



## **RESPONSE OF THE FACULTY OF ADVOCATES**

**to the**

### **Automated Vehicles: Consultation Paper 2 on Passenger Services and Public Transport**

#### **INTRODUCTION and CHAPTER 2**

1. We refer to our Response to the first Consultation Paper as setting the context for the responses to the present Consultation Paper. We note that the present Consultation seeks to address detailed regulatory issues in relation to passenger transport. We further note that this includes issues of a policy and of a socio-economic nature, on which the Faculty does not intend to comment. Rather, our present Response seeks to add value to the consultation by focussing on those specific matters which fall within our areas of expertise.
2. We note the proposal that Highly Automated Road Passenger Services be treated in a regulatory category of their own. We agree that it would not be appropriate, nor would it be likely to be effective, to try to “shoehorn” this type of service into existing regulatory categories such as, for example, private hire vehicles. The issues which HARPS raise are of a different nature from services provided by conventional means and the use of a separate regulatory regime will assist in creating and maintaining focus and clarity.
3. We also welcome the proposed sub-division between services which involve users in charge and those which operate without users in charge. This approach goes a substantial way to addressing our observations in our Response to the first Consultation Paper.
4. We note the Policy Objectives set out in Chapter 2.

## CHAPTER 3: OPERATOR LICENSING – A SINGLE NATIONAL SYSTEM

### A single national scheme

#### **Consultation Question 1 (Paragraph 3.82): Do you agree that Highly Automated Road Passenger Services (HARPS) should be subject to a single national system of operator licensing?**

5. Whilst this is a policy issue, we agree that a single national regulatory system would be desirable, not least because HARPS vehicles may well cross borders between regulatory areas within Great Britain. However, the existing devolution settlements may affect matters (see the following paragraphs) unless the UK Parliament exercises its residual powers to legislate for the whole UK, or, at any rate, the regulatory regime is harmonised throughout Great Britain.
6. Given the tightly drawn definition of the transport reservations under Section E1 of Schedule 5 to the Scotland Act 1998, elements of any regulatory system are likely to fall within the competence of the Scottish Government.
7. Furthermore, any UK-wide regulatory regime may face challenges due to the position in Northern Ireland. It would seem undesirable that HARPS vehicles were to be unable to operate over the Irish border because of a regulatory mismatch between the United Kingdom and the Irish Republic. Unless a UK HARPS regime is sufficiently harmonised with that in the Republic of Ireland, there may well be complications with any service crossing the land border between the UK and the Republic of Ireland. However, HARPS services in Northern Ireland will not be able to cross (by land) into Great Britain. This suggests that a different approach may require to be taken in Northern Ireland than in the rest of the UK.

#### **Consultation Question 2 (Paragraph 3.86): Do you agree that there should be a national scheme of basic safety standards for operating a HARPS?**

8. The Faculty of Advocates makes no further comment beyond referring to the response to Question 1.

## CHAPTER 4: OPERATOR LICENSING – SCOPE AND CONTENT

### Scope of the new scheme

**Consultation Question 3 (Paragraph 4.33): 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)?**

9. The answer to this question will likely feed into questions 1 and 2. When considering licensing issues, the paramount consideration should be ensuring the safety of users and of the general public. The requirement for businesses to have an operator licence will be an effective way of ensuring safety through the attaching of conditions to that licence, such as maintenance of vehicles and the ability to provide the advertised service. For this reason, we agree that, in order to ensure and maintain reasonable standards of safety, businesses operating for commercial purposes should be subject to licence requirements. However, careful consideration needs to be given to the definition of ‘business’ in this context. A ‘business’ could perhaps be defined as an entity which operates for commercial purposes. Such an entity should require an operator licence if it operates HARPS vehicles. As for the individual elements mentioned in this question and whether an operating licence should be required:

9.1 Carries passengers for hire or reward – yes in theory, but this is further discussed in answer to question 4.

9.2 Using highly automated vehicles – yes. However, as mentioned above, a paramount concern for licensing will be safety. The safety of HARPS has two aspects – technical safety, i.e. safety of the equipment involved and practical safety, i.e. safety of the persons on board from other passengers. Practical safety is discussed as a part of question 11. Operators might not be able to guarantee passenger safety in the same way that, say, having a human driver might be able to and this is perhaps something that should be considered when looking into operator licence requirements. Is it reasonable for the operator to have to ensure practical safety of passengers? If it is thought that operators cannot ensure practical safety then does that mean they should not be given operator licences? Should operator licences only be issued for HARPS if there is a designated operator employee on board in a security capacity or could safety requirements be met by the use of distant monitoring by means of remotely operated

surveillance cameras? Which staff should require to be trained in safety awareness and what should be the content of that training?

