



Law Commission

Consultation on Automated Vehicles

Response from:

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Bona-fides

BVRLA, the industry and its members

- Established in 1967, the British Vehicle Rental & Leasing Association (BVRLA) is the UK trade body for companies engaged in vehicle rental and leasing.
- BVRLA membership provides customers with the reassurance that the company they are dealing with adheres to the highest standards of professionalism and fairness.
- The association achieves this by maintaining industry standards and regulatory compliance via its mandatory codes of conduct, inspection programme and conciliation service. To support this work, the BVRLA shares information and promotes best practice through its extensive range of training and events.
- On behalf of its 980+ members, the BVRLA works with governments, public sector agencies, industry associations and key business influencers across a wide range of road transport, environmental, taxation, technology and finance-related issues.
- BVRLA members are responsible for a combined fleet of almost five million cars, vans and trucks, supporting around 465,000 jobs and contributing £49bn to the economy each year. For more information, please visit www.bvrla.co.uk.

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Introduction

The BVRLA is grateful for the opportunity to contribute to this consultation on behalf of the vehicle rental and leasing sector. We specifically welcome the review into on how UK law should change to enable the safe use and operation of automated vehicles. Given that the degree of uncertainty with the future direction and development of such new technologies, we feel it is appropriate to ensure that the law is flexible.

While our members are typically the legal owner of the vehicle, they do not generally have day-to-day operational control of the vehicle. We would therefore welcome legal clarity on the way the automated vehicle is operated and controlled by the customer, as well as on those responsibilities which the legal owner or supplier would be accountable for.

Consultation questions

Chapter 4

Question 9:

We seek views on how automated driving systems can operate safely and effectively in the absence of a user-in-charge.

The BVRLA believes that every automated driving system (ADS) should be backed by an Automated Driving System Entity (ADSE) which would have the legal responsibility to ensure such systems are safe.

Question 10:

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.

We believe the ADSE should have some oversight over the accrediting software developers, whose work could impact the vehicle safety. We also feel there needs to be clarity on the roles and responsibilities of the vehicle producer and the software developers.

Question 11:

We seek views on how the safety assurance scheme could best work with local agencies to ensure that is sensitive to local conditions.

Our view is that the safety assurance systems should be able to adapt to the change in localised conditions for specific towns and cities. We nevertheless feel it is paramount that there is a clear national framework for local agencies to adhere to, to ensure consistency and provide an appropriate balance.

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Chapter 5

Question 12:

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? If so, should the organisation have responsibilities for:

- (1) regulating consumer and marketing materials?**
- (2) market surveillance?**
- (3) roadworthiness tests? We seek views on whether the agency's responsibilities in these three areas should extend to advanced driver assistance systems.**

The safety assurance agency should have a responsibility to monitor the safety of the driver assistance systems as well as highly automated vehicles which drive themselves. We would add that a mechanism should also be established for consumers to receive information about advanced driver assistance systems and clarity provided regarding what their legal obligation and responsibilities should be. We feel the provision of guidelines and processes would be useful to prevent consumers being misled on an automated vehicle's capabilities.

Question 13:

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?

Drivers should have the option to undergo additional training to operate and oversee the operation of an automated vehicle or advanced driver assistance systems. The training should be voluntary, similar to learning how to drive on a motorway. But ultimately the driver should be held accountable for ensuring the vehicle is safely operated in automated mode.

Question 14:

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.

We believe that specialist expertise should be provided to police forces to investigate high-profile accidents involving automated vehicles.

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Question 15:

- (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.**

Yes, the new safety agency should monitor the accident rate of autonomous vehicles as well as the accident rate of accidents caused by a fault in the advance driver system.

Question 16:

- (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?**

There may be challenges in making comparisons to the cause of automated related incidents due to a number of factors such as driver age and experience. Furthermore, if an automated vehicle was involved in an accident due to a software glitch, this would not be comparable to an accident involving human error.

Chapter 6

Question 17:

We seek views on whether there is a need for further guidance or clarification on Part 1 of Automated and Electric Vehicles Act 2018 in the following areas:

- (1) Are sections 3(1) and 6(3) on contributory negligence sufficiently clear?**
- (2) Do you agree that the issue of causation can be left to the courts, or is there 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?**
- (b) how long should that period be?**

We believe that further guidance is required on the meaning of causation on Part 1 of Automated and Electric Vehicles Act 2018, noting that the ultimate decision on issues relating to causation should be left to the Courts to ultimately decide upon.

