

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

## OVERVIEW

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

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

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

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

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

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

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

A shorter summary is also available on the same pages.

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

[automatedvehicles@lawcommission.gov.uk](mailto:automatedvehicles@lawcommission.gov.uk).

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## About you

What is your name?

Professor Sally Kyd

What is the name of your organisation?

University of Leicester

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

Personal response

Responding on behalf of organisation

Other

If other, please state:

What is your email address? (If you enter your email address then you will receive an acknowledgement email when you submit your response.)

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

## Consultation Question 1

We provisionally propose that:

- (2) 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;
- (3) 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;
- (4) to be classified as self-driving, the vehicle must be safe enough even if the human user does not intervene in response to any event except a clear and timely transition demand.

Do you agree?

Yes  No  Other

Please expand on your answer

I very much agree with the position taken at paras 2.5-2.8 of the summary (please note all references to paragraphs will be to the Summary rather than full CP, which I have not been able to read in full). Driving as a task should be all or nothing; full attention is required or it is not. I am concerned that there might be pressure placed on Government and authorities to allow AVs onto the roads before they are sufficiently developed to accord with this position, as seen at para.2.15 with the response from the SMMT in relation to ALKS. Whatever the economic benefits of allowing for ADS, safety must remain the priority, and the Government should ensure a robust response to demands from the SMMT. The LC's proposals will assist with this.

## Consultation Question 2

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

Please share your views below

I agree with the Law Commission's view that those who have a hearing loss and hold a driving licence should not be restricted in their use of AVs, as set out at para.2.24.

### Consultation Question 3

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

Do you agree?

Yes  No  Other

Please expand on your answer

I'm not sure that such an important question should be answered by an individual. Acknowledging the LC's position that this is a political question, I worry that an individual might take the decision in a way that does not follow the reasoning carefully set out in the CP and may do so for reasons of short-term economic gain. It would be better if this were made by a specialist regulator, not as an individual, but a committee made up of technical advisors as well as driver behaviourists and road safety experts.

### Consultation Question 4

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

- (a) as safe as a competent and careful human driver;
  - (b) as safe as a human driver who does not cause a fault accident;
  - (c) overall, safer than the average human driver.
- none of the above

Please expand on your answer

As the LC rightly shows in the CP, the average human driver is not particularly careful or competent. That is highly problematic, and arguably the main reason why despite having one of the best road safety rates in the world, we continue to see a high number of deaths on the roads. With that said, the current law requires all drivers to be competent and careful; if they fail to live up to that standard they commit the offence of driving without due care and attention.

The main benefit of AVs should be increased safety. That should be the motivation for introducing them onto our roads and, that being the case, in my view they should not be permitted onto the road until they are both safer than the average human driver *and* safer than a competent and careful driver. The police will continue to try to improve driving standards by enforcing the law, and the danger is that such efforts could be undermined if AVs were not at least as safe as the current legal requirement. This suggests that AVs

should be an improvement on humans and be required to drive to a higher standard (perhaps of an advanced driver).

### **Consultation Question 5**

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

Please share your views below

I do not feel qualified to answer this. I acknowledge the view that it will be difficult to judge how safe AVs are until they have been driving on public roads for some time, but I would urge that sufficient testing be done that they are not introduced prematurely in order to be sure that the benefit is not outweighed by the risks.

### **Consultation Question 6 (Paragraph 5.121)**

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

Please share your views below

As with question 5, I am not really qualified, but would suggest that rigorous testing is a must. AVs should not be introduced if they are shown to be incapable of recognising the presence of all human beings on the road; it is horrifying that the implication is that some able-bodied white men working on technological advances feel it acceptable to put at greater risk of harm those who do not benefit from such attributes.

## Safety assurance before deployment (Chapters 6 to 8)

### Consultation Question 7 (Paragraph 7.99)

We provisionally propose that:

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

Do you agree?

Yes  No  Other

Please expand on your answer

I agree with what is said at para.7.98 of the CP.

### Consultation Question 8

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

Please share your views below

Yes, an approval authority ought to consult with road user groups – including road safety/road harm reduction groups. Additionally, academics with relevant expertise should be involved. This should include psychologists to be able to compare AV performance with driver behaviour to assist in assessing whether the AV is less dangerous than drivers (NB it is important that that road “safety” is framed as an issue which identifies where the danger originates, rather than just presenting *roads* (inanimate objects) as dangerous. I would not want “road user groups” to just include e.g. members of the AA/RAC.

### Consultation Question 9

We provisionally propose that:

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

Do you agree?

