

18 March 2021

Automated Vehicles Team
Law Commission
1st Floor, Tower
52 Queen Anne's Gate
London
SW1H 9AG

To whom it may concern,

RE: Automated Vehicles consultation paper 3 – A regulatory framework for automated vehicles

SEStran is the statutory Regional Transport Partnership for the councils of the City of Edinburgh, Clackmannanshire, East Lothian, Falkirk, Fife, Midlothian, the Scottish Borders, and West Lothian. SEStran responded to the first consultation paper in February 2019 and welcomes the opportunity again to respond to the third consultation paper. For this consultation paper, SEStran has opted to provide comments through this letter, setting out some views on the principles outlined in the paper.

SEStran's primary function is to produce a Regional Transport Strategy (RTS) for the South East of Scotland. The current strategy runs until 2025¹ whilst a new strategy is being developed. SEStran's core objectives, which align with the priorities of the Scottish National Transport Strategy 2, are as follows:

- **Economy** – to ensure transport facilitates economic growth, regional prosperity and vitality in a sustainable manner;
- **Accessibility** – to improve accessibility for those with limited transport choice (including disabled people) or no access to a car, particularly those who live in rural areas;
- **Environment** – to ensure that development is achieved in an environmentally sustainable manner;
- **Safety & health** – to promote a healthier and more active SEStran area population.

A reduction in the number and severity of accidents is a sub-objective of the SEStran RTS. SEStran recognises that the automation of vehicles is an emerging technology that will impact the way in which our transport system operates. If automated vehicles are deployed without the appropriate regulatory frameworks in place, there is a risk that road safety may be compromised.

¹ The current SEStran RTS can be found online at: https://sestran.gov.uk/wp-content/uploads/2017/01/SEStran_Regional_Transport_Strategy_Refresh_2015_as_published.pdf

On the other hand, overregulation might stifle innovation and technological advancement. Without innovation and technological advancement, the opportunity to develop highly automated vehicles will be limited. The legal framework should therefore strike the right balance and encourage innovation to ensure highly automated vehicles can be developed to safely operate.

When it comes to the safe deployment of automated vehicles, SEStran considers that automated vehicles require a higher safety standard than a competent and careful human driver, because it might be considered less acceptable for an automated vehicle, as opposed to a competent and careful human driver, to be at fault. We tend to hold computers to a higher standard of 'correctness' than humans and it may be difficult to accept that an accident may be the cause of a 'system error', to the same extent as if it were a 'human error', without requiring further investigation into the system error and the urge to aim for a faultless system.

SEStran is particularly concerned about the safe deployment of 'conditional automation' or level 3 automated vehicles, where some involvement from and responsibility by the user-in-charge is required. As the consultation paper highlights, "a robust body of research shows that people find it more difficult to monitor a task passively than to be actively engaged in it".² It is this level of automation that potentially poses the greatest risk to compromised road safety if it were deployed on UK roads. The law should protect the overall safety on roads and should therefore consider the increased risk to safety for certain levels of automation as illustrated in figure 4.1 of the consultation paper.³ Furthermore, scheme regulators must have the appropriate powers and responsibilities to establish and protect the right safety standard for automated vehicles.

In unforeseen circumstances, such as emergency road works which may not be fully recorded, and which may significantly change the street environment, bus stop access or location, pedestrian crossing locations, length of dedicated cycle lanes and / or number of running lanes, different levels of automated driving systems may require input from the user-in-charge. It is important that automated vehicles are able to respond to the situation should the user-in-charge fail to take back control. In doing so, automated vehicles should be required to prioritise road user safety and put the most vulnerable road users first.

Finally, to comment on the inclusivity of automated vehicles, SEStran would like to emphasise that self-driving features should be designed to be inclusive and consider the impacts on groups with protected characteristics, as per the Equality Act 2010. Inclusive design is key to developing a fair and equal transport system of the future, which is reflected in SEStran's core objectives.

It is hoped that these comments are of use in the final stage of the Law Commission and Scottish Law Commission's automated vehicle project. If you have any queries regarding our

² Scottish Law Commission, Automated Vehicle Consultation – third consultation paper, at: <https://www.scotlawcom.gov.uk/files/4316/1070/3395/AV-CP3.pdf>, page 36.

³ Ibid, page 60.

response, please do not hesitate to get in touch ([REDACTED]), SEStran, 3D
(Bridge), Victoria Quay, Edinburgh, EH6 6QQ.

Yours sincerely,



Julie Vinders

Project Officer