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Comprehensive regulatory framework for self-driving vehicles proposed to Government

The Law Commission of England and Wales and the Scottish Law Commission (the Law Commissions) have today [18 December 2020] announced landmark proposals that will seek to ensure the safety of self-driving vehicles via a comprehensive new legal framework.

Hailed as “leading the way on the regulation of this technology” by Transport Minister Rachel Maclean, the Commissions propose a new approach to assigning responsibility.

The proposals include:

- Implementing a new, start-to-finish self-driving vehicle safety assurance scheme that includes monitoring performance and software updates throughout the vehicle’s life
- Clearly defining the responsibility of drivers, users and fleet owners according to the capabilities of self-driving technologies, ensuring that self-driving vehicles are only ever used in the way they are intended
- Ensuring that manufacturers and technology developers recognise their role in guaranteeing the safety of the vehicle, while freeing the driver from responsibility when the self-driving mode is engaged. This would mean that the user-in-charge (a new concept to describe a former driver once the vehicle is driving itself) would not be criminally liable if an accident occurred whilst the self-driving mode is engaged.

The proposals also take lessons from the aviation sector, advocating a ‘no blame culture’, that will increase the quality of safety assurance over time while applying regulatory sanctions where appropriate.

This consultation builds on work commissioned by the UK Government in 2018, including two public consultations on the legal framework for self-driving vehicles. This proposed regulatory framework supports the safe deployment of self-driving vehicles whilst providing a clear direction to industry on the UK’s future regulatory landscape within the global stage.

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Nicholas Paines QC, Public Law Commissioner said:

“As the UK prepares for the introduction of automated vehicles on our streets, it’s vital that the public have confidence in this technology.

“Our proposed legal framework will ensure that this technology can be safely deployed, whilst the flexibility built into the rules and regulations will allow us to keep up with advances in the technology.”

“We look forward to hearing views on how we can improve on our proposals.”

David Bartos, Scottish Law Commissioner said:

“Automated vehicles have the potential to transform how we travel in the United Kingdom however we need to have the right regulations in place to ensure we protect the public whilst allowing this technology to thrive.”

“The responses to our consultation, from a wide range of stakeholders will help us to create a legal framework that achieves these aims.”

Transport Minister Rachel Maclean said:

“Self-driving vehicles can contribute to improving and levelling up transport across the country, making every day journeys greener, safer, more flexible and more reliable.

“The UK is leading the way on the regulation of this technology, supporting innovation and putting safety at the heart of everything we do – ensuring self-driving vehicles are safe, secure and ultimately benefit all of society.”

Further details

Context of the consultation

The Law Commissions were asked by the UK Government’s Centre for Connected and Autonomous Vehicles to review the regulatory framework for the safe deployment of automated vehicles in the UK. This is the third consultation paper by the Law Commissions, and it aims to bring together proposals for the new framework. Many of these proposals build on existing regulation and proposals made in the previous consultation papers, whilst others are brand new to the sector.

Proposals in detail

The Law Commissions are consulting on proposals for a new regulatory framework for automated vehicles underpinned by robust incident investigation and enforced through a flexible range of regulatory powers and sanctions. The Commissions also ask questions on how regulation can support access to data required to make the safety assurance scheme work.

The key proposals being consulted on include:

Vehicle safety

Ensuring safety before deployment of AVs: before deployment, a two-track system has been proposed which would allow manufacturers to choose whether to get type approval for the vehicle under an international framework or a new national scheme. This would be followed by a categorisation decision to establish whether the vehicle is self-driving for GB purposes, and how it can lawfully be used on our roads.

The proposed new safety assurance scheme would include additional responsibilities and powers to ensure in-use safety. This will ensure that self-driving vehicles remain safe throughout their lifetime. The scheme will regulate to ensure safety in response to software updates, cybersecurity risks and even updates to maps.

User and fleet operator responsibilities

The Law Commissions have identified two new major regulatory categories of AVs and have proposed that different rules should apply for each.

Category-1 AVs might – for example – only drive themselves on the motorway and need a human to complete the rest of the trip. The human would be a driver while off the motorway but would be a user-in-charge while the vehicle was driving itself. Users-in-charge are not responsible for the driving but continue to have responsibilities such as insuring the vehicle, duties after an accident and ensuring children wear seat belts.

Category-2 AVs may be entirely remotely operated as part of a licensed fleet with a user classified as a passenger. The vehicle fleets will need to be looked after by a licensed operator who will also have specific responsibilities, for example supervising their fleets and providing prompt support if they get stuck as well as maintenance for example.

