

## Law Commission: Consultation Paper 3 – A regulatory framework for automated vehicles

Direct Line Group ("DLG") welcomes the opportunity to respond to the above consultation, published by the Law Commission ("LC") on 18 December 2020.

### Introduction

DLG provides a wide range of general insurance products to consumers through a number of well-known brands including Direct Line, Churchill, Privilege and Darwin. It also provides insurance services for third party brands through its DLG Partnerships division. In the commercial sector, its NIG, Direct Line for Business and Churchill Business Insurance operations provide insurance products for businesses.

In addition, DLG continues to provide support and reassurance to millions of UK motorists through its Green Flag breakdown recovery service.

DLG would be happy to elaborate further on any of the points made in this response. In the first instance, any questions should be addressed to:

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## Executive Summary

DLG largely supports the proposals made by the LC throughout the consultation paper, particularly with regards to safety cases, a safety assurance scheme and regulatory sanctions. However, there are a number of areas requiring further consideration as highlighted throughout the response.

DLG considers that whichever safety standard is selected by the LC following this consultation must be considered the minimum acceptable standard and Automated Driving System Entities (ADSEs) should strive to exceed this as technology develops. DLG has provided comments on all the proposed options but considers AVs should initially be at least as safe as a competent and careful driver becoming safer as technology and usage increases.

DLG has concerns regarding proposals relating to transition demands and liability for offences following the failure to respond to a transition demand. DLG considers that an Automated Vehicle (AV) must be capable of finding safe harbour, even where the user-in-charge does not respond to a transition demand. If the vehicle is unable to do this, the vehicle cannot be considered able to safely drive itself.

Furthermore, DLG has some concerns arising from the proposals on data, particularly with regards to the recording of location data which DLG considers essential in determining liability should an incident occur.

## Response to questions

### 1. 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;**

1.1 DLG agrees with this proposal as the vehicle cannot be considered to have the ability to safely drive itself, as envisaged by the Automated and Electric Vehicles Act 2018 (AEVA 2018), if the user-in-charge needs to assume a monitoring role. Users-in-charge should be permitted to undertake other activities whilst the Automated Driving System (ADS) is engaged which would not be possible if the user-in-charge has to remain responsible for monitoring the vehicle.

**(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 situation awareness;**

1.2 DLG supports these requirements with regards to a transition demand, particularly with regards to not mandating a set time for the user-in-charge to gain situational awareness. However, DLG considers that more research is required to determine what "sufficient" means in all situations. DLG notes that "sufficient" should mean at least the time required to avert all known risks.

**(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?**

1.3 DLG agrees that a vehicle must be safe without any intervention from the human user, however, the term "safe enough" is subjective and requires further consideration as per our answer to Q4. DLG considers that "safe enough" should mean safe to drive without intervention, except in emergencies. DLG also notes that a transition demand should only occur in the event of an emergency and, in the event that the user-in-charge does not respond to the transition demand, the vehicle must be capable of stopping somewhere safe.

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

2.1 DLG considers that the introduction of AVs should enable more people to benefit from using vehicles than at present. All vehicles ought to be designed to accommodate disabilities, otherwise the manufacturer/developer risks breaching the Equality Act 2010.

2.2 Additionally, as hearing loss is not listed on the Driver and Vehicle Licencing Agency's notifiable conditions list<sup>1</sup>, any features required to use the vehicle safely should be usable by those with hearing loss without restriction and this should be dealt with within the safety case.

**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?**

3.1 No, DLG considers a regulatory body with expert knowledge, with contributions from different industries, would be better placed to make fully informed decisions.

**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 human driver who does not cause a fault accident;**

**(c) overall, safer than the average human driver.**

4.1 DLG considers that it is imperative that whichever standard is selected must not result in a step back in safety. A significant benefit in developing AVs is to see an improvement in safety, therefore, DLG suggests that option (a) is the most appropriate as a minimum standard with a view to exceeding this as technology develops.

4.2 Given that 94% of serious crashes were put down to "human error"<sup>2</sup>, this means only 6% of drivers involved in serious crashes were being competent and careful. Therefore, to accept anything less than competent and careful driving from an AV would not be in keeping with the proposed benefits of introducing AVs onto our roads. There is also the risk that if more accidents were allowed to happen, drivers would be dissuaded from believing that AVs are safe; this could result in significant long-term issues in take-up. Additionally, DLG notes that the standard suggested by option (b) is very high, in that an AV would never cause an accident. DLG is of the opinion that selecting such a high standard could hinder the development and deployment of AVs.

