



Office of the Traffic Commissioner

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Automated Vehicles Team
Law Commission
(sent by email)

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Dear Sir / Madam

Automated Vehicles: Consultation Paper 3 - A regulatory framework for automated vehicles

I am responding to the consultation on behalf of the Traffic Commissioners for Great Britain. Traffic commissioners are appointed by the Secretary of State for Transport and are responsible for regulating operators of goods vehicles and passenger carrying vehicles as well as registering local bus services (outside of London) and considering the conduct of holders or applicants of large goods vehicles and passenger carrying vehicle driving entitlement. More information can be found at:

<https://www.gov.uk/government/organisations/traffic-commissioners>

The traffic commissioners thank the Commission for giving them an opportunity to respond to the consultation. The consultation document was informative and helpful in further crystallising the issues presented by the development of connected and autonomous vehicles. A number of the questions posed in the consultation are technical in nature and others may be more qualified to provide an informed opinion. Therefore, the traffic commissioners' response will be focussed on those questions most relevant to the knowledge and jurisdiction of the traffic commissioners.

The definition of self-driving

Question 1

The traffic commissioners support the proposal detailed in the question regarding the classification of self-driving.

Question 2

As technology evolves it is important that all members of society benefit, wherever possible and practicable. It would be appropriate to consider the needs of people with hearing impairment when developing self-driving systems.

Safety assurance before deployment

Question 10

Traffic commissioners fully support the proposal for a domestic scheme to approve automated driving systems for use on roads within Great Britain. Allowing a developer to submit an ADS for national approval without manufacturing the vehicle would appear to allow appropriate flexibility and encouragement for innovation and would appear to align with some of the trials on which the commissioners have been briefed.

Questions 13 – 15

The traffic commissioners agree with the proposals set out in questions 13 and 14. Administrative decisions risk a challenge to the High court through Judicial Review and is likely to result in unnecessary delay. Commissioners suggest that an independent appeal process needs to be capable of delivering Article 6 and common law compatible decisions. Therefore, it would appear appropriate to make provision for an appeal scheme against a categorisation decision. Regulation 19 provides a basis for such appeals.

Question 16

Safety and public confidence are essential as autonomous vehicles develop and become a common feature on the British roads. It would appear a proportionate response for a regulator to have the power to limit the numbers of a particular vehicle for a set period of time to allow for the gathering of data on its performance in real world scenarios.

Assuring safety in use

Questions 17 – 21

The traffic commissioners welcome and agree the proposals set out in this range of questions. It is important that a regulator continues to assess the safety of an ADS after deployment as they will be more susceptible to changes in the driving environment and development than self-drive vehicles. The commissioners consider that it is important to recognise that whatever technology is deployed to control a vehicle, there will be moving parts within its operation. The established system provides for the Vehicle Certification Agency to provide Type Approval and, once approved responsibility moves to the Driver and Vehicle Standards Agency. This system appears to work well. It is acknowledged that there will be additional expertise required in relation to automated driving elements, however there is already a high level of computerisation in modern vehicles that the respective bodies have expertise in.

Questions 22 – 27

Traffic commissioners note the proposals relating to the traffic infractions and collisions. Commissioners note the potential range of sanctions and the legal implications associated in a suspension and/or withdrawal of authorisation. Any regulator would require to be properly established with appropriate legal competence and technological knowledge to fulfil the role. The regulator function should be separate from the proposed specialist incident investigation unit to avoid a conflict of interest or risk prejudicing any legal proceedings.

Responsibilities of the user-in-charge

Question 28 – 34

Traffic commissioner support the proposals set out in this range of questions.

Question 35

Traffic commissioners agree to the proposal in principle but recognise that a number of offences are absolute under current road traffic legislation and where the vehicle is under direct control. It may be necessary to consider whether there should be some qualification to the duty on the user-in-charge such as concept of reasonable practicability.

