



## **Law Commission and Scottish Law Commission Joint Preliminary Consultation – “Automated Vehicles”**

**A Response by**

**The Chartered Institute of Legal Executives (CILEX)**

**[February 2019]**



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## **1. Summary of Recommendations**

- 1.1. Driverless vehicles and driver assistance technologies have great potential for improving the experience for road users, particularly in making our roads safer. As such it is right that the Law Commission are considering how the law can adapt to enable these developments.
- 1.2. These proposals however, while welcome, do run the risk of being premature in attempting to regulate vehicles which have not yet entered the market and are still in the process of being developed. (Para 3.1, 7.1-7.2)
- 1.3. It would be prudent to give focus to the impacts of driver assistance technology as part of this three-year project, as well as automated vehicles, in order to provide greater clarity for present-day road-users who are already using these technologies. (Para 3.2)
- 1.4. As the focus of these proposals includes those vehicles which both would and would not require a user-in-charge it is difficult to adopt a blanket approach for regulation and liability. (Para 4.1, 4.5, 4.4.1)
- 1.5. A user-in-charge should be expected to undertake mandatory additional training on how to handle their automated vehicle if it requires substantial skills that are not met through the established licensing process. (Para 4.2, 6.4)
- 1.6. Civil liability, such as liabilities relating to negligence, are still relevant in the context of automated vehicles (even where the system is engaged, and the vehicle is 'driving itself'). (Para 4.3)
- 1.7. A new criminal offence should be introduced for a user-in-charge who is aware of a risk of serious injury to fail to take reasonable steps to avert that risk. (Para 4.4)
- 1.8. The degree to which liability (particularly criminal liability) applies to automated vehicles shall depend on the level of sophistication seen within automated vehicle technology. Therefore, an overly prescriptive approach would not be suitable. (Para 4.4, 4.7-4.9)
- 1.9. An independent regulator of automated vehicles should be established, and unauthorised vehicles should be prohibited from use. (Para 5.1-5.3, 6.1-6.3)
- 1.10. Product liability for software installed onto automated vehicles needs to be reviewed, and it is provisionally proposed that the Consumer Protection Act 1987 should apply to all software, whether contained on a physical medium or not. (Para 7.3)
- 1.11. The proposed mechanism for sanctioning entities behind the automated driving system may be appropriate for summary offences (Para 8.4-8.5) however for indictable offences a review of the law on corporate offences is necessary. (Para 8.11)
- 1.12. A new offence of causing death or serious injury by wrongful interference with vehicles, roads or traffic equipment (contrary to the Road Traffic Act 1988 s22A) where the chain of causation involves an automated vehicle may be warranted. (Para 8.10)
- 1.13. Even where existing criminal offences are adequate for deterring wrongful interference with automated vehicles, it would be desirable to re-enact the law as case specific legislation for the sake of clarity. (Para 9.1-9.2)

## **2. Introduction**

- 2.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. Amongst these more than 12,000 specialise in civil litigation, more than 4,000 specialise in personal injury and more than 1,000 specialise in criminal law.
- 2.2. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
- 2.3. This response includes contributions from some of CILEx's members working in civil litigation, personal injury and criminal law. CILEx liaised with practitioners through its Civil Litigation, Personal Injury and Criminal Practitioner Specialist Reference Groups and conducted surveys of members into their opinions for the future regulation of automated vehicles and the types of liability that may arise therefrom. These are expanded in more detail below.
- 2.4. Please be aware that as a professional association for members in England and Wales, CILEx's responses to these questions should not be considered as extending to the Scottish jurisdiction.

### 3. General Points

- 3.1. CILEx is mindful that the focus of these reforms, in trying to regulate automated vehicles, may be a little premature. Members were largely in support of the principle of innovation before regulation within this context,<sup>1</sup> voicing the difficulty of providing definitive opinions whilst the technology in question is yet to be developed and is therefore both uncertain and unknown. One member commented:
- “It is a whole new world and simply attempting to adapt existing principles and notions of risk/liability miss the point of the enormous challenges faced.”*
- 3.1.1. CILEx appreciates that these proposals are part of a wider 3-year project, and emphasises the importance of flexibility throughout to take account of changes and developments in technology.
- 3.2. CILEx recognises the justifications put forth for creating a distinction between automated vehicles (as defined within the consultation paper) and driver assistance technology. It is noticeable that these reforms focus on the future regulation of vehicles which have not yet entered the market, when there are still legal ambiguities around those that have. CILEx hopes that along with mobility services and goods vehicles, areas for future reform include driver assistance to help provide clarity for present-day consumers when they are involved in legal disputes concerning this technology.

