think the enhanced scheme should give regulators some but not all of the listed responsibilities and powers.

- (1) Yes. The regulator should have a multi-disciplinary approach, including safety experts, consumer testing and insurers, with the aim of promoting and ensuring safety.
- (2) Yes. Safe automation is not feasible without cyber-resilient vehicles. Even a single cyber-related incident could shatter public confidence in the technology and severely limit the uptake, as well potentially impacting public safety.

In terms of regulatory responsibility, this should sit with the VCA (approval) and the Driver and Vehicle Standards Agency (DVSA; market surveillance), though it should be noted that the complexity and nature of cybersecurity will require a considerable change of approach. In addition to the point mentioned, software versioning should be clear and publicly available.
- (3) (a) Maps are not centralised and may rely on local authorities, utility companies, infrastructure providers, etc. to update maps. There will also need to be a practical

way to deal with an instance where map providers are providing conflicting road conditions/statuses.

(b) The manufacturer should also provide mandatory training through a vehicles infotainment system and ensure the user is paying attention. The system will also need to be able to identify new drivers that have not taken the training.

Consultation Question 19

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.)

Please share your views below

(1) No. Software that would materially impact the driving task should pass through an international type approval process as this process is more stringent. For this to happen, there must be specific definitions and agreement on what updates would “materially impact the driving task.” A potential side effect, however, is that this may delay the process of the installation of critical safety updates and improvements and we require more clarity about the type approval process for software updates.

There should also be a UK-specific assessment to certify that these software updates continue to comply with UK road networks.

If experience shows that this is unworkable in the future (too many software updates and a lengthy and laggard type approval process) then alternate authorities within the UK should be considered. However, at this time, we would still support an international type approval process.

(2) Yes. Cybersecurity should be considered by the scheme.

(3) Yes. The regulator should have additional powers such as withdrawing a vehicle from legal use on the roads due to safety concerns. We also need proposals for what happens when a Vehicle Manufacturer no longer exists.

Consultation Question 20

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?

Separate bodies Single body Other

Please expand on your answer

A separate body with power to influence international type approval.

Consultation Question 21

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)?

Please share your views below

Traditional engagement mechanisms including vehicle manufacturing bodies and automotive associations are valid channels of receiving and soliciting feedback.

Consultation Question 22

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?

Yes No Other

Please expand on your answer.

We believe that legislation must be in place to ensure open data sharing happens.

Insurers will rely on the driver/user to co-operate which is not always possible e.g. death, self-implication, theft of vehicle. The proposals do not address the issue of how a defendant accused of an offence (such as excess speed or jumping a red light) can access data to support their case.

Consultation Question 23

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.

Please select the sanctions which you think the regulator should have powers to impose, leaving blank those which you do not think the regulator should be able to impose.

Please explain the reasons for your selection above.

We suggest that others are better suited to decide what sanctions could apply.

We believe it is fundamental that where there is a fault, it needs to be corrected or the vehicle should not remain on the road to save causing a repeated incident. We would also want to understand more about what happens under the proposals if the regulator withdraws authorisation.

Consultation Question 24

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?

Yes No Other

Please expand on your answer.

Whatever fine or steps are decided, the most important outcome is that the breach is put right to ensure safety.

Consultation Question 25

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?

Yes No Other

Please expand on your answer.

Yes, this needs to be multi-disciplinary and cross functional. Key questions will remain about oversight as well as how this special incident investigation is funded.

We would like to use this opportunity to reinforce the need for ADS to collect data and for that data to be accessible. The findings of this specialist incident investigation unit should be made available to select parties. The rationale is to prevent overlap given that a large proportion of collision investigations are carried out by insurers. There also needs to be consideration for the investigation of smaller, less-serious collisions as a pattern of these incidents may pre-empt larger issues.

Consultation Question 26

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?

Yes No Other

Please expand on your answer.

We believe elements of the Highway code, Driver learning and testing will need to be adapted for the use of Automated vehicles and Automated Driving Systems on our UK roads.

Consultation Question 27

We welcome views on:

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

Please share your views below

The behaviour of AVs should be predictable as possible so that their behaviours fit in with the surrounding traffic and the road user infrastructure.

A diverse range of relevant stakeholders including road safety organisations, regulators, relevant Government bodies, emergency services, vehicle manufacturers, software engineers, data managers, insurers, driver training etc. should be represented.

