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Nominet Response to Automated Vehicles: Consultation Paper 2 on Passenger Services and Public Transport

January 2020

Overview

This is Nominet's response to the Law Commission of England and Wales, and the Scottish Law Commission's Phase 2 Consultation on the legal and regulatory framework for autonomous vehicles in the UK.

Nominet welcomes the Commissions' continued work to deliver a framework that is robust, safe and secure for the deployment of new technologies on the roads. Autonomous vehicles will have a transformative impact on the UK's economy, society and its citizens, changing our mobility and ways of working for good. To enable this we will need a regulatory framework fit for the 21st century, which will require fresh thinking, rather than just adapting pre-existing rules and regulations.

The Commissions' emphasis in Phase 2 on passenger services adds considerable complexity to this, so we welcome the opportunity to respond.

We believe Nominet has insights to offer in doing so. As the .uk domain name registry, Nominet provides a key component of the UK's critical national infrastructure. Our expertise led us to provide the world leading protective DNS programme in partnership with the National Cyber Security Centre, protecting more than 1.4m public sector users every day.

And as part of the DRIVEN consortium, Nominet has worked first-hand on understanding and building systems to protect, detect, and respond to cyber physical security risks to autonomous vehicle fleets.

We broadly support the Commission's proposed approach as a sensible framework going forward. However, we note four key areas where we believe improvements can be made, or greater clarity added in the Law Commissions' final recommendations to Government.

1. Role and scope of a national registry for HARPS

We welcome the Law Commissions' proposal for a 'single national system' of HARPS operator licensing. Any attempt to update or adapt frameworks used today for vehicle hire would be misguided, and the fragmentation of doing so would ultimately undermine the Commissions' objective – to facilitate the safe deployment of autonomous vehicles at national scale.

While the licensee requirements set out by the commission are proportionate, and the four categories of license reflect anticipated use-cases, we believe the Law Commissions and the Government should not simply replicate *existing* licensing practices and categories (albeit with a new *national* model) but instead take the opportunity to revise how this licensing is done from the ground up.

As a starting point, this could include a dynamic registry – one not just encompassing names, numbers and events, but instead a broader set of adapting rulesets and parameters for vehicle operations in real time. This can include for example vehicle journeys themselves, which would also help satisfy the Commissions' preference for remote supervision of vehicles – as a condition of granting a license.

Precedent for such a model exists; for example the Civil Aviation Authority receiving journey plans for approval in advance, with these being adapted – as necessary – depending on weather, safety or congestion, in real time and with input from a range of third-parties.

We believe such an approach is possible for autonomous vehicles as well.

Historically this might have been overly burdensome on licensees, however the technology is available to operate these on a genuinely dynamic basis, with automated approvals for journeys, allowing for greater coordination and oversight to ensure passenger safety. This will allow any regulator to see that an operator has indeed applied "due care" to the selection of its route, minimising risks to the vehicle and users.

A dynamic registry model of this kind would represent a regulatory toolkit - to allow rollout of new requirements instantaneously – and to ensure that the new national framework can adapt to local needs (eg local authority ordinances, planned street closures, or 'no drive areas' near schools or hospitals). Community buy-in will be vital to the long-term prospects of autonomous vehicles in the UK and we believe a framework built to be responsive will support this.

This can be further supported by the Law Commission's work on a "digital highway code". While this will be complex to deliver the benefits are likely to be substantial.

We therefore encourage the Law Commission to consider not just the geographic scope of the regulator but how regulation can be responsive to a fast-changing technology as well.

2. Connectivity and remote management of HARPS

In support of these ambitions, we also acknowledge the Law Commissions support for remote management in Section 4 of the consultation paper, and the connectivity needs associated with this.

Connectivity and remote management need to be understood as closely connected challenges. Without connectivity operators will not be able to remotely monitor and manage conformity to the Operating Design Domain of the vehicle as well as ongoing monitoring of cyber and cyber-physical threats.

Connectivity considerations should be part of any "due care" consideration on the part of the HARPS operator, and mapping of radio spectrum availability could provide a valuable supporting framework for this. We would urge the Law Commissions to consider how this might be implemented into the kind of dynamic model of registry set out above.

3. Trials and responsibility

While we believe that the joint Law Commissions' consultation has set out a good draft framework for responsibility, there are some cases – particularly around trials – where the Commissions may be able to give further clarity in their recommendations to Government.

To note, the CCAV Code of Practice has provided a good working framework for trials to take place to date. These guidelines would represent a good basis in law for trials in future.

