



Bar Council response to the Law Commission consultation paper on Automated Vehicles

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CHAPTER 3: HUMAN FACTORS

A new role in driving automation: the "user-in-charge"

Consultation Question 1 (Paragraphs 3.24 - 3.43): Do you agree that:

- (1) All vehicles which "drive themselves" within the meaning of the Automated and Electric Vehicles Act 2018 should have a user-in-charge in a position to operate the controls, unless the vehicle is specifically authorised as able to function safely without one?**
- (2) The user-in-charge:**
 - (a) must be qualified and fit to drive;**

¹ [Law Commission consultation on Automated Vehicles](#)

(b) would not be a driver for purposes of civil and criminal law while the automated driving system is engaged; but

(c) would assume the responsibilities of a driver after confirming that they are taking over the controls, subject to the exception in (3) below?

(3) If the user-in-charge takes control to mitigate a risk of accident caused by the automated driving system, the vehicle should still be considered to be driving itself if the user-in charge fails to prevent the accident.

4. All agreed – for the tentative reasons given by the Commission.

Consultation Question 2 (Paragraph 3.45): We seek views on whether the label “user-in-charge” conveys its intended meaning.

5. We cannot conceive a better label at this stage. The label “user -in -charge” conveys its intended meaning because the person who is given the label must be ‘qualified’ and ‘fit’ to drive and also be responsible for all the matters that do not relate to the dynamic driving task such as insurance and maintenance requirements. These factors connote that the person is ‘using’ the vehicle and, in fact, is also ‘in charge’ of it.

Consultation Question 3 (Paragraphs 3.47 - 3.57): We seek views on whether it should be a criminal offence for a user-in-charge who is subjectively aware of a risk of serious injury to fail to take reasonable steps to avert that risk.

6. Yes – it should be a criminal offence. We tentatively take the view that failure to make this a criminal offence could result in a gap in the law where actions by the user -in- charge merit criminal penalisation. The fact that subjectivity may be difficult to distinguish from objectivity should not be a barrier to such criminalisation. Ultimately this would be a matter for the courts to determine and they are used to doing this in other areas of the criminal law. Further, the developer could also be made criminally liable in such circumstances where its system is not fully safe.

When would a user-in-charge not be necessary?

Consultation Question 4 (Paragraphs 3.59 - 3.77): We seek views on how automated driving systems can operate safely and effectively in the absence of a user-in-charge.

7. We are unable to add to the conclusions of the Commission as set out in paragraphs 3.76 and 3.77 of the consultation paper. A further matter which the

Commission may wish to consider in due course is the potential for law enforcement agencies to seek powers to take control of such vehicles – for example to deal with the aftermath of an accident or to move vehicles which are causing an obstruction. The circumstances in which this could be done would need to be carefully considered.

Consultation Question 5 (Paragraphs 3.59 - 3.77): Do you agree that powers should be made available to approve automated vehicles as able to operate without a user-in-charge?

8. We are unable to add to the conclusions of the Commission as set out in paragraphs 3.76 and 3.77 of the consultation paper.

When should secondary activities be permitted?

Consultation Question 6 (Paragraphs 3.80 - 3.96): Under what circumstances should a driver be permitted to undertake secondary activities when an automated driving system is engaged?

9. Our tentative view is that secondary activities should not be permitted unless the vehicle can achieve a minimal risk condition without human intervention.

Consultation Question 7 (Paragraphs 3.80 - 3.96): Conditionally automated driving systems require a human driver to act as a fallback when the automated driving system is engaged. If such systems are authorised at an international level:
(1) should the fallback be permitted to undertake other activities?
(2) if so, what should those activities be?

10. See answer to Question 6 above.

CHAPTER 4: REGULATING VEHICLE STANDARDS PRE-PLACEMENT

A new safety assurance scheme

Consultation Question 8 (Paragraphs 4.102 - 4.104): Do you agree that:
(1) a new safety assurance scheme should be established to authorise automated driving systems which are installed:
(a) as modifications to registered vehicles; or
(b) in vehicles manufactured in limited numbers (a "small series")?

11. Agree. There should be a safety assurance scheme administered by a specialist agency in the circumstances set out in Questions 8(1) a) and b). A regulatory regime is necessary to ensure that only authorised automated driving

systems (“ADS”) are permitted. Minimum standards should be prescribed, and powers given to the agency to authorise systems and to revoke them. The regime should also provide that consumers are clearly informed about the functions of the ADS and instructed how to use them. This seems fundamental to safe use and should form part of the authorisation process.

