

AUTOMATED VEHICLES:

Consultation Paper 2 on Passenger Services and Public Transport

A joint consultation paper

Response on behalf of DAC Beachcroft LLP

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GENERAL OBSERVATIONS

DAC Beachcroft fully supports the work of the Law Commission in considering a national licensing scheme for HARPS, private ownership of passenger-only vehicles and considerations relating to accessibility, congestion and how regulation can help self-driving vehicles integrate with public transport. However, it is likely that the deployment of passenger-only vehicles (other than very low velocity 'Path 2' pods operating in extremely limited operational design domains) will not be seen for a number of years to come.

Meanwhile, there are various issues regarding the safe deployment of highly automated vehicles that must be addressed as a matter of priority, including data and cybersecurity, and identifying clear and unequivocal rules around drivers resuming control. Resolving these issues is of fundamental importance if there is to be consumer confidence in purchasing / using an automated vehicle, and for the practical application of the Automated and Electric Vehicles Act 2018. We would urge the Law Commission to bring these issues into scope for the purpose of its third and final consultation paper.

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, and we do so for 4 reasons: better and more flexible regulation, reduced costs, jurisdictional difficulties and increased market penetration.

1. We agree that HARPS cannot fit into the current regulatory structure as operators would choose the regulator that is most convenient for them. We express concerns about operators taking advantage of the new and untested nature of HARPS and the regulations around the technology below.

Flexibility is also extremely important when designing new regulation for an emerging technology. Like all autonomous technology in general, HARPS will be fast growing and evolving. Government will need to be fast acting and proactive in order to enact regulations that keep pace with HARPS and ensure the safest possible experience for passengers and members of society who come into contact with HARPS. A single national operator licence system will make that easier.

2. Having a national system of operator licensing would reduce the costs of overseeing the operators system and would keep regional/local authorities from experiencing the costs of establishing and supervising such a system. It would also prevent operators of fleets across large geographical areas from having to comply with multiple licence conditions, which would add extra costs to their business; costs that would most likely be passed on to consumers.

Additionally, insurance premiums for HARPS likely would be kept lower. Insurers would only have to refer to the single system. That would likely instil greater confidence amongst the market, keep insurers' costs down and allow for more efficient risk management.

3. As you point out in 3.35, separate systems of operator licensing for England and Scotland or for different regions would increase the likelihood of jurisdiction shopping when an operator sought out licences. It would also increase the possibility that the potential passengers of any particular region or area would have reduced access to HARPS because of stricter local licensing laws.

4. For autonomous vehicles to achieve market penetration, potential operators need to be able to understand the rules and regulations applying to them with relative ease. A single national system of operator licensing would be a step in the right direction.

Multiple licence schemes across the UK could prevent potential operators from entering the market at all. Operators will face many technological and sociological hurdles in trying to gain traction with this emerging transportation service. Added complications and costs in the form of multiple forms of licensing could convince them that it makes business sense to focus their efforts and resources in less challenging and expensive markets.

CONSULTATION QUESTION 2

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

We have had the benefit of seeing a copy of the ABI's response to this question and we agree with it entirely, though we wish to add the following.

Safety needs to be broken down into the 2 most important safety components: that of the vehicle and of the operator.

We believe the best way of addressing safety concerns regarding the vehicle itself (hardware and software) is by means of introducing, firstly, measures that ensure the vehicle is safe and fit for purpose before it is allowed for use, and, secondly, an MOT test for autonomous vehicles (AVMOT) that are in use. This is a point we raised in our response to question 12 in the first autonomous vehicles consultation paper:

Question 12: If there is to be a new safety assurance scheme to authorise automated driving systems before they are allowed onto the roads, should the agency also have responsibilities for safety of these systems following deployment?

Automated driving systems should undergo rigorous testing to ensure that they are as safe as possible before they are authorised to be used on roads or other public places. This should apply both when the ADS comes equipped on the vehicle and when it is an aftermarket product. An approval regime based on both self-certification and third-party testing should be able to evolve to ensure the safety of new automated driving systems as far as reasonably possible. The two can and should work together harmoniously and should improve consumer confidence and safety.

Though cyber security is not part of this consultation, we feel it is important to stress that a safety assurance scheme will be important in addressing issues around cyber security and preventing ADS from falling prey to hacking and malware. Any scheme that arises from this consultation should be the basis for cyber as well.

A single organisation tasked with safety-related aspects of automated driving systems would ensure clear lines of responsibility and set clear standards that need to be met by the vehicle; the automated driving system; driver training; and marketing materials.

Providing consumers with the necessary information to develop and maintain awareness of their responsibilities when using an automated driving system is a significant factor in road safety and it seems sensible to include this within the remit of the new safety assurance agency

[...]

(3) roadworthiness tests?

The current MOT test regime only relates to the roadworthiness of the vehicle in general. It does not check the vehicle's general mechanical condition and does not cover the state of several critical parts. A more rigorous roadworthiness test would be appropriate to ensure continuous promotion of vehicle safety.

This new MOT test would need to perform a check of the automated systems to ensure they are operating correctly and do not contain any illegal modifications. A software check for malware, viruses, etc. would also be beneficial.