### 4. Human factors

#### Q1. 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;

(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.

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<sup>1</sup> When presented with the options of ‘regulation before innovation’ of ‘innovation before regulation’, 58.8% of members working in both civil and criminal law, agreed with ‘innovation before regulation’ within this context. Nevertheless, member comments did support the notion that regulation should come into force before these vehicles are allowed for public use. The current issue is with regulation at this point in time whilst the technology is still yet to be developed.

Q3. 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.

- 4.1. CILEx recognises that the definition under the Automated and Electric Vehicles Act 2018 extends to vehicles that are able to safely drive themselves only in part (i.e.: only in certain circumstances or situations).<sup>2</sup> In acknowledgement of this wording, not all self-driving vehicles shall be able to drive safely for the entire duration of a journey, and as such CILEx agrees that the original position should be for them to have a user-in-charge in a position to operate the controls.
- 4.1.1. Where a vehicle has been specifically authorised as able to function safely without a user-in-charge, then an exception shall be warranted. However, in order for this to be successful, CILEx iterates the importance of clear marketing material and product information for consumers, so that they fully understand the scope of their legal responsibilities. One member commented:  
*“Having seen press releases of people sitting in the passenger seat instead of driving the vehicle, it is clear that training and education is needed. It would be dangerous to give someone new technology and let them loose on the road without them having full knowledge of how to use it properly and safely.”*
- 4.2. Given that a user-in-charge is expected to operate the controls in situations where the automated vehicle is unable to drive itself safely, it is only logical that the user should be able to do so safely, and thereby is qualified and fit to drive. 88.2% of survey respondents went a step further in suggesting that the user undertake additional training on how to handle automated vehicles so that they are familiar with the new technology and understand when intervention is needed.
- 4.2.1. CILEx anticipates that driving an automated vehicle may require a user-in-charge to exhibit different skills as compared with more conventional vehicles, as the very nature of driving is overhauled. For instance, whilst 94.1% of survey respondents agreed that the user-in-charge should remain vigilant to the road, this was largely viewed in the context of having more of a supervisory or ‘override’ function. Requiring that the user-in-charge is able to engage and disengage with driving at different points within a single journey, is bound to have an impact upon the manner in which they pay attention to the road. As such, where the skill set required is not yet covered under the existing licensing process then additional training may be needed on a mandatory basis.<sup>3</sup>
- 4.3. In the context of civil liability, a majority of survey respondents felt that a blanket approach, whereby a user-in-charge is not considered to be the ‘driver’ whilst the system is engaged, would be inappropriate.

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<sup>2</sup> Automated and Electric Vehicles Act 2018, s1.

<sup>3</sup> Member comments included: *“In comparison with the aviation industry, an auto-pilot operated aircraft is still supervised by a flight crew, and given that an automated vehicle is essentially the same thing – i.e. a conveyance, why should the established ethos be relaxed?”*; *“Different operation methods require different training.”*; *“[This is a] very different concept to ordinary cars”*; *“You should fully understand a vehicle before you are allowed to drive it, so that you can deal with any unforeseen circumstances arising and know how to manually override if there is a problem.”*; *“It is new technology, new systems and a new skill/approach. Mindsets and pre-existing driving behaviour/reactions need to be retrained.”*; *“Additional skills will be needed to operate such cars and know when intervention is needed.”*; *“The person using the vehicle should be fully aware of how the vehicle operates and in what scenarios the automated features will step in.”*; *“The skills required, and technology will require additional knowledge, a different mindset and a clear understanding of role and potential concerns.”*

