Joint response to Law Commission / Scottish Law Commission
Automated Vehicles: A joint preliminary consultation paper

On behalf of its more than 300 member local authorities in England and Wales (outside London), the PATROL (Parking and Traffic Regulations Outside London) Joint Committee, together with the Traffic Penalty Tribunal, welcomes the opportunity to respond to the Law Commission’s consultation on a number of individual points.

This response has been jointly prepared by:

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About PATROL

The PATROL (Parking and Traffic Regulations Outside London) Joint Committee comprises over 300 local authorities in England (outside London) and Wales. The principal statutory function of the Joint Committee is to make provision for independent adjudication in respect of parking and a range of traffic penalty charge notices issued by local authorities. This is delivered through the Traffic Penalty Tribunal.

PATROL also represents its member authorities on traffic management issues of mutual interest and promotes best practice in public information to increase understanding of traffic management objectives.

About the Traffic Penalty Tribunal

Established in 2000, the Traffic Penalty Tribunal (TPT) decides appeals against penalties issued for traffic contraventions by charging authorities in England (outside London) and Wales. This includes appeals against civil enforcement penalties issued by local authorities for parking, bus lane, littering from vehicles and (in Wales only) moving traffic contraventions, as well as appeals arising from road user charging enforcement.

The road user charging schemes for which the TPT sees appeals for include the: Dartford-Thurrock River Crossing (‘Dart Charge’), where the charging authority is the Secretary of State for Transport; Mersey Gateway Crossing (‘Merseyflow’), where the charging authority is Halton Borough Council, and Durham Road User Charge Zone, where the charging authority is Durham County Council. The road user charging appeals processes TPT has in place will form the basis for the forthcoming enforcement of Clean Air Zones from 2020.

The TPT comprises 30 part-time adjudicators (wholly independent lawyers whose appointments are subject to the consent of the Lord Chancellor) working remotely with the support of 14 administrative staff, who provide customer support and process appeals (~25,000 cases a year, arising from both civil and road user charging enforcement).
1. Civil enforcement and minor traffic contraventions

While the consultation deals with a number of elements of criminal liability, there is no reference to the now widespread civil enforcement of minor traffic contraventions by local authorities. The purpose behind civil enforcement is that the authorities which make the traffic regulations are now responsible for compliance and enforcement, so they are accountable for how their traffic schemes work on the ground.

Since the Road Traffic Act 1991 (RTA), parking and minor traffic regulations have been subject to civil enforcement by local authorities. This started with parking, both on- an off-street, and was shortly followed by bus lane restrictions, then yellow boxes (in London, and Wales, but not for English local authorities outside London).

The Traffic Management Act 2004 (TMA) repealed the RTA, applying civil enforcement by local authorities to a wider range of contraventions and simplifying the process, whereby local authorities adopted the civil enforcement powers. The full range of contraventions are contained in Schedule 7 of the TMA.

Notwithstanding that the TMA applied a common civil enforcement regime across a range of contraventions, the Government implemented the parking provisions in 2007. The TMA bus lane and moving traffic provisions have not been implemented for councils in England (outside London), but the Welsh government has implemented the full package in respect of parking, bus lanes and moving traffic Wales, as of 2013. Bus lane enforcement in England (outside London) takes place by means regulations issued under the Transport Act 2000 (TA).

Recently, civil enforcement was introduced at the outset for failure to pay a road user charge under the TA, with the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013, i.e. this was not a criminal offence that became subject to civil enforcement. The Traffic Penalty Tribunal adjudicators are prescribed as the adjudicators for appeals.

London authorities have given themselves civil enforcement powers across a range of minor traffic and vehicle related offences / contraventions through various London Local Authority Acts.

In Scotland, parking and bus lane enforcement is subject to civil enforcement, where the RTA is still in force for parking and there are separate bus lane regulations.

More recently, the Department for Environment, Food & Rural Affairs (Defra) is promoting the legislation for clean air charging zones, whereby local authorities can create charging zones for high-emission vehicles. Defra has also made littering from vehicles subject to civil enforcement (although a pedestrian littering is still subject to a criminal sanction).

