

**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?

Philip Lloyd

What is the name of your organisation?

Logistics UK (formally the Freight Transport Associations - FTA)

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

Consideration needs to be given to the operation of the transition functions, if one or more are inoperative/defective and would compromise the vehicles ability to warn the user-in-charge, then the ADS should not be capable of being activated.

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.

We would agree, as you can have a deaf driver, but not a blind one.

We would however suggest that a range of other medical factors need to be considered. For example, some medical conditions allow for the non-wearing of seatbelts, so you could have a deaf person with a medical condition not wearing a seatbelt, so unless there are other features to warn, then identifying the necessity to intervene may be compromised.

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

We would suggest that there needs to be a minimal safety standard developed at a UNECE, or equivalent level, but that the Secretary of State (SoS) have discretion to impose tighter standards - which would allow for the factors relevant to Britain.

We would agree that advice is provided to the SoS by a panel of experts, but would also suggest that this include those developing Artificial Intelligence (AI) – as this may form part of machine learning from AVs, leading to evolved improvements in AV safety, and hence road-safety.

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.]

Overall, safer than the average human driver

We would agree that this is a difficult area, as the assumptions made are based on accident rates and not accidents, near misses and potential accidents that did not materialize (risk

that may be taken by a competent and careful driver, that may have resulted in an accident/incident if other unforeseen factors had come into place i.e. continuing to drive at 30 mph in a built up area without seeing children on the road but obscured by parked cars - if they didn't see the child and they did not become a hazard out, then the driver would be oblivious to the risk).

Additionally, as mentioned in the report, there are significant differentiation in accident rates of young (or perhaps more appropriately described "less experienced") drivers compared to others, yet this is socially accepted as a natural part of ongoing learning - people learn from experiences they encounter and/or tuition given, this could be; criticism from passengers; near misses they experience; feedback (gestures) from other road users; etc.

Consultation Question 5 (Paragraph 5.120)

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

As mentioned above, we would suggest that developments in AI and machine learning would facilitate improvements. However, for these to become effective, there is a need for some form of development/improvement/technological update to AVs. This would necessitate the requirements for AVs to be periodically updated/graded to ensure that they progressively become more safer, through improved developments in technology.

Consultation Question 6 (Paragraph 5.121)

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

We believe this falls into 3 areas:

1) Vehicle manufacturer

- * Ensuring that they fulfil their obligations in the developments of AV, in line with both world-wide standards and those dictated nationally.
- * Implementing evolving technological improvements that contribute to road safety.
- * Making provision for AV currently in use, to be able to take advantage of technological safety improvements - retro fitment, etc.
- * Being subject to regulatory action which can force change, etc.

2) Vehicle keeper/operator

- * Ensuring provisions are made to ensure those using such vehicle are; aware of their functionality; the users obligations; etc.
- * Making the provision for regular safety improvement updates - akin to vehicle recalls.
- * Ensuring that there are some forms of Regulatory redress, where actions related to safety of AVs are found to be wanting.

3) Vehicle user

* Implementing a public awareness campaign aimed at raising awareness for the uses of such vehicles, and clarification of the users obligations.

* Making provisions for appropriate sanctions against users who miss-use AVs, and/or others who intervene (either directly or indirectly) with AVs - which can, or does, compromise their safe use on the highway.

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

As we have said in the previous consultations, we believe there is a need to implement a process that provides a level of assurance that is aligned to the current methodology employed in the automotive industry. However, these need to be enhanced with procedures that are more akin to the sophisticated technology that will be applicable to the systems employed within AVs.

We would suggest that the recommendation made above are a good starting point, but these provisions will need to be periodically reviewed, in line with technological developments, to ensure that they still fulfilling their primary objective.

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.

We consider this to be a wise position, as it will be imperative in gaining public confidence that these bodies are seen to be working more widely, in order to ensure that safety concerns are both considered and assessed.

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

We agree with the proposal and would recommend that suitable provisions (i.e prosecutions) are put in place to ensure that the temptation to use/make use of unauthorised systems will be mitigated.

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

But there will need to be a process that ensures checks and ensures interoperability of ADS systems, as those systems may gain approval in their own right, but not be validated for functional interoperable with other ADS systems.

Re para 8.20 - We are unaware of what plans/actions you are proposing to prevent the use of a GB only ADS approved vehicle/system being taken and used overseas - potentially illegally.

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.]

Yes

We would however recommend that No 3 include another sub bullet (c) which should related to when and how the ADS should be maintained once the vehicle is put into service.

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.

As this related to component and/or vehicle manufacturers, Logistics UK is not in a position to comment.

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

We would agree, providing the ADSE can ensure interoperability of its ADS function, with other ADS systems. Failing to ensure interoperability could lead to the fitment of one ADS, effecting the correct functionality of another ADS - compromising safety.

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

We think this would build confidence towards AV's being accepted by the general public.

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?