- 4.3.1. Members considered that the concept of negligence under civil law would still be applicable in cases involving automated vehicles, reiterating the general consensus that a user-in-charge should still be expected to stay vigilant to the road. This included circumstances of omission including *“failure by the owner to update the software and/or failure to maintain which leads to the accident or injury caused by the vehicle.”* One member drew an analogy to the *“example of a pilot who can turn to auto-pilot but ultimately [is] responsible for the plane and its safety.”* Whilst CILEx recognises that this analogy is in part affected by a pilot’s role within mobility services, it is not unreasonable to expect a certain duty of care where an automated vehicle specifically requires that a user-in-charge ought to be present.
- 4.3.2. In addition, concerns were voiced that this proposal could result in satellite litigation around whether the automated driving system had been engaged at the time of the incident or not. Whether the vehicle itself could assist in solving this factual problem would depend on technological developments and the capabilities that these vehicles are built to have in future. One member commented:  
*“I think we are going to see the courts having to deal with extremely complicated IT and technical data where a driver is blaming a third party, the operator is blaming a software failure and the software company could be blaming the operator, and the driver blaming his employer for not training him.”*
- 4.4. With regards to criminal liability, 86.7% of respondents agreed with introducing a new criminal offence for a user-in-charge who is aware of a risk of serious injury to fail to take reasonable steps to avert that risk. Member opinion was divided however as to whether this test of reasonableness ought to be one that is objective or subjective, and whether the user-in-charge should be considered a ‘driver’ for the purposes of criminal liability while the system is engaged.
- 4.4.1. One argument, in support of the above proposals, stated:  
*“[This is the] same principal as being driven by a bus, taxi, tube, train, plane...you have no control of the actions being taken, you are in effect putting trust in the driver and the system that has got them in a position of trust whereby they are “qualified” to drive you. This is [an] automated [driver] but the principal remains, to get to the stage where the public can use it you are placing a trust that it has been tested to the extreme, it is regulated etc.”*  
 However, CILEx is concerned that as the scope of this consultation extends to automated vehicles which both would and would not require a user-in-charge, it is difficult to ascertain the extent to which the vehicle would be ‘qualified’ to drive itself and the ‘position of trust’ that consumers can reasonably expect from it. The Law Commission may wish to be mindful that consulting on these technologies when they are still yet to be developed may not be such an effective approach, as respondents are necessarily required to comment on the basis of assumption. Resultantly, survey comments called for a more flexible approach based on an individual assessment of each case.
- 4.4.2. One solution proposed amongst survey comments was that:  
*“A statutory defence could be introduced (with the burden of proof resting upon the defendant) that if an autonomous system was at fault for any action which led to a criminal offence being committed, then it could be relied upon and raised by the “driver” and/or “user” of the vehicle at an early stage and thus be investigated by the authorities (Police/VOSA etc) as part of the investigative process. The legal rights of the individual would [thereby] remain protected.”*

- 4.5. Members operating within civil litigation, personal injury and criminal law were all divided on whether a user-in-charge should be liable where they unsuccessfully take control of the vehicle to mitigate a risk of accident caused by the automated driving system. CILEx does not think that it would be appropriate to apply a blanket approach in these circumstances; a better approach may be for this to be determined on a case by case basis by applying existing principles of law (such as foreseeability, reasonableness etc.) to the various factors at play.

Q2. We seek views on whether the label “user-in-charge” conveys its intended meaning.

- 4.6. CILEx has not obtained any member feedback on the suitability of this label. However, we would caution against the alternative title that was suggested for a ‘driving-able user’ as this may cause confusion amongst earlier proposals that a user-in-charge should not be liable as the ‘driver’ in certain instances.

Q6. Under what circumstances should a driver be permitted to undertake secondary activities when an automated driving system is engaged?

Q7. 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?

- 4.7. Just under three quarters of all respondents disagreed that a user-in-charge<sup>4</sup> should be permitted to undertake secondary activities, however survey comments did suggest that some activities may be acceptable. Others suggested that the user-in-charge should be expected to make reasonable glances at particularly risky locations (e.g.: pedestrian crossings).
- 4.8. On the other side of the spectrum were survey comments suggesting that it should be possible to watch a video, use a laptop device or engage in any other activity that would be permitted on public transport provided that the user does not interfere with the driving system. This was largely premised on an understanding that the technology around automated vehicle systems would be heavily regulated to provide a safeguard in enabling users to engage in these additional activities.
- 4.9. CILEx is concerned that there may be a corollary between the level of vigilance that consumers would be expected to have and the level of trust that those consumers would have in the capability of their automated vehicle technology. Once again, this is complicated by the scope of these proposals which encompass both automated vehicles that would and would not require a user-in-charge, making it difficult to ascertain the level of dependency that would be placed upon the human involved.

