

**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?

Calum McPhail

What is the name of your organisation?

Zurich Insurance plc

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

1 Agree

2a) Agree

2b) Agree

2c) This is agreed with the proviso that safe timescales for transition are still to be agreed

3 Agree

We also agree with the additional comments submitted by Thatcham Research/ABI for this section.

### **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.

It seems appropriate and necessary to us that self-driving features should include multiple alert functionality for all users including visual, audible, touch/vibration and these should be required consistently for all users.

## **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 believe that advice from a specialist regulator is essential to ensure that there is a full understanding and appreciation of the actual capabilities of any given vehicle but that ultimate responsibility and accountability rests at a governmental level.

### **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.]

As safe as a competent and careful human driver

We agree with the point made by Thatcham Research/ABI that it should relate to a competent and careful human driver, driving a vehicle fitted with advanced driver assistance safety features. To base it on an unassisted vehicle is neither appropriate nor realistic.

#### **Consultation Question 5** (Paragraph 5.120)

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

Thatcham Research works with Euro NCAP to develop testing infrastructure. This testing regime will be a more demanding and transparent approach, which could form the basis of UK type approval and will have the confidence of the UK Motor Insurance industry. This should be an essential part of path towards the integration of automation onto UK roads.

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

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

Zurich is unable to respond on this.

### **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

1) Agree

2) Agree – However the safety case must be prescriptive, structured and formulaic. Likewise, it must be clear, transparent and a unified approach.

3 (a) There should not be guidelines, but a set of rules and a structure to follow. In essence we agree, but this needs to be strengthened.

3 (b) Agree

3 (c) Agree

3 (d) We believe there need to be mandatory and defined tests agreed by the multi-disciplinary work group / body / regulator.

We also agree with the points expanded upon by Thatcham Research/ABI in their response to this question.

### **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 agree with this on the basis that road user groups should be consulted on the types of scenarios to be included but it remains the responsibility of the approval authority to ensure that it provides an overall relevant, balanced and realistic combination of scenarios.

## **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

1) Agree

2) We would allow tests and trials, provided that they don't circumvent type approval and act as a back door to deployment onto UK roads

### **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.]

Other

- 1) Agree, but this should be a UK structured safety assurance scheme. It should be multi-disciplinary including insurers and based on Thatcham Research / Euro NCAP processes.
- 2) Disagree. There should not be a free choice to choose the least demanding route to approval.
- 3) Disagree

### **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.]

Other

- 1) Zurich is not in a position to respond on this point.
- (2) ADS need to be integrated into the vehicle at the point of manufacture. This is not technology which should be made available for retrospective or aftermarket fitment.
- (3) & (4) We disagree completely with any retrospective or aftermarket fitment of ADS systems. It would not be economically viable to adapt every vehicle to have all the other technological requirements as well as have additional approval processes for each different permutation of ADS and vehicle.

### **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.

Vehicle manufacturers should take the feedback from the approval process and return when the required improvements have been made. We do not believe that there should be an appeals process to challenge a situation where the approval process has deemed that a vehicle does not meet the required standards/capabilities

### **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.]

Other

1) Agreed

2) Agreed

3) We believe that if an ADS does not meet the standard of being classed as Automated, there should not be an automatic fallback to classification as Assisted.

Substandard automation does not always equal competent assisted technology; therefore, this requires separate type approval. We believe the 3 categories should be: a) self-driving only with a user-in-charge; b) self-driving without a user-in-charge; and c) not self-driving.

(4) Agreed, although ADSE should be read as the vehicle manufacturer only, not a tier 1 supplier or software provider

### **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

Agreed on all points

#### **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?

We do not believe so - if the testing and approval regime is appropriate then manufacturers should be required to make changes so that their systems meet requirements rather than merely appealing against a categorisation decision.

#### **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 do not agree. If vehicles have been permitted to use on UK roads, then this should be on the basis that the full capability is understood via the testing and approval process and there should be no further testing on public roads.

### **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

We agree in principle but reference the comprehensive response made by Thatcham Research/ABI in relation to this question.

#### **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

1) Agree

2) Agree

3) Agree

### **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) No, we believe that any software that would materially impact the driving task should pass through an international type approval process.

2) Yes, cybersecurity should be considered by the scheme.

3) Yes, the regulator should have additional powers such as withdrawing a vehicle from legal use on the roads due to safety concerns.



### **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

We believe it is appropriate for these bodies to remain separate.

### **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)?

We are unable to comment specifically on this.

## **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

We firmly believe that there needs to be a very open and collaborative approach to such matters otherwise there will be a lack of confidence and trust from the driving public and other road-users.

