



Law
Commission
Reforming the law



Scottish Law Commission
promoting law reform

The UK's approach to criminal responsibility and ethical dilemmas for SAE level 3 and 4 vehicles



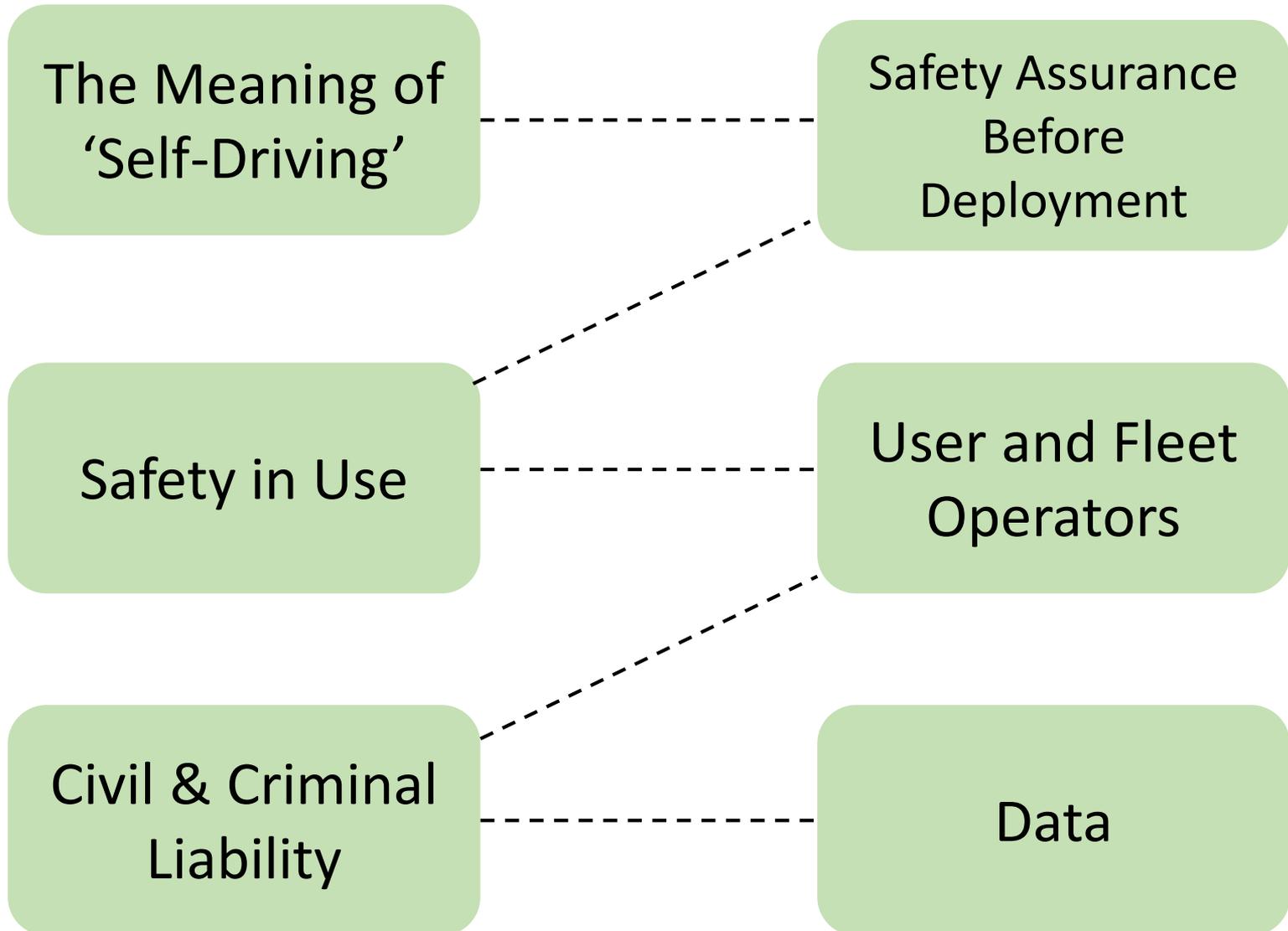
Jessica Uguccioni
Law Commission of England and Wales
25 February 2021
IATSS Symposium