We envisage that the proposed new agency would have the appropriate expertise to devise and update the testing regime as necessary to uphold safety standards.

In addition, it is imperative that potential passengers feel as safe as possible in using HARPS. As the 2019 KPMG autonomous vehicle readiness report show¹, one of the major challenges the UK must overcome before it is ready for autonomous vehicles is raising consumer confidence in the technology. This will be especially true of HARPS, where consumers could be wary of the lack of any human driver/user-in-charge inside the vehicle². A well-publicised national safety standards scheme should go some way to alleviating fears.

¹ KPMG 2019 Autonomous Vehicles Readiness Index, p 20.

² See, for example, the CCAV commissioned report: *CAV public acceptability dialogue* (July 2019).
DAC Beachcroft Response - Automated Vehicles: Consultation Paper 2

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;**
- (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)?**

In general, we agree with this list, though we have concerns about (3), which needs to be modified to conform with the language used in the Road Traffic Act and related secondary legislation to read 'on a road or other public place'.

It is appropriate and reasonable to require a HARPS operator licence for any business which uses vehicles that have the ability to operate without a human driver or user-in-charge any time it is on a road or other public place.

We question, though, whether it is sensible to limit the requirement to roads and other public places, especially in light of recent CJEU decisions (e.g. *Vnuk*,³ *Rodrigues*⁴ and *Torriero*⁵), all of which have changed compulsory motor insurance requirements. The recommendations that arise from these consultations need to avoid creating inconsistencies between licensing requirements and insurance liability provisions. The need to address licensing and insurance of HARPS both on and off the road will be even more important now that the UK has left the EU.

Additionally, it is important that anything that comes from these consultations needs to be future-proof, and there is good reason to believe that manufacturers will develop autonomous vehicles that are capable of off-road travel.

In regards to (4), the lack of a user-in-charge makes it imperative that HARPS operators are regulated closely and held to a high standard to protect passengers and members of the public who may come into contact with HARPS vehicles. A licence scheme will go a long way to ensuring safety, improving transparency and reducing insurance premiums – all of which are likely to make HARPS vehicles a more viable service.

The one exception we would make is for vehicles that have very limited abilities to engage in (4), such as only being able to self-park, though in most cases the driver or user-in-charge is still in the vehicle. 4.31 implies that it is your belief that a responsible person is always in direct sight of a vehicle engaged in an automated parking function, but this should not be assumed to be the case in every instance, especially as the technology improves. We reiterate that the recommendations that arise from these consultations need to be future-proof.

Because these vehicles will be able to operate without a human driver or user-in-charge in the vehicle, it is imperative that the regulations regulating HARPS operators focus on the safety of consumers and anyone who may come into contact with HARPS.

³ *Damijan Vnuk v Zavarovalnica Trigalev* (C-162/13)

⁴ *Rodrigues De Andrade v Salvador & Others* (C-514/16)

⁵ *José Luis Núñez Torreiro v AIG Europe Limited, Sucursal en España, formerly Chartis Europe Limited, Sucursal en España, UNESPA, Unión Española de Entidades Aseguradoras y Reaseguradoras* (C-334/16)

CONSULTATION QUESTION 4

Is the concept of “carrying passengers for hire or reward” sufficiently clear?

In general, we agree that the test for “carrying passengers for hire or reward” is sufficiently clear and well-established. We are somewhat concerned, however, that in the context of HARPS, it may require some future-proofing.

The example given in 4.13 is a good one and demonstrates a larger problem that needs to be addressed – the law as it stands needs reform to account for the growing shared economy. How will the test apply to vehicles that are privately owned but added to a shared fleet, especially on an informal basis? Matters around insurance requirements, ‘keepers’ and insurance liability need to deal with this.

The test potentially will be further tested as operators seek to increase public interest in the technology; for example, HARPS operators providing passengers with free trips in HARPS as a means of increasing public confidence and interest in their product. Will the supply of free passage in a HARPS vehicle with a design to create consumer confidence and generate potential future (paying) hire be covered? Will an operator that operates a traditional PSV service and initially limits its HARPS operations to offers of free trips in HARPS require a HARPS operator licence?

For these reasons, we believe the test for ‘hire or reward’ needs to be revisited and modernised to take into consideration the changing nature of vehicle ownership and usage as well as the likely problem areas that will arise as HARPS operators seek to increase public interest in their services.

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.

We agree with the purpose of the HARPS operator licensing system as set out in 3.2 and 3.3: the licence is primarily a means of increasing the likelihood of safe operation of HARPS.

A HARPS operator licence would be the best way of regulating HARPS operators and ensuring that they provide adequate service and safety for all passengers; a concern arising from the lack of driver or user-in-charge.

These concerns are less of an issue for some HARPS operators, such as schools, churches and small community organisations. They are, however, still concerns, and the need to overcome public concerns about autonomous vehicles means it might be best to require an operator licence for any organisation using HARPS. For these reasons, we agree that community groups should have to apply for an operator’s license.

With that in mind, the licencing scheme needs to:

- o Ensure that operators prioritise the safety of their passengers;
- o Whilst not being so onerous as to keep small groups from operating HARPS, and;
- o Be future-proof enough to accommodate the changing nature of vehicle ownership and usage, e.g. vehicle sharing.

