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18 March 2021

**Response to [Automated Vehicles](#):
Consultation Paper 3 – A regulatory framework for automated vehicles**

We welcome this consultation.

We have two main concerns the first being **civil enforcement associated with AVs** and the lack of reference to it within the consultation.

A major second consideration is the challenge '**owner liability**', which is common throughout civil parking and traffic management enforcement. There is an absolute need to better understand the concept of 'owner liability' in the context of enforcement of 'self-driving' vehicles. Who is the 'owner'? We experience those issues every day now, and automation will make this worse. It is noted that the Law Commission proposes the concept of 'user-in-charge' when it comes to self-driving vehicles. How do you evidence who was the 'user-in-charge' at the time of the contravention?

Local authorities will need a uniform way to enforce any civil parking and traffic management contraventions arising from the use of AVs as well as any other types of vehicles. Nearly all parking enforcement is civil enforcement carried out by local authorities, not the police. In fact currently only nine local authorities remain in England that **do not** operate and enforce parking, stopping, bus lanes, and zone restrictions. In London and parts of Wales local authority civil enforcement also includes moving traffic contraventions. As you know the government's proposal is to fully implement Part 6 of the Traffic Management Act in 2021, and this is welcome as it will extend civil enforcement to the whole of England.

Consideration also needs to be made on the more automated methods of criminal enforcement, such as speeding and red light running. There needs to be a standard method for issuing a 'notice to keeper' regardless of whether a vehicle is in automated or manual mode, which is likely to be unknown to the enforcement authority unless there is something to indicate this.

Responses to relevant questions and those of interest to the parking sector

Q.1

2.35 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?

We agree, however what evidence there will be to indicate if a vehicle is in self-driving mode or not? For example, an external light, a 'silent' sound signal that is only detectable by technology? The enforcement authority will need to decide what actions to take in the event of poor driving/parking being observed or a collision, and subsequently to decide on the appropriate legal process to follow. What would the consequences be of an event that occurred close to the moment of transition into or out of self-driving?

Q. 3

2.65 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?

No. The example of smart motorways being approved and then subsequently coming into question specifically on grounds of safety demonstrates that this approach does not work in practice. An independent panel to advise the regulator is a better route to consider. Well-funded vehicle manufacturers could sway ministers' decisions on grounds other than safety especially if the regulator does not have the resources to commission independent research. Guidance on whether modifications to vehicles would need re-approval on safety grounds would be needed.

Q.4

2.66 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.

(c) is the most appropriate – for the standard to be 'safer than the average human driver'. Not *just* safer though, the benchmark should be significantly safer. This is essential not least because the sector promotes the safety angle to the public. For example, is achieving a specified target, of X% reduced road casualties and injuries per km travelled on the same

categories of road. We recommend learning from existing codes of practice on safety (accountability, operation, control and maintenance) that exist for the aircraft and maritime sector which use auto pilot extensively.

Q.5

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

There is a need to ensure that AVs are at least as safe as vehicles being driven by humans. These 'auto pilots' need their own equivalent of the physical 'driving test' where competency is tested in a real time live environment over a long period of time so all scenarios are tested.

Additionally, we should learn from the experience of the airline and maritime sectors where autopilot is common place. How do they assess the suitability of aircraft and ships for automatic navigation?

Q.16

3.41 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.

Yes, absolutely. Data collection from testing to assess safety in all scenarios is crucial.

Q.17

4.22 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. For the regulators to carry out effective enforcement of the scheme it would need sufficient resources and be independent.

Q.18

4.23 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, and the Digital Economy Act 2017 provides powers for data exchange for a variety of purposes and including crime prevention compliance testing and safety. Regulation of autonomous vehicles need to be included in this, if they aren't already.

Additionally, consideration needs to be given to how the regulator will access the driver data that indicates for example bad driving and parking in contravention, that could or does lead to harm, obstruction etc. in other words the DEA 2017 provides the power to do this but we need workable Codes of Practice or procedures to enable it to function efficiently and effectively.

For example, we are part of a multi-agency data sharing project to reduce nuisance vehicles (those who have more than 3 unpaid Penalty Charge Notices, no valid MOT, no insurance and unpaid vehicle excise duty), aimed at making roads safer and more vehicles compliant called Tutelage, and data sharing is proving to be a significant challenge. In this case would the regulators get it from police and/or local authorities? And would they have a duty to report the data or would the data be collected directly by themselves. The latter is likely to be costly and perhaps unrealistic.

Q.19

4.24 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 also deal with cybersecurity?

(3) Are other powers needed?

Yes.

Q.22

4.38 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, with the same concerns expressed in Q.18. This would rely on local authority and police data.

Consider creating a data standard across both local authority and police data to ease collation. How would a local authority know if an AV was in self-driving mode when a parking contravention takes place? Issuing Penalty Charge Notices would need to be consistent across all local authorities.

The BPA is a partner in the worldwide Alliance for Parking Data Standards, soon to become an ISO Standard and we would recommend adoption of this Standard to facilitate efficient and effective data exchange between vehicles and traffic and parking management systems for example.

Q.26

4.53 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, agree and we would welcome being part of this forum. Our interest would be particularly on traffic regulation orders that relate to parking contraventions, kerbside management, automated valet parking, traveller data services, congestion and moving traffic management.

Q.27

4.54 We welcome views on:

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

The forum composition needs to be given a lot of consideration. For example, we recommend it includes representatives from a wide range of organisations involved in traffic and parking management and transport planners. It should include ourselves, Disabled Motoring UK, local authorities and parking technology providers and could also include the Alliance for Parking Data Standards.

The forum could agree a list of stakeholders that would be referred to for input at relevant stages and also a user group.

Q.28.

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

- (1) should be defined as an individual in the 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?

No. If (2) were to be the case there would need to be a sufficient deterrent to ensure it did not happen. It may be that a different type of a Penalty Charge Notice is appropriate. Compliance is necessary in many cases on safety grounds. Another thing to consider is that income from Penalty Charge Notices helps local authorities to pay for road and traffic management improvements (pothole repairs etc) and this includes making the roads safer for motorists and pedestrians (reducing emissions by switching to electric buses etc).

Q.35

5.32 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?

Criminal liability of the so-called user-in-charge is appropriate; however it must be recognised that nowadays most parking and traffic management non-compliance are no longer criminal offences but civil contraventions enforced through The Traffic Enforcement Centre for England and Wales using civil enforcement powers.

There are many scenarios that need to be considered including for example exemptions in Traffic Regulation Orders like the setting down and picking up of passengers and the loading and unloading of goods for short periods or blue badge holder exemptions in residents parking bays.

Q.36

5.33 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, agree.

Q. 55

10.17 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, agree this is a sound proposal.

Q.56

10.19 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, and also more widely to individuals seeking redress, local authorities and all those involved in civil enforcement.

We look forward to our continued involvement in helping to develop the regulatory framework for AVs.

Yours faithfully



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