Both public engagement and transparency are necessary, and information should be properly signposted and freely available.

Responsibilities of the user-in-charge (Chapter 12)

Consultation Question 28

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?

Yes No Other

Please expand on your answer.

(1) No. We believe clearer definitions are required. Depending on how data is collected, the definition could be expanded so that the user-in-charge would have to be identified by the vehicle (similar to someone logging into a system).

(2) Yes.

Consultation Question 29

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?

Yes No Other

Please expand on your answer.

(1) No. There is legal obligation for the user-in-charge to take control of the vehicle following a transition demand if the ADS can seek safety. As such, we would also like to re-emphasise our calls for ADS to be required to change lanes and seek a safe place on a hard shoulder or side of the road. It is not enough for a system to simply stop in lane.

We recognise there will be exceptions such as if the user-in-charge is incapable of taking back control (i.e. medical emergency). This is where data will be paramount.

(2) No. We do not think it should be possible for an automated vehicle to come to a halt in a manner which endangers its occupants or other road users.

We believe there is already a common law obligation for the user-in-charge to take action to protect or safeguard the occupants and other road users.

Consultation Question 30

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.

Please share your views below

We believe provisional licence holders should be allowed to drive AVs, but only where accompanied by an approved driving instructor. This would provide the structured education and training on the correct use of AV systems rather than waiting until they pass their test when potentially, the next day they are behind the wheel of an AV experimenting with AV systems and capability. Use of AVs could form part of driving tuition, theory, practical and testing along with changes to the Highway code.

Consultation Question 31

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?

Yes No Other

Please expand on your answer.

Yes. The user-in-charge will need to be capable of responding to a transition demand.

Consultation Question 32

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

Do you agree?

Yes No Other

Please expand on your answer.

While in principle, it is important to ensure that there is a capable user-in-charge, a broad provision could result in unintended consequences. Passengers may not realise that the

user-in-charge is unfit to drive. For example, a passenger may not be able to tell if a driver is potentially over the legal blood alcohol content limit.

We would suggest an appropriate claims investigation processes (potentially enabled by access to data) that could accurately assess the role of passengers. It would be important for contributory negligence to be applied where those being carried were aware that the user-in-charge was unfit, while understanding that this could be quite difficult to prove.

Consultation Question 33

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.

Please share your views below

There may examples where an individual, such as a child, is aware of the user-in-charge requirement, but cannot refute the individual, such as an adult, that is in a position of authority.

Consultation Question 34

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?

Yes No Other

Please expand on your answer. If you do not agree with the proposal, we welcome your views on alternative legal tests.

Yes. We believe that the user-in-charge should be considered a driver. We also believe the issue is the user-in-charge knowing the full extent of capability and limitations of the specific ADS that they are using. A user-in-charge may act with good intent but increase the risk or cause a loss. There should be guidance so as not discourage a user-in-charge from trying to do the right thing.

A user-in-charge 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. This could be managed in a similar way to a no-fault accident.

In the case of a user-in-charge taking an inappropriate evasive action, there needs to be further analysis into assigning fault. Therefore, issues surrounding data collection and retention are significant.

In the case of AVs turning the wrong way down a one-way street and the user-in-charge correcting the error, the user-in-charge should not be at fault. In this case, fault may need to be assigned to the ADSE.

If not, we welcome views on alternative legal tests.

Consultation Question 35

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? *(please tick one of the following)*

- Yes, the user-in-charge should be liable for all offences not arising from the dynamic driving task
- No, the user-in-charge should not be liable for any offences
- The user-in-charge should be liable for some but not all of the offences listed
- Other

Please expand on your answer. If you indicated that you think the user-in-charge should be liable for some but not all of the offences which do not arise from the dynamic driving task, please indicate which offences you think the user-in-charge should be liable for.

We believe that the user-in-charge should be liable for criminal offences related to insurance and ensuring child passengers wear seatbelts.

The user-in-charge should have a duty following accidents to provide information and report accidents to the police if they are aware of the occurrence. A user-in-charge may not always be aware of an accident if the ADS is engaged and they are occupied with a secondary task. Regardless, the user-in-charge should have an obligation to grant access to vehicle data and camera footage.