(2) unauthorised automated driving systems should be prohibited?

12. Agree. See previous answer

(3) the safety assurance agency should also have powers to make special vehicle orders for highly automated vehicles, so as to authorise design changes which would otherwise breach construction and use regulations?

13. Agree. If the agency is specialist then it is best placed to authorise such changes and it is sensible to grant it such powers.

Consultation Question 9 (Paragraphs 4.107 - 4.109): Do you agree that every automated driving system (ADS) should be backed by an entity (ADSE) which takes responsibility for the safety of the system?

14. Agree. There should be no authorisation unless the ADS is put forward by an ADSE which should be legally responsible for the safety of its systems. It is analogous to the placing on the market of a product by a producer for use by consumers under the General Product Safety Regulations 2005. The product must be safe and the ADSE should be obliged to ensure that.

Consultation Question 10 (Paragraphs 4.112 - 4.117): We seek views on how far should a new safety assurance system be based on accrediting the developers’ own systems, and how far should it involve third party testing.

15. In common with many other products that are placed on the market for use by consumers accreditation of the developers’ own systems seems to be a sensible step. Vehicular and road safety require a high level of consumer protection. Third party testing is often a vital part of ‘due diligence’ systems and without such it is less likely that a product or system can be said to be safe. Self – certification may well not go far enough unless there is some form of independent verification of the product undergoing and passing certain tests.

Consultation Question 11 (Paragraphs 4.118 - 4.122): We seek views on how the safety assurance scheme could best work with local agencies to ensure that is sensitive to local conditions.

16. Not answered. This is beyond our scope.

CHAPTER 5: REGULATING SAFETY ON THE ROADS

A new organisational structure?

Consultation Question 12 (Paragraphs 5.30 - 5.32): If there is to be a new safety assurance scheme to authorise automated driving systems before they are allowed onto the roads, should the agency also have responsibilities for safety of these systems following deployment?

17. It is sensible for the agency to have monitoring and enforcement powers in respect of safety following deployment of an ADS. Not least there should be power for the agency to invoke suspension, withdrawal and recall notices in respect of driverless vehicles in a similar way to that provided by the General Product Safety Regulations 2005. Whilst the Driver Vehicle Standards Agency ("DVSA") has powers to withdraw or recall a vehicle the powers should be extended to cover particular situations that may apply to driverless vehicles that do not apply to conventional vehicle e.g where the vehicle breaches road traffic law due to a software defect. As a specialist agency it appears that it would be better placed to undertake this function than, for example, local authorities or the Office of Product Safety and Standards.

If so, should the organisation have responsibilities for:

(1) regulating consumer and marketing materials?

18. The existing agencies namely Trading Standards and the Advertising Standards Agency are used to dealing with consumer and marketing materials in relation to a wide variety of goods and services. There is no reason why they should not be able to deal with them in this situation. However, acknowledging the specialist knowledge of the new agency, some formal liaison between it and the existing agencies seems a sensible step.

(2) market surveillance?

19. The agency's specialist knowledge would qualify it to be responsible for market surveillance in a similar way to its suitability for being responsible for implementing product recalls.

(3) roadworthiness tests?

20. As to roadworthiness it seems sensible for the agency to be given responsibility. If the agency is not to be simply a new manifestation of existing agencies then it might be that the DVSA can assist in the discharge of this function.

We seek views on whether the agency's responsibilities in these three areas should extend to advanced driver assistance systems.

21. Yes. For the same reasons as above.

Driver training

Consultation Question 13 (Paragraphs 5.54 - 5.55): Is there a need to provide drivers with additional training on advanced driver assistance systems? If so, can this be met on a voluntary basis, through incentives offered by insurers?

22. It seems desirable to us to provide drivers with additional training on advanced driver assistance systems if such drivers are going to be entitled to use them. A person's driving licence could indicate whether they have passed such training in a similar way to when people are authorised to drive heavier vehicles.

23. We are not inclined to leave this to voluntary training on the basis of incentives from insurers. This seems less desirable for road safety, as some insurers may give greater incentives than others and some people may never do the voluntary training and be prepared, for example, to pay higher premiums if cost is the only incentive. We are aware that only a minority of drivers do the "voluntary" advanced driving test. The Law Commission might wish to analyse statistics regarding how many people take the advanced driving test and how this is then reflected in the insurance premiums charged by insurers.