Yes, provided that there is impartiality within the approving body - between that of the initial "examiner" and the "examiner" undertaking the appeal.

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.

We would agree, providing there is a clear differentiation between the roles and responsibility of the Regulator and that of the Approvals body (i.e they are not one and the same).

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

Unless the regulator has sufficient powers and sanctions, then their role would only be diminished and hence safety compromised. However, those powers need to be limited to within agreed perimeters, and where criminality is identified, referral to the Courts should be considered.

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.]

Yes

We agree with the proposal, but believe that the regulator will need to be adequately funded and resourced to be able to fulfil its obligation effectively.

The current provisions of VCA and DVSA may not have either the funding or skilled expertise to be able to meet those requirements and/or keep up to date with technological developments.

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 - only if they have the skill and capability to fulfil that requirement. If not then the default position should be a referral back to the original type approval authority - providing there is a legal framework in place to ensure that this authority is under an obligation to undertake that approval.

2 - This would be beneficial, but cyber-security is a growing concern and with the speed of technological advances, this may not be feasible. Perhaps consideration needs to be given to a joint venture a lead authority on UK cyber-security and this scheme's regulator.

3 - We would suggest that there needs to be a level of authority over road infrastructure, to ensure that the current restrictions are understood and considered and that future developments/upgrades/downgrades are given due consideration on their potential effects on AVs.

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

Yes, doing so retains a line of demarcation which can ensure open and full transparency, whilst focusing attention on improvements.

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)?

The implementation of an advisory committee would be beneficial, but its membership would need to include a wide, and balanced range of interested bodies – so that particular groups cannot promote a particular agenda.

Such a committee would need to have access at a high level in government (Minister), to ensure that its recommendations were not being overlooked/ignored by the committees leadership.

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

In regards to 1 & 2 - this brings into question the ability to identify if/when the vehicle was in self-drive mode and who is responsible, if not the vehicles then how does the "responsible person" challenge this, if they are unable to gain access to the same data, or challenge it?

We agree with 3, but as with our response to Q17, there needs to be adequate and proportionate sanctions available.

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

As we have stated in Q17 and Q22, there needs to be a range of appropriate sanctions available. - not all of which need to be punitive.

This list provided a range of sanctions, but we would also add (as in our response to Q17), that where criminality is identified, there is the option for referral to the Courts.

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

See our comments in Q17, Q22 & Q23.

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 would be supportive of a singular specialist incident investigation body, but not a segmented one i.e. separate units run by different Police Forces.

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

If AVs are operate as intended, safer and more effective/efficiently, then the rules governing our roads may need to reflect this changes and (for example) speed limits; vehicle weight limits, may increase/be variable.

There would a range of views, and objections, expressed about such, so the comments we make in Q21 would also apply here.

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)

- * Relevance of the current details in the Highway Code, relevant to AV use.
- * Appropriateness of roles, responsibilities, driving licence/entitlement of AV users.
- * Appropriateness of speed limits, etc where AVs are able to assess/judge levels of risk - i.e is 70 mph still relevant on an empty motorway at 3am?
- * The criteria for assessing what level of risk are applicable to AV use and under what conditions.

2)

- * Highway authorities - e.g. Highways England.
- * Relevant Trade Associations - eg Logistics UK
- * Roadside safety bodies - e.g Brake
- * Association of Local Authority
- * Police Force
- * National Crime Agency (Cyber security)

3)

- * It should be open to the views of the public (surveys, Poll, etc) , but not open to the public.

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

Although we would agree in principle, we believe that some provision should be made to allow slow speed manoeuvres with indirect sight e.g. parking where the vehicle has a 360 degree helicopter view (as is in operation in a number of modern vehicles).

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

Although we would agree in principle, in such a situation where the transition period would be insufficient for the user-in-charge to take effective evasive action to prevent an incident, then they should not be held liable for that incident. For example, they are able to respond to prevent an anticipated incident in their traffic lane, but the evasive action led to another incident - user-in-charge is able to avoid the impending accident in their traffic lane, but this results in the vehicle veering off the road and damages a crash barrier. An incident that may have resulted in damage to/or loss of life, is replaced with damage to vehicle/road infrastructure.

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 fail to see how using an ADS function fits as part of the practical learning to drive process - this may even distract from it.

As transition back to a user-in-charge is something that requires a driver to undertake situational observation and enact potential mitigation. For true learning to be achieved, this would require situations that could be potentially dangerous.

We believe that a safer and potentially more effective process, would be to expand the "situational judgement" element of the Theory Test - using CGI.

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

A vehicle will either have a user-in-charge or it will not; therefore anyone who is not eligible to be a user-in-charge would be covered by Q32.

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

We are unaware of how, or if, a criminal offence applies where all the passengers are classified as minors.

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.

As these vehicles, initially, will look very much like conventional vehicles it may be difficult to distinguish between these and a conventional vehicle. On that basis we would agree that both 1 & 2 should apply.