9.3 On a road – yes. It is submitted that the definition of ‘road’ is well established and current definitions suffice.

9.4 Without a human driver or user in charge in the vehicle (or in line of sight of the vehicle) – see comments in relation to (2).

**Consultation Question 4 (Paragraph 4.34): Is the concept of “carrying passengers for hire or reward” sufficiently clear?**

10. The concept of ‘hire or reward’ may require some adaptation and clarification for the purposes of HARPS licensing as the current definition is understandably geared towards vehicles with a driver. It has been interpreted by the courts to take into consideration many different situations, including situations where the person receiving the hire or reward is not operating a business.

11. Interpretation seems to have been required in two circumstances that might not seem to tie in with the traditional business model:

Where a complimentary transport service has been provided as part of a more general business venture;

Where the provider of transport is not actually operating a business but is receiving something, be it monetary or other reward, in return for the journey.

12. Transferring the concept of ‘hire or reward’ as it currently stands to larger HARPS commercial operators whose sole purpose is provision of passenger transport seems to be relatively straightforward. However, in the two situations identified above, where the operator’s sole business is not transport, the concept of hire or reward may require further clarification.

13. The first situation relates to provision of transport as part of a wider commercial enterprise. The business will clearly be benefiting as a result of the transport provision and therefore can comfortably fit within the concept of hire or reward as it is currently understood.

14. It is less clear how the second situation will be transferable to HARPS vehicles. In the second situation as it currently stands, there is not a clear commercial purpose. However,

there is usually an identifiable driver who is receiving the hire or reward. With HARPS vehicles though, who is the identified individual who is receiving hire or reward? For example, with minibuses, currently there will be a driver who can be the recipient of the hire or reward. How is this concept transferable to HARPS vehicles with no 'user in charge'? In the case of HARPS vehicles, will it be an operator who will be receiving hire or reward? Paragraphs 4.30 – 4.32 refer to a centralised operating system. Hypothetically, is the centralised operator the recipient of the hire or reward? Clarification is required in respect of the mechanics of HARPS operating systems in order to better understand how it could apply to the current understanding of hire or reward in the second situation.

### **Exemptions**

**Consultation Question 5 (Paragraph 4.46): 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.**

15. As with question 3, a central concern in licensing is ensuring reasonable safety standards. There should be confidence that transport provided for the use of community or other services meets required standards. Therefore, there should be licensing of some description. However, there is an obvious difference between those operating for commercial gain and those operating community or other services. Perhaps there could be a two-tier licensing system where all HARPS operators should be licensed but those providing community or other services are exempt from payment of a fee. It may be that other reliefs or exemptions could be applied, but these should not imperil the over-riding objective of ensuring safety. For this to be feasible, such services will need to be appropriately defined. They are distinguishable from HARPS operators who seek commercial gain and are clearly not operating vehicles for personal use. Operators who do not fit either of those situations could possibly be treated as falling into an exempt category.

**Consultation Question 6 (Paragraph 4.54): 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).**

16. There should be some form of monitoring trials to ensure that they are conducted to appropriate standards. However, any formal requirements to conduct these trials should not be so onerous as to prevent developers conducting them. In order to be appropriately

monitored, perhaps developers should apply for HARPS operator licences. But these should be modified to accommodate the purpose of a trial as opposed to carrying passengers for commercial gain.

### **Operator requirements**

**Consultation Question 7 (Paragraph 4.72): 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?**

17. Yes. HARPS operators will be liable under civil law for breaches of common law or statutory duties. It is important that there is accountability within corporate structures and that HARPS operators can easily be sued and are able to meet any remedy ordered under civil law. The licensing regime should be constructed so that the public can be assured that this is the case.