Accident investigation Consultation

Question 14 (Paragraphs 5.58 - 5.71): We seek views on how accidents involving driving automation should be investigated. We seek views on whether an Accident Investigation Branch should investigate high profile accidents involving automated vehicles? Alternatively, should specialist expertise be provided to police forces.

24. We do not consider that this issue falls within the remit of the Law Reform Committee of the Bar Council.

Setting and monitoring a safety standard Consultation

Question 15 (Paragraphs 5.78 - 5.85):

(1) Do you agree that the new safety agency should monitor the accident rate of highly automated vehicles which drive themselves, compared with human drivers?

(2) We seek views on whether there is also a need to monitor the accident rates of advanced driver assistance systems.

25. We do not consider that this issue falls within the remit of the Law Reform Committee of the Bar Council.

Consultation Question 16 (Paragraphs 5.86 - 5.97):

(1) What are the challenges of comparing the accident rates of automated driving systems with that of human drivers?

(2) Are existing sources of data sufficient to allow meaningful comparisons? Alternatively, are new obligations to report accidents needed?

26. We do not consider that this issue falls within the remit of the Law Reform Committee of the Bar Council.

CHAPTER 6: CIVIL LIABILITY

Is there a need for further review?

Consultation Question 17 (Paragraphs 6.13 - 6.59): We seek views on whether there is a need for further guidance or clarification on Part 1 of Automated and Electric Vehicles Act 2018 (AEV) in the following areas:

(1) Are sections 3(1) and 6(3) on contributory negligence sufficiently clear?

27. No. Further guidance or clarification of the provisions is needed. The counter-factual situations cited in the paper are evidence of the potential for uncertainty. We are aware of the criticisms that have been made of the possibility of 100% contributory negligence. We would favour any review of contributory negligence to be done in conjunction with any reform of the Law Reform (Contributory Negligence) Act 1945.

(2) Do you agree that the issue of causation can be left to the courts, or is there is a need for guidance on the meaning of causation in section 2?

28. Yes. The courts are well placed to deal with causation on a fact sensitive and principled basis. We do not believe that there is a need for guidance on the meaning of causation in section 2.

(3) Do any potential problems arise from the need to retain data to deal with insurance claims? If so:

(a) To make a claim against an automated vehicle's insurer should the injured person be required to notify the police or the insurer about the alleged incident within a set period, so that data can be preserved.

29. There are problems in storing data for sufficient periods of time to deal with insurance claims. We are aware that automated vehicles will generate and collect huge amounts of data and that some insurers have raised the difficulties about keeping such volumes of data. Such data will be important in establishing the cause of an accident and attributing fault. We understand that some countries, such as Germany, have required automated vehicles to have "black boxes" to record such information, but we are not aware of how much data they can hold. There is no mention of black boxes in the current legislation but this may be something the Law Commission may wish to consider for future legislation.

(b) how long should that period be?

30. We would favour an injured person being required to notify the police about an alleged incident within a set period, such as 6 months, from the date of the occurrence of the incident, so that data can be preserved. The police should then immediately notify the insurer shown on DVLA records. It would be desirable for the vehicle's insurer to be notified as soon as possible but an injured person may not be in the position to know the identity of the insurer of the vehicle. It seems to us that it would be helpful if each vehicle had the name and contact details of its insurer securely in place when it is being used in order to assist identification. No doubt the insurance details should be registered with DVLA but this would be a further safeguard to allow for easier notification.

31. We are against failure of an obligation by an injured person to notify the alleged incident within a set period having the consequence of barring a claim for personal injuries. We consider that there should be no changes in the limitation periods for bringing a claim by those who have suffered personal injuries.

Civil liability of manufacturers and retailers: Implications

Consultation Question 18 (Paragraphs 6.61 - 6.116): Is there a need to review the way in which product liability under the Consumer Protection Act 1987 applies to defective software installed into automated vehicles?

32. Yes. The current uncertainty in relation to whether software not incorporated within a physical medium is a 'product' creates a difficulty in deciding liability when such defective software is actually installed. This will be a particular difficulty when the software producer is a different entity to the vehicle producer. Such a review would be welcome on this aspect of the Consumer Protection Act 1987.