### **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

We believe that the regulator should have access to all these remedies to ensure the safety of autonomous vehicles and other road-users. As mentioned previously, there needs to be an environment of working together and collaboration to enable focus and faster resolution of performance issues. Meaningful collaboration is essential in the public interest and for public confidence.

#### **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.]

Other

Zurich is unable to comment on this.

#### **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

Yes, we believe this is necessary for public confidence.

### **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

### **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.

The effectiveness of autonomous vehicles and the reality of how they react with other road-users and vice-versa.

A diverse range of relevant stakeholders including road safety organisations, emergency services, vehicle manufacturers, software engineers, data managers, insurers, etc. should be represented.

Public engagement and transparency will be essential and information needs to be very clearly signposted and freely available.

## **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

1) We believe the user in charge needs to be in a position to take actual control so needs to be in the vehicle.

2) Agreed

### **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.]

No

- 1) No. There is legal obligation for the user in charge to take control of the vehicle following a transition demand, other than those which fall around due care and attention, which is presumably on a case-by-case basis.
- (2) No. This appears to be unenforceable and in parallel with point (1) there would be a requirement to prove negligence on the part of the user in charge on a case-by-case basis. We do not think it should be possible for an automated vehicle to come to a halt in a manner which endangers its occupants or other road users. Therefore, (2) may be a moot point.

### **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 do not agree with this - any user-in charge must be capable of taking back full control of the vehicle in a situation beyond the capabilities of the automated system and those circumstances are also likely to be beyond the safe capabilities of a provisional licensed driver.

### **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

The user in charge must be fit and capable to take back control so it follows that they should be fit and able to drive a non-automated vehicle.

**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

We believe this is very fact specific and further thought and elaboration is required to avoid inequitable outcomes.

**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 may be appropriate for adult passengers but otherwise may not be.

**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

We agree on both points

**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

The user in charge should be responsible for offences relating to:

- insurance
- duties following accidents
- children not wearing seatbelt
- illegal parking but not accidents caused by parking controlled by the automated system
- general maintenance requirements in line with those in existence for current vehicles

### **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

Agreed

## **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

1) agree

2)

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”.

We agree that AEVA does need to be amended to deal with this.

**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

Agree on all points

**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.

Agreed

**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

Agreed

#### **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

We agree that this is a sensible approach to account for future developments

#### **Consultation Question 42** (Paragraph 13.116)

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

We are not in a position to comment

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.]

Other



We are not in a position to comment

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

We are not in a position to comment

**Consultation Question 43** (Paragraph 13.133)

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

We are not in a position to comment

**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.]

Other

We are not in a position to comment

**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 in a position to comment

#### **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 agree this is a fundamental requirement

### **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.]

Other

We agree that it should clarify so far as it relates to safety aspects of the vehicles performance

#### **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.

We agree with this in principle

#### **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 believe that there must be clear evidence of a wrongful and deliberate intent to interfere with and compromise the safety of an automated vehicle to attract criminal liability

#### **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.]

Other

We believe that the intent must be related to deliberately and wrongfully compromising the safety of the vehicle

#### **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.

Vehicle manufacturers must specify how the systems are maintained and checked as a part of routine maintenance or repair to ensure the system is still safe and operating as required. There should be an approved work defence for repair or maintenance if they are authorised by a VM or ADSE and properly following that guidance, but this would not be a defence for the VM or ADSE if there was an issue with the guidance that was issued.

### **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 reference the response from Thatcham Research/ABI:

“The insurance industry has always viewed the Automated and Electric Vehicles Act 2018 as an important first step in providing the right framework to facilitate the rollout and uptake of

automated driving systems. We accept that further changes to the legal regime may be necessary as this technology develops and a greater proportion of the population uses automated driving systems. Once insurers have had exposure to claims arising from the use of these vehicles, we will be in a better position to determine how well the contributory negligence provisions of the Act work in practice.”

### **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

We agree that there should be measures put in place to compensate the victims of accidents caused by uninsured AVs. This could potentially be done using existing statutory powers, but there may also be a role for ADSE to contribute to this fund.

In conjunction, the Government needs to do more to police and regulate this space.

### **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.]

Other

Product liability law needs to be reviewed and amended as necessary and it should be included in this process. It is intrinsic to the effective and transparent legislative context which insurers will be operating in and is therefore also important to the premium paying consumer.

Something to consider is that under the RTA, unlimited liability is required for injury while product liability does not provide that limit. Could this result in the negligent party being unable to meet their civil liabilities and potentially going into liquidation?

## **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

Agree on all points

### **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

Agreed - it is essential that this is provided immediately and free of cost to ensure that there is confidence both from the insurance industry but also from the public at large. Failure by VMs to release this will result in suspicion and friction

### **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

3 years will in many cases not be sufficient for resolution of any associated compensation claims where minors or serious injuries are involved.

### **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

Agree on both points