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<sup>4</sup> Whilst the consultation question refers to the ‘driver’ in this instance, CILEx is operating under the assumption that this is intended to refer to the ‘user-in-charge.’



4.9.1. Additional concerns were raised about the difficulties that might arise in policing these secondary activities.

## 5. Regulating Vehicle Standards Pre-Placement

Q8. 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")?

(2) unauthorised automated driving systems should be prohibited?

(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?

5.1. 85.3% of all survey respondents specialising within personal injury, civil and criminal law called for an independent regulator of automated vehicles, with a further 94.1% agreeing that unauthorised vehicles should be prohibited from use. CILEx agrees that authorisation should extend to automated driving systems which have been installed both as modifications to registered vehicles and to vehicles manufactured in limited numbers to ensure that every vehicle has been effectively assessed and meets minimum standards.

5.1.1. Members indicated concern that there will already be mixed transport on public roads with the presence of automated vehicles and their more conventional counterparts. Having a mix of authorised and unauthorised automated driving systems would only add to this complexity and give rise to greater risks.<sup>5</sup>

5.2. 79.4% of survey respondents agreed that the new regulatory agency should have the ability to authorise design changes which would otherwise breach construction and use regulations.

5.3. An issue raised amongst survey comments was the public expenditure that would be needed to establish an entirely separate regulatory body. It was suggested that this spending might be better invested into resourcing existing bodies and updating their internal frameworks so that they can take on this additional function.

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<sup>5</sup> Member comments included: "[This is] absolutely vital. There will [already] be a two tier of transport with manned and unmanned cars."; "Incompatibility between any vehicles would create a complete failure of the network."; "There have already been incidents where automated vehicles have crashed. You would have to be absolutely sure that automated vehicles are safe before authorising use on roads."; "cannot have blanket testing in the real world, the risk to life/harm it too great."

## 6. Regulating Safety on the Roads

Q12. 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.

- 6.1. A majority of survey respondents agreed with the new regulatory agency having responsibilities over regulating consumer and marketing materials (70.6%), over market surveillance (88.2%) and over roadworthiness tests (91.2%).
- 6.2. In addition, all members were in agreement that the agency should have powers to recall or withdraw unsafe products, suspend or withdraw authorisation for automated vehicles to drive on public roads, and impose improvement notices where necessary. Powers to impose fines where an authorised vehicle does not comply with regulatory requirements and powers of investigation<sup>6</sup> were also considered to be useful and well placed by majority of respondents.
- 6.3. Members identified the following additional areas in which the new regulatory agency ought to have additional responsibilities: 1). The operation of large vehicles (as the Traffic Commissioner currently has), 2). Prosecutorial matters over indictable offences involving automated vehicles (providing the agency does not also enjoy investigatory powers in this respect), 3). Setting disclosure requirements for automated vehicles manufacturers, 4). Automated vehicles for use in mobility services.

Q13. 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?

- 6.4. Please see paragraph 4.2 above for CILEx's response to this question. CILEx is of the opinion that additional training may need to be imposed on a mandatory basis. If the skill set necessary for safe operation of the vehicle is substantially different to those tested through the established licensing process then there is a risk that, if this was made optional, this could result in two varying applications of the law whereby the liabilities of a user-in-charge differ depending on whether they had undertaken additional training or not. For example, this might be the case when determining whether the user-in-charge had acted negligently under civil law whilst using the automated vehicle.<sup>7</sup>

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<sup>6</sup> Members suggested that the regulatory body could be deferred to for a final determination of whether an accident was caused by the system or the driver in ambiguous cases.

<sup>7</sup> Please see paragraph 4.3.1 above: CILEx is of the opinion that civil liability for negligence should persist regardless of whether the driving system had been engaged at the time of accident.

## 7. Civil Liability

Q17. 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?

7.1. CILEx notes that it is difficult to provide a detailed response when there is still insufficient awareness of this Act and its application in practice. Whilst survey members did suggest that section 6(3) was not so clear, general member opinion was of the view that this was to be expected in absence of case law and whilst the technology covered by the provisions is still at an early stage of development.