Remote operation: no user-in-charge vehicles

The proposals set out in questions 37 – 40 are accepted. Traffic commissioners accept that there will be a need for varied new skills in remote operation and software installation and that it may be more difficult for a single individual to hold the requisite skills for these and the current professional competence to maintain effective control of a fleet. However, the clarity in responsibility is an important factor in ensuring that the regulated industries remain one of the safest in Europe. A current CPC holder may not possess the technical knowledge on vehicle maintenance but this does not reduce his/her responsibility in despatching safe vehicles onto the public highway. It will be important for an organisation to ensure that they have a safety management system that is fit for purpose and this may be developed by a number of people within and outwith of an organisation, but it should be possible for control to be focussed on a clearly specified role within the operation.

Traffic commissioners do not support the proposal in question 41. Under current legislation related to operator licensing the operator of the vehicle remains responsible for the use of the vehicle. The registered keeper of the vehicle is often separate to the user or operator of the vehicle and there is many benefits to adopting the current approach, not least for clarity of responsibility.

The work undertaken on accessibility of passenger vehicles has benefitted many people and is now considered to be the expected standard. Automated vehicles present different challenges and it is appropriate that further consideration as to how these services can be developed for the benefit of all users is formalised (question 42).

In the response to the second consultation the traffic commissioners stated that there were benefits in a single operator licensing scheme regardless of whether the vehicle has a conventional driver or has no user in charge. This position has not changed. As a regulatory and tribunal body that has been in existence since the 1930s the traffic commissioners have remained relevant despite the many changes in road usage during that time. There will undoubtedly be a requirement to gain further knowledge, the Traffic Commissioner Board has a diversity of background and experience. Skills required as a result of changes in technology may be developed through appropriate recruitment of traffic commissioners.

Criminal offences by ADSEs and their senior managers

Questions 44 - 45

It is agreed that there should be criminal offences for an ADSE to omit safety-relevant information or include misleading information when putting a vehicle forward for classification

as self-driving or for failures to respond to information requests from the regulator. It should be noted that existing health and safety legislation may already provide a legislative vehicle.

An offence to be applied to senior managers (where it was attributable to the manager's consent, connivance or neglect) mirrors section 37 of Health and Safety at Work Act 1974. The defence of reasonable precautions will inevitably draw on case law around the reverse onus in section 40 of that Act. That should be sufficient in itself to cover approved work or repair.

New wrongful interference offences

Questions 47 – 51

Wrongful interference is already covered in section 25 of the Road Traffic Act 1988. The legislation is long overdue an update to reflect modern technology and to include external elements such as software. The aggravating features for these offences closely resemble existing sentencing guidelines but the interference offence has an intent element. In such a technical field it might be advisable for the offence to capture more than just specific intent.

Civil Liability

Questions 52 - 54

There is little change in respect of civil liability with reference to the Automated and Electric Vehicles Act 2018 providing for contributory negligence and causation. That appears to exclude liability to an insured person where an incident occurs as a result of software alterations made by the ADSE etc, and a failure to install safety-critical software updates that the insured person knows, or reasonably ought to have known, are safety critical. That obviously requires additional duties to communicate and take action. Incidents will be subject to the usual rules of contributory negligence by the injured party. There may be a similar approach to the person 'in charge of the vehicle' in allowing the vehicle to begin driving itself. There are risks of claims being protracted into product liability. The consultation proposes review (including product liability) in light of practical experience so the proposal to compensate victims of accidents caused by uninsured automated vehicles appears sensible.

General comments

The consultation would appear to have settled on a safety case regime for approvals. There are potential downsides of safety case regimes, which often require to-ing and fro-ing between regulator and can risk blurring the lines between regulator/enforcer and the duty holder.

The Commission may wish to consider the legal status of Approved Codes of Practice, which allow for practical advice on how to comply with the law, but where the law recognises that a duty holder may use alternative methods to those set out in the Code. The traffic commissioners' experience of the Guide to Maintaining Roadworthiness, which does have that legal status, has relevance. The process ensures that standards are developed between regulator and industry representatives.

Commissioners would wish to correct a misapprehension where the lack of enforcement might be confused with a low level of penalties imposed. The Health and Safety Executive has understandably sought to target limited enforcement resources, but the definitive sentencing guidelines would indicate that substantial penalties are open to the sentencing courts:

<https://www.sentencingcouncil.org.uk/wp-content/uploads/Health-and-Safety-Corporate-Manslaughter-Food-Safety-and-Hygiene-definitive-guideline-Web.pdf>

Yours faithfully

(sent by email)

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