

**Automated Vehicles Team  
Law Commission**

*By email: [automatedvehicles@lawcommission.gov.uk](mailto:automatedvehicles@lawcommission.gov.uk)*

**Response: Automated Vehicles: Consultation Paper 3 – A regulatory framework for automated vehicles**

The British Insurance Brokers' Association (BIBA) is the UK's leading general insurance intermediary organisation representing the interests of insurance brokers, intermediaries and their customers.

BIBA membership includes around 1800 regulated firms, employing more than 100,000 staff. General insurance brokers contribute 1% of GDP to the UK economy; they arrange 67% of all general insurance with a premium totalling £65.1bn and 81% of all commercial insurance business. Insurance brokers put their customers' interests first, providing advice, access to suitable insurance protection and risk management.

BIBA receives hundreds of thousands of enquiries per year to its Find Insurance services, online and via the telephone, which are directed to member insurance broking firms.

BIBA is the voice of the sector advising members, the regulators, consumer bodies and other stakeholders on key insurance issues.

**Summary points:**


- Approval of any ADS (or any vehicle fitted with an ADS) needs confirmation that all 12 of Thatcham Research's principles for safe self-driving vehicles are satisfied in full.
- In particular, determining how long a period is acceptable for a User in Charge (UIC) to respond to a transition request needs to be carefully determined.
- ADS approval should involve both UNECE and domestic certification and, where the ADS is manufactured separately, the vehicle once fitted with the ADS should be subject to a holistic approval approach.
- We prefer the idea of one supervisory body that gives ADS/Vehicle approval in the first instance and is then responsible for assuring their safety following deployment.
- We agree that the User in Charge should not be liable in criminal law for transgressions that occur while the ADS is engaged.

- The UIC or NUIC operator should be responsible for arranging insurance. The principle established under the AEV Act 2018 that the motor insurer should respond to any third-party claims is important. Injured parties must not be forced to make complex product liability claims against an ADSE.
- Responsibility for making critical software updates should rest solely with the ADSE.
- Access to data (subject to GDPR) by insurers and insurance brokers is essential if accidents are to be properly investigated and lessons learned.

**Detailed response**

See annex 1 (pages 3-19)

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Graeme Trudgill', with a long horizontal flourish extending to the right.

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## ANNEX 1

### Consultation Question 1.

2.35 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?

Yes. We would add that a vehicle should not be classified as self-driving unless the 12 principles for safe autonomous vehicles as established by Thatcham Research are met: <https://www.thatcham.org/what-we-do/automated-driving/12-principles-automation/> On the second point, we agree that the UIC must be able to respond quickly to a transition demand. The problem is the duration needed to respond: research by Thatcham suggests this could be up 15 seconds which translates into considerable distance (500m) if the vehicle is travelling at 70mph. Point 3 is very important and has our full support.

### Consultation Question 2.

2.36 We welcome views on whether self-driving features should be designed to ensure that they can be used by people with hearing loss.

The key would be for the driver to be alerted in a non-audible fashion to a transition demand. Vibration/shaking of the vehicle or other haptic alerts accompanied by flashing lights on the dashboard would make sense.

### Consultation Question 3.

2.65 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?

Yes, given the gravity of the decision, it makes sense that it is made at the highest level. The specialist regulator needs to be independent of Government and must give its approval in the first instance before the decision reaches the Secretary of State. Again Thatcham’s 12 principles for safe self-driving vehicles must be factored into this decision-making process and satisfied in full.

### Consultation Question 4.

2.66 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.

We would start with (c). It seems to make sense to pick the highest standard given the potential for loss of life and serious bodily injury.

#### Consultation Question 5.

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

Satisfying Thatcham's 12 principles for safe self-driving vehicles is essential in our view. We also see sense in a two tier approach to approval involving both the UNECE and UK domestic approval agency – see our response to Q10 below.

#### Consultation Question 6.

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

This is beyond BIBA's field of expertise

#### Consultation Question 7.

- 3.11 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?

Yes, the more rigour that can be applied here the better and again Thatcham's 12 principles play a key role in the safety assessment process. We are mindful of recent scandals in the automotive industry around emissions and this stresses the need for intense scrutiny and careful sign-off.

#### Consultation Question 8.

- 3.12 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.

This makes sense and we would recommend that the main motoring organisations and Thatcham are consulted..

#### Consultation Question 9.

- 3.17 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?

We agree with 1). On point 2) we also agree on the proviso that no public traffic is on the highway at the time of the tests and trials are taking place.

### Consultation Question 10.

3.22 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?

Given that ADS manufacturers are likely to be international automakers, we see a two-tier approval process: UNECE approval followed by UK domestic approval, particularly when UK vehicles will also be driven on EU roads. Both approvals would be required before a self-driving vehicle can be used on the road. We do not think it is wise to approve ADS systems in isolation from the vehicle. An holistic approach to testing of the complete vehicle would seem more prudent.