On maintaining a vehicle's roadworthiness, the user-in-charge should be similarly responsible to a driver of a non-automated vehicle and ensure that various hardware parts of a vehicle are in working order. Regarding software, a user-in-charge should be responsible for installing critical safety software updates, but criminal liability will depend on the magnitude of the issue if the security update is not actioned. There is still the question of who is responsible for ensuring software updates. For example, the driver of a hired or company vehicle may not have the authority to perform such updates. In such cases, the entity in charge of the vehicle should be liable for criminal offences related to software updates.

Furthermore, problems could arise where the owner of a vehicle has a legitimate reason to not want to install a software update. Or, in this case, it could give VMs sweeping authority to alter the vehicle in certain ways by inserting extraneous code into a critical software update. This is especially challenging depending on the type approval process for software and the definition of that software counts as "material to the driving task". We would also like to reference the ongoing "Right to Repair" movement and difficulties associated if applied to software updates.

We would also call for the development of a "digital MOT". This system could identify software-related changes that are material to the driving task and could apply to all systems across various VMs. While it obviously presents its own challenges, it would also make enforcement significantly easier.

While the user-in-charge should undoubtedly be responsible for parking in a manual driving mode, technology already exists to enable self-parking out of the line of sight of the user-in-charge. In such cases, if an issue related to parking arose, it may be worth exploring where the liability rests especially if it results from any problems relating to software or with the parking infrastructure itself.

Consultation Question 36

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?

Yes No Other

Please expand on your answer.

As the sophistication of AVs develop, the requirements for roadworthiness will change – especially on the software side. Therefore, we believe that there should be regulations clarifying roadworthiness failings as the technology advances. This should include existing H&S legislation/regulation and vicarious liability for employers who operate AVs for their business along with changes to the Highway code and driving tuition and testing.

Remote operation: no user-in-charge vehicles (Chapter 13)

Consultation Question 37

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?

Yes No Other

Please expand on your answer.

(2) We believe this should be regulated as “remote driving”. Since the external monitoring function would be responsible for the driving or intervention. This is typically an organised function. Clearer definitions are required especially in the case of self-parking vehicles as discussed in Question 28.

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”.

Please Share your views below.

We believe the AEVA needs to be amended. In addition, we believe the regulation of self-driven versus remotely driven vehicles needs to be split and carefully clarified. Please see Question 29 for the requirement to find safe harbour to be included in the definition of a vehicle that “drives itself.”

Consultation Question 38

We provisionally propose that:

- (1) 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);
- (2) 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;
- (3) 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?

Yes No Other

Please expand on your answer.

While we agree with these regulations should be put in place initially, they will likely need to be revised when NUIC vehicles become more advanced and a private citizen can make use of the technology safely.

(6.12) Within the preceding text: for UIC vehicles (passenger cars) this responsibility falls mostly with the Vehicle Manufacturer. The same thing should apply here. Depending on the ownership and operation structure there will be cybersecurity responsibilities for the owner, manufacturer, and licenced operator.

Consultation Question 39

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.

Please share your views below.

Agree.

Consultation Question 40

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?

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

No, a licensed operator should not be subject to any of the listed duties

A licensed operator should be subject to some but not all of the listed duties

Other

Please expand on your answer. If you think a licensed operator should be subject to some but not all of the listed duties, please indicate which listed duties you think should be placed on a licensed operator.

(1) Yes.

(2) Yes.

(3) Yes.

(4) Yes. This should complement, not remove, the duty of the vehicle manufacturer with regards to cybersecurity.

(5) Yes. Strict guidelines and thresholds should be set as to prevent a requirement for immaterial events from being reported (e.g. striking a small piece of debris). Not only should they report material accidents, but they should also have an obligation to provide relevant data to authorities and other related parties.

Consultation Question 41

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?

Yes No Other

Please expand on your answer.

Yes, we believe that eventually there will be a desire for private use of these vehicles. However we believe the eventual use of these vehicles is misleading, given the growing demand for car sharing, ride sharing and ride hailing services.

We would like further clarity about whether the transfer of duties will be mandated at a specific point or if it will occur on the back of a request to transfer duties. We also suggest that the phrase "appropriate to do so" is vague and would like guidance to be set.

Consultation Question 42

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

Please share your views below

Please refer to our answer in Question 6.