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4. Cyber accountability

Finally, the Law Commission recommends that the legal framework should identify "*the person or organisation responsible for updating, insuring and maintaining the vehicles and for guarding against cyber-attacks*". This is welcome and necessary, however the ongoing nature of the commitment is such that dependencies on third-parties that might, for example, cease trading – will be considerable.

We hope the responses to specific questions, included in the Annex below, will be supportive of the Commissions' work on these important issues and we would of course be happy to meet in person to discuss these in further detail.

Annex A - Nominet Responses to Specific Questions

Operator licensing: a single national system

Consultation Question 1: Do you agree that Highly Automated Road Passenger Services (HARPS) should be subject to a single national system of operator licensing?

Yes

No

Other

Do not know / not answering

Please explain your answer:

Yes – as set out above a fragmented licensing regime would not reflect the usage of autonomous vehicles and would not be an appropriate framework to take forward. A new, national licence model with a dynamic registry would be a better alternative.

Consultation Question 2: Do you agree that there should be a national scheme of basic safety standards for operating a HARPS?

Yes

No

Other

Do not know / not answering

Please explain your answer:

Yes – as noted in our response to Question 1, such a framework would be desirable and necessary to ensure the safe adoption of autonomous vehicles on UK roads.

Operator licensing: scope and content

Consultation Question 3: Do you agree that a HARPS operator licence should be required by any business which:

(1) carries passengers for hire or reward;

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(2) using highly automated vehicles;

(3) on a road;

(4) without the services of a human driver or user-in-charge in the vehicle (or in line of sight of the vehicle)?

Yes

No

Other

Do not know / not answering

Please explain your answer:

Yes – we would note there may be some context specific applications, for example in the mining sector or construction, where autonomous vehicles might be used in circumstances under scenario 4 where an operator's license might still be appropriate.

Consultation Question 4: Is the concept of "carrying passengers for hire or reward" sufficiently clear?

Yes

No

Other

Do not know / not answering

Please explain your answer:

Yes – we believe this is a clear definition, though how and whether this ought to be differentiated for community and other licenses is not clear in cases for example of passenger safety.

Consultation Question 5: We seek views on whether there should be exemptions for community or other services which would otherwise be within the scope of HARPS operator licensing.

Please share your views:

While community and third-sector involvement in the autonomous vehicles ecosystem should certainly be encouraged, one of the purposes of a regulatory framework is to ensure public safety regardless of its operator. Exemplary safety and cyber security standards should remain a condition of any license granted for public and operating services.

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Consultation Question 6: We seek views on whether there should be statutory provisions to enable the Secretary of State to exempt specified trials from the needs for a HARPS operator license (or to modify licence provisions for such trials).

Please share your views:

Yes – we would note Nominet's own experience in this regard as part of the DRIVEN consortium testing autonomous vehicles on the road. We believe the current framework can be integrated into any new licensing regime.

Consultation Question 7: Do you agree that applicants for a HARPS operator licence should show that they:

- (1) are of good repute;
- (2) have appropriate financial standing;
- (3) have suitable premises, including a stable establishment in Great Britain; and
- (4) have a suitable transport manager to oversee operations?

Yes

No

Other

Do not know / not answering

Please explain:

Yes.

Consultation Question 8: How should a transport manager demonstrate professional competence in running an automated service?

Please share your views:

This will be a point for any new licensing body to establish, for example through accreditation, however there is a range of best practice to be learnt from for example though TfL's licensing criteria on operator competence.

Consultation Question 9: Do you agree that HARPS operators should:

(1) be under a legal obligation to ensure roadworthiness; and

(2) demonstrate "adequate facilities or arrangements" for maintaining vehicles and operating systems "in a fit and serviceable condition"?

Yes

No

Other

Do not know / not answering

Please explain:

Yes – though in response to (2) we would recommend clarification as to whether these facilities or arrangements need to be delivered by a first party or could be completed by a third party or an insurance based mechanism for example.

Consultation Question 10: Do you agree that legislation should be amended to clarify that HARPS operators are "users" for the purposes of insurance and roadworthiness offences?

Yes

No

Other

Do not know / not answering

Please explain:

Yes – delineating clear responsibility will be key to ensuring the new framework is effective in supporting the eventual deployment of autonomous vehicles.

Consultation Question 11: Do you agree that HARPS operators should have a legal duty to:

(1) insure vehicles;

(2) supervise vehicles;

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(3) report accidents; and

(4) take reasonable steps to safeguard passengers from assault, abuse or harassment?

Yes

No

Other

Do not know / not answering

Please explain:

Yes – on (3) in particular we note that reporting could be delivered through a journey registry as part of a wider licensing regime, managed on a dynamic basis as we have set out in our overview above.