Consultation Question 19 (Paragraphs 6.61 - 6.116): Do any other issues concerned with the law of product or retailer liability need to be addressed to ensure the safe deployment of driving automation?

33. We agree a general review of the law of product liability and retailer liability is not necessary.

CHAPTER 7: CRIMINAL LIABILITY

Offences incompatible with automated driving

Consultation Question 20 (Paragraphs 7.5 - 7.11): We seek views on whether regulation 107 of the Road Vehicles (Construction and Use) Regulations 1986 should be amended, to exempt vehicles which are controlled by an authorised automated driving system.

34. We agree that Reg 107 could be incompatible with authorised automated vehicles which operate without any "attendance" by anyone or any entity. It could be argued that the software in some way attends the vehicle but the law will achieve greater clarity if authorised automated driving systems are exempt from this offence. If not explicitly exempt we suggest incorporating the US clause quoted at paragraph 7.8 allowing for idling/transition time.

Consultation Question 21 (Paragraphs 7.5 - 7.11): Do other offences need amendment because they are incompatible with automated driving?

35. We agree with the analysis of Reg 104, that no individual is carrying out the dynamic driving task (or being caused or permitted to drive) where a highly, or fully, automated driving system is operating. We have concerns that "person" could potentially apply to an "automated driving system entity" if that entity is a legal as opposed to a human person. Reg 104 could therefore be amended to refer to an

“individual” and not a person. Provided legislation introducing automated vehicles makes it clear when an automated system is “driving” as opposed to a human occupant of the vehicle, we do not consider that specific regulations referring to driving or drivers would need to be amended (see answer to Q22). A “user-in-charge” of an SAE Level 4 or 5 automated vehicle ought not to be considered a “driver” because they are not involved in driving the vehicle whilst the vehicle is in automated mode. Consequently, users in charge of SAE Level 4 or 5 automated vehicles should not be restricted from using a mobile phone or obliged to look at the road ahead. A user-in-charge of SAE Level 3 automated vehicles would still need to be subject to the same restrictions as a driver. Arguably being receptive to the need to intervene requires less focus on the road than a driver, but you cannot realistically have a rule requiring “some focus” or “receptiveness”. At least to begin with, it is better to retain the same need to focus on the road etc. in such cases. Legislation will need to be clear as to which automated systems become the driver and when.

Offences relating to the way a vehicle is driven

Consultation Question 22 (Paragraphs 7.14 - 7.19): Do you agree that where a vehicle is: (1) listed as capable of driving itself under section 1 of the Automated and Electric Vehicles Act 2018; and (2) has its automated driving system correctly engaged; the law should provide that the human user is not a driver for the purposes of criminal offences arising from the dynamic driving task?

36. Yes. Consideration should be given as to how it will be proved that the automated driving system was correctly engaged. We consider that this should be the responsibility of the automated driving system entity (ADSE). We say this although we recognise that the ADSE’s incentive will go in the opposite direction, to show that the system was not correctly engaged and therefore the liability is not theirs. In determining whether the system was engaged, the burden on the consumer and the public authorities should be as light as possible, but the onus should be upon them to raise the presumption that the system was correctly engaged.

37. As per Q24 below, at first it would be for the keeper of the vehicle to claim, in response to the Notice of Intended Prosecution, that the system was correctly engaged. They could be expected to show that the car has such a system (presumably quite easily as it would be registered as such). As per Q24 below, they might simply have to give permission for their data to be passed to the police to determine if the system was on at the relevant time. If the technology allows it to be done easily, however, they might also be expected to demonstrate this themselves (e.g. if responding to the NIP online, through an online platform where you enter

your registration details and the relevant time, and which automatically confirms that the system was engaged at that time).

38. This could give rise to a presumption that the system was correctly engaged and, if disputed, it would be the responsibility of the ADSE to prove that the system was not correctly engaged (including whether an update had not been carried out, or there is evidence of tampering), then shifting liability back to the user-in-charge or the keeper.]