### Consultation Question 11.

3.23 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?

This makes sense but we see an important final step in the approval process where the vehicle once fitted with ADS is approved as a whole for self-driving use. This makes the idea of retrofitting ADS more problematic unless the regulator can test at this more micro level.

### Consultation Question 12.

3.24 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.

Outside of BIBA's expertise.

### Consultation Question 13.

3.35 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?

Yes, this seems a rigorous and sensible approach. Again, we would reiterate the need to test and approve the vehicle fitted with ADS as a whole before approval is granted and any one of the 3 classifications awarded. On 4 a) the question of who is responsible for software updates needs to be clarified. Another proviso might be to ensure that the ADSE carries Product Liability, D&O and Cyber insurance to prescribed limits. The cyber resilience of the ADSE might need to meet certain standards as laid down by Government/NCSC.

### Consultation Question 14.

3.36 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?

Yes, these powers should include the regime for ongoing certification subject to maintenance requirements including ensuring that all software is current

### Consultation Question 15.

3.37 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?

Beyond BIBA's knowledge and expertise

### Consultation Question 16.

3.41 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.

This would seem a sensible approach. Perhaps, it would be prudent to start with ALKS scenarios where vehicles are on motorways and driving below certain speeds to mitigate traffic jams?

### Consultation Question 17.

4.22 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?

Yes – see our comments on Q 18 below.

### Consultation Question 18.

4.23 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?

Collecting data is essential. This should be shared with Thatcham Research to assess vehicle safety and insurers to help them understand how to underwrite such risks. On 3) we agree that the onus to keep software up to date needs to fall solely on the ADSE. This important when we think about more vulnerable customers, including the elderly. The same rule should apply to keeping maps current. On going communication and training between the ADSE and the UIC makes sense, in particular around software updates and how they affect the vehicle.

### Consultation Question 19.

4.24 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.)

If the UNECE approved the ADS, then it seems sensible for that body to approve any software updates and for these to then in turn be approved domestically. The scheme regulators should deal with cyber security and have sanction powers if cyber security is breached. The NCSC could help develop minimum standards of cyber security that an ADSE must meet while the scheme regulators could stipulate minimum limits of cyber insurance that the ADSE must hold.

Consultation Question 20.

- 4.30 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?

We would argue that one body that both approves the vehicle fitted with ADS in the first instance and then provides oversight for safe driving once deployed makes sense. Data collected while vehicles are in use will help inform subsequent approval decisions

Consultation Question 21.

- 4.31 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)?

Setting up an advisory board/committee that includes such bodies as Thatcham/ABI/FOIL/BIBA to act as an ongoing forum for consultation makes sense. The Government has taken a similar approach with the Civil Liability Act

Consultation Question 22.

- 4.38 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?

Yes, such supervision and the data that can be gathered will be important to ensuring self-driving becomes as safe as possible. Sanctions against an ADSE for fault are an important tool in ensuring safety and should extend to responsibility for ongoing software updates to the vehicle.

Consultation Question 23.

- 4.42 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?

Yes, this is a comprehensive and flexible list. We assume compliance orders would include compulsory vehicle recalls? We assume that where the ADSE is separate to the vehicle manufacturer that the same sanctions will apply if the vehicle manufacturer has wrongly installed the ADS or has some contributory negligence?

#### Consultation Question 24.

4.43 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?

Yes. If fines, it should be made clear that these are not insurable under a D&O policy.

#### Consultation Question 25.

4.48 We provisionally propose that a specialist collision 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?

Yes. Such anonymised data should also be shared with Thatcham Research, insurers/ insurance brokers to help underwriting decisions and made available to the public.

Under the A EVE 2018, insurers will be responsible for responding to claims in the first instance. Where they can subrogate against the ADSE because the accident was clearly the result of ADS failure, sharing accident data collected by the unit will be important.

#### Consultation Question 26.

4.53 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?

Yes. This should be open to the public as a way of building trust in self driving vehicles.

#### Consultation Question 27.

4.54 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) Issues to be discussed could include lessons learned from accident data, future technological advancements to improve safety, updates on what new ADS systems are in the approval pipeline.

- 2) Regulatory approval bodies for self-driving vehicles/ADS systems, NCSC, DVLA, Thatcham Research, ABI, BIBA, FOIL, RAC, AA
- 3) Publication of minutes, invitations to public to join forum.

### Consultation Question 28.

5.5 We provisionally propose that that the user-in-charge:

- (1) should be defined as an individual in a 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?

The UIC definition makes sense. We also agree that the UIC should not be liable for offences such as speeding or a parking caused by the ADS while the vehicle is in self driving mode.