We agree that the driver's liability and the automated vehicles liability must be insured under the same policy. To make a claim in the event of an accident, the injured party should be required to notify the police/ insurance provider of the incident. They should then be given a time period of up to seven calendar days after the event to provide notification. However, the time period implemented would need to take into consideration circumstances, such as, if the injured party is hospitalised since they will not be in a position to provide instant notification.

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Question 18:

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?

Yes. Further clarity is needed to establish which party would be liable and under what circumstances. Each case should be reviewed on its own merit.

Question 19:

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?

There needs to be clarity regarding who would be responsible for providing notification in the event of a 'product safety recall'. Would the manufacturer notify the registered keeper or if the defect was software related, would it be the software company? In addition, clarity will also be needed as to whether the vehicle would be able to 'drive itself' if a software update/detect was alerted, or if the vehicle would go into 'sleep mode' until the software was updated, enabling the vehicle to be fit for use.

Chapter 7

Question 20:

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.

Yes. The regulation should be amended accordingly.

Question 21:

Do other offences need amendment because they are incompatible with automated driving?

Any offence(s) that prevents particular types of automated driving should be amended to provide compatibility.

Question 22:

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?

Yes. We agree that a human user or operator of an automated vehicle is not a driver for the purposes of criminal offences arising from the dynamic driving task, if the vehicle meets the conditions outlined.

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Question 23:

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)).

A 'user-in charge' should be subject to specific criminal offences. For example, if a 'user-in charge' has been called onto drive, either following a planned handover or after the vehicle has achieved a minimal risk condition and come to a stop but failed to take over to prevent damage/injury, this should amount to a criminal offence.

Question 24:

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 authorise data to be provided to the police?**
- (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?**
- (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?**

With regard to a notice of intended prosecution, the same actions should be taken as under 'Section 172 of Road Traffic Act 1988' relating to speeding offences. If the registered keeper was not driving the vehicle and the vehicle was 'driving itself', the registered keeper has a duty to provide all relevant data to the police. If the problem appears to lie with the software itself, the issue should be submitted to the new safety assurance agency who would then need to investigate what went wrong.

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?**

Yes. We agree that if the 'user-in charge' meets any of the conditions outlined it should be a criminal offence for the person to operate the controls.

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Question 26:

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.

Yes. The law needs to establish who would be responsible for the safety of the passengers when a 'user-in-charge' is not present.

Question 27:

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?**

Yes. We agree that legislation should be amended accordingly.

Question 28:

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.

It is an offence for a human driver to drive a vehicle in a prohibited place. Therefore, it should also be an offence for those who set the controls of an automated vehicle resulting in it driving within a prohibited place. Nevertheless, we note that when the automated driving system is engaged and conducting the entire dynamic driving task, complying with traffic law should be the legal responsibility of the automated driving system, not the human user.

Question 29:

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?**

Yes. Legislation should be implemented which outlines the responsibilities of the 'user-in charge' in all 3 instances outlined.

Question 30:

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.**

If there is a 'user-in' charge present in the vehicle, we believe that he/she should be responsible to act in each instance outlined. In the situation where there is no 'user-in' charge present and the automated vehicle is 'driving itself' with an unaccompanied child, the responsibility for

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ensuring that the child is wearing a seat-belt is the duty of the child's parent/guardian even if they are not present.

Question 31:

We seek views on whether there is a need to reform the law in these areas as part of this review.

We believe there is need for reform in the law in the areas mentioned in question 30.

Question 32:

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.

Yes. We believe that there should be a new offence as outlined above.

Question 33:

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.

Yes. We welcome the suggested review.

General observations and additional Comments

- It is an offence to knowingly sell a vehicle that is unsafe. In the event the vehicle is sold, a second-hand user would need to be aware that all safety factors are in place and the automated driving system is updated and 'fit for its purpose'. Therefore, a mechanism would need to be put in place as a way of checking that all safety notifications are cleared before the sale of the vehicle. This could be a summary throughout the life of the vehicle which would outline all software updates and glitches that occurred – similar to a service history. This should be easily accessible in the event the vehicle is being sold.
- We note that this consultation considers road vehicles and elements of road safety for vehicles 'driving themselves' but does not consider vehicle data and cyber security. However, we would ask that consideration be given to support the vehicle rental and leasing industry to ensure that it preserves direct and unrestricted access to its vehicles' data and functions. In addition, specific guidance should be provided for the automotive industry to support compliance with the new data protection regulation, GDPR.

We hope our comments and observations are helpful to the Law Commission. We would be happy to provide any additional information, if necessary.



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