4.3 DLG is concerned that option (c) is very much open to interpretation; "average driver" would need to be further qualified to confirm who/what is considered "average". DLG also considers it impossible to measure accident volume against average drivers, as it is well known that more accidents are caused by new and inexperienced drivers.

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

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<sup>1</sup> [DVLA's notifiable conditions list](#)

<sup>2</sup> Paragraph 5.36

5.1 DLG has no comments to make as observations on how AVs can be made safe is for manufacturers and third parties such as Thatcham. However, on a general note, DLG supports the ABI and Thatcham's 12 principles of safe automation report<sup>3</sup>. DLG considers that the AV must be fitted with the technology that enables incidents to be avoided without causing a secondary incident (for example, an AV must be able to change lanes safely where there is a risk of collision without swerving into the path of another vehicle).

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

6.1 DLG considers that regulators are expected to comply with the Equality Act 2010<sup>4</sup>, and one way in which regulators can achieve this is by ensuring that all groups of people (especially those with protected characteristics) are in mind and considered when designs are put together, and involved in testing.

**7. 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?**

7.1 DLG supports this proposal and further considers that national level approval must be sought after type approval has been received. Ensuring that safety assessments use a variety of techniques is the best way to embed a culture of safety and openness within manufacturers.

7.2 The regulator(s) must have the ability to control retrospective faults and the option to remove/suspend approval as per our answer to Q23.

**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.**

8.1 DLG supports this proposal as, for the sake of equity, it is important to consult stakeholders.

**9. We provisionally propose that:**

**(1) unauthorised automated driving systems should be prohibited; and**

9.1 DLG strongly supports this proposal.

**(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?**

9.2 DLG finds this proposal reasonable but urges the Secretary of State to ensure that the public must not be put at risk in doing so (i.e. not on public roads/hard shoulders not compromised).

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<sup>3</sup> [ABI & Thatcham's 12 principles of safe automation](#)

<sup>4</sup> [S.149 of the Equality Act 2010](#)

**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”);**

10.1 DLG agrees with this proposal.

- (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;**

10.2 DLG considers that this should be a two-stage process in which the ADS must receive international type approval and undergo the national classification process to consider whether the ADS can be classified as automated under the AEVA 2018. It would be unacceptable to allow manufacturers to only seek approval via one scheme if the other scheme has tighter provisions, thus allowing an easier route to approval, possibly at the cost of enhanced safety.

- (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?**

10.3 DLG is unsure how this would work in practice, particularly with regards to liability where something does go wrong, as case law suggests that software is only a product if sold with or in an object and so is not covered by product liability law. If this were to be the case, a review of product liability legislation would be needed.

**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;**

11.1 DLG agrees with this proposal, noting that as the Road Traffic Act 1988 already accounts for road worthiness, this seems a sensible place to establish an ADS approval scheme.

- (2) an ADS should be defined as a combination of software, hardware and sensors, which can be installed in a “type” of vehicle;**

11.2 DLG supports this proposal.

- (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;**

11.3 DLG considers that an ADS should only be approved once it has been tested in a vehicle. DLG recommends that it is made clear that an ADS can never receive approval until it has been fully tested in a 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?**

11.4 DLG is concerned about who will be the ADSE for a system which is approved to be installed in pre-registered vehicles. DLG is of the opinion that this should be the entity intending to sell the ADS or the service facilitated by the ADS, subject to comments made in response to Q10 regarding software and product liability.

11.5 DLG considers the specification for the “type of vehicle” must include operational design parameters for each system; this includes minimum and maximum weights, minimum and maximum lengths etc.

**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.**

12.1 DLG is not best placed to comment.

**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;**

13.1 Subject to the points made in answer to Q10 regarding the need for a two-stage approval process, DLG agrees with this proposal.

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

13.2 Subject to the points made in answer to Q3 regarding the Secretary of State, DLG agrees with this proposal.

- (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;**

13.3 DLG supports this proposal.

- (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?**

13.4 DLG agrees with these proposals but considers that there needs to be some classification of what "sufficient funds" looks like and recommends the safety regulator includes a financial provision for liability, whether that is a monetary amount or compulsory insurance cover.