Yes  No  Other

Please expand on your answer

### Consultation Question 10

We provisionally propose that:

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

Do you agree?

Yes  No  Other

Please expand on your answer

I do not feel qualified to present a firm answer to this.

### Consultation Question 11

We provisionally propose that:

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



- (4) where an ADS is installed in a pre-registered vehicle, an example vehicle should be submitted to the regulator for approval of the installation.

Do you agree?

Yes  No  Other

Please expand on your answer

### Consultation Question 12

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

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

Please share your views below

### Consultation Question 13

We provisionally propose that:

- (1) once an ADS has received type approval at either international or domestic level, an Automated Driving System Entity (ADSE) would need to submit the vehicle to the UK safety regulator for categorisation as able to safely drive itself;
- (2) the safety regulator should make a recommendation to the Secretary of State for how the vehicle should be classified;
- (3) it should be open to the safety regulator to recommend that an ADS-enabled vehicle is classified in one of three ways: as not self-driving but driver assistance; as self-driving only with a user-in-charge; or as self-driving without a user-in-charge;
- (4) the safety regulator should only recommend classification as self-driving (either with or without a user-in-charge) if it is satisfied that:
  - (a) an ADSE is registered as taking responsibility for the system;
  - (b) the ADSE was closely involved in assessing safety and creating the safety case; and
  - (c) the ADSE has sufficient funds accessible to the regulator to respond to improvement notices, to pay fines and to organise a recall.

Do you agree?

Yes  No  Other

Please expand on your answer

#### Consultation Question 14

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

- (a) who should assess whether a vehicle is capable of self-driving;
- (b) the procedure for doing so; and
- (c) criteria for doing so.

Do you agree?

Yes  No  Other

Please expand on your answer

I agree with what is set out in para.3.33 of the summary.

#### Consultation Question 15

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

Please share your views below

#### Consultation Question 16

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

Please share your views below

A definitive answer to this question will depend on the level of testing needed to deploy self-driving vehicles in even limited numbers. Deployment on public roads cannot be seen as the primary mechanism for ensuring safety; robust tests must be put in place prior to any AVs being used in public.

## Assuring safety in use (Chapters 9 to 11)

### Consultation Question 17

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

Do you agree?

Yes  No  Other

Please expand on your answer

### Consultation Question 18

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

- (1) scheme regulators should be responsible for comparing the safety of automated and conventional vehicles using a range of measures;
- (2) to do this the regulator should have power to collect information on:
  - (a) leading measures (instances of bad driving which could have led to harm) and
  - (b) lagging measures (outcomes which led to actual harm);
- (3) regulators should have power to require an ADSE:
  - (a) to update software where an update is needed to ensure safety and continued compliance with the law;
  - (b) to keep maps up-to-date, where an AV relies on maps to ensure safety and compliance with the law;
  - (c) to communicate information about an ADS to users in a clear and effective way, including where necessary through training.

Do you agree?

Yes  No  Other

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

### Consultation Question 19

We welcome views on the following issues:

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

Please share your views below

### Consultation Question 20

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

Separate bodies  Single body  Other

Please expand on your answer

### Consultation Question 21

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

Please share your views below

### Consultation Question 22

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

- (1) investigate safety-related traffic infractions (such as exceeding the speed limit; running red lights; or careless or dangerous driving);
- (2) investigate other traffic infractions, including those subject to penalty charge notices;

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

Do you agree?

Yes  No  Other

Please expand on your answer.

I largely agree with this proposal.

My only misgivings are in including careless and dangerous driving as examples of infractions that would be included in investigation. I would not envisage such offences being committed by AVs given that such offences are specifically designed for human drivers and it does not make sense to compare an AV's driving to that of a competent and careful human driver. If an AV is to be approved, it should "automatically" and consistently drive at a standard at least as high as a competent and careful driver (see answer to earlier question). If an AV manages to obtain type approval and enters onto the roads and yet shows evidence of driving below such standard, this indicates that either the system as a whole is not working or presumably that there is a fault with the individual AV (e.g. that it has been tampered with). These possibilities would necessitate a more in-depth investigation. A statutory scheme should assure such investigation, in addition to being able to investigate simpler infractions.

### Consultation Question 23

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

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

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

Please explain the reasons for your selection above.

It is important that the regulator should have powers to reduce the potential harm caused by those who breach the regulatory scheme, having discretion to apply appropriate sanctions. It is likely that guidance will need to be drawn up to guide the exercise of such discretion.

### Consultation Question 24

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

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

Do you agree?

Yes  No  Other

Please expand on your answer.

### Consultation Question 25

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

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

Do you agree?