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?

Yes No Other

Please expand on your answer.

While we agree in principle, please refer to our answer in Question 6.

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

Please share your views below

We do not have specific recommendations but believe that periodical re-consulting must occur more frequently at the start of the development of these technologies that we anticipate will change quickly due to developing technology.

Consultation Question 43

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

Please share your views below

It needs to be a competent body with competent persons to administer the operator licensing scheme.

CHAPTER 14: CRIMINAL OFFENCES BY ADSES AND THEIR SENIOR MANAGERS

Consultation Question 44

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?

Yes No Other

Please expand on your answer.

- (1) Yes. We believe the sanction should also be greater if it can be proved that there was an intention to mislead, rather than because of an honest mistake.
- (2) Yes.
- (3) Yes. While the onus should largely rest on senior managers, wilful omission, or purposeful dissemination of misleading information by junior employees should not preclude repercussion.
- (4) Yes. Victim impact should be a factor when applying penalties.
- (5) No view on this.

As an insurer, we would welcome more differentiation between criminal offences and negligence. The difference here may impact the ability of insurers to rightfully seek subrogation.

Consultation Question 45

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—

- (1) to have been committed with the consent or connivance of an officer of the body corporate; or
- (2) 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:

- (1) related to an increased risk of a type of adverse incident; and
- (2) an adverse incident of that type occurred; and

(3) 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.

Please share your views below

We would welcome the introduction of any new offences to support and discourage the misrepresentation or manipulation of information regarding the safe operation of automated driving vehicles, their systems and software.

Consultation Question 46

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.

Please share your views below

Yes. It should be an obligation upon anyone human or corporate to present all material information and an offence for an individual or organisation to present something that is not factually correct or a falsehood or not disclose something which may influence any decision. Grenfell fire cladding is an example where emails on poor tests on the cladding were not shared.

New wrongful interference offences (chapter 15)

Consultation Question 47

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 ?

Yes No Other

Please expand on your answer.

While we think it should be an offence to tamper with anything that is physically part of a vehicle, there needs to be clear thresholds established. We understand not wanting to create exhaustive lists of parts that would fall under the legislation, but wording needs to reflect that tampering with a part that is material to the driving task is a serious offence. Therefore, the use of 'mechanism' in the RTA should include elements like sensors.

Similarly, the use of 'mechanism' should also be amended to reflect non-physical assets. These delineations should be made when referencing software. As the consultation notes, there is no definition for tampering. Therefore, it would be unreasonable to group a modification of an infotainment system with purposeful interference of a key driving system.

We would also like to ensure that there is a set of offenses covering an owner's tampering of their own vehicle such as software-based performance upgrades.

For this to occur, the ADSE may need to identify and clearly indicate which elements are critical to the driving task and should not be tampered with in any way.

Consultation Question 48

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

Please share your views below

Yes, we believe the tampering offence should apply to external infrastructure given the integral role that relevant infrastructure has in the safe operation of AVs. However, there should be clarity to ensure that tampering with infrastructure does not overlap with existing offenses. There needs to be a keen analysis of proportionality and intent because, depending on the wider system, tampering with one piece of infrastructure could have far reaching consequences.

Consultation Question 49

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?

- Yes, in both England and Wales and Scotland
- In England and Wales only
- In Scotland only
- In neither jurisdiction

Please expand on your answer.

We would welcome a harmonised approach across England, Scotland, Northern Ireland and Wales.

Contractors must be approved and skilled in maintaining essential equipment. Wilful damage, interference, tampering, vandalism, etc. should carry criminal charges.

The precedent from other modes of transport could be utilised to establish parameters. We defer to legal entities to provide a comprehensive response.

Consultation Question 50

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?

Yes No Other

Please expand on your answer.

We believe the mental element also needs to consider the motive and intent on victims by the act. Premeditated action should be proven and punished accordingly.

Proportionality is key. For example if the intent is to hack an individual's personally identifiable information, but in the process, alters software - that is material to the driving task.

Consultation Question 51

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.

Please share your views below

We believe the liability should follow from negligence rather than strict liability upon the driver or user.

Vehicle manufacturers must specify how the systems are maintained and checked as a part of routine maintenance or repair to ensure the system is still safe and operating as required. There should be an approved work defence for repair or maintenance if they are authorised by a VM or ADSE and properly following that guidance, but this would not be a defence for the VM or ADSE if there was an issue with the guidance that was issued.