Law Commissions' AV Review

- **Scottish Law Commission and Law Commission for England and Wales**
- Independent statutory law reform agencies
- UK Government's **Centre for Connected and Autonomous Vehicles**
- **Aim: develop a legal framework** for self-driving vehicles in deployment beyond trials on GB roads



Priority areas: the current consultation



Overview of today's presentation

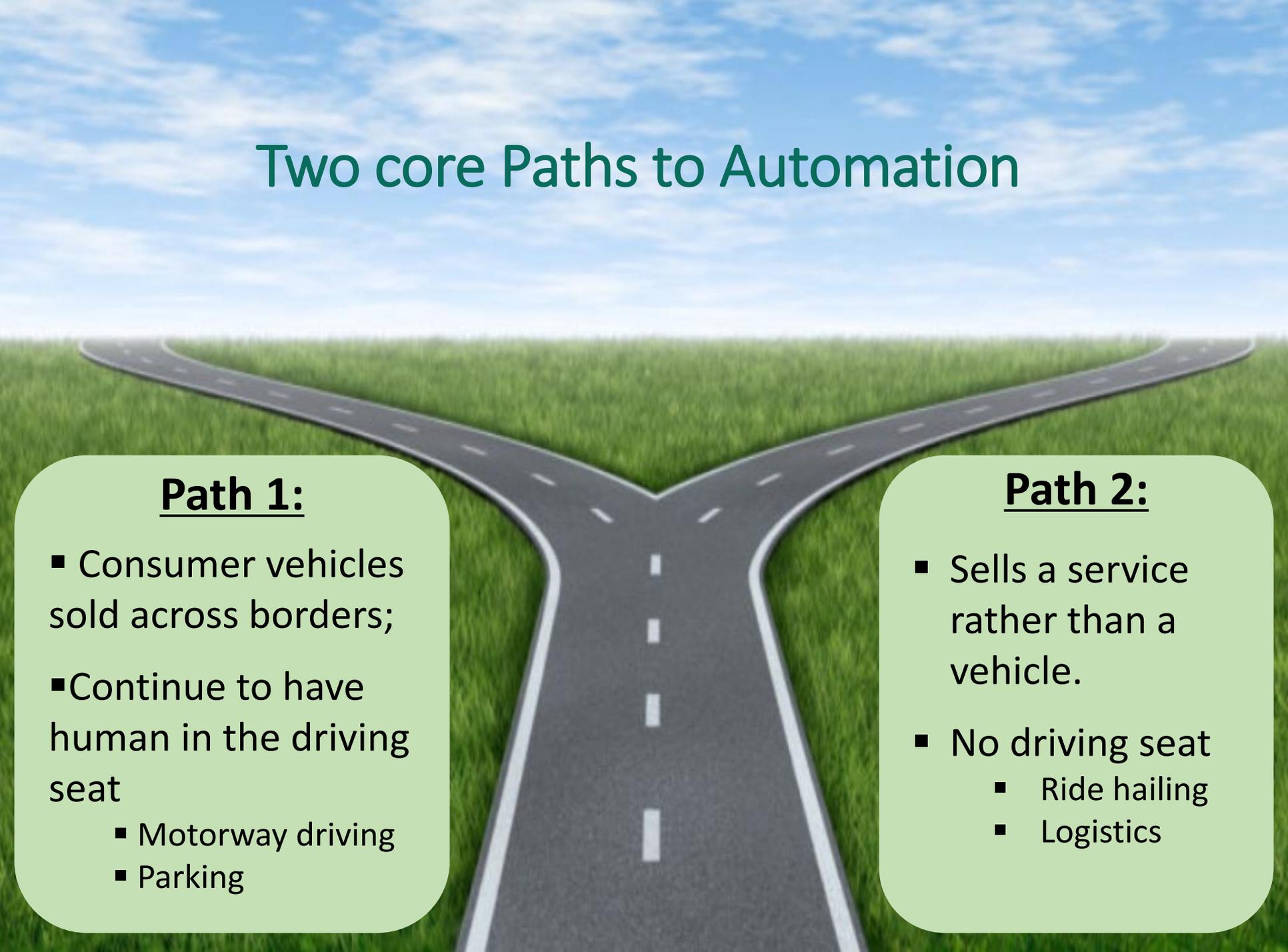
- I. How we are adapting the UK legal framework to better fit AVs**
- II. The legal status of human users of AVs**
- III. How safe is safe enough?**
- IV. The scope of criminal liability for AVs –
an update on our policy**





