



**Crown Prosecution Service response to the Law Commission consultation paper 2 on Automated Vehicles (paper no. 245)**

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## INTRODUCTION

1. Thank you for the opportunity to offer our observations on the proposals in this consultation.
2. The Crown Prosecution Service recognises the importance of this topic both to the development of the law in general relating to artificial intelligence and to the issues that surround the public's understanding of the capabilities of this technology. Clarity regarding regulation will be needed for all road users including the users and owners of 'passenger-only' vehicles –as well as manufacturers of these vehicles to ensure these vehicles are safe and effectively deployed.
3. Our response provides substantive responses to 3 of the 8 chapters which contained consultation questions, starting at Chapter 4. As with our response to the first consultation paper regarding automated vehicles, as this consultation focusses more on regulatory matters we did not feel we could offer observations or substantive responses to all matters but recognise that there will be many interested parties and representative bodies who will feed into this consultation. We hope that the responses we are able to provide will be useful and constructive, especially as provisions regarding the insuring and maintaining of vehicles, as well as using vehicles to carry passengers for hire or reward can often lead to criminal offences being committed.
4. We would like to commend the proactive approach that is being adopted by the Law Commission in seeking to discuss these issues and provide certainty and clarity to the law in advance of automated vehicles being deployed on our roads; however we feel we must preface our responses with a note of caution – it is difficult to provide wholly constructive responses on technology that has yet to be developed and/or fully understood by the 'lay person'. Until the full scope of the technologies is known and approved, it will not be possible to clearly attribute liability and responsibility for these vehicles.

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## CHAPTER 4: OPERATOR LICENSING – SCOPE AND CONTENT

**Question 4** – Is the concept of “carrying passengers for hire or reward” sufficiently clear?

5. We are of the view that, broadly, the concept of carrying passengers for hire or reward is sufficiently clear and is an established concept in English and Welsh law. There have not been any significant cases in recent years, suggesting that this concept does not often cause difficulties and is unlikely to cause any difficulties in respect of HARPS operator licensing.

The case law detailed in the consultation paper primarily deals with private arrangements that have been made to assist with a specific issue such as the taking of more than 8 children to school by a parent on a regular basis. We cannot envisage that these types of cases arise often in practice and will not become any more prevalent with the introduction of ‘passenger-only’ vehicles.

**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”?

6. We agree that HARPS operators should be under a legal obligation to ensure roadworthiness and demonstrate adequate facilities or arrangements for maintaining vehicles and operating systems in a fit and serviceable condition. This obligation is analogous to existing provisions for existing Public Service Vehicles operators and assists in keeping the law as clear as possible whilst developing a better understanding of the challenges in maintaining automated vehicles.

7. It is important that the obligation to ensure roadworthiness and all that it entails is clear to ensure public safety is paramount and help to promote public confidence in these vehicles.

**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?

8. Again to ensure that roadworthiness and insurance offences could be effectively enforced against HARPS operators, if they are to be considered responsible for roadworthiness and insurance, it would seem sensible to designate them as “users” to keep parity with existing obligations on PSV operators.

**Question 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?

9. As commented upon above in our responses to questions 9 and 10 of the consultation, if HARPS operators are going to be under an obligation to ensure the roadworthiness of a vehicle and be deemed a “user” for the purposes of insurance and roadworthiness offences, then they must have a legal duty to insure and supervise vehicles.
  
10. When it comes to reporting accidents we agree in principle that HARPS operators should have a legal duty to report accidents akin to those that currently apply to drivers and PSV operators. We do however query the practicalities and logistics of how an accident is to be reported and the applicable timescales. Without knowing how the technology will operate, the automated vehicle needs to be able to ‘know’ that an accident has occurred and we query how this will be ‘known’, especially in the situation where the automated vehicle has ‘swerved’ or another vehicle has had cause to ‘swerve’ the automated vehicle to avoid an incident. Both these scenarios would affect the safety of the occupants or other road users however as there has not been contact with another vehicle will the operating system be able to identify this an accident? In addition, if the information collated by the operating system in the vehicle needs to be verified by a ‘supervisor’ to confirm that an accident has in fact taken place, the maximum 24 hours allowed under section 170 of the Road Traffic Act 1988 would need to be revised in respect of HARPS operators to allow sufficient time for investigation.
  
11. These are all practical details to be considered but as stated there should be a legal duty on HARPS operators to report accidents.

12 We are concerned by the suggestion that there should be a specific requirement that HARPS operators should take reasonable steps to safeguard passengers from assault, abuse or harassment. In our view this is placing a additional duty on HARPS operators that does not apply to any other road user, driver or PSV operator. There is a general duty of care that all PSV operators owe to a customer which should be applicable to HARPS operators however we do not see why this should be expressly extended.