**Consultation Question 8 (Paragraph 4.73): How should a transport manager demonstrate professional competence in running an automated service?**

18. This is a policy question on which the Faculty of Advocates would not express a view.

### **Adequate arrangements for maintenance**

**Consultation Question 9 (Paragraph 4.89): 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”?**

19. We strongly agree with both proposals. It is of the nature of a HARPS vehicle that there will be no responsible human being on board the vehicle who might be regarded as fulfilling a role analogous to that of a “user in charge” let alone that of the driver of a non-automated vehicle. It would be intolerable were this to lead to a regulatory vacuum, or even the possibility of such a vacuum. The obligation to ensure that a public service vehicle is roadworthy is of paramount importance both in respect of the safety of those who are being carried on the vehicle and of other road users. Indeed, this obligation assumes particular importance in the case of HARPS vehicles, given the absence of the sort of onboard human/machine interaction that exists with conventional vehicles. The lack of real time human feedback on vehicle operation amplifies the need for reliable systems

and practices that ensure roadworthiness. This is one of the issues highlighted at paragraph 4.85.

**Consultation Question 10 (Paragraph 4.90): Do you agree that legislation should be amended to clarify that HARPS operators are “users” for the purposes of insurance and roadworthiness offences?**

20. We agree. The rationale for our answer is similar to our rationale in relation to our previous answer. Without there being explicit clarification that a HARPS operator is a “user” for these purposes, then there is a danger that there will be a regulatory vacuum, resulting in possibly inadequate protection of passengers and other road users.

**Compliance with the law**

**Consultation Question 11 (Paragraph 4.124): 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?**

21. For each of the first three the argument is well made out and we agree with the proposals.
22. The fourth proposal may be more problematic. Whilst it is difficult to disagree with proposal four in principle, the complicating factor is the regulatory divergence in the present regime, for example, as to whether the use of CCTV cameras should be mandatory. The problem breaks down into, first, what systems should be in place and, second, what the operator should do when assault, abuse or harassment is detected. In relation to the first issue, whatever the regulatory requirement for the fitting of CCTV cameras, the situation on the ground appears to be that on-board CCTV is now the norm on buses and trains. Extending that to HARPS does not appear to present any further inroad into privacy. CCTV has shown its value in preventing and detecting crime in public places. We believe that it is justifiable for the fitting of CCTV on HARPS vehicles to be made mandatory, at least in the absence on board of a human steward or similar person charged with ensuring passenger safety. As to the second matter, it is not obvious from the consultation material whether something more onerous is in contemplation than the level of responsibility that presently exists on the driver when, for example, there is a disturbance on a train or bus. Although a driver of a train or a bus would be able to react to a disturbance (such as that contemplated in paragraph 4.117), it is unclear whether they are presently under any obligation to do so, beyond calling in the police. It seems sensible to us to allow a facility whereby a supervisor can react to an on-board alarm and

make direct audio contact with the vehicle, in the way a driver would currently, warning miscreants of the existence of recording CCTV and the fact of a police alert to the event. That would seem to put the passenger in no poorer situation than a present-day bus or train traveller. If the question is whether such steps would be mandatory then, if no such decision is taken in the case of non-automated public transport, perhaps the market can decide between the HARPS operators who offer the security of it and others who do not.

**Consultation Question 12 (Paragraph 4.125): 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)?**

23. We have no strong view. With respect this is not an easy question to answer as it stands. For it to be possible to use background information to put the reported events into context, would there not have to be a corresponding obligation on existing utilities for that same background information, in order that like is compared with like?

**Consultation Question 13 (Paragraph 4.128): Do you agree that the legislation should set out broad duties, with a power to issue statutory guidance to supplement these obligations?**

24. We agree, subject to the requirement that laws giving rise to punishment for breach should be readily understood and intelligible.

### **Price information**

**Consultation Question 14 (Paragraph 4.133): 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?**

25. The Faculty of Advocates makes no comment on the specifics of this question.
26. However, it is noted that it would seem to be in the public interest that as much information about HARPS services is publicly and freely available rather than being retained or restricted by HARPS operators where it is in their commercial interest to do so.