Civil liability (Chapter 16)

Consultation Question 52

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?

Yes No Other

Please expand on your answer.

We remain concerned that the AEVA Act does not go far enough to mandate the sharing of vehicle data which is paramount for insurers. We are aware that if claims cannot be easily agreed, this will initially push up costs meaning the adoption will slow and the benefits will not be realised. Therefore, we believe it is in the interest of Government to ensure that this data issue is quickly resolved.

Consultation Question 53

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

Do you agree?

Yes No Other

Please expand on your answer.

This could potentially be done using existing statutory powers, but there may also be a role for ADSE to contribute to this fund administered by the Motor Insurance Bureau.

In conjunction, the Government needs to do more to police and regulate this space.

Consultation Question 54

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?

Yes No Other

Please expand on your answer.

Product liability law needs to be reviewed and amended as necessary and it should be included in this process. It is intrinsic to the effective and transparent legislative context which insurers will be operating in and is therefore equally important to the premium paying consumer.

Under the RTA, unlimited liability is required for injury while product liability does not provide that limit. Could this result in the negligent party being unable to meet their civil liabilities and potentially going into liquidation?

Without clear and transparent sharing of data with relevant bodies (not just insurers) we could witness some small attrition claims which do not get challenged but represent a technical or software failure. It wouldn't be until a catastrophic accident that this fault is identified unless there is clear on-going monitoring of data and claims experience.

Access to data (Chapter 17)

Consultation Question 55

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?

Yes No Other

Please expand on your answer.

Insurers must have access to sufficient data to establish whether a vehicle's system or a human driver was in control should an accident occur.

If insurers are unable to access this data, the provisions of the Automated and Electric Vehicles Act 2018 will be unworkable in practice. The current regulatory gap regarding data standards and access to in-vehicle data must be addressed if the Government wants to harness the benefits of new transport technologies. The Law Commission should explore the option of amending the Automated and Electric Vehicles Act 2018 to make the capturing, storage, and transfer of this data mandatory.

Access to data is also incredibly important when assigning legal liability, the lack of which could have far reaching consequences for insurers and individuals.

The lack of appropriate location data and corresponding timestamps will also leave room for fraud. The associated increase in cost of investigating fraudulent claims will only serve to harm regular customers.

The reliance on data will inevitably grow as AVs mature and the user-in-charge is less involved in the overall driving task.

There must also be established ways to access relevant data without accessing personal, protected, or non-related data. We need to ensure that this data is properly collected and stored by a neutral third-party. As we have seen in the past, there have been instances where VMs have been incentivised to intentionally obscure data.

Consultation Question 56

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?

Yes No Other

Please expand on your answer.

Data should be made available to insurers free of charge, without the need to obtain court orders, and stored by a safe and neutral third-party.

Insurers have identified a minimum of 7 data items which need to be captured, for every collision. These are:

1. GPS-event time stamp.
2. Activation status of each automated driving feature, driver acceptance between automated/manual mode time stamp.
3. Record of driver intervention of steering, braking, accelerator or gear -shift.
4. Driver seat occupation.
5. User engagement commenced.
6. Has Minimum Risk Manoeuvre (MRM) been triggered.
7. System status (linked to fault code).

The technology fitted needs to be able to achieve this.

We would also like to suggest that data sharing should be extended for the purposes of dealing with first and third-party fraud and criminal activity.

Consultation Question 57

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?

Yes No Other

Please expand on your answer.

We believe that 3 years is not sufficient time to allow data capture and recording for insurers to learn and understand more about risk acceptance and longer term trends - enabling robust and fair pricing for consumers for insuring AVs.

The MIB have proposed that the data should be proactively sent directly from the vehicle via telemetry. A request for data should not be required.

While three years is a good start, we believe that data should be held for even longer. Some symptoms from certain injuries, like whiplash, can persist and even get worse over a period of years.

We understand that the threshold for three years is derived from the maximum amount of time to file a personal injury claim. However, for minors and other protected parties, the maximum time could be a lot longer and will need to be reflected in the access to data.

Consultation Question 58

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?

Yes No Other

Please expand on your answer.

No further comment.