

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

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What is your name?

John Birtwistle

What is the name of your organisation?

FirstGroup plc

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

Response on behalf of organisation

CHAPTER 4: SELF-DRIVING AND HUMAN INTERVENTION

Consultation Question 1 (Paragraph 4.114)

We provisionally propose that:

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

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

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

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

Do you agree?

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

Yes

The concern is about what is "safe enough" although that is addressed in the next set of questions.

Consultation Question 2 (Paragraph 4.115)

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

Yes - there is no justification from their exclusion and in particular vocational "users in charge" ought not be discriminated against. Hearing loss is no barrier to driving so why should it be to being a "user in charge", and it should be a legal requirement that ADS systems provide signals other than auditory.

CHAPTER 5: HOW SAFE IS SAFE ENOUGH?

Consultation Question 3 (Paragraph 5.118)

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

Do you agree?

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

Yes

Consultation Question 4 (Paragraph 5.119)

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

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

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

As safe as a competent and careful human driver

Particularly in the early days of adoption of this type of vehicle there should be a high standard set for their performance, as they will be interacting with a far higher proportion of vehicles driven by drivers of various competence levels. To minimise the adverse interaction between these vehicles the automated vehicles should be capable of matching the characteristics of the best drivers. This will also help ensure the vehicles' "learning" experience and should reduce the need for "handover" events.

Consultation Question 5 (Paragraph 5.120)

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

Comprehensive testing in as wide a variety as possible of public environments, to build data which will improve development of ADS systems, handover systems/events and "user in control" testing. One area which is not covered in the Consultation is the relationship between the Operational Design Domain (ODD) and the testing or deployment to be undertaken; specifically ensuring that the ODD accurately reflects the specification of both the environment in which the vehicle is being deployed and the use to which it is being put. This is a fundamental requirement of any use of such vehicles in respect of their current technological capabilities and limitations.

Consultation Question 6 (Paragraph 5.121)

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

A robust approach to the evaluation of safety cases, test scenarios and results will be required in order to eliminate bias.

CHAPTER 7: ASSESSING SAFETY PRE-DEPLOYMENT

Consultation Question 7 (Paragraph 7.99)

We provisionally propose that:

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

Do you agree?

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

Yes

We have some reservations on items 3b and 3d. For 3b it is perhaps a question of terminology - is it an audit of the safety case that is required or an independent review? The latter seems more appropriate. That perhaps also covers 3d, although whether any "test" is required is perhaps questionable - a competent safety case should include the results of testing and to have these signed off by a third party - independent corroboration that they took place as reported - as part of the safety case documentation would probably reduce the amount of administration required, as well as obviating the need for (and cost of) a physical testing environment, whilst providing the same level of assurance.

Consultation Question 8 (Paragraph 7.100)

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

Yes to ensure that these are representative of, and address the concerns of, stakeholders. This will help both with "buy in" to the process and to ensure that an appropriate range of circumstances is covered.

CHAPTER 8: INITIAL APPROVALS AND CATEGORISATION – PROPOSALS

Consultation Question 9 (Paragraph 8.17)

We provisionally propose that:

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

Do you agree?

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

Yes

Tests and trials should be possible under defined circumstances and conditions as evolution (or revolution) in design and capability of vehicles will never get beyond the controlled environment of the test track and lab.

Consultation Question 10 (Paragraph 8.25)

We provisionally propose that:

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

Do you agree?

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

Yes

This raises a question of EU approval - how would an ADS approved in Germany be approved in UK - would it be required to go through the entire process as if starting without any evaluation at all?

Consultation Question 11 (Paragraph 8.43)

We provisionally propose that:

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

Do you agree?

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

Other

In respect of items 1 3 and 4 this is agreed. For item 2 there is a need for a potentially more complex approach. For instance an ADS could be capable of retrofitting to a vehicle which already has type approval or individual vehicle approval. That should suffice once the ADS itself is approved. But if the ADS and the vehicle itself are new designs, but independent of each other, there is a gap if the ADS is approved - even if it is "authorised" by its supplier to fit to that particular vehicle. And in that case the vehicle itself will also need to be approved before it can be deployed. Further complication arises in the case of any ADS system that can be installed in a third party vehicle - the installation process itself needs approval, which perhaps could be covered by this being permitted only by the party which supplies the ADS system.