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 need for a HARPS operator licence (or to modify licence provisions for such trials).

Trials of HARPS require additional scrutiny and, up to the present, have received that scrutiny. As autonomous vehicles become more commonplace, though, there is a chance that individual tests will undergo less scrutiny.

As we state in our answer to Question 5 above, we believe that a HARPS operator licence scheme is a good way to better ensure provision of adequate and safe service for all passengers. This is just as important for trials as it is for established service.

Additionally, we are concerned that unethical operators could take advantage of an exemption available for trials to bypass regulations by structuring their service to be classified as a 'trial', which would need to be strictly defined to prevent this.

If the current level of scrutiny can be maintained by the relevant agencies, perhaps there is merit in providing an exemption for trials. If such scrutiny is not practical in the future, then some manner of licencing seems like a reasonable means of regulating this important feature of HARPS development.

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, we agree that the 4 requirements outlined are necessary for all applicants for a HARPS operator licence.

The size of the operator and its fleet will need to be taken into consideration when applying the tests related to the factors listed.

We note the point you raise in 4.63: 'we can see a case for reducing the capital needed to operate large numbers of small vehicles, such as pods'. A reduction in capital would benefit small-scale operators, especially community-based ones, even more and increase the viability of HARPS for non-commercial operators.

We would add that, possibly as a subcategory of (2), applicants need to show that they have adequate insurance cover.

CONSULTATION QUESTION 8

How should a transport manager demonstrate professional competence in running an automated service?

We have had the benefit of seeing a copy of the ABI's response to this question and we agree with it entirely.

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. We anticipate that the role of the HARPS operator will mainly reflect that of a PSV operator. Absent a ‘user-in-charge’, the HARPS operator must be under a legal obligation to ensure the vehicle is roadworthy and demonstrate ‘adequate facilities or arrangements’ for maintaining vehicles and operating systems ‘in a fit and serviceable condition’ in the same way a PSV operator is required to do. It stands to reason that HARPS operators should be subject to the usual offences that apply to ‘users’ under the Road Traffic Act 1988.

In the case of HARPS the legal obligation must extend to maintenance of and necessary updates to the vehicle’s ADS.

The legal obligations of the HARPS operator should extend to the provision of adequate insurance cover also, under the Road Traffic and Automated and Electric Vehicles Acts.

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. In order to avoid any confusion which risks undermining the safety of other road users we agree that legislation should be amended to clarify that HARPS operators are ‘users’ for the purpose of ensuring adequate third party insurance is maintained at all times and that the vehicle remains roadworthy.

CONSULTATION 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?**

Yes, specifically:

- 1.** Insure vehicles – We refer to our response to question 10 above;
- 2.** Supervise vehicles – This is essential to ensure the safe and continuous flow of traffic where a HARPS vehicle carries out a minimal risk manoeuvre or is involved in a collision.
- 3.** Report accidents – In order to promote the safe operation of HARPS, we agree that the obligation should extend to the reporting of ‘near misses’, which requires defining. We also support the recommendation to put accidents into some context, by obliging operators to report all miles travelled, split by reference to the specific operational domain. All accidents should also be reported by reference to operational domain.

4. Take reasonable steps to safeguard passengers from assault, abuse or harassment – Absent a driver, placing an obligation on operators to adequately safeguard passengers is an absolute necessity to ensure consumer confidence in HARPS.⁶

Potentially, there will be difficulties arising from the general duty to ensure passenger safety, especially given the absence of a user or user-authorized supervisor in the HARPS vehicle. How will an operator protect passengers from fellow passengers? What liability will they have if a passenger causes harm to a fellow passenger? What steps will they have to take to demonstrate that they took all reasonable steps to ensure passenger safety? How will 'reasonable steps' be determined?

The use of 'stewards' in HARPS vehicles would inevitably reassure, especially where the young, elderly and infirm are concerned, provided that he/she has undergone the necessary criminal checks. Whilst stewards may be necessary initially to instil confidence, their use in private hire HARPS vehicles should not be mandated in the medium to long term, as it would somewhat undermine their purpose. On the other hand, there is no reason why constant CCTV (without audio) should not be mandated. Would CCTV effectively protect passengers? Would deployment of CCTV be deemed adequate reasonable steps to protect operators from liability or would further steps be required? How would those steps be determined?

Consideration should also be given to the positioning of 'SOS' or 'panic buttons' about the cabin which would put the occupant(s) in direct contact with the supervisor at the HARPS operator (and law enforcement services). Again, though, it is unclear if this would be considered reasonable or if more is required of the operator.

In conclusion, supervision of vehicles will be crucial, but how it is carried out will be extremely difficult – see, for example, the difficulties raised in the scenarios posed by the ABI in its answer to this question. The Law Commission and government need to give this topic careful and considerable attention moving forward.

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)?

There are several points to address when considering this question from a data protection perspective:

1. What would constitute an 'untoward' event and who would determine whether something untoward has occurred?. Would this be the responsibility of the passenger or the HARPS operator?;
2. What level of detail would need to be disclosed? Would this simply be factual information about the vehicle, i.e. number of miles travelled and operating information, etc. or will the reporting obligations require personal data to be disclosed if it is relevant to the untoward event? and
3. Who is this data reported to? Would it be shared with third parties such as insurers, reinsurers, regulatory bodies and/or police, vehicle manufacturers?