Yes  No  Other

Please expand on your answer.

I agree with para 4.47 of the summary. This should not replace the involvement of the police, but be additional to it, given that the police cannot be expected to have the necessary expertise and resources to investigate some of the issues in full.

### Consultation Question 26

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

Do you agree?

Yes  No  Other

Please expand on your answer.

Such a forum should be advisory but over time it would desirable to develop a version of the Highway Code specifically for AVs, taking account of what is discussed in this forum. If

developing such a Code required changes to legislation, it would of course then have to go through the relevant channels (parliament if it involved changes to legislation).

**Consultation Question 27**

We welcome views on:

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

Please share your views below

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

### Consultation Question 28

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

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

Do you agree?

Yes  No  Other

Please expand on your answer.

### Consultation Question 29

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

- (1) the user-in-charge should re-acquire the legal obligations of a driver, whether or not they have taken control of the vehicle; and
- (2) if, following a failure to respond to a transition demand, the vehicle stops in a manner which constitutes a criminal offence, the user-in-charge should be considered a driver and should therefore be liable for that offence.

Do you agree?

Yes  No  Other

Please expand on your answer.

### Consultation Question 30

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

Please share your views below

If AVs are to become more popular, it follows that managing the transition from ADS being engaged to taking back control is something that in fact *should* be part of a driver's instruction (like motorway driving, as noted at para.5.13 of the summary). There is a case



to made that the driving test should be changed in future to incorporate this if a learner is driving a vehicle with ADS available as a requirement.

### Consultation Question 31

We provisionally propose that legislation should create new offences of:

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

Do you agree?

Yes  No  Other

Please expand on your answer.

Yes. If there is a clear demarcation between being a “driver” and a “user in charge” arguably such new offences are needed.

### Consultation Question 32

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

Do you agree?

Yes  No  Other

Please expand on your answer.

### Consultation Question 33

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

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

Please share your views below

The addition of a requirement that the passenger “ought to have known” that a user in charge is needed is a positive addition. Presumably this can take into account characteristics of the passenger when applying the objective test (e.g. blindness).

### Consultation Question 34

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

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

Do you agree?

Yes  No  Other

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

On the whole, it would seem appropriate to have an offence but also a defence as suggested.

However, this does raise additional questions. In the example given at para.5.24 of the summary the user in charge only potentially becomes liable once they take control of the vehicle as a driver, but have a defence if a competent and careful driver could not prevent the continued offence of driving the wrong way down a one way street. The question that arises here is whether a user in charge *who is aware* that the ADS has committed and continues to commit an infraction is under any obligation to take control of the vehicle to avoid continuing the danger to others. This is the one example where the clear line between “driver” and “user in charge” might be questioned. A user in charge cannot be expected to know such things, as they are not expected to pay attention. But if they happen to be aware of it, and the potential for harm caused as a result, are they not under a moral obligation to intervene in the control of the vehicle? Should they then be under a legal obligation? Presumably these issues have been considered and the preference is for a clear cut application of the law to avoid “grey” areas. I can see the attraction of this, but it might become problematic if the infraction then leads to a collision. Are we saying that a user in charge does not owe a duty to act if they are aware that the AV has created dangerous situation? If so, do we need to make this clear in law? An argument in favour of this is that to place upon the UiC a requirement to act, subject to awareness of the risk, would encourage users in charge to ignore their surroundings to avoid the possibility of being held liable, meaning that the opportunity for them to improve the safety of the AV by taking over when needed would be diminished.

If not, we welcome views on alternative legal tests.

### Consultation Question 35

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

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

Do you agree? *(please tick one of the following)*

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

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

### Consultation Question 36

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

Do you agree?

Yes  No  Other

Please expand on your answer.

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

## Consultation Question 37

We provisionally propose that:

- (1) where an individual is exercising latitudinal and longitudinal control (steering and braking) over a vehicle remotely, that should not be regarded as a form of “self-driving”; and
- (2) where lateral and longitudinal control are exercised by an ADS, all other forms of remote operation should be regulated as “self-driving”.

Do you agree?

Yes  No  Other

Please expand on your answer.

We welcome views on whether the current definition of when a vehicle “drives itself” under the Automated and Electric Vehicles Act 2018 should be amended to deal with some forms of remote operation which may involve a degree of “monitoring”.

Please Share your views below.

## Consultation Question 38

We provisionally propose that:

- (1) the regulation of self-driving vehicles should distinguish between an Automated Driving System Entity (which vouches for the design of the system) and an operator (responsible for the operation of individual vehicles);
- (2) all vehicles authorised for use on roads or other public places with no user-in-charge should either:
  - (a) be operated by a licensed operator; or
  - (b) be covered by a contract with a licensed operator for supervision and maintenance services;

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

Do you agree?