### **Who should administer the system?**

#### **Consultation Question 15 (Paragraph 4.138): Who should administer the system of HARPS operator licensing?**

27. This is a policy question on which the Faculty of Advocates would not express a view.

### **Freight transport**

#### **Consultation Question 16 (Paragraph 4.140): We welcome observations on how far our provisional proposals may be relevant to transport of freight.**

28. The Faculty of Advocates has no observations to make on this question.

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

### **Setting a boundary between HARPS and private leasing**

#### **Consultation Question 17 (Paragraph 5.12): 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?**

29. Agreed that this is a sensible starting point. As the Discussion Document notes at 5:10, “It is important to focus on the initial period of the agreement. If a family hired a vehicle for one month and then kept renewing the arrangement from month to month, we think that this should continue to be seen as a HARPS even if the arrangement lasts for more than six months in all.”

30. It is understood that there are companies in the marketplace which already seek to lease or hire private cars on a “streaming” basis. By “streaming” is meant a type of arrangement currently seen in online services such as ‘Netflix’. These arrangements persist from month to month but are often and indeed are intended to be, indefinite but long term in their duration, possibly for years. Assuming that “streaming” is common in the provision and use of such vehicles, the application of the six-month limit will have an impact on the market insofar as it seems inevitable that consumers will opt for “streaming” rather than purchase or lease for six or more months. This is because the responsibilities upon the consumer would be so much less under the former arrangement. Equally, it means that the public can benefit from the knowledge that an appropriate ‘person’ that can be relied upon, both regarding technical competencies and financial answerability, is behind the

vehicle's use on the road. This would be a desirable outcome especially in the earlier stages of the widespread public use of such private vehicles but it could mean the effective end of any large scale 'second hand' market in autonomous vehicles. It would seem wise to consider the wider economic impact of such a development standing the size of the potential market involved.

**Allocating responsibility for a privately-owned passenger-only vehicle: placing responsibilities on keepers**

**Consultation Question 18 (Paragraph 5.40): 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?**

31. Agreed.
32. However, even where HARPS applies, it would be of benefit to have some form of responsibility imposed on an individual user in respect of heads (2) and (4) supra. For example, what if the vehicle has been vandalised in some way which impacts upon its safe use? The HARPS provider may not always be able to know this even remotely, yet it may be of great significance to the safe use of the vehicle. Similarly, if the vehicle is involved in an accident in a remote area, outside the range of any online communication with the HARPS provider, it may still represent a hazard to other road users and the public in general. Only a user on the scene could reasonably be able to take steps to notify the police or other agencies.

**Consultation Question 19 (Paragraph 5.41): Do you agree that there should be a statutory presumption that the registered keeper is the person who keeps the vehicle?**

33. This seems to be entirely a matter of policy but it has the benefit of clarity and ease of verification.

**Consultation Question 20 (Paragraph 5.42): 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?**

34. (1) We agree with this approach, though under reference to Answer 18 and the matter of responsibility where the lessor may have no way of dealing with an issue but a user does.
35. (2) We agree in principle but with the caveat that the lessor may only transfer the obligations to a lessee of similar financial and technical standing. To allow otherwise could put the public at risk and allow the lessor to avoid legal responsibility.

#### **Will consumers require technical help?**

**Consultation Question 21 (Paragraph 5.47): 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?**

36. We agree, though suggest that there is a need to ensure effective policing of this. For example, it may be that the regulations should impose an obligation upon all such providers to supply to the DVLA details of all such vehicles with appropriate vouching that such contracts are in force. In turn the DVLA should have power to require the immobilisation of any such vehicle until such time as such contracts are provided or restored.

#### **Peer-to-peer lending**

**Consultation Question 22 (Paragraph 5.53): 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.**

37. Reference is made to Answer 18 *supra*. What happens regarding responsibility for reporting issues of roadworthiness or accidents if peer to peer lending is ongoing seems to be an unresolved matter.

#### **Protecting consumers from high ongoing costs**

**Consultation Question 23 (Paragraph 5.60): We seek views on whether the safety assurance agency proposed in Consultation 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.**

38. Under reference to Answer 21 *supra* such information should be provided along with a warning that any non-compliant vehicle will be immobilised by DVLA for the duration of its non-compliance.