If personal data is contained/has the potential to be contained within the data that is reported (in the ways set out above) ("**Reporting Data**"), data protection laws will apply and HARPS operators will be a data controller of such personal data and will be responsible for compliance with data protection laws (including GDPR and member state local legislation which sits alongside the GDPR, for example the UK Data Protection Act 2018). Such obligations imposed on HARPS operators will include:

⁶ See the finding contained in the CCAV commissioned report: *CAV public acceptability dialogue* (July 2019).

- o Having both a lawful ground for (i) the processing of personal data and any special category data (such as health data or information about a passenger's disability) collected by the vehicles and (ii) the disclosure/onward reporting of such personal data to any third parties such as insurers and police, etc. The relevant lawful ground will depend on whether the HARPS operator is legally required to undertake reporting activities or whether GDPR consent can be obtained from the individuals whose personal data it is (unlikely to be practical) or whether there is a legitimate interest for such reporting obligations. In respect of any special category data, there are limited processing conditions which can be relied on unless such special category data is being used/disclosed in a manner which is necessary for an insurance purpose (as defined in the UK Data Protection Act 2018) or in connection with a legal claim. Therefore, there appears to be a significant challenge in using special category data for reporting purposes;
- o Ensuring compliance with the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR") in respect of use of location data. PECR imposes strict rules on location data and limits who can use location data. So to the extent that data collected by vehicles amount to location data (any data processed in an electronic communications network or by an electronic communications service indicating the geographical position of the terminal equipment of a user of a public electronic communications service, including data relating to (a) the latitude, longitude or altitude of the terminal equipment; (b) the direction of travel of the user; or (c) the time the location information was recorded), HARPS will need to ensure that they (1) are permitted to process location data and (2) they have the relevant consent for doing so;
- o Ensuring that the use and disclosure of personal data for reporting purposes is limited to (i) what is necessary; and (ii) data that is accurate and where necessary, kept up to date (this is essential for compliance with the GDPR data minimisation and accuracy principles);
- o Ensuring that the processing of and disclosure of personal data for reporting purposes is covered in the HARPS operators' privacy notices and ensuring that HARPS operators can actively communicate and explain to passengers, and the individuals whose personal data is being disclosed for reporting purposes, how their personal data is processed. An effective method of communication will need to be deployed, especially given that it has been reported that only 16 percent of internet users read privacy policies and of that, only 20 percent actually understand them. HARPS will need to consider alternative methods to sufficiently inform individuals of this information, rather than using the usual lengthy privacy policies presented on websites or the short form fair processing notices contained in documentation or terms and conditions. Some features could assist with this. For example, the privacy policy could be presented on the infotainment screen with an interactive and layered approach, and "just in time" notices could be communicated to the user at the beginning of the journey prior to the point at which certain personal data is collected.
- o Ensuring that there are data sharing agreements in place with appropriate data protection provisions. Such data sharing agreements should be put in place with any third parties with whom HARPS operators share data with for reporting purposes;
- o Considering any cross-border implications. Vehicles often cross international borders. An autonomous and connected vehicle originating in the EEA will be generating personal data relating to EEA individuals (for which the GDPR applies). Should this vehicle enter non-EEA jurisdictions, the sharing of personal data with HARPS operators and other third parties may constitute an international transfer of personal data and the GDPR then requires for there to be adequate export mechanisms put in place to legitimise the transfer of such personal data;
- o Considering whether anonymised data would be suitable for reporting purposes and if so, ensuring that anonymisation is undertaken in compliance with relevant guidance; and
- o Considering how long to retain such data for, ensuring that data protection has been considered.

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, we agree.

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, and/or**
- (2) withdraw the licence of an operator who failed to give price information?**

Clear and comparable price information is vital to building public confidence in HARPS as a transportation and mobility service. Because of this, the HARPS operator licensing agency should have the power to issue guidance and withdraw licences for failing to give price information.

We are concerned that HARPS operators will place excessive priority on their online and mobile phone presence, both for pricing and booking HARPS. Online and mobile transactions are excellent resources, but our concern arises because this could adversely affect the elderly, who would benefit greatly from HARPS.

All price information and booking facilities should be available to consumers in a variety of media, e.g. online but also by telephone, so that the elderly can more comfortably use the service.

All forms of communication, including pricing and booking, also need to be accessible by disabled people with difficulties communicating.

CONSULTATION QUESTION 15

Who should administer the system of HARPS operator licensing?

We agree with the points in favour of placing responsibility for administering with the Traffic Commissioners (para 4.135). Given the similarities that will exist between the operator licences of PSVs and HARPS, it seems sensible to place them in charge, and the reduced costs of obtaining a licence and minimal number of government agencies will potentially increase operator interest in HARPS.

We also see the sense in expanding the remit of the agency responsible for authorising automated driving systems. As the agency with the most experience of autonomy, it would be best placed to cope with the new and evolving technology. This, however, is only a part of the responsibilities of administration, and not the most important part at that.

