

**Response to Law Commissions' third consultation on Automated Vehicles  
(Law Commission Consultation Paper 252; Scottish Law Commission Discussion  
Paper 171)**

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Any personal email addresses and phone numbers have been excluded from this document. Unanswered questions have been deleted from this document.

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What is your name?

Nynke Vellinga

What is the name of your organisation?

University of Groningen

Are you responding to this consultation in a personal capacity or on behalf of your organisation?

Personal response

**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

Regarding 1): if a vehicle is classified as self-driving even though a user-in-charge needs to monitor the vehicle, this risks raising unrealistic expectations with its users. This could lead to overestimating the abilities of the vehicle and overdependence of the user on the vehicle, creating risks for road safety.

## **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

Democratic accountability is ensured by having the Secretary of State making the final decision. A specialist regulator can provide the Secretary of State with the necessary information and insights about the specific technology.

## **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

With the regulator providing guidelines for the safety case and auditing the safety case, there is the possibility for parliament to hold someone accountable for decisions made on, essentially, how safe is safe enough.

## **CHAPTER 8: INITIAL APPROVALS AND CATEGORISATION – PROPOSALS**

### **Consultation Question 9 (Paragraph 8.17)**

We provisionally propose that:

(1) unauthorised automated driving systems should be prohibited; and

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

Do you agree?

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

Yes

This ensures democratic accountability, whilst maintaining a innovation-promoting culture.

## **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.]

Yes

### **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

Concerning 1. "the user-in-charge should re-acquire the legal obligations of a driver, whether or not they have taken control of the vehicle" : in case of a handover demand, it seems reasonable that the user-in-charge only re-acquires the legal obligations of a driver at the end of the handover period, to avoid users-in-charge to wait until the end of the handover period so as to avoid liability and users-in-charge who have taken the wheel before the end of the handover period to become liable for issues arising before the end of the handover period even though they had very limited influence over the situation they found themselves in.

**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.]

Other

For both proposed offences it will be necessary to clearly identify an AV as an AV requiring a user-in-charge (for those who commit the offence and for law enforcement)

**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.]

Other

As a consequence, it will be necessary to clearly identify an AV as an AV requiring a user-in-charge (for those who commit the offence and for law enforcement)

**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.

This seems reasonable. It will require an AV to be clearly identifiable as an AV requiring a user-in-charge (to those who commit the offence and to law enforcement)

**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

## **CHAPTER 15: NEW WRONGFUL INTERFERENCE OFFENCES**

### **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.

External infrastructure can be paramount to the safe operation of the AV. Tampering with the external infrastructure can therefore be just as dangerous as tampering with the AV itself and should therefore be just as punishable.

## **CHAPTER 16: CIVIL LIABILITY**

### **Consultation Question 53** (Paragraph 16.32)

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

Do you agree?

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

Yes

### **Consultation Question 54** (Paragraph 16.47)

We provisionally propose that:

(1) product liability law should be reviewed to take account of the challenges of emerging technologies;

(2) any review should cover product liability as a whole, rather than be confined to automated vehicles;

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

Do you agree?

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

Yes

## **CHAPTER 17: ACCESS TO DATA**

### **Consultation Question 55** (Paragraph 17.65)

We provisionally propose that:

(1) for a vehicle to be classified as self-driving, it needs to record the location as well as the time at which the ADS is activated and deactivated;

(2) the Government should work within the UNECE to ensure data storage systems for automated driving record these data; and

(3) any national system to approve an ADS should require these data to be collected, subject to safeguards.

Do you agree?

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

Yes

**Consultation Question 56** (Paragraph 17.71)

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

Do you agree?

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

Yes

**Consultation Question 57** (Paragraph 17.81)

We provisionally propose that:

(1) initially, DSSAD data from self-driving vehicles should be stored for three years; and

(2) the issue should be reviewed in the light of experience.

Do you agree?

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

Yes