## **CHAPTER 6: ACCESSIBILITY**

### **What we want to achieve**

**Consultation Question 24 (Paragraph 6.11): 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.**

39. It seems likely that the promotion of accessibility by the regulatory regime will be central to ensuring the delivery of accessible services. It may be that highly accessible services would not be commercially attractive without a regulatory requirement to deliver them as part of a wider service.
40. In principle, it seems that a framework of accessibility standards would be required. This is so that regulatory bodies can ensure that, whilst a service meets minimum standards of accessibility, there is also appropriate provision of highly accessible services. For instance, the regulatory regime may require HARPS operators over a certain size to provide a proportion of their service offering in one or more categories of high accessibility.

### **Core obligations under equality legislation**

**Consultation Question 25 (Paragraph 6.31): 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?**

41. In principle, there seems no reason to exempt HARPS operators from these provisions.
42. However, the regulatory scheme should attempt to reduce any uncertainty introduced by the concept of “reasonable adjustments”, as HARPS operators may not be able to anticipate what a court or tribunal may consider a “reasonable adjustment” when making significant investment or system design decisions.

43. This uncertainty could be mitigated by a comprehensive framework of accessibility standards and requirements which would provide regulators and HARPS operators with a clear understanding of what they are required to do to provide a sufficiently accessible service.

### **Specific accessibility outcomes**

**Consultation Question 26 (Paragraph 6.106): 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? Developing national minimum accessibility standards for HARPS**

44. This is a question on which the Faculty of Advocates would not express a view.

**Consultation Question 27 (Paragraph 6.109): We seek views on whether national minimum standards of accessibility for HARPS should be developed and what such standards should cover.**

45. For the reasons set out in the previous responses, national standards of accessibility (including a minimum standard and various enhanced standards) should be developed.
46. The Faculty of Advocates makes no comment on what accessibility standards should cover but notes that they should cover any element of a service (whether physical, operational or communication) that impacts on accessibility.

### **Enforcement mechanisms and feedback loops**

**Consultation Question 28 (Paragraph 6.124): 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.**

47. The Faculty of Advocates makes no comment on the specifics of this question.
48. However, it is noted that it is likely HARPS operators will gather very significant amounts of information about journeys taken by members of the public. Subject only to the requirements of privacy, it would seem to be in the public interest that this information is available to the regulatory authorities and, so far as is possible, is seen as a public asset and freely available for transport planning, research, and in the interests of transparency

rather than being retained within the sole control of the HARPS operators and, inevitably, exploited as a commercial asset.

## **CHAPTER 7: REGULATORY TOOLS TO CONTROL CONGESTION AND CRUISING**

### **Traffic regulation orders**

**Consultation Question 29 (Paragraph 7.23): We seek views on whether the law on traffic regulation orders needs specific changes to respond to the challenges of HARPS.**

49. A detailed and comprehensive analysis of the impact on the law and procedure of Traffic Regulation Orders (“TROs”) is beyond the scope of this response or the expertise of the Faculty of Advocates. However, it seems very likely that changes will be required to both primary and secondary legislation to provide explicitly for HARPS, notwithstanding that existing powers are usually defined widely, so may deal with some or most of what is required for implementation of HARPS.
50. For instance, the Secretary of State or Scottish Ministers may wish to coordinate, monitor or approve TROs made by local authorities which relate to HARPS, at least until it is well established how such services should integrate with the existing road network. Enforcement of this will require amendment to the Road Traffic Regulation Act 1984 (the “1984 Act”) section 1 (or equivalent provisions).
51. There should probably be a new provision, equivalent to section 19 of the 1984 Act (which deals with regulation of the use of highways by public service vehicles) for HARPS.
52. Amendment to secondary legislation will also be required. For instance, HARPS operators and consultations about TROs relating to HARPS should be included in consultations under Regulation 4 of the Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 (and, presumably, the equivalent secondary legislation elsewhere in the UK).

## Regulating use of the kerbside

**Consultation Question 30 (Paragraph 7.59): We welcome views on possible barriers to adapting existing parking provisions and charges to deal with the introduction of HARPS. In particular, should section 122 of the Road Traffic Regulation Act 1984 be amended to expressly allow traffic authorities to take account of a wider range of considerations when setting parking charges for HARPS vehicles?**

53. In principle, it would seem preferable to make explicit provision for HARPS vehicles to be considered when planning road and parking infrastructure. However, consideration should be given to distinguishing, even in this Act, between HARPS operators providing a service which is a genuinely public offering in terms of availability and price (along the lines of a public mass transit system) and those providing an exclusive service more akin to taxi or private hire car. Making this distinction explicit may enable and encourage traffic authorities to appropriately privilege public use over private use in transport planning and parking provision.