The best plan would be to make the Traffic Commissioners responsible for administering HARPS operators licensing, but only through close work with the automated driving agency and DVSA. As we have stated elsewhere in this response (please see our responses to questions 11 and 21), one of the solutions we recommend for safely and smoothly introducing autonomous driving and HARPS is the introduction of an AVMOT. As a result of this, the DVSA will need to be closely involved in administering the licensing.

Regardless of which body administers the operator licensing system, it would be preferable for a single body to be responsible for all HARPS related safety assurance and operator licensing.

CONSULTATION QUESTION 16

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

For the first several years HARPS are available publicly, the main purchasers and users will almost certainly be commercial organisations – they will have the finances to invest in these costly products and many will see self-driven vehicles as a means of reducing costs associated with employing or contracting human drivers/deliverers.

Bearing that in mind, we believe the Law Commission needs to place more focus on the applicability of HARPS in the transport of freight. This will be an early important growth area of the HARPS market, and it would be in the interests of public safety and consumer confidence for more attention to be spent on this topic.

Para 4.139 provides: “Freight vehicles may face similar challenges. Like passenger vehicles, freight vehicles may travel empty, so similar solutions may be needed”. As such, the focus appears to be on the issue of automated freight vehicles travelling empty. The concern here seems to relate to the risk of increased congestion/pollution caused by HARPS travelling around empty awaiting the next passenger (“empty cruising”).

In our view, empty cruising is unlikely to be relevant to automated freight vehicles, at least in relation to how freight companies currently operate, i.e. a freight service is booked by a shipper, road freight vehicle travels empty from freight company’s hub to shipper’s site/warehouse, loads goods and transports goods to specified location, unloads goods and then return travel empty to freight company hub / or travels to next specified site to pick up next delivery. On that basis, we do not foresee road freight vehicles empty cruising, waiting for the next delivery job, as the primary focus for freight logistics companies is to make the most efficient use of their vehicles and limit unnecessary travel.

However, para 1.24 appears to be seeking wider input beyond the issue of “empty cruising”:

“However, we are aware that some form of regulation will be needed for highly automated vans and lorries which do not have people on board. Some service providers may offer a mix of passenger and goods transport. Often the safety issues will be similar, and it may be appropriate to apply similar solutions. We therefore welcome observations on our proposals from those involved in the freight industry, if only to highlight where passenger provisions may or may not be appropriate. We will pass these observations to the Department for Transport.”

As a starting point, we have considered whether freight vehicles can currently carry passengers (that being the primary focus of HARPS). We then address the more general question of whether the HARPS operator licensing scheme proposed by the Law Commission will be relevant to the freight industry and if so, to what extent. To do this, we considered what the future of the freight industry looks like.

Please note we have only considered freight vehicles on the road (i.e. trucks), as opposed to trains, planes and ships.

Can freight vehicles carry passengers?

There is no restrictions for freight vehicles to carry passengers. For example, [Section 100](#) of The Road Vehicles (Construction and Use) Regulations 1986 refers to passengers when providing guidance on how vehicles should be maintained and used so as not to be a danger. The DVSA guidance ‘[Safe Driving for Life](#)’ also provides for scenarios that involve passengers in freight vehicles along with lorry drivers. The most important consideration is how dangerous it is for the passenger to be in the vehicle.

What does the future of autonomous freight vehicles look like and in what way, if at all, will it involve humans?

There are numerous studies/thought pieces into how the future of autonomous trucks is envisioned. The [Financial Times](#) and [McKinsey & Company](#) have both discussed this.

The current view is that humans will not be entirely eliminated from involvement in driving/controlling/monitoring road freight vehicles for at least the next decade, if at all. The [American Truck Business Services](#) state that key players in the autonomous truck industry (Daimler, Waymo, Tesla, Embark, and TuSimple) are testing their trucks with the intention of having a driver in the vehicle at all times. When the Port of Rotterdam began using autonomous vehicles, the shift created jobs in centralised control terminals to monitor the trucks and remotely control them if necessary.

The current technology that is being tested is called platooning. This involves trucks from the same company synchronising their braking on motorways to drive far closer together than would be safe if they were reliant on human reaction times. This would increase the capacity of roads on an automated highway system.

To what extent is the HARPS Licensing Scheme proposed by the Law Commission relevant to freight vehicles?

The freight industry is sufficiently different to industries that carry passengers that a different version of the HARPS Licensing Scheme should be created. Below are the considerations that the Law Commission may wish to take into account.