39. Separately, we wish to bring the Law Commission's attention to a recent blog article written by Alex Du Sautoy of 6KBW College Hill <https://blog.6kbw.com/> (dated 31 January 2019). We respectfully agree with the points raised by Mr Du Sautoy that:

“what ought to be a straightforward and relatively efficient prosecution may become increasingly complex and technical. It may need to be determined a) whether the car was in autonomous mode; b) whether the software was responsible for the speeding; and c) whether the owner ought to have updated the software and whether that update would have prevented the speeding. There may even be other issues raised by potential defendants, such as whether the software has been hacked, whether the roads or signs have been tampered with in a manner that tricks the software, or whether the user-in-charge ought to have realised the system was not functioning correctly and taken over. Aside from the changes to legislation, the courts and its users will all need to be ready for what could be an incredibly complex development. The need for proper case management in driving cases, as was highlighted in 2016 by Senior District Judge Riddle in [R v Cipriani](#), could be tested to the extreme.”

Consultation Question 23 (Paragraph 7.21): Do you agree that, rather than being considered to be a driver, a user-in-charge should be subject to specific criminal offences? (These offences might include, for example, the requirement to take reasonable steps to avoid an accident, where the user-in-charge is subjectively aware of the risk of serious injury (as discussed in paragraphs 3.47 to 3.57)).

40. Yes. The criminal law should not equate “user-in-charge” with a driver.

41. We are concerned about how criminal liability may arise in practice. For example, it is unclear to us whether there are any plans to ensure that ‘smart motorways’ will update AV Software in real time with automated vehicles. Temporary speed restrictions, lane closures and traffic lights - if extended to non-motorways - also cause us concern.

42. We consider that there will be a need for a specific offence of failing to take reasonable steps to avoid an accident, where the user-in-charge is subjectively aware of the risk of serious injury, as discussed in paragraphs 3.47-3.57 and as below.

Consultation Question 24 (Paragraphs 7.23 - 7.35): Do you agree that:

(1) a registered keeper who receives a notice of intended prosecution should be required to state if the vehicle was driving itself at the time and (if so) to authorize data to be provided to the police?

43. Yes. We have some concern about how this may work in practice. For example, where an individual used an ADS for part of a journey, would an individual be penalised for mistakenly nominating the ADSE if the ADS was not actually engaged on the critical part of the journey (c.f. *Jones v DPP* [2004] EWHC 236 (Admin), *Flegg v New Forest Justices* [2006] EWHC 396 (Admin) and *Atkinson v DPP* [2011] EWHC 3363 (Admin))? We agree that there should be an obligation to authorise the release of data from the ADSE to the police. If the technology allows for it to be done easily, a keeper of a vehicle might be expected to demonstrate that the system was engaged at the relevant time (e.g. through an online platform which, when you enter your registration details and the relevant time, can certify that the system was engaged at that time).

(2) where the problem appears to lie with the automated driving system (ADS) the police should refer the matter to the regulatory authority for investigation?

44. We agree that where the problem appears to lie with the ADS, referral to a specialist regulatory body is the appropriate step because it would be overly burdensome for local police forces to obtain the specialist knowledge necessary to understand whether the ADS has failed and, if so, why.

(3) where the ADS has acted in a way which would be a criminal offence if done by a human driver, the regulatory authority should be able to apply a range of regulatory sanctions to the entity behind the ADS?

(4) the regulatory sanctions should include improvement notices, fines and suspension or withdrawal of ADS approval?

45. We agree that the regulator should be empowered to issue improvement notices, suspend or withdraw approval and impose financial penalties. Moreover, automated driving systems will not be authorised unless they meet strict technical standards. Therefore, in most cases compliance with the obligation on the ADSE to design and manufacture safe automated vehicles will be achieved through regulatory notices and sanctions. However, we suggest that further consideration be

given to whether the ADSE's failure to operate a working system or failure to apply software which meets legal requirements should also be a criminal offence. To ensure effective deterrence, the criminal liability of the ADSE could extend to its directors and managers if the offences were committed with their consent, connivance or neglect. The specialist regulatory body could be empowered to prosecute or refer the matter to the CPS. There is a risk that limiting the sanction to regulatory enforcement action will be insufficient to ensure compliance. As the consultation recognises, public safety is paramount and other legislation designed to protect public safety does extend to criminal offences (for example, health and safety, and environmental protection). Whilst we agree that regulatory action should be the first step, and prosecution used sparingly, we are concerned that removing the possibility of prosecution from the regulator's toolkit in serious and persistent cases could lead to a lack of compliance from ADSEs.