### Consultation Question 29.

5.9 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?

We want to flag significant concerns here. As noted in our response to Q1, Thatcham's research suggests that the average human needs 15 seconds to respond to a transition request. We are also concerned about injuries to the UIC. If the ADS is driving the vehicle and an accident occurs, the UIC would be compensated for his/her injuries. As a driver who is at fault, that compensation would be denied. In this context the transition demand takes on huge relevance and creates a potential grey area.

### Consultation Question 30.

5.14 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.

Given novelty of the technology and the fact that self-driving vehicles are likely to be deployed on motorways in the first instance, then we would discourage. The approved driving instructor should be the UIC with dual controls to allow him/her to take control of vehicle.

### Consultation Question 31.

5.17 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?

Agree

### Consultation Question 32.

5.21 We provisionally propose that persons carried without a user-in-charge should be guilty of a criminal offence. Do you agree?

We have reservations here. How would a passenger know that there was not a UIC in the vehicle? What effect might this offence have on any awards to injured passengers who ordinarily would be treated as innocent third parties?

### Consultation Question 33.

5.22 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 makes sense. The overriding concern should be not to prejudice innocent third parties injured whilst in the vehicle for not being able to present a claim because of prosecution for this new offence.

### Consultation Question 34.

5.27 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.

Agree, but in Q4, we suggest that ADS should be tested to a standard that in overall terms operates in a safer manner than the average human driver.

### Consultation Question 35.

5.32 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?

- (1) Yes, the UIC should be criminally liable for driving without insurance
- (2) We agree that the UIC should be responsible for ensuring the roadworthiness of the vehicle. On responsibility for software updates, please refer to our earlier comments on

placing the primary responsibility on the ADSE. Whilst we believe that the vehicle manufacturer should retain a high degree of responsibility for ensuring the vehicle is fit-for-purpose (including safety critical software updates), it is important to note that Part 1, 4(b) of the [Automated and Electric Vehicles Act 2018](#) which states: An insurance policy in respect of an automated vehicle may exclude or limit the insurer’s liability under section 2(1) for damage suffered by an insured person arising from an accident occurring as a direct result of—a failure to install safety-critical software updates that the insured person knows, or ought reasonably to know, are safety-critical. Whilst we disagree that the end user should own this responsibility, it is important that the position the Law Commission come to does not create conflict with this piece of legislation

- (3) Agree
- (4) Agree.
- (5) Agree

#### Consultation Question 36.

5.33 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?

Agree. This is important in the context of critical software updates where the ADSE may be at fault. A new definition of what is meant by ‘roadworthiness’ may be required to include making sure that software is current. A future MOT could look quite different.

#### Consultation Question 37.

6.5 We provisionally propose that:

- (1) where an individual is exercising lateral 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?

We would defer to Thatcham Research here.

#### Consultation Question 38.

6.15 We provisionally propose that:

- (1) 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);
- (2) 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;

- (3) 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?

This makes sense. We would assume there will be a single national system of operator licensing as envisaged in the HARPS consultation.

### Consultation Question 39.

- 6.18 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 note that this will not be done by examination (at least at the start.) We do, however, think that there should be some form of certification process to evidence that the NUIC operator is competent and that this is regularly reviewed/updated. For example, could certification be withdrawn in the event of an untoward number of accidents or near misses? Is there a role to be played by the manufacturer of the automated vehicle? The skill set required needs to be carefully established and could involve software engineering and data scientist type skills as well as cyber security. For example, a good operator should be regularly looking at data from each vehicle under his/her control to detect trends that might indicate possible safety issues – for example, near misses. If the NUIC operator is to be accountable for the cyber resilience of the establishment, this brings a different set of skills into play. This is a complex area: for example, would interference with software transfer blame in a situation where the vehicle fails?

### Consultation Question 40.

- 6.21 We provisionally propose that, irrespective of the nature of the vehicle, a licensed operator should be under a duty to:

- (1) supervise the vehicle;

We agree that NUIC operators should be responsible for the supervision of the vehicles they operate.

- (2) maintain the vehicle;

Agree, but please refer to our comments on roadworthiness under Q35 above and the responsibility on the ADSE for ensuring that critical safety software updates are made.

- (3) insure the vehicle;

We believe that for NUIC vehicles, the operator should be responsible for the insurance provision. The scope of cover should also be expanded to ensure that cover for cyber-attack is a compulsory part of cover to provide protection for users and third parties.

