

**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?

Jennie Martin

What is the name of your organisation?

ITS United Kingdom

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.]

Other

This approach deals with connected devices but not “nomadic” devices brought into the vehicle such as mobile phones, which may well become relevant in the future. Although we agree in principle, with this approach it only makes sense if there are definitions and measurements for the terms used such as “clear”, “safe enough” and “timely”.

There is a need to take into account different user reaction times, including those with cognitive or physical disabilities if they are to be potential users.

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. Without this there would need to be a graduated licensing scheme and inherent difficulties of testing and enforcement. It would be a failure for the industry to put this in the 'too difficult' box. We can engage with the hearing-impaired community to ensure the vehicles cater safely for their needs.

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

But we note that this is a very complex and multi-dimensional issue which needs a lot more research and public engagement.

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 human driver who does not cause a fault accident

We believe that the public would demand much higher than average driving standards. What would be achieved by a competent and careful driver would need to be examined in detail, probably in court anyway, so the most practical approach is (b). However, even this may not be sufficient to gain full public acceptance.

Consultation Question 5 (Paragraph 5.120)

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

- 1) Training / campaigns for those that are not users but will be in environments with AVs. There will be a bigger picture of pedestrian / cyclist / scooterist (a new word!) / equestrian interactions with AVs. We imagine this is where safety will drop below ALARP if education/campaigns are not rolled out to help people understand how to interact with AVs.
- 2) Programmed to drive to conditions (icy, wet surface, loose gravel) – max/min speeds, distances etc should change in relation to the environment and conditions the vehicle is driving in. Algorithms will therefore have to be written for these conditions/road surface types.
- 3) The basics should not be forgotten – vehicle system safety check before travelling mandatory (tyres, fuel, oil). Could be system automated.
- 4) Have fallback operations if connections are lost/certain Automated Driver Systems (ADS). This way, the vehicles can be used in rural areas or more difficult road environments with more confidence. This will also be valuable when cyber security vulnerabilities occur, which are inevitable at some point in the AV journey.
- 5) Maybe every user should have an emergency contact before they can use any vehicle. Could share journey information with that person too, although this is a bit more ‘information’ focused than responsive or a proactive safety improvement.

Consultation Question 6 (Paragraph 5.121)

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

An obvious step is to compile suitable data (also addressed elsewhere in this consultation). Some form of oversight body could be formed.

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

However, “at least some” in (3.d) is too weak as there needs to be a suitably representative and rigorous independent testing regime. E.g.: “... carry out sufficient independent tests to confirm that the manufacturer/developer has undertaken representative and rigorous testing such that the public interest has been satisfied ...”

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. Scenarios may come up that are not initially considered and ensure that more user groups views in the ‘driver’s seat’ are captured

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

This is a good general principle but provision for innovation and trials in secure environments only, until the vehicle is officially authorised.

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.]

Other

(1 and 2) A scheme to approve ADS is fine but automatically allowing any vehicle equipped with it as an automated vehicle seems risky. A systems approach would look at the whole

vehicle. So, we suggest that WVTA is still required and that this will likely be much easier when using an already approved ADS.

(3) – slightly unsure, it feels like naturally this should be only open to international type approvals, but then it may be a futile investment to develop the domestic (national) approval, as almost all vehicles have components from other countries. Potentially developers should be able to submit an ADS for national approval, if they can evidence the source manufacturer of all parts and components and have tested these parts sufficiently for potential failure/security risk.

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

As noted above there may be unintended consequences of partial type approval without a systems approach.

(1) further legislative reform will likely be required, to ensure laws are written with AVs and ADS in mind.

(2) – yes

(3) (a) – yes. (b) – not only how the ADS is installed but who is responsible for each component. Different people/entities will likely be responsible for software, hardware and sensors. This could be an important detail when considering liability/clarity through legal processes.

(4) – yes

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

With the exception of (4b), the ADSE should not only have been “closely involved in the safety case development”, but should have full ownership of it and responsibility for its development. This removes ambiguity and a loophole of getting third parties to develop the safety case and then issues could crop up around sufficient check and review of the safety case by the ADSE.

(3) – consider classification also by type of road

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

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.

Yes, they should.

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

Particularly for early stages of development and wider roll out.

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

Partially – are more powers required for (3)? If not properly updated an ADS will be in breach of the law.

There arises the question of how compliance will be monitored.