Categorising AVs according to their designed capabilities will help ensure that they are only ever used in the way intended, improving the safety of the technology further.

Shifting towards a no blame safety culture for AVs

Even the best designed AVs, which reduce the overall number of accidents, may still cause collisions. When a self-driving vehicle is in operation the user-in-charge will not be criminally responsible for any accidents that do occur, under the proposals. As there will therefore be no driver, society will not have someone to blame in the same way that occurs for conventional vehicles. However, the main aim of the Law Commissions is to move away from blame, and towards a learning culture, in which adverse events and accidents lead to the improvement of systems for the future.

However, we seek views on whether to review the possibility of new corporate offences where wrongs by a developer of an ADS resulted in death or serious injury.

Next steps

The Law Commissions are consulting on these proposals until 18 March 2021. Once the consultation period is over, the Commissions will use the feedback provided to create final recommendations for the regulatory framework for the safe deployment of automated vehicles in England, Wales and Scotland. The final report is due in the final quarter of 2021.

Notes for Editors

In this paper, the Law Commissions seek views on proposals for a regulatory framework for automated vehicles. Concepts introduced in the first two consultations have been further developed to create this new system.

One key concept is the “user-in-charge”. This is an individual in the driving seat or in direct sight of the vehicle with access to the controls, who is not considered to be driving while the automated driving system is engaged but can take over when required. Most of the first automated vehicles will require a user-in-charge.

The core concepts and proposals on which we seek views are discussed below.

The meaning of “self-driving”

Using the Automated Lane Keeping Systems (ALKS) Regulations as a case study, this paper tries to pin down what it means for a vehicle to be able to drive itself. We propose that there should be a single definition of self-driving for all purposes, including for civil and criminal liability.

Safety assurance before deployment

It is essential that self-driving vehicles are safe before they enter the market. This paper considers the regulation of vehicle standards, the current work of standards institutions and the various methods of testing vehicles. We propose a two-track system, which allows manufacturers to choose between getting type approval under an international framework or a new national scheme.

Safety in use

The driving environment continually changes, meaning that automated vehicles will require on-going monitoring to remain safe throughout their lifetime. Assuring this ongoing safety presents particular challenges – how to deal with software updates, cybersecurity and updating maps for example. In order to tackle these, we suggest an enhanced safety scheme with additional responsibilities and powers under legislation.

User and fleet operator responsibilities

We explain the roles of those who use and operate self-driving vehicles. Some vehicles will require a user-in-charge, with their own set of requirements and responsibilities, such as insuring the vehicle. Other vehicles will not require a user-in-charge and instead will need to be looked after by a licensed operator, who will also have specific responsibilities.

Criminal offences

The aim of the Law Commissions is to move towards a no-blame safety culture, in which adverse events lead to regulatory changes designed to improve systems for the future. However, we do propose limited new offences concerning interference with automated vehicles and wrongdoing by the corporate bodies and any senior management responsible for them.

Compensation and data

The Automated and Electric Vehicles Act 2018 smoothed the path to compensation for those injured by self-driving vehicles. Our provisional conclusion is that the 2018 Act remains “good enough for now.” This paper also considers the need to store and share necessary data in a way which still protects privacy.

Automated Lane Keeping Systems (ALKS)

The Department for Transport has closed its call for evidence on Automated Lane Keeping Systems (ALKS) in October this year. The Law Commissions use ALKS as a case study and refer to the responses provided to the call for evidence to inform their analysis of the meaning of self-driving. The Law Commissions highlight the importance of developing a national system of regulating driving behaviour of AV, as distinct from the technical assessments of AVs being developed at an international level by the UNECE. The Department will be publishing its analysis of the outcomes of that consultation early next year.

Further Information

If you have any media enquiries about this Preliminary Consultation Paper or interview requests, please contact Dan Popescu on: daniel.popescu@lawcommission.gov.uk or 07784 275513

The closing date to respond to the consultation is 18 March 2021.

Further details will be available on [the Law Commission website](#) and [Scottish Law Commission website](#).

[The consultation will be available here](#).

About the Law Commissions

The Law Commission and the Scottish Law Commission are both non-political, independent bodies. They were set up by Parliament in 1965 to keep all the laws of their respective jurisdictions under review, and to recommend reform where needed.

About the Centre for Connected and Autonomous Vehicles

The Centre for Connected and Autonomous Vehicles (CCAV) works across the UK Government to support the safe development and deployment of connected and automated vehicles (CAVs). CAVs could change the way we travel, making road transport safer, smoother and more accessible to those with mobility issues. CCAV is working to develop the domestic and international legal frameworks to support CAV deployment. The Law Commissions' review will inform this work.