**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?**

14.1 DLG agrees with this proposal.

**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?**

15.1 DLG supports the inclusion of an appeals process but has no comment to make regarding the existing appeals process.

**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.**

16.1 DLG considers that privately owned AVs should either have received sufficient testing and have approval for use by the general public, or not.

16.2 However, DLG acknowledges there is a potential case for testing HARPS in real world conditions, provided there are conditions around the circumstances in which the testing can be done to ensure this does not jeopardise public safety. It is imperative that the regulator is not doing this to BETA test the vehicles. DLG considers that only "limited numbers" of such vehicles should be permitted at any one time, subject to definition of "limited numbers".

**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?**

17.1 DLG strongly supports this proposal, as continual monitoring of development, software changes, and cybersecurity will be necessary to ensure safety for the lifetime of the vehicle.

**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?**

18.1 DLG agrees with these proposals which support the aims of safety, subject to some concerns.

18.2 DLG considers that manufacturers should provide mandatory training through the vehicle's infotainment system to each new driver of the vehicle. The vehicle must be able to recognise a new driver who has not yet completed this training and therefore not allow the driver access to the ADS.

18.3 DLG is also concerned about how the AV will keep up to date with variable traffic rules such as average speed restrictions and variable speed limits on motorways. There are also concerns around ensuring continued safety where the ADSE has ceased to trade.

**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?**

19.1 DLG agrees with this proposal which will enable software updates to be pushed out as quickly as possible but notes that geofencing should be built in automatically to protect the driver from prosecution, for example a driver crossing the English Channel into France. The AV must hand back control to the driver when it reaches the limits of its geofencing.

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

19.2 DLG supports this proposal providing that experts in this field are consulted regularly.

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

19.3 DLG considers that the regulator should be empowered to require the gathering of specific information, and that such information should be gathered, retained for a specified amount of time and made accessible for every instance that may be an accident, so that all potential accidents are recorded for analysis, e.g. minor impacts that do not deploy airbags may still incur a liability for an injury such as whiplash. DLG considers that all incidents should be interrogated to determine the safety of vehicles, not just those that cause serious injury. This will also aid the continued development of AVs and their safety features.

**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?**

20.1 DLG recommends that the two authorities should be kept separate to uphold the integrity of the two functions. Each authority will have separate issues to consider and expertise to develop.

**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)?**

21.1 DLG considers that the regulator should report into another body (for example, the Transport Select Committee) to ensure regulator accountability. The regulator should include 'communication' as a standing agenda item to encourage engagement with external parties such as Thatcham.

**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?**

22.1 DLG supports these proposals. However, DLG considers it should be made clear that there is a requirement to investigate, as currently it sounds as though this could be an optional activity.

**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;**



**(7) recommendation of attendance at a restorative conference.**

**Do you agree?**

23.1 DLG agrees that the regulator should have a wide range of sanctions available to them, to ensure that the sanction is effective in achieving the outcome that is desirable. However, if the regulator has established that the ADSE is at fault or has been negligent in design or implementation, the investigation should be made available to interested parties who might wish to pursue the ADSE for their liability for a specific loss.

**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?**

24.1 DLG supports this proposal and considers that the regulator should have the power to impose any sanction that achieves a safer driving environment for road users.

**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?**

25.1 DLG supports this proposal, although notes that a large proportion of collision investigations are carried out by insurance companies. Smaller incidents may be indicative of wider safety issues, DLG is concerned about how these will be taken into account. Further consideration is required as to how the unit will be funded and how it will maintain its impartiality.

**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?**

26.1 DLG strongly supports this proposal given that there are so many scenarios to be considered.

**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.**

27.1 DLG considers the insurance industry must be considered; both insurers (such as DLG) and industry bodies (such as the Association of British Insurers and Thatcham) should be included in the forum to give a wide-ranging view on the topics discussed.

27.2 There are a number of issues that still require further consideration, including liability issues and safety issues. The forum should continue to discuss these issues as the AV landscape progresses.