- o *Scope:* A HARPS operator is defined as any business which carries passengers for hire or reward using highly automated vehicles on a road without the services of a human driver or user-in-charge. In the freight industry it is the transport of goods that we are primarily concerned with, less so passengers. However, as freight vehicles become more automated, there will potentially be an increase in passengers travelling in vessels for the purpose of transportation of goods (although, importantly, not for profit). As such, a HARPGS (Highly Automated Road Passenger and Goods Services) operator licensing scheme may be devised.
- o *Exemptions:* The exemptions proposed by the Law Commission are based on sections 19 and 22 of the Transport Act 1985. This is not relevant in the case of freight vehicles because the use of these vehicles are for companies only in transporting passengers, and not goods. However, there are relevant exemptions that the Law Commission may require consideration.
 - To be eligible for a HGV licence, drivers must first hold a full [Driver CPC](#) (PSV operators also require Driver CPC to demonstrate competence). There are exemptions to this, although they are unlikely to be relevant.
 - There are also exemptions for registering for a [goods vehicle operator licence](#), although these are also unlikely to be relevant.
 - Therefore, those that require a "HARPGS" (or similar) operator licensing scheme should apply for full licences, with the possibility of applying for exemptions. Whether the exemptions will be successful should be determined by the Law Commission.
- o *Applicants:* The requirements for those that wish to apply for a HGV licence is similar to those that wish to apply for a PSV licence. Applicants must demonstrate that they:
 1. Are of good repute;
 2. Have an appropriate financial standing;
 3. Have an effective and stable establishment in Great Britain;
 4. Have proposed operating centres (where vehicles are stored);
 5. Have the facilities and/or arrangements to maintain the vehicles (e.g. maintenance contracts);
 6. Are professionally competent; and
 7. Have a transport manager who is of good repute and who is professionally competent.
 - All of these requirements would still be relevant for a "HARPGS" operator licensing scheme. Unlike HARPS vehicles which may be small, autonomous trucks are unlikely to decrease drastically in size. Similar to the HARPS context, a transport manager for "HARPGS" would need to demonstrate technical understanding of automated driving systems. As there will be no examinations, companies might have to submit a detailed safety case.

- *Adequate arrangements for maintenance:* Similar to HARPS operators, “HARPGS” operators should have the legal duty to insure vehicles, supervise vehicles, and report accidents. This includes ensuring the relevant maps and software are updated, maintaining cyber-security, and ensuring roadworthiness as per the statutory language.
- *Remote supervision:* Above we have summarised the ways in which autonomous trucks may be supervised, including remote supervision. Similar challenges follow, such as connectivity, cyber-security, the training of staff, and protocols in the event of vehicle failure. Similar considerations will also apply to platooning.
- *Reporting requirements:* Like HARPS operators, “HARPGS” operators should also report untoward events, miles travelled without untoward events, and other key contextual information (such as type of road, weather conditions, and other risk factors) to put collision statistics in context.
- *Safeguarding passengers:* the primary focus of the freight industry is transportation of goods, but to the extent that passengers travel on board automated freight vehicles (as part of the service of delivering goods – but not for profit), then provisions relating to passenger safety will also be relevant to automated freight vehicles.
- *Price information:* Prices should be governed in B2B contracts and will likely be set according to the market standard. It may be helpful for the operator licensing agency to issue guidance about how to provide clear price information. However, as these are sophisticated buyers and sellers, the regime to provide price information need not be as protective of the client as if the buyer was a natural person.

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. This will place the responsibility for maintaining the vehicle with the organisation that has ultimate control over the vehicle.

It is especially important that the duty to keep the vehicle properly insured remains with the HARPS operators for hire with an initial period of six months or less. As 5.11 demonstrates, the short term hire market is not a viable model because of light regulation, and the credit hire market shows how unethical providers can and do take advantage. This cannot allowed to be replicated with HARPS.

Further thought needs to be given to how the provisions will account for vehicle sharing; particularly, in a more informal peer-to-peer environment.

It is imperative that ‘exclusive use’ be properly defined in this context.

Additionally, it would be beneficial for the Law Commission to outline what penalties will arise from failure to comply.

CONSULTATION 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?**

We have had the benefit of seeing a copy of the ABI's response to this question and we agree with it entirely. We add the following:

We consider the mandating of professional remote supervision services is particularly important in the case of passenger-only vehicles. By putting the obligation to remove a vehicle causing an obstruction or left in a prohibited place on to a lay person, there is risk of delay in removal of the obstruction, which in turn risks causing unnecessary congestion and compromising the safety of other road users.

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. We agree that, for the sake of consistency, the registered keeper is the most preferable identifier for the person who keeps the vehicle as, unlike the 'owner' or 'user' of the vehicle it is simple to check.

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.**
- (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 refer to our response to question 18 above. For the purpose of safety and simplicity, unless the lessee is itself a HARPS operator we do not consider that the lessor should be able to transfer any of the listed duties to the lessee, save for the duty to insure the vehicle and maintain the mechanical and consumable parts of the vehicle (as is the case with conventional vehicles). One would anticipate the commercial cost of discharging such duties will be bundled into the cost of leasing.

What would be the consequences where a lessee has accepted responsibility but is unable to fulfil its obligations?

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?

We see the merit in requiring HARPS operators to contract with a licensed provider to supervise and maintain services.

We agree with the comment in paragraph 5.4 that those leasing such a vehicle will most likely be prepared to pay a monthly premium to cover things like servicing, software updates and remote supervision. In the interest of safety and consistent monitoring of passenger-only vehicles, we do not consider it appropriate to allow a leasing company to devolve responsibility for compliance with any of the obligations listed to the registered keeper. Instead, these costs should be bundled into the overall cost of the lease, so that the leasing company operates in the same way as a HARPS operator.

