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Dear Sirs

Automated Vehicles: Consultation Paper 2: Passenger Services and Public Transport

We have responded only to those questions where we consider we are suitably placed. We believe that other stakeholders will be better placed to respond to others with, for example, empirical data or anecdotal evidence.

Q 3: Do you agree that a HARPS operator licence should be required by any business which:
(1) carries passengers for hire or reward;
(2) using highly automated vehicles;
(3) on a road;
(4) without a human driver or user-in-charge in the vehicle (or in line of sight of the vehicle)?

We support the proposal that HARPS operators' legal duties should correspond with the scope of the compulsory insurance obligation within Part 1 of *the Automated and Electric Vehicles Act 2018* and Part 6 of *the Road Traffic Act 1988*.

Whilst agreeing with [4.29] of the paper that "**most** places where HARPS will drive will be roads... It is not necessary to show that the road is maintained at public expense or that other vehicles have access to it", potential gaps in cover would exist where HARPS were used on private property, not being roads. See, for example, **Cowan v DPP** [2013] EWHC 192 (Admin) referenced at [4.24]-[4.26], involving use on a university campus.

Although – at the end of the implementation period (currently, 31 December 2020) – the UK may chose not to retain *all* elements of the European motor insurance regime, the UK's land border with Ireland, coupled with the importance of commercial and tourist traffic flowing across the Channel and the North Sea, suggests that any post-exit domestic law should be closely aligned to the new European regime.

Under the directives – currently directive 2009/103/EC – it is impermissible to exclude from the compulsory insurance obligation the use of vehicles as a means of transport on *private* property (i.e. use on private property beyond private roads), per **Vnuk** [C-162/13], **Torreiro** [C-334/16] and **Rodrigues de Andrade** [C-514/16].

Q 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. HARPS operators, as users-in-charge, should be responsible for regulatory offences such as maintaining appropriate insurance, ensuring vehicles remain roadworthy and reporting accidents. These duties should, as far as possible, be consistent with the liability imposed upon human users-in-charge or keepers of autonomous vehicles.

They should also be accountable for criminal liability arising out of dynamic driving offences committed whilst the vehicle is in automated mode and within its operational design domain.

The Law Commissions may also wish to consider creating discrete corporate offences relating to use by HARPS operators.

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

(1) insure vehicles;

(2) supervise vehicles;

(3) report accidents; and

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

In consideration of the power to use automated vehicles to operate HARPS without a (human) user-in-charge, we agree that the operator – who would be licensed/approved by the newly-proposed safety assurance agency – should be subject to the legal duties outlined at (1)-(3).

We anticipate that robust eligibility criteria, prescribed by the new safety assurance agency, would need to be satisfied, and continuously maintained (with compliance reviewed annually), to ensure that operators are always able to safely administer their service without (human) users-in-charge.

We imagine that vehicle operators are currently under a duty to take reasonable steps to safeguard passengers from assault, abuse or harassment. We believe that the imposition and content of this broad duty should be supplemented by guidance from the newly-proposed safety assurance agency. We would support the introduction of prescribed and clearly defined measures which must be satisfied by HARPS operators – e.g. installing CCTV and/or communications equipment that would facilitate remote communication to/from control centres (e.g. audible warnings) – in order to demonstrate what is required to discharge the duty to take reasonable steps.

Q 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.

(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?

We are concerned that the transfer of risk away from a lessor to a lessee, who may not actually be the registered keeper, may succeed only in transferring a contractual liability but fail to ensure that the regulatory responsibilities are effectively discharged by either party, i.e. responsibility 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 (albeit, in respect of (4), we imagine these vehicles are capable of capturing sufficient accident data, and completing an automatic transmission).

We wonder whether responsibility for these obligations should remain with the lessor, and the additional cost of compliance included within the commercial rent or fee.

We also query whether, despite sufficient contractual arrangements transferring these obligations, a HARPS operator may remain potentially liable under product liability law as a "supplier" putting these automated vehicles into circulation (aka "liability for defective products" within the meaning of s. 2(3) of the Consumer Protection Act 1987). However, certain limitations inherent in the 1987 Act may mean that such liability is not uniformly imposed because (i) it applies only to consumer claims (rather than businesses), (ii) there exists a 10 year after market long stop limitation period, (iii) a "state of the art" defence, and (iv) an exclusion of liability for damage to the product itself (in this case, the automated vehicle).

Yours faithfully

Kerris Dale, Partner & Head of Motor
BLM