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

In situations where one identifies an imminent accident/incident and where harm is likely to be incurred on oneself, or others, then it will be a natural human instinct to intervene.

If the actions of the ADS has resulted in a situation which a competent and careful driver would have avoided, then a user-in-charge should be exonerated for their interventions - where those actions were aimed at mitigating the accident/incident.

The interventions of a user-in-charge may result from their perception of a perceived risk and this level of perception will usually have been developed through their learning/knowledge, or through there experiences of similar situations. Dependant upon the level of knowledge or experience, then a persons perception of risks may be quite wide, hence their perception of risk mitigation may varied.

As the percentage of automated driving expands and practical driving diminishes, then there is a likelihood that experiences of situations, and hence risk, will diminish - this could lead to the average drivers competence and carefulness also diminishing.

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.]

The user-in-charge should be liable for some but not all of the offences listed

No 1 - is not applicable if the vehicle belongs to the business (within which you are an employee), where the expectation of the driver is that the business has the relevant insurance.

No2 - only for those items for which a driver could reasonably be expected to check.

No 3 - only if it was the driver that chose to accept the parking area . As vehicle move more towards autonomy, the expectation is that these vehicles will initiate such decisions based on their data knowledge. There may also be questions about whether a user-in-charge needs to be in the vehicle whilst parking.

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

This would be useful initially, but there may be a period of transition towards full AV driving where the lines of demarcation of driver/user-in-charge/AV become blurred - clarity of roles and responsibilities may therefore become unclear.

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

If the vehicle is still proceeding at a set/or varied speed (a form of active cruise control) then the vehicle is undertaking some forms of self-driving, so consideration needs to be given to situations such as these, and where the lines of demarcation lie between vehicle and another controller.

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”.

Consideration needs to be given to situations where monitoring takes place (mandatory and/or regulatory), deficiencies/irregularities identifies, but there is a failure in rectification action having taken place.

We would suggest that the monitoring of; condition; security; weight and; size of loads need to be considered, as these can effect the stability and safety of the vehicle, and to that of other road users / road infrastructure.

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 would ask that consideration be given to the legal responsibility of these vehicles when towing trailers and what, where and how the lines of responsibility are drawn. For example if a trailer is poorly loaded and this effects the safe operation of the vehicle, who becomes responsible for the effects of this and any subsequent action?

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 would suggest that there needs to be both a competent and accountable person, but also that there are effective safety management systems in place to monitor, report, and recommend actions to the accountable person.

We would also suggest that in the world of AV, there would need to be a review the role a Transport Manager, as in its traditional form this may not work effectively for AV operation. I.e. currently large business' have more than one Transport Manager, this may not work in an AV environment, where there needs to be a clear line of responsibility for software updates, etc.

We would suggest that the responsibility falls to the Operator Licence holder and not to the Transport Manager, as it would then be the Operator to ensure that systems are in place to cover the areas of concern.

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

We would add - "operate vehicles safely" e.g. within dimensional requirement (not used on routes where the height of bridges is lower than the vehicle operated), weight limits, etc.

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.

Logistics UK would suggest that the Confederation of Passenger Transport (CPT) is a more suited trade body to provide advice.

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

Consultation Question 43 (Paragraph 13.133)

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

We believe that to ensure commonality and consistency of operation, including fairness where pricing may be influenced by a licencing body framework, that a national approach to operating a licencing scheme would be more beneficial. Hence an approach akin to that of the Office of the Traffic Commissioner would be more effective.

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 are not qualified to offer an opinion here and would defer to those who are qualified in such legal matters.

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 would suggest that this being a "duty" may not represent the significance of the potential consequences, so would suggest that this it should be a legal responsibility to do so.

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.

Although the context of this may be rather wide and not currently reflect the future requirements of infrastructure, we would agree with the principle of this being an offence.

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

We would suggest that consideration is given to widening the criteria, as the interference may not have resulted in death or serious injury, but could have under different circumstances.

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

Perhaps the word "intentional", should be supplemented with the words "without giving due consideration".

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.

We would agree, providing that capability and competence of the repairer was clarified - this would prevent repairs being undertaken by those who are not qualified, or competent to do so.

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

We would agree that this is a reasonable position upon which progress could be made as AV development and implementation become closer.

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.]

Other

We do not feel qualified to comment.

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

As system integration, and dependency, will be fundamental to the progress of AV technology, perhaps a fresh views needs to be taken as to where, and how, liability can be applied to ensure that system integration and functionality remains a priority for software developers.

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.]

Other

Although we understand the issues associated with the proposal for 3 years, perhaps consideration could be given to who is responsible over what period. i.e. the DSSAD for a generic 6-month period, but where a claim, or prosecution, is anticipated, that the data be transferred to the relevant Insurance company/Police Force - who would then hold the responsibility for this data for the remaining period?

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