Consultation Question 12: Do you agree that HARPS operators should be subject to additional duties to report untoward events, together with background information about miles travelled (to put these events in context)?

Yes

No

Other

Do not know / not answering

Please explain:

Yes – as set out in our response to Question 11.

Consultation Question 13: Do you agree that the legislation should set out broad duties, with a power to issue statutory guidance to supplement these obligations?

Yes

No

Other

Do not know / not answering

Please explain:

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Yes – this will be necessary to ensure public confidence and accountability in line with other regulator's oversight by Parliament and the Government of the day.

Consultation Question 14: We invite views on whether the HARPS operator licensing agency should have powers to ensure that operators provide price information about their services.

In particular, should the agency have powers to:

(1) issue guidance about how to provide clear and comparable price information?

Yes

No

Other

Do not know / not answering

Please explain:

(2) withdraw the licence of an operator who failed to give price information?

Yes

No

Other

Do not know / not answering

Please explain:

Not answering – these questions will be better informed by the business model that HARPS operators eventually use, though there is a wealth of information about interventions to support pricing transparency in regulated markets that will provide a valuable basis to inform any assessment in this instance.

Consultation Question 15: Who should administer the system of HARPS operator licensing?

Please share your views:

We would recommend the creation of a new, national licensing body that would be able to do so without preconceptions of building on existing licensing models. Bodies like the CCAV would also provide invaluable expertise in establishing such a body and may be a suitable body to administer a licensing regime even on a temporary basis – conditional on receipt of adequate resource to do so.

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Consultation Question 16: We welcome observations on how far our provisional proposals may be relevant to transport of freight.

Please share your views:

Do not know / not answering

Privately-owned passenger-only vehicles

Consultation Question 17: Do you agree that those making "passenger-only" vehicles available to the public should be licensed as HARPS operators unless the arrangement provides a vehicle for exclusive use for an initial period of at least six months?

Yes

No

Other

Do not know / not answering

Please explain:

Do not know / not answering

Consultation Question 18: Do you agree that where a vehicle which is not operated by a HARPS licence-holder is authorised for use without a user-in-charge, the registered keeper should be responsible for:

(1) insuring the vehicle;

(2) keeping the vehicle roadworthy;

(3) installing safety-critical updates;

(4) reporting accidents; and

(5) removing the vehicle if it causes an obstruction or is left in a prohibited place?

Yes

No

Other

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Do not know / not answering

Please explain:

Yes – this would represent a clear and consistent delineation of responsibility.

Consultation Question 19: Do you agree that there should be a statutory presumption that the registered keeper is the person who keeps the vehicle?

Yes

No

Other

Do not know / not answering

Please explain:

Yes – however the Law Commissions' may wish to consider wider evidence in this regard – for example if this were to be too restrictive or not reflect new and emerging business models in the autonomous vehicles space.

Consultation Question 20: We seek views on whether:

(1) a lessor should be responsible for the obligations listed in Question 18 unless they inform the lessee that the duties have been transferred.

Please share your views:

(2) a lessor who is registered as the keeper of a passenger-only vehicle should only be able to transfer the obligations to a lessee who is not a HARPS operator if the duties are clearly explained to the lessee and the lessee signs a statement accepting responsibility?

Please share your views:

Do not know / not answering

Consultation Question 21: Do you agree that for passenger-only vehicles which are not operated as HARPS, the legislation should include a regulation-making power to require registered keepers to have in place a contract for supervision and maintenance services with a licensed provider?

Yes

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No

Other

Do not know / not answering

Please explain:

Yes – this will be important to ensure continuation of service for users.

Consultation Question 22: We welcome views on whether peer-to-peer lending and group arrangements relating to highly automated passenger-only vehicles might create any loopholes in our proposed system of regulation.

Yes

No

Other

Do not know / not answering

Please explain:

Do not know / not answering

Consultation Question 23: We seek views on whether the safety assurance agency proposed in Consultation Paper 1 should be under a duty to ensure that consumers are given the information they need to take informed decisions about the ongoing costs of owning automated vehicles.

Please share your views:

Yes – transparency will be a welcome measure towards this and ensuring consumers can make informed choices.

Accessibility

Consultation Question 24: We seek views on how regulation can best promote the accessibility of Highly Automated Road Passenger Services (HARPS)? In particular, we seek views on the key benefits and concerns that regulation should address.

Please share your views:

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Nominet does not offer any specific comment on this question other than to add that diverse and innovative business models, including community managed ones, will be key to enabling services that meet the needs of all users.