Consultation Question 12 (Paragraph 8.44)

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

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

We do not have first hand knowledge of this process.

Consultation Question 13 (Paragraph 8.71)

We provisionally propose that:

- (1) once an ADS has received type approval at either international or domestic level, an Automated Driving System Entity (ADSE) would need to submit the vehicle to the UK safety regulator for categorisation as able to safely drive itself;
- (2) the safety regulator should make a recommendation to the Secretary of State for how the vehicle should be classified;

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

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

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

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

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

Do you agree?

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

Yes

This is a measured approach. Is it anticipated that the UK Safety Regulatory would be [part of the] DfT?

Consultation Question 14 (Paragraph 8.77)

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

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

(b) the procedure for doing so; and

(c) criteria for doing so.

Do you agree?

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

Yes

This process will need to evolve with experience and making it too rigid will hinder development.

Consultation Question 15 (Paragraph 8.78)

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

The principle appears sensible but we have no first hand experience of the current process.

Consultation Question 16 (Paragraph 8.83)

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

In the early stages of deployment this appears sensible - and perhaps also needs to consider control of where deployment is permitted and under what conditions. However this does raise the issue of quantity licensing which may not be appropriate for certain types of automated vehicles as it could represent a market distortion - for instance in public transport. There will need to be an appropriate exit mechanism to prevent such an adverse consequence.

CHAPTER 10: ASSURING SAFETY IN USE

Consultation Question 17 (Paragraph 10.82)

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

Do you agree?

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

Yes

Inasmuch as any such system can assure safety, given the number of variables and limited experience, but we have to start somewhere.

Consultation Question 18 (Paragraph 10.83)

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

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

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

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

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

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

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

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

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

Do you agree?

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

Other

The principle is laudable - but will it work in practice? Considering 2a, using data from conventional vehicles will help in the instances where there has been a recordable incident of some form, but will not provide data on the far greater number of inconveniences, discourtesies, inefficiencies, near misses and minor incidents that fall outside that scope. So any record of leading measures will, by definition, be exaggerated in its impact but massively under-recorded in its incidence. We also foresee practical difficulties with 3c, as to ensure the value from such an exercise would require periodic retraining in use of the ADS - it will require changes to the way in which "user in charge" licenses would differ from "driving" licenses and impose on ADS manufacturers a duty to ensure that the keepers (and drivers) of automated vehicles were monitored and kept up to date, and these individuals contacted to be advised of new training and testing requirements. Presumably, failure to adhere to this process (by the individual) would lead to a loss of license and thereby invalidate insurance. Other problems include where an ADS supplier goes out of business - would that render that ADS system unusable? This process does not appear to be practically feasible.

Consultation Question 19 (Paragraph 10.84)

We welcome views on the following issues:

- (1) Should scheme regulators be empowered to approve software updates that apply only within the UK, without requiring the manufacturer to return to the original type approval authority?
- (2) Should the scheme should also deal with cybersecurity?
- (3) Are other powers needed? (Note that data is discussed in Chapter 17.)

Item 1 agreed. Item 2 is a far wider issue that is not covered comprehensively in this consultation. Item 3 we have no view at this point.

Consultation Question 20 (Paragraph 10.100)

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

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

Other

We can see either of these scenarios working - but the administrative burden for consumers must be minimised. Expanding the roles of VCA and DVSA would capitalise on their existing skills and capabilities and benefits from the wide familiarity and acceptance of the roles of these bodies. But, given the need for all to learn by experience with this new technology, a single body responsible for the entire "nose to tail" concept might work equally well. One practical problem with the latter might be that finding suitable qualified and experience personnel might lead to cannibalisation from the existing agencies.

Consultation Question 21 (Paragraph 10.101)

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

Its constitution should mandate an annual [or other periodic] public consultation to identify pressing issues which should then be pursued with expert stakeholders. An advisory committee with powers to mandate such expert involvement on specific issues may suffice - but public transparency demands may not be satisfied by such an approach.