7.1.1. It was additionally pointed out that the impact of this law has been to establish a new liability which falls somewhere between product and personal liability, which may give rise to ambiguities in the application of legal principles.

7.2. More than half of all respondents agreed that at present, the issue of causation would be best left to the courts to determine, as it is still unclear whether existing legal principles would be applicable or whether additional guidance is warranted. It was suggested that further review of this issue, and of the Act as a whole, should take place a few years after automated vehicles have been on the roads, so that the effectiveness of this new law can be better assessed.

Q18. 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?

7.3. 82.4% of respondents agreed that product liability for software installed onto automated vehicles needs to be reviewed. Member opinion provisionally favoured an approach which would see all software as within the scope of the Consumer Protection Act 1987, whether contained on a physical medium or not. This was in appreciation of changes in consumer behaviour and technological developments that have occurred since the 1996 ruling for *St Albans City and DC v International Computers Ltd.*<sup>8</sup>

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<sup>8</sup> Member comments included: "I think it should apply to all software whether on a physical medium or not."; "Most software is now downloaded by way of update not stored on a disk. The Law needs to be updated to move with the technology."; "Software may be downloaded without any disk being involved which appears to render the provision meaningless."; "I don't think the CPA 1987 goes far enough here, as it's not just the software that could go wrong with these cars."

Q19. 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

- 7.4. Survey respondents identified the following areas of law which may still be ambiguous: 1). The role of those responsible for the creation of hardware and software, 2). Who would be held responsible for updating the software, 3). How the software is applied, configured and checked, 4). The role of maintenance contractors, 5). Issues of hacking.

## **8. Criminal Liability**

Q20. 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.

- 8.1. CILEx provisionally welcomes this change as a logical amendment where automated vehicles are capable of driving themselves without the need for a human 'driver' present.

Q21. Do other offences need amendment because they are incompatible with automated driving?

- 8.2. Members identified the following offences which may require amendment to be compatible with automated driving: 1). Criminal Attempts Act 1981 s9. (vehicle interference may need amending to reflect interference with an automated function), 2). Road Traffic Act 1988 (provisions relating to the standard of driving expected), 3). Provisions relating to driving an 'unroadworthy' vehicle.

Q22. 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?

Q23. 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)).

- 8.3. Please see paragraph 4.4 and 4.5 above for CILEx's response to these questions.

Q24. 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

8.4. CILEx understands this question as relating to summary offences, with a separate system in place for handling the more serious indictable offences to which the Law Commission propose a review of existing corporate offences. On the basis of this assumption, CILEx provisionally agrees that the steps proposed would be sensible in such instances where the automated driving system has acted in a way which would be a criminal offence if done by a human driver. 64.3% of survey respondents agreed that this process would be practical, whilst a further 71.4% agreed that it is both proportionate and in the interests of justice.

8.5. CILEx does however draw caution to the fact that the method of sanctioning within criminal law is not solely dependent on the gravity and seriousness of the injury caused (i.e. incidents of death or serious injury) but is also dependent on the seriousness of the mens rea behind the offence (the intention of the accused). As articulated within the consultation paper, sanctions are determinable based on whether their function is “to declare and prohibit those public wrongs that are serious enough to justify the censure of conviction and punishment”<sup>9</sup> or “to provide sanctions to reinforce regulatory systems.”<sup>10</sup> CILEx is concerned that there may be instances where, although no injury has occurred, the entity behind the automated vehicle exhibits a mens rea which is serious enough to suggest that a regulatory sanction would be a disproportionate penalty.<sup>11</sup>

Q25. 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;

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<sup>9</sup> A. Ashworth, “Positive Duties, Regulation and the Criminal Sanction,” (2017) 133 Law Quarterly Review 626.

<sup>10</sup> Consultation paper, p. 144, para 7.94.

<sup>11</sup> Relevant member comments included: “Criminal offences are not the responsibility of a regulator. Police and courts enforce road traffic law.”; “If it is a driving offence it should be dealt with like any other driving offence and not sent to be lost in the “long grass””

(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?