Responsibilities of "users-in-charge"

Consultation Question 25: Do you agree that where a vehicle is listed as only safe to drive itself with a user-in-charge, it should be a criminal offence for the person able to operate the controls ("the user-in-charge"):

- (1) not to hold a driving licence for the vehicle;**
- (2) to be disqualified from driving;**
- (3) to have eyesight which fails to comply with the prescribed requirements for driving;**
- (4) to hold a licence where the application included a declaration regarding a disability which the user knew to be false;**
- (5) to be unfit to drive through drink or drugs; or**
- (6) to have alcohol levels over the prescribed limits?**

46. Yes. In respect of paragraph 7.30 of the consultation, we consider that there should be:

1. a statutory obligation on the Highway Authority to inform software providers of a change to the speed limit,
2. a statutory obligation on the user-in-charge to update software before putting the vehicle into ADS mode (if the ADSE cannot automatically disable the ADS pending installation of the latest updates)
3. a new criminal offence of uploading unauthorised software and
4. a new regulatory or criminal offence for software providers who deliberately ignore legal requirements. Consideration could also be given to whether this offence is not limited to those who deliberately ignore legal requirements but is strict liability coupled with a due diligence defence.

Consultation Question 26 (Paragraphs 7.37 - 7.45): Where a vehicle is listed as only safe to drive itself with a user-in-charge, should it be a criminal offence to be carried in the vehicle if there is no person able to operate the controls?

47. Yes. It should also be a criminal offence to cause such a vehicle to travel without someone able to operate the controls (e.g. using the car to transport a child, an unconscious person, or an object).

Responsibilities for other offences

Consultation Question 27 (Paragraphs 7.48 - 7.65): Do you agree that legislation should be amended to clarify that users-in-charge:

- (1) Are “users” for the purposes of insurance and roadworthiness offences; and**
- (2) Are responsible for removing vehicles that are stopped in prohibited places, and would commit a criminal offence if they fail to do so?**

48. Yes.

Consultation Question 28 (Paragraphs 7.59 - 7.61): We seek views on whether the offences of driving in a prohibited place should be extended to those who set the controls and thus require an automated vehicle to undertake the route.

49. Yes, otherwise those restrictions will be sidestepped.

Obligations that pose challenges for automated driving systems

Consultation Question 29 (Paragraphs 7.71 - 7.88): Do you agree that legislation should be amended to state that the user-in-charge is responsible for:

- (1) duties following an accident;**
- (2) complying with the directions of a police or traffic officer; and**
- (3) ensuring that children wear appropriate restraints?**

50. Yes.

Consultation Question 30 (Paragraphs 7.71 - 7.88): In the absence of a user-in-charge, we welcome views on how the following duties might be complied with:

- (1) duties following an accident;**
- (2) complying with the directions of a police or traffic officer; and**
- (3) ensuring that children wear appropriate restraints.**

51. We have nothing to add to the examples given in the paper. We consider this more a matter for software developers and better addressed in a subsequent consultation.

Consultation Question 31 (Paragraphs 7.71 - 7.88): We seek views on whether there is a need to reform the law in these areas as part of this review.

52. See above.

Aggravated offences

Consultation Question 32 (Paragraphs 7.92 - 7.123): We seek views on whether there should be a new offence of causing death or serious injury by wrongful interference with vehicles, roads or traffic equipment, contrary to section 22A of the Road Traffic Act 1988, where the chain of causation involves an automated vehicle.

53. We agree that such an offence should be introduced.

Consultation Question 33 (Paragraphs 7.113 - 7.123): We seek views on whether the Law Commissions should review the possibility of one or more new corporate offences, where wrongs by a developer of automated driving systems result in death or serious injury.

54. Yes. For the reasons given in response to Q24(4), we agree that this would be sensible and our tentative suggestion is that corporate offences should be available.

CHAPTER 8: INTERFERING WITH AUTOMATED VEHICLES

Consultation Question 34 (Paragraphs 8.1 - 8.58): We seek views on whether the criminal law is adequate to deter interference with automated vehicles. In particular:

(1) Are any new criminal offences required to cover interference with automated vehicles?

(2) Even if behaviours are already criminal, are there any advantages to re-enacting the law, so as to clearly label offences of interfering with automated vehicles?