**28. We provisionally propose 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**

28.1 DLG considers that the user-in-charge should be defined as an individual 'qualified' to operate the controls of the vehicle, rather than purely in the position to do so. This would then capture issues such as licensing and the influence of alcohol or drugs.

**(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?**

28.2 DLG supports this proposal, but only where the vehicle is in dynamic driving mode at the time of the offence. The user-in-charge should only be liable from the end of the transition period. Parking as an example does not demonstrate this issue well given that the user-in-charge may have selected an unfit parking space albeit they are not parking the vehicle themselves.

**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**

29.1 DLG agrees with this proposal, subject to any defences that are developed (for example, the user-in-charge is unable to take over control of the vehicle as they are suffering a heart attack at the time of the transition demand).

**(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?**

29.2 DLG considers that if the driver does not take over control following a transition demand, the vehicle should stop in safe harbour, not in a manner which constitutes a criminal offence. The driver should not be liable for inadequate design. A vehicle which stops in a manner which is unsafe cannot be considered to safely drive itself.

**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.**

30.1 DLG supports this proposal as a learner driver should be given the opportunity to get used to this level of autonomy.

**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?**

31.1 DLG supports this proposal.

**32. We provisionally propose that persons carried without a user-in-charge should be guilty of a criminal offence. Do you agree?**

32.1 DLG supports this proposal.

**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.**

33.1 DLG supports this proposal.

**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? If not, we welcome views on alternative legal tests.**

34.1 DLG strongly supports this proposal, however, consideration should be made as to how to ensure that such a defence would be possible considering that data will be collected by the vehicle.

**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;**

35.1 DLG supports this proposal.

**(2) maintaining the vehicle in a roadworthy condition (including installing safety critical software updates);**

35.2 DLG supports this proposal, however, notes that the AV should be designed in such a way that it is not able to be used if a safety critical software update has not been completed. DLG considers that the user-in-charge should only be liable if they were aware or ought to have been aware of the safety critical update; this is in line with the AEVA 2018<sup>5</sup>, whereby the insurer's liability may be excluded or limited where an accident occurred as a direct result of "a failure to install safety-critical software updates that the insured person knows, or ought reasonably to know, are safety-critical".

**(3) parking;**

35.3 DLG considers that further clarity is required regarding liability whilst parking. Question 28 references the liability of parking offences while the ADS is engaged and suggests the user-in-charge is not responsible, although DLG notes that the user-in-charge may still retain some responsibility as to the activity even if the AV is carrying out the parking manoeuvre. However, this question suggests the user-in-charge is liable where the ADS is not engaged. Given the multitude of parking situations a driver/user-in-charge could find themselves in, this requires further clarity.

**(4) duties following accidents to provide information and report accidents to the police; and**

35.4 DLG considers that there should be no obligation on the user-in-charge to report accidents whilst the ADS is engaged unless the vehicle notifies them of an accident. For accidents that do not arise from the dynamic driving task, DLG agrees with this proposal.

**(5) ensuring child passengers wear seatbelts.**

**Do you agree?**

35.5 DLG supports this proposal.

**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?**

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<sup>5</sup> [AEVA 2018 Part 1 Section 4](#)

36.1 DLG considers that clarity and guidance around topics such as software or recalibrating sensors would be beneficial. Any requirements of the ADSE in ensuring the roadworthiness of the ADS should be mandated by regulation. DLG further considers that AVs should be able to recognise and report any faults to the AV system.

**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**

37.1 DLG agrees with this proposal.

- (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?**

37.2 DLG agrees with this proposal and considers that the entirety of the route must be able to be completed safely.

**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”.**

37.3 DLG considers that as not enough is known about how remote operation will work yet<sup>6</sup> and this isn't set to happen in the near future, no changes should be made to the Act at this time. The Act is intended to be the first wave of legislation to allow the development of AVs and will be updated through time as technology develops; DLG feels this technology has not yet developed enough to warrant an update to the Act.

**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?**

38.1 DLG supports these proposals.

**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.**

39.1 DLG considers the safety case route to be appropriate but also recommends a training regime as part of a safety management system.

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<sup>6</sup> Paragraph 13.97

**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?**

40.1 DLG agrees with these proposals.

**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?**

41.1 DLG supports this proposal in principle where the registered keeper or owner has possession of the vehicle and are aware of the duties placed upon them but does have some reservations.