Part I: adapting the UK legal framework to AVs

Two core Paths to Automation

A photograph of a road that starts as a single path in the foreground and then splits into two separate paths that curve away from each other towards the horizon. The road is paved and has white dashed lines down the center and solid lines on the sides. The surrounding landscape is a flat, green field under a bright blue sky with scattered white clouds.

Path 1:

- Consumer vehicles sold across borders;
- Continue to have human in the driving seat
 - Motorway driving
 - Parking

Path 2:

- Sells a service rather than a vehicle.
- No driving seat
 - Ride hailing
 - Logistics

Key AV-specific legal actors

ADSE

Needed for all on-road AVs. Puts the ADS forward for legal categorisation as self-driving and is legally responsible for how the ADS performs dynamic control. The ADSE must have been closely involved in assessing safety and have sufficient funds (e.g. to organise a recall).

Path 1: AVs that can only be used with a

User-In-Charge

A UIC is a human in the vehicle or in sight of the vehicle, with access to the controls. The UIC must:

- (1) Be qualified and fit to drive
- (2) Be receptive to a transition demand
- (3) Maintain and insure the vehicle
- (4) Report accidents

Examples of use cases where a user-in-charge may be required:

Sub-trip features such as motorway chauffeur, or valet parking where an element of conventional driving is needed to complete a journey.

Path 2: Remote operation – AVs that can be used without a UIC. They must be associated with a

Licensed Fleet Operator

Tier 1 requirements apply to all AVs with No User-In-Charge (NUICs). The operator must:

- (1) Be qualified (of good repute, professionally competent)
- (2) Operate remote supervision
- (3) Maintain and insure the vehicle
- (4) Report accidents and near misses

Tier 2 requirements that apply to certain use cases

Requirements for passenger services (HARPS):