## Road pricing

**Consultation Question 31 (Paragraph 7.86): We seek views on the appropriate balance between road pricing and parking charges to ensure the successful deployment of HARPS.**

54. This is a policy question on which the Faculty of Advocates would not express a view.

**Consultation Question 32 (Paragraph 7.87): 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.**

55. We query the premise of the question, which is that automated vehicles offer ‘a much more flexible approach to road pricing’ notably because their distance travelled, time of travel, and occupancy can be measured. It is not self-evident to us why this information should not be available (already or with attainable modification) from buses. Nor would we recommend assuming, without the benefit of experience, that the effect of automated systems on, for example, demand for parking will necessarily be greater than that of the comparable provision of buses. Though we defer to expert views on questions of economic policy, we would suggest that in the first instance the Scottish Ministers be granted a broad discretion to allow such schemes to be established if experience

suggests it would be beneficial; but that the default position be that automated systems be subject to the same prices as buses, absent such a scheme.

### **Quantity restrictions**

**Consultation Question 33 (Paragraph 7.97): Do you agree that the agency that licenses HARPS operators should have flexible powers to limit the number of vehicles any given operator can use within a given operational design domain for an initial period? If so, how long should the period be?**

56. We agree with the views provisionally expressed by the Commissions that such waiting periods may have anticompetitive effects and that their primary aim should be to ensure safety. The question whether a system is safe does not seem to us to be capable of being answered in advance by reference to a fixed period of time. It does seem to us that, if there is to be a power to limit numbers, then it should be related to safety, for example, limitation may apply unless and until an operator is able to demonstrate to the agency that the operator is able to operate safely. However, we do not understand that operators would be allowed to operate at all unless they are able so to satisfy the agency. We therefore doubt the need for, or utility of, such a power.

**Consultation Question 34 (Paragraph 7.120): Do you agree that there should be no powers to impose quantity restrictions on the total number of HARPS operating in a given area?**

57. Yes.

## **CHAPTER 8: INTEGRATING HARPS WITH PUBLIC TRANSPORT**

### **The current system of bus regulation: HARPS as mass transit**

**Consultation Question 35 (Paragraph 8.92): Do you agree that a HARPS vehicle should only be subject to bus regulation: (1) if it can transport more than eight passengers at a time and charges separate fares; and (2) does not fall within an exemption applying to group arrangements, school buses, rail replacement bus services, excursions or community groups?**

58. We agree that at least these conditions should be met. We would also suggest, however, that owing to the likelihood of automated systems' running in an adaptive way—responding to patterns of need as they emerge—there is the possibility that such systems might meet the conditions for regulation as bus services in an unforeseen and indeed transient way. We suggest, therefore, that an additional condition would have to be

imposed to ensure that this did not create an unpredictable and unviable situation for both regulators and operators. The condition might be, for example, that the operator had applied for regulation as a particular form of bus service (which might bring benefits such as the use of bus lanes or other priority traffic measures) or that a system which continuously operated so as to meet the conditions for regulation as a bus service for a particular period of time should be required to so apply.

**Consultation Question 36 (Paragraph 8.94): We welcome views on whether any particular issues would arise from applying bus regulation to any HARPS which transports more than eight passengers, charges separate fares and does not fall within a specific exemption.**

59. Please see response to question 35.

**Consultation Question 37 (Paragraph 8.95): We welcome views on whether a HARPS should only be treated as a local bus service if it: (1) runs a route with at least two fixed points; and/or (2) runs with some degree of regularity?**

60. Please see response to question 35.

#### **Encouraging use of mass transit: Mobility as a Service**

**Consultation Question 38 (Paragraph 8.109): We seek views on a new statutory scheme by which a transport authority that provides facilities for HARPS could place requirements on operators to participate in joint marketing, ticketing and information platforms.**

61. This appears to us to be primarily a policy question on which the Faculty of Advocates would not express a view.

62. This appears to us to be primarily a policy question on which the Faculty of Advocates would not express a view.