- 8.6. As articulated previously in paragraph 4.2 above, the function of a user-in-charge is to be able to operate the controls where an automated vehicle is unable to drive itself safely. Accordingly, the user-in-charge must be in a position where they can take control of the vehicle and drive it safely. In line with the current road rules and criminal offences for driving under the influence, driving without the requisite license, and driving without proper vision, CILEx agrees with all of the above.

Q26. 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?

- 8.7. Survey respondents were largely undecided on the best approach to take in this regard. Members suggested that they would first need to understand more about the nature of these vehicles and the safeguards that they have in place before being able to comment.

Q27. 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?

- 8.8. CILEx provisionally agrees with this proposal in duplicating the current approach that has been taken for insuring vehicles.

Q28. 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.

Q29. 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?

8.9. CILEx agrees with these proposals as logical amendments in addressing any loopholes which could otherwise arise.

Q32. 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.

8.10. 78.6% of survey respondent agreed that this should be a new offence. One member commented: *“Vehicles can currently be used as weapons by persons using the manual driving functions of a vehicle. As a result of changes in vehicle technology, an individual may remotely take control of the functions of a vehicle, without the knowledge of the “user/driver”...”* CILEx finds that it would be prudent to counteract these risks sooner rather than later.<sup>12</sup>

Q33. 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.

8.11. CILEx welcomes a future review of corporate offences to determine whether there is a need for new offences to be created in the context of automated vehicles. 92.9% of survey respondents called for this to be part of the Law Commission’s 3-year project.

## **9. Interfering with Automated Vehicles**

Q34. 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?

9.1. Members were undecided on whether the current law is adequate to deter interference with automated vehicles. Survey comments felt that new legislation may be warranted given the unique challenges that automated driving systems could bring, giving rise to potentially new ways of interference. These changes in turn could have an impact on what the requisite criminal penalty should be. One member commented: *“There needs to be a strong degree of legislative certainty, so that users, investigators, legal practitioners and ultimately the courts have clear guidance.”*

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<sup>12</sup> Members did indicate however that ‘unreasonable interference’ may be a better term to use.

- 9.2. Even if the existing laws are found to be adequate, 78.6% of survey respondents thereby agreed that it would be advantageous to re-enact the law so that it clearly related to situations involving automated vehicles. Members felt that case specific legislation would be useful in removing any ambiguities or doubts as to how the law should apply in such instances, especially given the changes that technology could bring and the impact that it might have on the very nature of driving.<sup>13</sup>

Q35. 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?

- 9.3. Survey respondents were unclear as to whether the term 'other mechanisms' sufficiently includes automated vehicle sensors.<sup>14</sup> Whilst some members did acknowledge that common law precedent could help to remedy this ambiguity, CILEx would welcome further clarity to prevent a potential floodgate of cases.<sup>15</sup>

Q36. 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?

- 9.4. CILEx agrees that the Theft Act 1986 should be extended to any motor vehicle, however, would like to draw attention to the fact that a vehicle which 'cannot carry a person' and one that is 'without driving seats' are two separate ideas. CILEx favours the former ('cannot carry a person') as the more accurate term to use in this context.

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<sup>13</sup> Members comments included: "Existing legislation would be no more than continually trying to make a square fit into a triangle."; "This is a first, in all other methods of transport there is a human "driver", this is placing your trust in something completely automated."; "New case specific legislation should be introduced so there are no question marks over liability."; "I think for ease of knowing where all relevant legislation and offences are they should all be contained within one act for ease of transparency regardless of whether other offences may fit."; "Over time there will be millions of automated vehicles. There need[s] to be clear provisions in place from the outset - not reliance on a mish mash of other provisions created before such vehicles were available."; "Automation of driving tasks in a car raises special issues of command and control."

<sup>14</sup> 50% of members felt that it did, and 50% felt that it didn't.

<sup>15</sup> Member comments included: "[A]mendments should be made to the law to specifically reflect sensors which are a fundamental operating function of an automated vehicle. The term "mechanism" may be too ambiguous and provide scope [for] uncertainty and legal argument, when relating it to a computer sensory function of a vehicle, given the software and technology involved."; "This will lead to wholesale uncertainty and the courts will be clogged up with points of law and appeals/judicial reviews unless all is made clear."



**For further details**

Should you  
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