3 (b) – Not “maps” – these need to be Digital Traffic Regulation Orders (as explored in the DfT TRO data publication project)

On training:

Fortunately, experience exists from other modes and industries (such as piloting aircraft and operating construction plant and medical equipment). These developments will be more complex and expensive than current arrangements and will take some time to develop but are important to ensure safety for all road users is not compromised. Several remarks can be made:

A simple development would be to ensure that basic education around vehicle automation be made available and tested within the theory part of the driving test.

As we transition from manual to automated driving where branding and marketing can have safety consequences, existing arrangements for user training and licencing need to be radically developed. This is a substantial task and we support development of a national graduated licencing scheme with checks such that insurance is only valid if a driver's licence covers all the enabled functions of a vehicle.

Relevant extract from our response to the recent DfT consultation on Automated Lane Keeping Systems (ALKS):

The form of education and training needs further study: Research shows that using a blended approach of written instruction, video and practical experience is most beneficial. In addition, driving simulators (as used in the aviation industry for example) would allow more intensive training on challenging and little-experienced use cases.

Similarly, requirements for testing users need to be determined which are appropriate and proportionate. These may include acquisition of driving experience, written/computer testing, simulator tests or the opinion of an examiner following review of driving performance. Driver re-testing is controversial but is a requirement in other industries and should also be considered for automated vehicles.

Enforcement measures to ensure that drivers are suitably qualified to drive vehicles already exist (e.g., checks when taking out insurance, on-road checks).

These would need to be suitably extended if some form of permit is required for vehicles with automated functionality.

In terms of responsibilities, a first approach which could be considered is to make training the seller's responsibility. One can imagine the good practice of a sales agent at a main dealership, seating prospective clients at a screen and showing them an instructional video, and then being available to answer questions and demonstrate the automated functionality. However, one can also imagine less good practice with uninformed sales staff and uninterested clients, and an approach that does not check that the training has been absorbed. A second approach could be independent training with a certificate of successful completion required before a vehicle is acquired. This could work for new vehicle sales but it doesn't deal with the private second-hand vehicle sale (and it is assumed that manufacturers will want to seek individual ownership of vehicles as well as rental/leasing arrangements).

A third approach might be for manufacturers to implement automatic disablement of automated functions periodically which can only be unlocked when the owner furnishes proof of training. This approach seems fraught with difficulty.

A fourth approach, which we favour, would require a more formal national system to be developed, overseen by government, of graduated licensing/permits and a check such that insurance is valid only if a driver has permits covering all the enabled functions/services of the vehicle. To increase the acceptability of this approach, existing drivers could be granted a fully populated licence and the graduated approach introduced for new drivers from a certain date (this was the approach when graduated licencing was introduced for motorcycles). As automated vehicles become more common, driving schools will have access to them but, in the shorter term, specialist providers could run one-day courses. Of course, this would need DVSA to maintain enhanced detailed data on drivers and on vehicles including which automated functions are installed/enabled and there would need to be appropriate liaison between DVSA and insurers. We do not underestimate the difficulty (and driver opposition?) to such developments and propose that policy and administrative work begins in parallel with technical system development.

Another point for consideration would be whether individual vehicles could initially have all automated system including ALKS disabled. Individual system could then be unlocked and enabled when drivers provide evidence that they have successfully undertaken the requisite training.

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.)

(1) Yes

(2) If they are approving software updates then yes it would be vital to reducing cyber security threats and vulnerabilities. However, cyber security is a broader issue than just this application.

(3) no comment

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.]

Separate bodies

We favour separate bodies. There needs to be separate authorities in order to ensure appropriate compartmentalisation.

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)?

There should be a duty to consult. There should also be a requirements to appoint an advisory committee representing diverse interests. The regulator and the advisory committee should issue annual public reports.

CHAPTER 11: INVESTIGATING TRAFFIC INFRACTIONS AND COLLISIONS

Consultation Question 22 (Paragraph 11.24)

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

(1) investigate safety-related traffic infractions (such as exceeding the speed limit; running red lights; or careless or dangerous driving);

(2) investigate other traffic infractions, including those subject to penalty charge notices;

(3) if fault lies with the ADSE, apply a flexible range of regulatory sanctions.

Do you agree?

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

Other

Yes, but it also depends on sanctions being proportionate.

(1) should include near misses

(3) – what are a ‘flexible range of regulatory sanctions’? This requires further definition and justification.

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

Informal warnings should also be logged. That way previous data can be looked at to see which ADSEs have had which sanctions imposed and why, which will mean regulation and legislation can be iterated for improvements.