CHAPTER 11: INVESTIGATING TRAFFIC INFRACTIONS AND COLLISIONS

Consultation Question 22 (Paragraph 11.24)

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

- (1) investigate safety-related traffic infractions (such as exceeding the speed limit; running red lights; or careless or dangerous driving);
- (2) investigate other traffic infractions, including those subject to penalty charge notices;
- (3) if fault lies with the ADSE, apply a flexible range of regulatory sanctions.

Do you agree?

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

Yes

Para 4.35 suggests that some traffic contraventions may be less safety critical, but fails to address their potential impact on the wider community. A bus service held up by an automated vehicle which has strayed over the bus lane marking may have a significant adverse impact on up to 100 people, and this needs to be taken into consideration. Except in unavoidable emergency situations (as explored elsewhere in the consultation) such an infringement should not be treated any more lightly than a safety critical one.

Consultation Question 23 (Paragraph 11.53)

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

- (1) informal and formal warnings;
- (2) fines;
- (3) redress orders;
- (4) compliance orders;
- (5) suspension of authorisation;
- (6) withdrawal of authorisation; and
- (7) recommendation of attendance at a restorative conference.

Do you agree?

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

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

On the final point this should (in some circumstances at least) be mandatory rather than a recommendation. These sanctions should also be available for use in combination, not on an individual basis alone.

Consultation Question 24 (Paragraph 11.54)

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

- (1) the amount of any monetary penalty; and
- (2) the steps which should be taken to prevent re-occurrence of a breach.

Do you agree?

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

Yes

This will allow for mitigating and aggravating individual circumstances to be taken into account, as well as repeat offences.

Consultation Question 25 (Paragraph 11.69)

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

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

Do you agree?

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

Yes

Given that all parties will be learning from the deployment of automated vehicles, it seems appropriate that in the first instance a specialised unit be established.

As automated vehicle use becomes more widespread, this would probably be integrated into mainstream functions.

Consultation Question 26 (Paragraph 11.82)

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

Do you agree?

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

Yes

A body which brought together expert stakeholders from all elements of the automated vehicle sector, and sought wider public views (to identify underlying concerns and perceptions) on a regular basis, would add value to the processes, enforcement and control proposed by the paper.

Consultation Question 27 (Paragraph 11.83)

We welcome views on:

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

All issues of use of automated vehicles, and their interaction with other traffic and road users. A wide range of expert stakeholders should be engaged covering all modes, as well as enforcement agencies and highway designers/traffic engineers. Regular public consultation should be included.

CHAPTER 12: THE USER-IN-CHARGE

Consultation Question 28 (Paragraph 12.24)

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

- (1) should be defined as an individual in position to operate the controls of a vehicle while an ADS is engaged and who is either in the vehicle or in direct sight of the vehicle; and
- (2) is not a driver while the ADS is engaged, and would not be liable for any criminal offence or civil penalty (such as a parking ticket) which arises out of dynamic driving.

Do you agree?

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

Yes

Consultation Question 29 (Paragraph 12.37)

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

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

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

Do you agree?

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

Yes

We support these principles although if the handover event occurs as a result of, or coincident with, there being a medical emergency or condition experienced by the "user in charge" then this needs to be considered in mitigation on a case by case basis.

Consultation Question 30 (Paragraph 12.45)

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

We do not consider this to be appropriate. The user in charge should already be in possession of a full driving license appropriate to the vehicle category in question. The handover events in particular are, we believe, a need for the user to be fully qualified and experienced in the control of the vehicle and indeed we would recommend that the user in charge has a minimum period of experience, post license acquisition, of the vehicle category in question - not less than 12 months.

Consultation Question 31 (Paragraph 12.53)

We provisionally propose that legislation should create new offences of:

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

Do you agree?

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

Yes

Consultation Question 32 (Paragraph 12.59)

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

Do you agree?

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

Yes

Consultation Question 33 (Paragraph 12.60)

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

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

We consider that each of these offences is appropriate.

Consultation Question 34 (Paragraph 12.66)

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

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

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

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

Yes

This is further justification, we believe, for our recommendation that the user in charge is a fully qualified driver for that vehicle category with pre-existing experience of driving it that category a period of time (see response to Q30 above)

Consultation Question 35 (Paragraph 12.94)

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

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

Do you agree?