As commented upon in the consultation paper the practicalities of fulfilling such a duty are problematic. Whilst we agree that if stewards are to be introduced into HARPS operated vehicles then their criminal records should be checked (although we do question if the use of stewards undermines to an extent the purpose of the a HARPS vehicle) how is it proposed that HARPS operators safeguard passengers from harassment or abuse? As now, a passenger is free to report such behaviour to the police or to the operator. The only way we can envisage HARPS operators being able to fulfil this duty is by installing CCTV in every vehicle. This would give rise to questions over the proportionality of such a measure. If audio recordings were also to be introduced then this would create further difficulties as to how to balance passengers'/users' privacy rights and the data protection implications that would follow if the CCTV or audio recording was needed in a criminal prosecution for example.

Considerations such as 'panic alarms' could be installed in vehicles for people to press if they are being subjected to assault, abuse or distress.

It may be HARPS operators should be under an expanded duty in situations such as Uber 'Pool' where there are strangers travelling together but we are of the view that further discussion is needed on this issue.

**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)?



13. In principle, yes. This is of particular importance as discussed as this technology emerges and develops and the public become more conversant with how these vehicles operate. It will be crucial to public confidence as public safety is paramount. As with our response to question 11 regarding how 'accident' is defined, it is not clear from the paper what would constitute an 'untoward event' and how the vehicle would be programmed to recognise such an event. It can only be constructive to gather data however to ensure the vehicles are operating in the way that is intended.

**Question 13**

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

14. Yes we agree. This has the benefit of flexibility and 'future-proofing' duties as they can be adapted as our understanding of the technology and its operation develops.

## CHAPTER 5: PRIVATELY-OWNED PASSENGER-ONLY VEHICLES

**Question 18** - Do you agree that where a passenger-only vehicle is not operated as a HARPS, the person who keeps the vehicle 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?

15. We agree that prima facie the person who keeps a passenger-only vehicle and who is not operating as a HARPS should be responsible for insuring the vehicle, roadworthiness, reporting accidents and removing it if it is causing an obstruction etc. We anticipate that the people who are keeping these vehicles will be the ones with a right to use the vehicle and allowing other people to use the vehicle.
16. As with our previous comments we raise the issue that if someone else other than the 'keeper' is using the vehicle when an accident occurs, how will the keeper become aware of this? The keeper would potentially have to rely on the user of the vehicle to inform them, or perhaps a system such as under section 172 could be employed – the keeper will nominate whoever was using the vehicle if notification of an accident is received. Alternatively the operating system on the vehicle should be able to relay a report to the keeper via an 'App' as soon as the accident occurs, enabling the keeper to report it. We also are of the view that not only should the keeper report the accident to the police, it should be reported to the manufacturer to assist in understanding if any 'untoward event' has contributed to the accident.

**Question 19**

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

17. We agree with this because it provides clarity in identifying a person (or organisation) who is prima facie responsible. We would agree that the presumption should be open to rebuttal but the onus for rebutting it should fall on the registered keeper.

It should be borne in mind that the existing law for drivers and the different obligations imposed on registered keepers, keepers and owners will be a different regime from what is proposed here so there may be scope for confusion, but that would be for parliament to ensure clarity that this statutory presumption applies to automated vehicles only.

**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.

(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?

18. We are unclear here as to the rationale for lessors being prima facie responsible for the obligations listed in question 18. The consultation paper suggests that generally there is a distinction between what is considered 'hiring' a vehicle and what is considered 'leasing'. Leasing appears to have more long-term connotations. If you take the example of leasing your vehicle from a manufacturer; currently the lessee would be expected to register as the registered keeper. As such, under the suggestions for questions 18 and 19 the lessee would be responsible for the obligations listed therein. This proposal appears to us to be contrary to that position. We recognise that there are different types of leasing arrangements than the one we have detailed above. However, if a lease is to be for over 6 months then perhaps the responsibilities should

automatically fall to the lessee who as the keeper and user of the vehicle will be better placed to fulfil the obligations listed in question 18. We do not consider that it should be necessary for the lessee to sign a specific statement accepting responsibility. We are not aware of any similar requirement under current systems for leasing vehicles and we do not consider that additional arrangements need to be put in place for HARPS vehicles.

**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?

19. Yes, safety is paramount with these vehicles and only approved and trusted providers of services such as software updates should be used to maintain these vehicles to help negate the risk of incidences such as cyberattacks on operating vehicles.

**Question 22**

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

20. We cannot see any loopholes with the proposed system of regulation in relation to peer-to-peer lending or group arrangements. However, if use is made of the vehicle under one of these arrangements that requires a HARPS operator licence then this could place very onerous obligations on that class of persons. This is most likely to arise in peer-to-peer lending scenarios as detailed in paragraph 5.50 of the consultation paper. Perhaps this needs further consideration as to whether a HARPS operator's licence is the most appropriate form of regulation in those scenarios.