We also agree that the vast majority of consumers who desire exclusive use of a highly automated vehicle which is capable of operating without a user-in-charge will choose to lease, as opposed to buy for commercial reasons. In the unlikely eventuality that a passenger-only vehicle is sold privately, there should be a legal requirement to purchase an ongoing 'care package' from a licensed provider (which could be the vehicle manufacturer) to assume responsibility for the obligations detailed above.

Alternatively, or perhaps additionally, we offer the following recommendations which are based on those we made in our response to the first consultation paper:

1. AV manufacturers and ADSE should be required to transmit software updates wirelessly, and operators should be required to install at least the safety-critical updates in a timely fashion; if they exceed the deadline, the vehicle or at least its autonomous capability becomes inoperative until they have installed the update. This system has worked very well for computers and mobile telephones for years; and
2. In addition to the standard MOT, the government should introduce an AVMOT that tests the hardware and software responsible for autonomous driving. The tester would have to be able to check that the software had not been bypassed or modified through illegal coding.

If an operator's vehicle does not pass the AVMOT, or if the safety-critical software has not been installed, the vehicle's autonomous features cannot be used.

Whatever the Law Commission recommends, it must ensure that all recommended requirements be abundantly clear. Registered keepers will need to be comfortable with the requirements placed upon them. Additionally, the Law Commission should recommend the consequences of not satisfying the requirement.

CONSULTATION 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.

We agree that most peer-to-peer lending will be caught by the definition of HARPS for the purpose of licensing, and that passenger-only vehicles purchased by a group of individuals for shared use will not.

In the case of the latter, we agree that it is imperative that responsibility for safety critical updates, accident reporting and vehicle removal obligations do not rest with the nominated registered keeper of the shared passenger-only vehicle.

As aforesaid, it should be mandated that such duties are discharged by a registered HARPS operator or the vehicle manufacturer or lessor that is approved and regulated in the same way as a HARPS operator. The cost of discharging these duties should be bundled into the cost of what is effectively a 'mobility solution'.

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.

We are in agreement that consumers should be given sufficient information at the point of purchase or leasing of an automated vehicle to take an informed decision about the total cost of ownership / leasing over a specified duration. However, we do not consider that the safety assurance agency proposed in Consultation Paper 1 should be responsible for providing such information. Rather, this obligation should fall on the manufacturer and/or the seller/lessor.

To place such an obligation on the safety assurance agency would be outside of its Terms of Reference. It would detract from its principal purposes of ensuring safe deployment and monitoring of AVs and learning and implementing lessons from adverse events and near misses.

As this is a commercial consideration, the onus should be on the manufacturer and/or the seller/lessor of the vehicle to make the total cost of ownership/leasing to a minimum, which may involve supporting an after-market for servicing and repairs by a network of approved third party providers.

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.

As the consultation paper rightly points out, accessibility to HARPS is critical for disabled and older people, who currently often face mobility difficulties. HARPS could alleviate some of the hindrances, but for this to happen, it needs to be as accessible by these people as is possible, and this should be addressed by regulations.

We note that as of April 2017, taxis cannot charge more for carrying passengers' wheelchairs. The same provisions, we expect, will apply to HARPS.

In terms of physical accessibility issues, we recommend that the model used for HARPS follow that already in use by taxis and PSVs: fleets should contain a percentage of vehicles that can cater to physical disabilities, possibly through modifications to the vehicle or by including a trained employee to ride with the passenger to provide assistance as necessary. Data on usage by passengers with physical disabilities would be helpful in determining what percentage of a fleet needs to cater to them.

Accessibility issues need to be considered, as the paper says, from departure to destination, but the point of departure needs to begin when the potential passenger first considers his mobility service options. For this to happen, HARPS needs to be advertised to the public as a mobility option alongside what are currently the conventional options (taxis, PSVs and public transportation).

Understandably, online and mobile phone advertising and communication will feature prominently in promoting HARPS, but to assist the elderly as much as possible, HARPS will need to be accessible through other means as well.

Accessibility is only truly achieved if potential passengers feel comfortable using a service, and HARPS operators will need to demonstrate that they have accounted for the concerns that have been raised about a lack of driver or user-in-charge in each vehicle. Regulations should require operators to show how this challenge will be met.

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?

We agree with the provisional proposal to extend 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 to include HARPs operators.

With HARPS, however, combatting discrimination will require more work than it does with traditional vehicles. Specifically, the programming for the operation of HARPS needs to be coded in such a way so that it is non-discriminatory.

As HARPS software and hardware increases in sophistication, and especially as it incorporates facial recognition, manufacturers and operators must be prevented from allowing or causing their programming to discriminate against ethnic minorities, people with physical disabilities and the elderly.

Penalties for violating these laws will need to be clear.

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?**
- (2) Requiring reassurance when there is disruption and accessible information?**
- (3) Expansion of support at designated points of departure and arrival?**

The goals of improving the mobility independence of disabled and elderly passengers will be difficult to achieve if there are concerns among such passengers about the lack of human support during their journey. We consider guidelines to support the safe entry and exit from vehicles should, therefore, be developed. Guidelines should also be prepared outlining the circumstances where it would be appropriate for support to be provided at designated points of departure and arrival.

Passengers should be able to communicate with transport staff to ensure they have the help they need in the event of a problem or emergency. Any user interface which is developed to provide information on the progress of the journey should also be of minimal complexity for passengers to use.