- (1) Accessibility
- (2) Safeguarding passengers
- (3) Price information

Example - ride hailing services

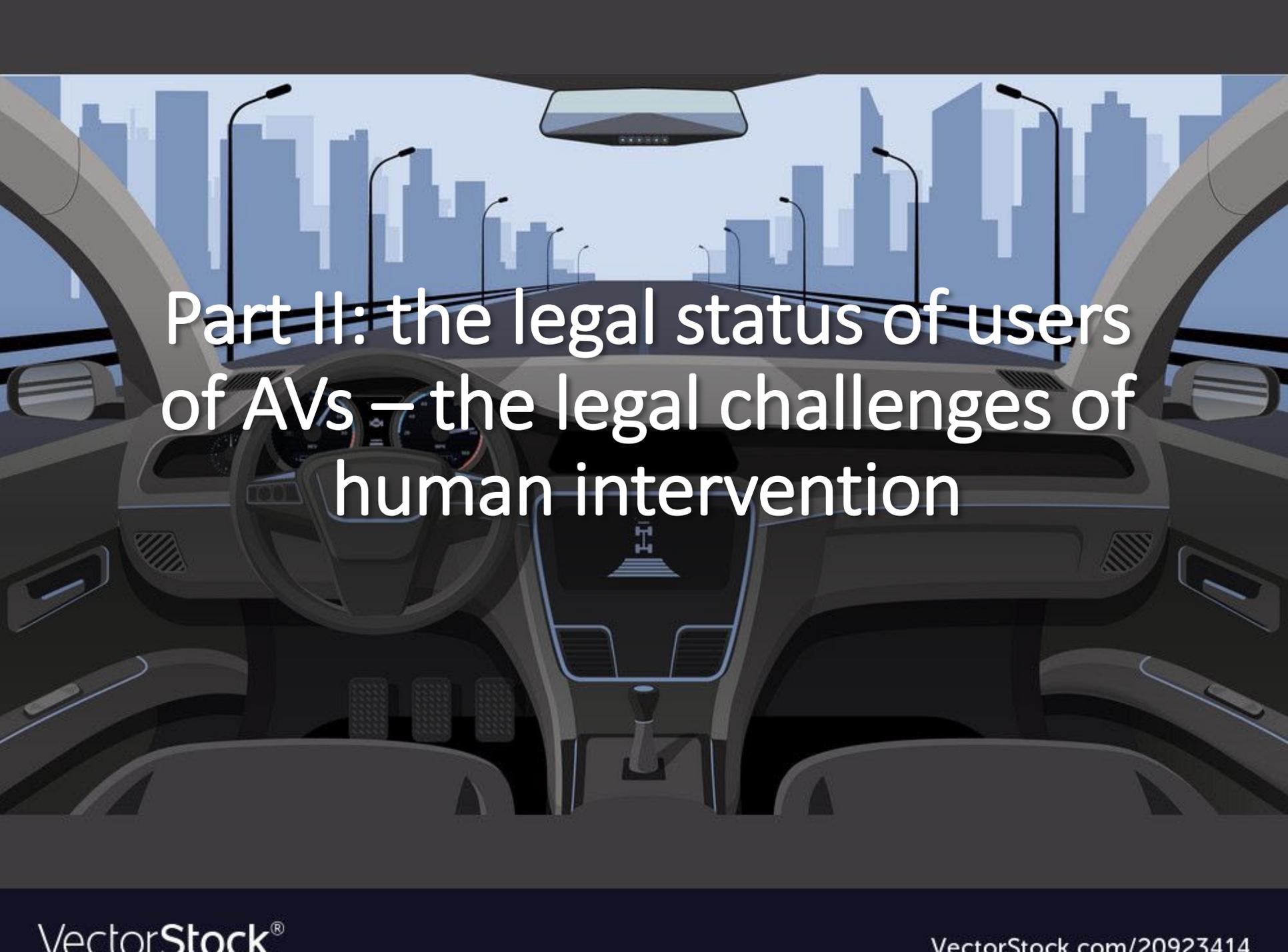
Requirements for goods deliveries use case:

- (1) Weight threshold
- (2) Type of goods
- (3) Securing loads safely

Example - freight truck

Simple use cases where fulfilment of Tier 1 requirements is sufficient. No additional Tier 2 requirements needed.

Example - snow plough



Part II: the legal status of users
of AVs – the legal challenges of
human intervention

Changes to criminal responsibility for driving

- **A bright line:** relaxing driver distraction laws and removing criminal liability go together.
- If you tell people they do not have to pay attention, you cannot criminalise them if they fail to pay attention.



The “user-in-charge”

- Creation of a **new legal category** - person in driving seat is not a driver but a “user-in-charge”
- User-in-charge not liable for death or serious injury under most circumstances when vehicle in self-driving mode
- No obligation to monitor vehicle