Consultation Question 25: We provisionally propose that the protections against discrimination and duties to make reasonable adjustments that apply to land transport service providers under section 29 of the Equality Act 2010 should be extended to operators of HARPS. Do you agree?

Yes

No

Other

Do not know / not answering

Please explain:

Do not know / not answering

Consultation Question 26: We seek views on how regulation could address the challenges posed by the absence of a driver, and the crucial role drivers play in order to deliver safe and accessible journeys. For example, should provision be made for:

(1) Ensuring passengers can board and alight vehicles?

Yes

No

Other

Do not know / not answering

Please explain:

(2) Requiring reassurance when there is disruption and accessible information?

Yes

No

Other

Do not know / not answering

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Please explain:

(3) Expansion of support at designated points of departure and arrival?

Yes

No

Other

Do not know / not answering

Please explain:

Do not know / not answering

Consultation Question 27: We seek views on whether national minimum standards of accessibility for HARPS should be developed and what such standards should cover.

Please share your views:

We believe this would be a welcome idea – accessibility has successfully been made a component of licensing terms for services in a range of industries, while still enabling a competitive and diverse marketplace for services themselves.

Consultation Question 28: We seek views on whether operators of HARPS should have data reporting requirements regarding usage by older and disabled people, and what type of data may be required.

Yes

No

Other

Do not know / not answering

Please explain:

While we agree with this in principle, the Law Commission ought to consider practical considerations of how this data might be collected (for example is the paying passenger is accompanied by unregistered guests or third parties) and how this would be made compatible with existing data protection regulations.

Regulatory tools to control congestion and cruising

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Consultation Question 29: We seek views on whether the law on traffic regulation orders needs specific changes to respond to the challenges of HARPS.

Please share your views:

Do not know / not answering

Consultation Question 30: We welcome views on possible barriers to adapting existing parking provisions and charges to deal with the introduction of HARPS.

In particular, should section 112 of the Road Traffic Regulation Act 1984 be amended to expressly allow traffic authorities to take account of a wider range of considerations when setting parking charges for HARPS vehicles?

Yes

No

Other

Do not know / not answering

Please explain:

Do not know / not answering

Consultation Question 31: We seek views on the appropriate balance between road pricing and parking charges to ensure the successful deployment of HARPS.

Please share your views:

Do not know / not answering

Consultation Question 32: Should transport authorities have new statutory powers to establish road pricing schemes specifically for HARPS?

Yes

No

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Other

Do not know / not answering

If so, we welcome views on:

- (1) the procedure for establishing such schemes;
- (2) the permitted purposes of such schemes; and
- (3) what limits should be placed on how the funds are used.

Please explain:

In principle we would welcome such a move – however this should be done so on an evidence based basis – to keep pace with change in HARPS usage.

Consultation Question 33: Do you agree that the agency that licenses HARPS operators should have flexible powers to limit the number of vehicles any given operator can use within a given operational design domain?

Yes

No

Other

Do not know / not answering

If so, how long should the period be?

Please explain:

Yes – however as set out in our overview this would be best enabled through a dynamic registry model, of which there is precedent in other regulated markets.

Consultation Question 34: Do you agree that there should be no powers to impose quality restrictions on the total number of HARPS operating in a given area?

Yes

No

Other

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Do not know / not answering

Please explain:

Do not know / not answering

Integrating HARPS with public transport

Consultation Question 35: Do you agree that a HARPS vehicle should only be subject to bus regulation if it:

(1) can transport more than eight passengers at a time and charges separate fares?

Yes

No

Other

Do not know / not answering

Please explain:

(2) does not fall within an exemption applying to group arrangements, school buses, rail replacement bus services, excursions or community groups?

Yes

No

Other

Do not know / not answering

Please explain:

Do not know / not answering

Consultation Question 36: We welcome views on whether any particular issues would arise from applying bus regulation to any HARPS which transports more than eight passengers, charges separate fares and does not fall within a specific exemption.

Please share your views:

Do not know / not answering

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Consultation Question 37: We welcome views on whether a HARPS vehicle should only be treated as a local bus service if it:

(1) runs a route with at least two fixed points; and/or

(2) runs with some degree of regularity.

Please explain:

Do not know / not answering

Consultation Question 38: We seek views on a new statutory scheme by which a transport authority that provides facilities for HARPS vehicles could place requirements on operators to participate in joint marketing, ticketing and information platforms.

Please share your views:

Yes – however as set out in our overview this would be best enabled through a dynamic registry model, of which there is precedent in other regulated markets.