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

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

We also consider that the user- in- charge should be responsible for checking that the vehicle has a valid MoT certificate, is fully functional at the time of taking the vehicle over, and that it has valid insurance cover. The functionality responsibility is directly analogous to the requirement for a PCV driver to conduct a "daily walk round check" of a vehicle before driving it in service. Given the reliance of an automated vehicle on its sensory equipment, the user in charge should check this for obvious damage or loss before the driving activity commences.

Consultation Question 36 (Paragraph 12.95)

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

Do you agree?

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

Yes

To avoid ambiguity.

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

Consultation Question 37 (Paragraph 13.67)

We provisionally propose that:

(1) where an individual is exercising latitudinal and longitudinal control (steering and braking) over a vehicle remotely, that should not be regarded as a form of "self-driving"; and

(2) where lateral and longitudinal control are exercised by an ADS, all other forms of remote operation should be regulated as "self-driving".

Do you agree?

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

Other

This is likely to depend upon the degree of control exercised by the individual and whether or not this can be overridden by the vehicle itself - these will need to be determined through the design, testing and evaluation of such systems and the principles underlying the safety case for the individual vehicle and its use.

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".

We have a similar position on this point as the degree of monitoring and the extent to which this is under the control of the operator will have a major influence on this.

Consultation Question 38 (Paragraph 13.86)

We provisionally propose that:

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

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

(a) be operated by a licensed operator; or

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

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

Do you agree?

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

Yes

We agree with all these proposals; they retain the maximum market flexibility for delivery of a service using such vehicles whilst ensuring that the necessary controls and safeguards can be applied.

Consultation Question 39 (Paragraph 13.92)

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

We believe this is appropriate and that individual operators should also be required to undertake continuous professional development if they wish to retain their right to be "in charge" of such a vehicle.

Consultation Question 40 (Paragraph 13.108)

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

(1) supervise the vehicle;

(2) maintain the vehicle;

(3) insure the vehicle;

(4) install safety-critical updates and maintain cybersecurity; and

(5) report accidents and untoward events (as defined by the regulator).

Do you agree?

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

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

If an operator (as a body corporate or an individual, as appropriate) wishes to provide a service of any nature using such vehicles, they must as a minimum be subject to the same responsibilities and legal requirements as those of an operator of "driven" vehicles.

Consultation Question 41 (Paragraph 13.109)

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

Do you agree?

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

Yes

Without experience of the type of operation that might take place it seems inappropriate to be prescriptive at this stage; a permissive regulation will depend on an appropriate burden of proof before any such transfer is permitted.

Consultation Question 42 (Paragraph 13.116)

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

There is already a set of accessibility standards mandated for all but the smallest such vehicles -- the PSV Accessibility Regulations 2000. These regulations should be applied in full to any analogous vehicles. Where this breaks down is in the requirements under the PSV (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002, which require the driver (or other staff member) to provide assistance as prescribed to passengers with particular needs - if there is no "user in charge" this function cannot be completed. There is no clear solution to this other than that vehicles without a user in charge cannot be used to provide a public service, which seems somewhat extreme.

We provisionally propose that:

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

(a) the Equalities and Human Rights Commission; and

(b) representative groups for disabled and older persons;

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

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

Do you agree?

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

No

We believe that the existing Disabled Persons Transport Advisory Committee (DPTAC), an expert committee which advises the Government (specifically the DfT) already fulfils this role and that its remit should be extended to ensure that it covers the same issues as apply to HARPS.

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

There should be continuous ongoing dialogue with DPTAC.

Consultation Question 43 (Paragraph 13.133)

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

We consider it most appropriate that this be administered by the Office of the Traffic Commissioner with support from the Driver and Vehicle Services Agency (DVSA).

CHAPTER 14: CRIMINAL OFFENCES BY ADSES AND THEIR SENIOR MANAGERS

Consultation Question 44 (Paragraph 14.107)

We provisionally propose that:

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

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

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

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

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

Do you agree?

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

Yes

Considering point 3, if the action leading to the offence was deliberate and without coercion, it should still be an offence applied to the individual. In point 4, there should be a direct link to the death or serious injury, rather than an association, for this to apply.