55. As for (1), see above. As for (2), there's no need to re-label.

Tampering with vehicles

Consultation Question 35 (Paragraphs 8.28 - 8.31): Under section 25 of the Road Traffic Act 1988, it is an offence to tamper with a vehicle's brakes "or other mechanism" without lawful authority or reasonable cause. Is it necessary to clarify that "other mechanism" includes sensors?

56. No, "mechanism" will no doubt be interpreted to include sensors.

Unauthorised vehicle taking

Consultation Question 36 (Paragraphs 8.32 - 8.39): In England and Wales, section 12 of the Theft Act 1968 covers "joyriding" or taking a conveyance without authority, but does not apply to vehicles which cannot carry a person. This contrasts with the law in Scotland, where the offence of taking and driving away without consent applies to any motor vehicle. Should section 12 of the Theft Act 1968 be extended to any motor vehicle, even those without driving seats?

57. Yes, section 12 should be amended to explicitly apply to automated vehicles.

Causing danger to road users

Consultation Question 37 (Paragraphs 8.6 - 8.12): In England and Wales, section 22A(1) of the Road Traffic Act 1988 covers a broad range of interference with vehicles or traffic signs in a way which is obviously dangerous. In Scotland, section 100 of the Roads (Scotland) Act 1984 covers depositing anything a road, or inscribing or affixing something on a traffic sign. However, it does not cover interfering with other vehicles or moving traffic signs, even if this would raise safety concerns. Should section 22A of the Road Traffic Act 1988 be extended to Scotland?

58. Yes.

CHAPTER 9: "MACHINE FACTORS" – ADAPTING ROAD RULES FOR ARTIFICIAL INTELLIGENCE DECISION-MAKING

Should automated vehicles ever mount the pavement?

Consultation Question 39 (Paragraphs 9.6 - 9.37): We seek views on whether a highly automated vehicle should be programmed so as to allow it to mount the pavement if necessary:

- (1) to avoid collisions;**
- (2) to allow emergency vehicles to pass;**
- (3) to enable traffic flow;**

(4) in any other circumstances?

Consultation Question 40 (Paragraphs 9.6 - 9.37): We seek views on whether it would be acceptable for a highly automated vehicle to be programmed never to mount the pavement.

Consultation Question 39: Should highly automated vehicles ever exceed speed limits?

Consultation Question 41 (Paragraphs 9.40 - 9.47): We seek views on whether there are any circumstances in which an automated driving system should be permitted to exceed the speed limit within current accepted tolerances.

59. Questions 39 – 41. See response to Q42.

Edging through pedestrians

Consultation Question 42 (Paragraphs 9.49 - 9.55): We seek views on whether it would ever be acceptable for a highly automated vehicle to be programmed to “edge through” pedestrians, so that a pedestrian who does not move faces some chance of being injured. If so, what could be done to ensure that this is done only in appropriate circumstances?

60. ‘Our tentative view is that as far as coding technology will permit automated and driven vehicles should be treated consistently. If it is possible the same tolerances (exceptions to the letter of the law) should be afforded to automated vehicles as to driven vehicles. We appreciate that there are many scenarios and that this might be difficult to achieve in practical terms, particularly when concerning edging through pedestrians. We appreciate that policy and ethical issues will also inform this and hope to have the opportunity to respond more fully at later stages of the process.

Avoiding bias in the behaviour of automated driving systems

Consultation Question 43 (Paragraphs 9.68 - 9.74): To reduce the risk of bias in the behaviours of automated driving systems, should there be audits of datasets used to train automated driving systems?

61. Yes. See response to Q. 44.

Transparency

Consultation Question 44 (Paragraphs 9.76 - 9.88): We seek views on whether there should be a requirement for developers to publish their ethics policies (including any value allocated to human lives)?

62. Yes. Our tentative view is it must be correct in principle that such information is disclosed and there is transparency where safety to people using the roads is paramount. Of course, we appreciate that complex issues concerning commercial secrets and confidentiality will arise and require consideration.

Consultation Question 45 (Paragraphs 9.76 - 9.88): What other information should be made available?

63. Information as to results of trials of prototype vehicles.

Future work and next steps

Consultation Question 46 (Paragraphs 9.91 - 9.93): Is there any other issue within our terms of reference which we should be considering in the course of this review?

64. We are not aware of any other issues to be considered other than possibly problems arising out of cross border uses of automated vehicles where other countries are not parties to international agreements regarding their use.

Bar Council
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