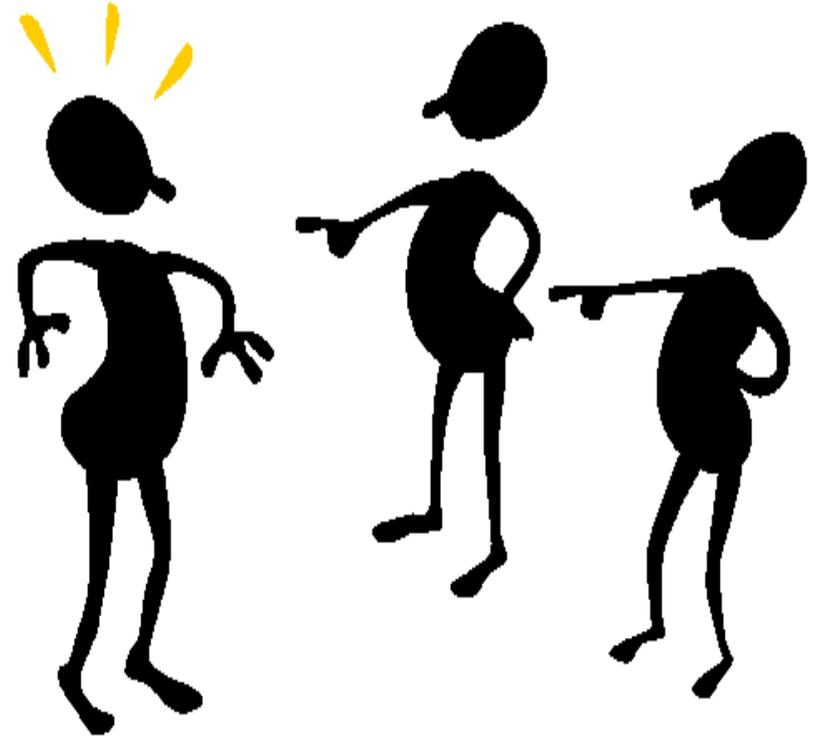
Transition Demands

- User-in-charge would **only** need to take over driving in event of transition demand
- Should provide clear, visual, audio and haptic signals and give sufficient time to gain awareness
- User-in-charge will be a deemed driver at end of transition demand, whether they take over or not



Societal shift – from blame to safety

- Move to self-driving requires conceptual leap for society as a whole
- Criminal prosecution of drivers currently acts as channel for societal blame → will cease to exist
- Challenge in respect of collision victims/families





Part III: How safe is safe
enough?



As safe as reasonably practicable

- Commonly used across many industries
- Flexible test - involves weighing the risk against the money, time and trouble to avert it

As safe as a competent and careful human driver

- High standard – AVs may be much better than human drivers in some areas and not as good in others

Four possible standards for “safe enough”

Does not cause a fault accident

- Test – if behaviour had been performed by human driver, would they be held liable for causing accident under law of negligence?
- Attempts to create a mathematical model of this test

Positive Risk Balance

- AVs must result in fewer overall casualties than human driving
- Issues with public perception, equity of risk distribution and measurement of risk



How safe is safe enough?

- Level of risk must be **acceptable to the public**
- With four possible standards, we advocate for **combined approach**
- Ultimately, a **political decision** informed by evidence and expert advice
- **Ethical questions** raised due to redistribution of risk

A black wrought-iron sign for Crown Court. The sign features a crown at the top, a central panel with the words 'CROWN COURT' in raised gold letters, and a decorative border of leaves. A red and blue striped ribbon is tied around the crown. A green wavy band is visible below the sign.

Part IV: Scope of criminal liability
for automated vehicles – our
proposals

Criminal liability of the user-in-charge

- Human in the driving seat (“user-in-charge”) not criminally liable for offences related to driving task while automated driving system engaged
- User-in-charge reacquires obligations of driver at end of transition period
- Two new proposed offences
 - Causing or permitting the use of a vehicle by an unfit/unqualified user-in-charge
 - Allowing oneself to be carried without a user-in-charge



Corporate criminal liability (1)

- In our February 2020 symposium presentation, we outlined the existing law and indicated we were considering creating new offences to hold AV developers liable
- In our third consultation paper, we emphasise a focus on **safety** rather than **blame**, achieved through regulatory sanctions
 - When something goes wrong (eg fatal collision), focus should be on identifying problem and fixing it



Corporate criminal liability (2)

- Criminal sanctions appropriate if an Automated Driving System Entity (ADSE) or its senior managers commit **serious wrongdoing** (eg lying about safety tests)
- Existing offences insufficient, creating “accountability gap”
- **FOUR** proposed new offences



Offence A: non-disclosure and misleading information in the safety case

When putting forward a vehicle for classification as self-driving, it would be a criminal offence for the ADSE to

- (1) **fail to provide information** to the regulator; or
- (2) provide information to the regulator that is **false or misleading** in a material particular

where that information is **relevant to the evaluation of the safety** of the ADS or the vehicle.