Consultation Question 45 (Paragraph 14.108)

We seek views on the following proposed offences.

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

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

- (1) fail to provide information to the regulator; or
- (2) provide information to the regulator that is false or misleading in a material particular where that information is relevant to the evaluation of the safety of the ADS or the vehicle.

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

The penalty would be an unlimited fine.

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

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

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

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

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

The penalty would be an unlimited fine.

Offence C: offences by senior management

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

- (3) to have been committed with the consent or connivance of an officer of the body corporate; or
- (4) to be attributable to neglect on the part of an officer of the body corporate,

then that officer is guilty of the offence.

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

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

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

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

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

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

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

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

Offences defined under A, B and C are supported. For Offence D, this should apply in the case where the risk or incident was directly associated with the offence rather than relating to it.

Consultation Question 46 (Paragraph 14.109)

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

We support this requirement. It will, in particular, assist operators of such ADSE equipped vehicles in making safety cases and appropriate provision and operational plans for their operation.

CHAPTER 15: NEW WRONGFUL INTERFERENCE OFFENCES

Consultation Question 47 (Paragraph 15.10)

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

Do you agree?

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

Yes

Consultation Question 48 (Paragraph 15.11)

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

The initial presumption should be that the law as it currently applies to infrastructure should be extended to apply to automated vehicles, with appropriate extensions to encompass dedicated external infrastructure, rather than starting with new legislation designed to be all-encompassing.

Consultation Question 49 (Paragraph 15.53)

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

(1) England and Wales; and

(2) Scotland.

Do you agree?

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

Yes, in both England and Wales and Scotland

There needs to be a consistent approach. The general principle is supported but might become problematic if the maintenance or remediation activities of a local highway authority, or its appointed contractor (or indeed of an authorised third party where a road is privately owned but open to the public) results in the failure of some form of infrastructure affecting the vehicle's performance or capabilities. There are also resultant issues about liability in cases whether or not an offence is committed.

Consultation Question 50 (Paragraph 15.55)

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

Do you agree?

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

Yes

Subject to comments at Q49 above.

Consultation Question 51 (Paragraph 15.62)

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

This seems appropriate as long as it does not result in market abuse due to exercise of market dominance. We also have concerns about the applicability of this principle to external infrastructure (see response to Q49 above).

CHAPTER 16: CIVIL LIABILITY

Consultation Question 52 (Paragraph 16.24)

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

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

Do you agree?

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

Yes

Consultation Question 53 (Paragraph 16.32)

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

Do you agree?

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

Yes

There should be no distinction between driven and automated vehicles in this regard - it is the other party which is at risk in the event of the vehicle being uninsured.

Consultation Question 54 (Paragraph 16.47)

We provisionally propose that:

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

(2) any review should cover product liability as a whole, rather than be confined to automated vehicles;

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

Do you agree?

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

Other

This is a complex area and whilst there is a need for protection against supplier negligence, it is probably too complex an area to cover in isolation.

CHAPTER 17: ACCESS TO DATA

Consultation Question 55 (Paragraph 17.65)

We provisionally propose that:

- (1) for a vehicle to be classified as self-driving, it needs to record the location as well as the time at which the ADS is activated and deactivated;
- (2) the Government should work within the UNECE to ensure data storage systems for automated driving record these data; and
- (3) any national system to approve an ADS should require these data to be collected, subject to safeguards.

Do you agree?

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

Yes

Consultation Question 56 (Paragraph 17.71)

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

Do you agree?

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

Yes

There will also need to be a requirement to advise users (both operators and public) that such data will be collected and disclosed in this manner.

Consultation Question 57 (Paragraph 17.81)

We provisionally propose that:

- (1) initially, DSSAD data from self-driving vehicles should be stored for three years; and
- (2) the issue should be reviewed in the light of experience.

Do you agree?

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

Yes

The review should be at the latest after 12 months experience.

Consultation Question 58 (Paragraph 17.95)

We provisionally propose that:

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

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

Do you agree?

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

Yes

The requirement under 1 above should also apply to any user (operator) of the vehicle