41.2 DLG considers clarity is required as to whether the transfer of duties will be mandated or whether this occurs on the back of a request to transfer duties.

41.3 DLG is concerned that "appropriate to do so" is too open to interpretation. DLG considers that the LC should quantify this and provide some measure of appropriateness.

41.4 DLG is also concerned that this could be dependent on the contract terms, for example when leasing a vehicle. Clarity is required around how duties can be transferred and in what circumstances.

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

**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?**

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

42.1 DLG supports these proposals but cannot comment any further as this falls outside its area of expertise.

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

43.1 DLG has no comment on this 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?**

44.1 DLG supports this proposal and considers that it will help to focus the senior managers' minds on embedding a safety-focused culture. DLG considers this could go further by including some form of approved/responsible person(s) scheme whereby senior managers formally assume responsibility over aspects of the application for classification and the information within the application. This would enable the regulator or the Crown Prosecution Service/Procurator Fiscal to apply the offence to the correct senior manager.

**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.

45.1 DLG supports these proposals.

**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.**

46.1 DLG agrees that the ADSE should be obliged to present information in a way which the regulator can understand and process, free from any unambiguity. This must form part of the approval process as otherwise the regulator will not fully understand all information relating to the approval.

**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?**

47.1 DLG agrees with this proposal.

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

48.1 DLG supports this proposal, for example, tampering with road signs may result in being unreadable to the sensors of the AV even though the sign can still be understood by a human driver; this should be considered tampering and the offence should apply.

**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?**

49.1 DLG supports this proposal.

**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?**

50.1 DLG supports this proposal.

**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.**

51.1 DLG supports this proposal in principle, however, notes that this should not allow the vehicle manufacturer to set up a repair or servicing monopoly. The issue being dealt with here is unauthorised interference which needs to be distinguished from legitimate changes, so a repair garage recalibrating the sensors of an AV should not be considered to be a criminal act.

**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?**

52.1 DLG considers there is sufficient clarity that the usual rules of contributory negligence will apply to accidents involving AVs. DLG recommends, however, that at the next suitable opportunity the Government considers amending the Act to remove any doubt as to the intention.

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

**Do you agree?**

53.1 DLG considers that the current situation with regards to victims of accidents caused by uninsured cars which are driven by humans should continue to apply in the case that the uninsured vehicle is an AV. DLG considers it is important that innocent victims of these accidents continue to be compensated.

**54. We provisionally propose that:**

**(1) product liability law should be reviewed to take account of the challenges of emerging technologies;**

54.1 DLG supports this proposal, noting that the review should take place as soon as possible to keep up with the technology that is already emerging.

**(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?**

54.2 Whilst DLG notes that it would be more efficient to review product liability as a whole, product liability does need to be fit for purpose so at least a review of the aspects relevant to AVs is needed.

**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;**



55.1 DLG considers the vehicle needs to not only record the location where the ADS has been activated and deactivated, but also where the vehicle has been whilst the ADS has been engaged. Where the ADS has not detected an accident, it will not issue a transition demand, and so will remain engaged. As such, only recording the beginning and end points of control will not be adequate to establish if the vehicle was involved in the accident in question. DLG considers recording the location for the entirety of the time that the ADS is engaged will help to determine whether or not the ADSE or driver is liable for the incident and also provide claims evidence.

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

55.2 DLG agrees with this proposal.

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

**Do you agree?**

55.3 DLG agrees with this proposal.

**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?**

56.1 DLG supports this proposal, however, considers that legislation “must” impose a duty, rather than “should”. DLG considers the data must also be supplied in a readable format.

56.2 DLG recommends implementing regulatory controls to ensure that insurers have access to this data, rather than insurers having to obtain court orders which ultimately results in unnecessary delay and increases the cost of insurance for customers.

**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?**

57.1 DLG considers that this proposal is acceptable, however, notes insurers and the ABI have previously requested 6 years to ensure the data is stored for the minimum amount of time in which a claim can be brought against the insurer.

**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;**

58.1 DLG supports this proposal, however, DLG considers the ADSE “**must**” present details in this way, rather than “should”.

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

**Do you agree?**

58.2 DLG supports this proposal but notes that the ADSE must abide by its obligations under the UK Data Protection Act 2018 and the UK GDPR.

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