Failure to have the necessary level of support to passengers could lead not only to a lack of confidence in the provision of the services, but also to personal injury and compensation claims.

In order to properly respond to the needs of passengers in the planning and development phase of HARPS, a strong partnership between disabled and elderly peoples' organisations, researchers and manufacturers is recommended from the onset of the development to ensure safe and accessible journeys are being delivered.

CONSULTATION QUESTION 27

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

One of the key benefits of the introduction of autonomous vehicles is the increased mobility such vehicles give to disabled and elderly people, and one can see the advantages for such passengers if some aspects of journeys are standardised.

It will be necessary to strike a balance between there being sufficient consistency in the design of the vehicles to give users with accessibility issues confidence to rely on the vehicles on the one hand, and encouraging innovations and improvements to the designs of HARPS on the other. The development of guidance for aspects such as standard internal layouts, is encouraged.

Stakeholders in the disability community can provide recommendations for technology companies, manufacturers, regulatory agencies and other policymakers involved in the development of these vehicles.

Individuals will have an extremely diverse set of needs, preferences and requirements with respect to transportation which need to be considered while planning trials of HARPS and early stage deployments. For instance, blind or visually impaired passengers may require cars with an auditory system that notifies the driver where the car is at any given time and the progress of the trip. Users with hearing impairments may require any audible information in HARPS to be conveyed visually as well. The requirements of users with ambulatory and physical disabilities as well as those with intellectual and developmental disabilities must also be considered.

It is very important to avoid the technologies developing in a way that does not foster inclusion.

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.

The collection of disability data such as an individual is blind or has a visual impairment or information about an individual's health condition would, under data protection laws, constitute special category data and by the nature and sensitivity of such data, it must be afforded greater protections and there are additional and more onerous obligations which apply when collecting, using and disclosing such data, for example for reporting purposes. In particular, as outlined at question 12, the processing and disclosure of such data for reporting purposes will need a lawful ground.

In respect of any special category data, there are limited lawful grounds which can be relied on unless such special category data is being used/disclosed for an insurance purpose (as defined in the UK Data Protection Act 2018) or in connection with a legal claim. Therefore, there appears to be a significant challenge in using special category data for reporting purposes.

From a data protection perspective also, HARPS operators should only be collecting and reporting on disability data (and generally any other personal data and special category data) to the extent that it is necessary and should be able to defend why this is.

CONSULTATION QUESTION 29

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

We do not consider that any changes are needed for the deployment of HARPS vehicles if they are to be used on roads in a similar way to conventional vehicles. However, in circumstances where a HARPS vehicle requires its own lane or is able to travel in bus lanes, this would need to be included in the TRO legislation. Likewise, TRO legislation would need to set out precisely where in HARPS vehicles may / may not operate in cities and urban areas.

Until such time as it becomes clear what different vehicle types will be capable of HARPS classification, the precise infrastructure that will be needed to support them is unknown. As such, it will not be possible to update the TRO legislation on a pre-emptory basis.

On the assumption that all HARPS vehicles will be electric, this may impact on congestion and low emission zones, as a result of which TRO legislation will also need to be updated.

CONSULTATION QUESTIONS 30 & 31

Given the policy-based nature of questions 30 and 31, they are effectively outside of our remit. We will, therefore, leave responses to be provided by those better placed to do so.

CONSULTATION QUESTION 32

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

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.**

A road pricing scheme could potentially serve several useful purposes, and because of this it should be seriously considered. There are some fundamental questions that need to be answered, however, before determining whether such a scheme would be practical:

- Would the purpose of the scheme be to reduce the number of cars overall, like the congestion charge, or to maximise the efficient use of HARPS vehicles, in which case the ULEZ is the more comparable model?
- Would road pricing apply to both private and commercial passenger-only vehicles?
- Who would be responsible for paying?
- What offence would arise if the costs were not paid, and who would be liable?
- What, if any, additional liabilities would fall on insurers? Would insurers have to provide costs cover?
- Any road pricing scheme needs to be introduced in a way that prevents it from putting potential HARPS users off from using the service. If HARPS have to pay per mile and traditional vehicles seemingly do not, many people will choose to rely on the older forms of transportation, and this will reduce the lower emissions benefits that HARPS will provide.

Additionally, would the scheme be designed to segregate HARPS vehicles from traditional, human-driven vehicles, or could such a scheme result in segregation?

We see some merit in the idea, if only for the first years of HARPS operation, of geo-fencing that would segregate HARPS from normal vehicles. This would reduce the number of accidents as autonomous technology continues to improve.

In regards to (2), the idea of reducing HARPS cruising is a good one, especially as cruising would unnecessarily use resources that would be saved by parking the vehicle whilst it waits for its next passenger. A road pricing scheme could help reduce cruising, but an even more effective means of controlling it is to require empty HARPS that are not travelling to pick up their next passengers to park at nearby car parks or HARPS depots, both of which could provide charging points.

CONSULTATION QUESTIONS 33-38

Given the policy-based nature of questions 33 to 38, they are effectively outside of our remit. We will, therefore, leave responses to be provided by those better placed to do so.

FOR FURTHER INFORMATION:

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