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

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

We have previously recommended this.

We think it is important that manufacturers and the authorities should freely share data within a “no blame” culture such that lessons can be learned from incidents. Education and training of personnel involved in incident investigation including infrastructure operators will be necessary. We note that the air accident investigations process is governed by IACO (International Civil Aviation organisation) and implemented through national agencies. This has “no-blame” initially, with incentives for early identification of the fault. Without such an approach there will be more casualties than necessary and, potentially, the adoption of automated vehicles will be delayed. Thus, if there are barriers this is an important area to address.

Near-misses should also be analysed for proactive decision-making rather than just responsive. This incident investigation unit should be given access to data it requires such as vehicular information to undertake a more in-depth investigation which might highlight which systems failed.

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

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.

(1) the issues the forum should consider;

- Data thus far
- Hierarchy of vehicles (this may change politically, and self-driving vehicles may have to alter their interactions if it were to change).
- Enforcement
- Behaviour change

- New vehicles (do the same road rule applications apply?)
- (2) the composition of the forum; and
- (3) its processes for public engagement.

One option would be development of road rules under BSI

Involved groups should include: road safety experts, AV experts, police, criminal justice professionals, including experts in Digital Traffic Regulation Orders. We suggest a core group of no more than 20 professionals and then undertaking wider consultation.

CHAPTER 12: THE USER-IN-CHARGE

Consultation Question 28 (Paragraph 12.24)

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

(1) should be defined as an individual in position to operate the controls of a vehicle while an ADS is engaged and who is either in the vehicle or in direct sight of the vehicle; and

(2) is not a driver while the ADS is engaged, and would not be liable for any criminal offence or civil penalty (such as a parking ticket) which arises out of dynamic driving.

Do you agree?

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

Other

Yes, with caveats:

We agree with the role but still have concerns about the term “user in charge”

We foresee problems if there is more than one potential driver in the vehicle e.g. sharing responsibilities on a long drive, or three workmen in a vehicle. There will likely be disputes over who was the UIC at the time.

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.]

Other

See answer to 28. It also depends on a fair transition demand period.

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.

Yes, they should.

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.]

No

No, not necessarily. The passenger(s) may have no knowledge of the user in charge's licence status or may have been misled by them.

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.

Yes, see Q32.

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

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

But see also Q36

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.]

Other

Not entirely. Perhaps there is a need to distinguish between “obvious” (to an observant typical driver) and “hidden” un-roadworthiness issues. If the user-in-charge cannot readily determine roadworthiness then it seem unfair to hold them responsible.

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

Consultation Question 37 (Paragraph 13.67)

We provisionally propose that:

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

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

Do you agree?

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

Yes

From a user perspective, whether the vehicle uses local automatic control or remote control or some combination thereof is not of relevance. What is important is that control and responsibility has shifted from the driver to “the system”. So, the legal definition should allow for partial or total remote control.

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”.

Yes, it should – see immediate previous answer.

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.

Yes, we agree that company level responsibility is appropriate so competence has to be assured.

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

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

Consultation Question 42 (Paragraph 13.116)

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

The DfT's own DPTAC will have a valuable contribution to make and should be invited to contribute.

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.]

Yes

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

Annually.

Consultation Question 43 (Paragraph 13.133)

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

To repeat our previous contribution:

Our existing licensing agencies should be extensively involved in this, to ensure continuity of knowledge and experience. As it must be a national scheme it has to be central government

or an agency of central government e.g. similar to the Civil Aviation Authority. CCAV and Zencic should also be closely involved. This function is too sensitive to be privatised.

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

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.

We agree.

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.

Yes, seems reasonable and with a more modest penalty for non-compliance than Q45.

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.

Tampering with infrastructure such as VMS or radio masts is, presumably, already covered in existing legislation. The legal situation with GPS jammers needs to be amended to be watertight. See <https://www.birminghammail.co.uk/black-country/bundles-cash-gps-jamming-device-18181702>

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

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

See also Q48

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

We believe this to be extremely important

Consultation Question 54 (Paragraph 16.47)

We provisionally propose that:

- (1) product liability law should be reviewed to take account of the challenges of emerging technologies;
- (2) any review should cover product liability as a whole, rather than be confined to automated vehicles;

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

Do you agree?

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

Yes

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

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.]

No

This sounds onerous and unnecessary. Six months (as Germany) is likely to be sufficient.

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