In the case of leased vehicles which may fall under the scope of NUIC, it would be our strong recommendation to ensure that the operator, or lessee, is responsible under law or regulation for the arrangement of cover. The reason for this is due to a likely shift in consumer behaviour, already observed in other areas of the economy, from an ownership basis to a use basis. If this is realised in the motor market, this could result in a huge

upsurge in the numbers of vehicles leased compared to those owned, not least because of the likely high cost of level 4 and 5 vehicles compared to those at levels 0, 1 and 2. If responsibility for the arrangement of insurance is on lessors, there is a risk that just a few large leasing companies own the market not only for vehicles, but also in the arrangement of insurance. Such a restriction in competition would be detrimental to the end-users who would have little control over the cost.

Our preference is to ensure that the lessee has the responsibility for arranging cover, ensuring choice, a thriving market, competition and a natural market pressure to keep premiums down, benefiting the consumer. This is similar to the situation that exists today for many leasehold vehicles.

(4) install safety-critical updates and maintain cybersecurity;

In line with our earlier points on this issue we see the onus for software updates to rest with the ADSE. The NUIC operator should be responsible for ensuring cyber security at their own locations to a level prescribed by the NCSC.

(5) report accidents and untoward events (as defined by the regulator). Do you agree?

There needs to be a 'responsible' person in a legal sense for ensuring that these duties are carried out. We agree that NUIC operators should hold the responsibility to report accidents given the technology on-board and encourage the Law Commission to reflect on the questions posed in the Department for Transport consultation on reporting accidents to police and ensure that both pieces of work match up and do not conflict with one another. The consultation revived calls for input in 2018 but Government have not yet responded to those inputs. We also believe there should be a responsibility to report so-called 'near misses' - especially during the early phases of this roll out of NUIC vehicles, that information is likely to be very relevant in terms of determining where collisions or incidents are likely to occur. This information should also be publicly available and would certainly be of interest to the insurance industry to ensure risk-reflective pricing. Near misses would need to be defined and this should form part of further consultation as the regulations are drawn up.

#### Consultation Question 41.

6.22 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?

Yes, other than the duty to make sure software updates are made which we think rests with the ADSE.

#### Consultation Question 42.

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

6.28 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?

This seems to make sense but is beyond BIBA's area of expertise.

### Consultation Question 43.

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

We have no strong view here. The DVLA might be one option. We would like to see a single national system would also ensure consistency of oversight.

### Consultation Question 44.

7.19 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?

Agree. On 3) we would expect internal disciplinary procedures to apply.

### Consultation Question 45.

7.20 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—

- (1) to have been committed with the consent or connivance of an officer of the body corporate; or
- (2) 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:

- (1) related to an increased risk of a type of adverse incident; and
- (2) an adverse incident of that type occurred; and
- (3) 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.

Agree. A similar regime should apply to the vehicle manufacturer if the ADS is sourced from a third party manufacturer.

#### **Consultation Question 46.**

- 7.21 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.

Agree.



#### Consultation Question 47.

- 8.5 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 ?

Agree.

#### Consultation Question 48.

- 8.6 We welcome views on whether the tampering offence should apply to external infrastructure required for the operation of the AV.

This makes sense – it is a cyber crime – and it highlights the need for the operator's establishment to have high levels of NCSC prescribed levels of cyber security and the need for adequate cyber insurance.

#### Consultation Question 49.

- 8.10 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?

Agree.

#### Consultation Question 50.

- 8.11 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?

Agree.

#### Consultation Question 51.

- 8.12 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.

Agree, but such restricted supply may drive up the cost of repairs and have a knock-on effect on the cost of insurance.

#### Consultation Question 52.

- 9.5 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?

We think the Act should be reviewed to clarify that the onus for safety critical updates rests solely on the ADSE.

#### Consultation Question 53.

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

Do you agree?

Agree. The MIB is the logical body to take on this role.

#### Consultation Question 54.

9.13 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?

This is a complex area and worthy of a wider review. The A EVE makes it clear that the insurer of the self-driving vehicle will respond to claims resulting from its use on a road. The motor insurer should then have the right to subrogate against the ADSE assuming the ADS was the cause of the accident. We want this principle to be preserved in any review of product liability law. What we do not want to face is the situation where an injured party cannot look to a motor insurer for compensation but must instead attempt to sue an ADSE or vehicle manufacturer by lodging a product liability claim.

#### Consultation Question 55.

10.17 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?

Agree. This data is key for proper accident investigation. It could determine, for example, if the UIC is eligible for compensation for their injuries if ADS was engaged at the time of an accident. Important also for a motor insurer's ability to successfully subrogate against the ADSE.

#### Consultation Question 56.

10.19 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?

Agree but disclosure must be wider than insurers and include insurance brokers.

#### Consultation Question 57.

10.23 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?

This seems to make sense and aligns with statutes of limitation for personal injury claims.

#### Consultation Question 58.

10.26 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?

Agree. Alignment with GDPR obligations makes sense especially give likelihood of agreement with EU on data sharing.