Yes  No  Other

Please expand on your answer.

### Consultation Question 39

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

Please share your views below.

### Consultation Question 40

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

- (1) supervise the vehicle;
- (2) maintain the vehicle;
- (3) insure the vehicle;
- (4) install safety-critical updates and maintain cybersecurity; and
- (5) report accidents and untoward events (as defined by the regulator).

Do you agree?

- Yes, a licensed operator should be subject to all the listed duties
- No, a licensed operator should not be subject to any of the listed duties
- A licensed operator should be subject to some but not all of the listed duties
- Other

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

### Consultation Question 41

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

Do you agree?

Yes  No  Other

Please expand on your answer.

### Consultation Question 42

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

Please share your views below

We provisionally propose that:

- (1) an accessibility advisory panel should be formed to include:
  - (a) the Equalities and Human Rights Commission; and
  - (b) representative groups for disabled and older persons;
- (2) the Secretary of State should be obliged to consult with the accessibility advisory panel prior to setting any national minimum standards on HARPS;
- (3) there should be a duty to periodically re-consult the accessibility advisory panel at set intervals to ensure requirements keep pace with developing evidence of technical feasibility and changing needs.

Do you agree?

Yes  No  Other

Please expand on your answer.

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

Please share your views below

### Consultation Question 43

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

Please share your views below

## CHAPTER 14: CRIMINAL OFFENCES BY ADSEs AND THEIR SENIOR MANAGERS

### Consultation Question 44

We provisionally propose that:

- (1) it should be a criminal offence for an ADSE to omit safety-relevant information or include misleading information when putting a vehicle forward for classification as self-driving or responding to information requests from the regulator;
- (2) the offence should apply to senior managers (where it was attributable to the manager's consent, connivance or neglect);
- (3) the offence should not apply to more junior employees;
- (4) the offence should carry a higher sentence if it is associated with a death or serious injury;
- (5) the offence should be prosecuted in England and Wales by either the regulator or the Crown Prosecution Service and in Scotland by the Procurator Fiscal.

Do you agree?

Yes  No  Other

Please expand on your answer.

### Consultation Question 45

We seek views on the following proposed offences.

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

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

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

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

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

The penalty would be an unlimited fine.

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

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

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

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

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

The penalty would be an unlimited fine.

### **Offence C: offences by senior management**

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

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

then that officer is guilty of the offence.

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

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

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

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



- (1) related to an increased risk of a type of adverse incident; and
- (2) an adverse incident of that type occurred; and
- (3) the adverse incident caused a death or serious injury.

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

Please share your views below

#### **Consultation Question 46**

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

Please share your views below

## New wrongful interference offences (chapter 15)

### Consultation Question 47

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

Do you agree ?

Yes  No  Other

Please expand on your answer.

### Consultation Question 48

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

Please share your views below

### Consultation Question 49

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

- (1) England and Wales; and
- (2) Scotland.

Do you agree?

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

Please expand on your answer.

**Consultation Question 50**

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

Do you agree?

Yes  No  Other

Please expand on your answer.

**Consultation Question 51**

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

Please share your views below

## Civil liability (Chapter 16)

### Consultation Question 52

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

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

Do you agree?

Yes  No  Other

Please expand on your answer.

### Consultation Question 53

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

Do you agree?

Yes  No  Other

Please expand on your answer.

### Consultation Question 54

We provisionally propose that:

- (1) product liability law should be reviewed to take account of the challenges of emerging technologies;
- (2) any review should cover product liability as a whole, rather than be confined to automated vehicles; it should not, therefore, form part of this project on automated vehicles.

Do you agree?

Yes  No  Other

Please expand on your answer.

## Access to data (Chapter 17)

### Consultation Question 55

We provisionally propose that:

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

Do you agree?

Yes  No  Other

Please expand on your answer.

### Consultation Question 56

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

Do you agree?

Yes  No  Other

Please expand on your answer.

### Consultation Question 57

We provisionally propose that:

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

Do you agree?

Yes  No  Other

Please expand on your answer.

### **Consultation Question 58**

We provisionally propose that:

- (1) when an ADSE applies for categorisation of its vehicle types as self-driving, it should present the regulator with details on how data will be recorded, stored, accessed and protected;
- (2) the regulator should only categorise a system as self-driving if it is satisfied that that the ADSE has systems to abide by its obligations under the GDPR.

Do you agree?

Yes  No  Other

Please expand on your answer.