The ADSE would have a defence if it could show that it took reasonable precautions and exercised all **due diligence** to prevent the wrongdoing.

The penalty would be an unlimited fine.

Offence B: non-disclosure and misleading information in responding to requests

When a regulator requests specific information from an ADSE (whether before or after deployment), it would be a criminal offence for the ADSE to

- (1) fail to provide information to the regulator; or
- (2) provide information to the regulator that is false or misleading in a material particular

where that information is relevant to the evaluation of the safety of the ADS or the vehicle.

The ADSE would have a defence if it could show that it took reasonable precautions and exercised all due diligence to prevent the wrongdoing.

The penalty would be an unlimited fine.

Offence C: offences by senior management

Where offence A and/or offence B committed by a body corporate is proved—

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

(2) to be attributable to **neglect** on the part of an officer of the body corporate,

then that officer is guilty of the offence.

An officer includes **any director, manager, secretary or other similar officer** or any person who was purporting to act in any such capacity.

We see this as equivalent to offences under the Human Medicines Regulations 2012 and General Product Safety Regulations 2005, which carry a penalty of a fine and/or a maximum two years' imprisonment.

Offence D: aggravated offences in the event of death or serious injury following non-disclosure or provision of misleading information to the AV safety regulator

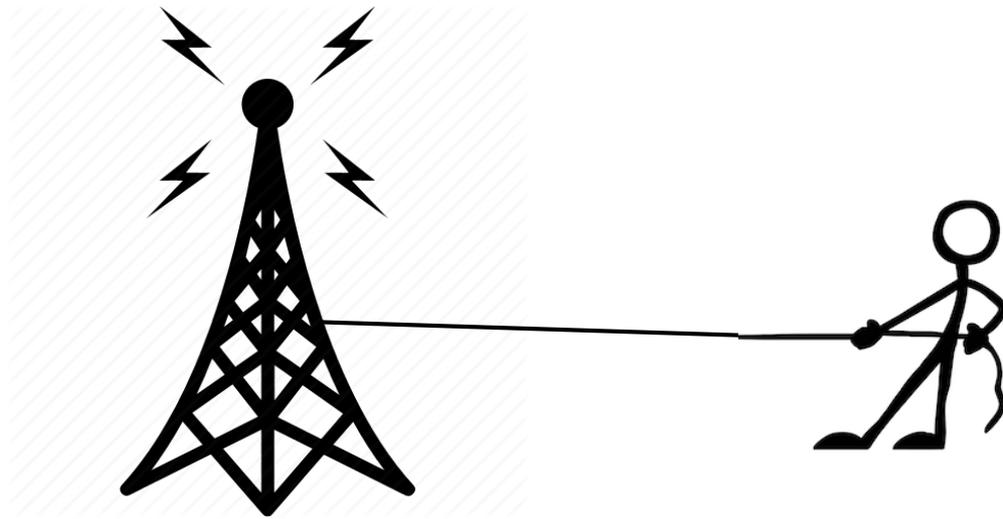
Where a corporation or person commits Offences A to C, that offence is **aggravated where the misrepresentation or non-disclosure:**

- (1) related to an **increased risk** of a type of adverse incident; and
- (2) an adverse incident of that type occurred; and
- (3) the adverse incident caused a **death or serious injury**.

We see this as equivalent to the offence of causing death by dangerous driving, which carries a penalty of an unlimited fine and/or a maximum of 14 years' imprisonment.

Criminal liability for tampering

- Proposed amendments to deter and penalise wrongful or unauthorised interference with AVs
 - Amendments to existing statutory offences
 - New aggravated offence where interference causes death or serious injury
- No proposals on cybersecurity



Milestones to completing the AV Review



Final date for consultation responses: 18 March 2021

Final Report: Q4 2021

automatedvehicles@lawcommission.gov.uk