- While the clean air zone charges should not apply to the new automated – and likely to be, electric, vehicles – the increased pinning of liability to the owners of vehicles causing offence is an ongoing trend. This needs to be addressed in the Law Commission’s considerations.
While the future holds innumerable possibilities for how autonomous vehicles are utilised – with the expectation that vehicle numbers on the road will be reduced, minimising the need for today’s type of parking provision – there will still be the transitional period dealing with paid and limited parking, as well the use of bus lanes, moving traffic restrictions (e.g. box junctions) and road-user charging schemes (e.g. bridges and tolls). Liability for both compliance and penal measures will remain for some years, whether it is attached to the owner of the vehicle, the driver or the ‘user-in-charge’.

There is also an assumption that the technology used in vehicles of the future will have payment or FinTech applications embedded within them, thereby creating entirely different transactional methods for payment of such charges that will still be required in the future. This should remove the need to issue penalties for non-payment.

The civil enforcement scheme is predicated on owner liability and follows a common process. Under the TMA and the TA, the vehicle owner is liable to pay any Penalty Charge Notices (PCNs) issued for a civil enforcement contravention, regardless of who was driving.

The owner is presumed to be the registered keeper, unless they prove otherwise. The local authority who issued the PCN will obtain the vehicle registered keeper’s data from the Driver and Vehicle Licensing Authority (DVLA) for the date the penalty was issued. There are exceptions for hired and leased vehicles.

The critical factors for local authorities are:

1. the ability to create and modify traffic regulations to be responsive to the new technology, as well as the behaviour change that will follow its implementation – rapid or slow.
2. the retention of transparent and fair enforcement tools, which directly relate to accountability for non-compliance.
3. the understanding of how the technology will develop, e.g. whether the automated vehicle ‘reads’ road signs, or is programed to recognise restrictions and traffic instruction connected to digitised geospatial mapping. How these issues evolve and are resolved will have a significant impact on local authorities’ duties to sign traffic restrictions and directions.
4. the woeful inadequacy the current hire and lease agreement regulations, which barely meet the digital reforms about documents and signatures, in consideration of the increase in Mobility-as-a-Service (MaaS) provision (also broadly known as Transport-as-a-Service [TaaS]). A Law Commission report addressed some of problems surrounding private hire vehicles. A fresh set of challenges emerge with TaaS schemes. There is an immediate need for revising the current legislation.
2. Traffic Regulation Orders.


The RTRA has, for a long while, been out-of-date and the procedures in LATOR are cumbersome and require considerable expenditure on the part of the traffic authority. Neither are suitable legislation for responding to the challenges of regulating the use of the roads of the future.

PATROL’s member authorities would welcome the initiative sparked by autonomous and connected vehicles to create new legislation, which would also give rise to invaluable efficiencies, as well as meeting the needs of all road users, whether in or out the vehicle.

The Traffic Penalty Tribunal hosts an online resource of 19,000 local TROs.

[PATROL can provide a full paper explaining the current processes, costs and time required to make a TRO under the RTRA and LATOR provisions, if required]

3. ‘Digital Highway Code’

We note the reference in the consultation to the development of a ‘digital highway code’. Since 1931, when the original Highway Code was published, much of the code has had to become subject to legislation.

Local authorities consider that they should have the tools and powers to support digital good practice where necessary; having flexible powers and procedures to meet changing opportunities and disrupting behaviour.

Geospatial mapping already enables ‘road rules data’ to be incorporated into ‘digital TROs’, but the process and drafting of the future must provide the flexibility for regular updates to take account of new development and infrastructure.

Ideally, the vehicle will recognise what can and cannot be done in a particular area of the road, achieving intuitive compliance.

4. DVLA

PATROL’s member local authorities would welcome the changes needed to bring DVLA data up-to-date.

As well as the issues highlighted in the consultation, the DVLA should consider designing a different VRM format for automated and quasi-automated vehicles.

It would be sensible for the DVLA to design a separate format for truly automated vehicles, so they can be identified glance (there are, of course, obvious ANPR problems with 0 and O, 5 and S etc.).
Owners of automated vehicles, whether fully autonomous or requiring a ‘user-in-charge’ should:

1. Provide a digital address for the service of notices. The current civil enforcement regulations require a Notice to Owner to be sent by first-class post. The new technology could ensure that any notices and communication with who is responsible for the vehicle could be sent more swiftly and via the convenience of digital channels.

2. Where applicable, nominate a ‘user’ on the registration, with their digital address.