

**Response to Law Commissions' second consultation on Automated Vehicles
(Law Commission Consultation Paper 245; Scottish Law Commission Discussion Paper 169)**

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Any personal email addresses and phone numbers have been excluded from this document.

Unanswered questions have been deleted from this document.

What is your name?

Philip Lloyd

What is the name of your organisation?

Freight Transport Association

Are you responding to this consultation in a personal capacity or on behalf of your organisation?

[Respondents chose from the following options: Personal response; Response on behalf of your organisation; Other.]

Responding on behalf of organisation

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?

[Respondents chose from the following options: yes; no; other.]

Yes

FTA would agree that HARPS should be subject to a single national system of operator licensing, but we believe that there needs to be a greater level of clarity to the definition of your term “mobility operator”, to ensure that it captures all those that may choose to use a vehicle as such.

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

[Respondents chose from the following options: yes; no; other.]

Yes

We agree that there should be a national scheme of basic safety standards for operating HARPS and would recommend that DfT engage with the Trade Association to help develop such.

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)?

[Respondents chose from the following options: yes; no; other.]

No

FTA does not believe that the definition “hire and reward” is sufficient to capture all those who may use these types of vehicles. As the aim of the licence would be to ensure those operating such vehicle do so in a same manner, then this definition fails to capture those who may use such vehicles without hire or reward – school minibus, nursing homes etc.

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

No

See our response in Q3.

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.

On the basis that the intent of a licencing regime would be to ensure that those transporting passengers do so in a safe manner, FTA does not believe that those group mentioned should be outside of the licencing regime. However, we think that consideration could be given to them falling under your other classification “Privately-owned passenger-only vehicles”, but not with the limitation of the proposals being made – see our comments to the question for Chapter 5.

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).

FTA accepts that the Secretary of State has to make provision to trial improvements to technology, etc and we would be supporting of this provision, subject to the usual safety assessments having been considered and suitable mitigation being in place.

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?

[Respondents chose from the following options: yes; no; other.]

Yes

We are in broad agreement with this requirement, but we question the current responsibilities and accountabilities of a Transport Manager, where their responsibilities are focus on the compliance of their drivers. We suggest that this role and its functions need to change to reflect HARPS operation.

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

As was mentioned in our response to Q7, FTA believes that the Transport Manager CPC will need to change to reflect the operating requirement for running safe and efficient HARPS.

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”?

[Respondents chose from the following options: yes; no; other.]

Yes

Although FTA would agree with the statement made, we believe that without the driver’s daily safety checks being undertaken, some other provision may need to be agreed and put in place. We would suggest that DfT engage with the Trade Associations to help agree the definition of what constitutes “reasonable measures”.

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?

[Respondents chose from the following options: yes; no; other.]

Other

FTA would agree with the statement, but in regards to roadworthiness offences, we believe more work is needed to define what these would be. Your previous consultation raised the subject of when an autonomous vehicle could break the law (mounting a kerb to make way for emergency vehicle, exceeding the speed limit to avoid a collision, etc), so this still needs to be clarified.

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?

[Respondents chose from the following options: yes; no; other.]

Other

In principle FTA would agree that the HARPS operator should have a legal duty, but the in respect to No 2 & 4 we believe that the level of supervision and what constitutes “reasonable steps” needs to be defined. Failure to do so could leave the operator liable and/or lead to reasonable levels of mitigation becoming too expensive to implement, making the running of such a service unviable.

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)?

[Respondents chose from the following options: yes; no; other.]

Other

FTA would suggest that some of the reporting requirement mentioned could be built into the data reporting of the autonomous vehicle. This would prevent the burden being placed on the operator.

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?

[Respondents chose from the following options: yes; no; other.]

No

Although FTA would be supporting of statutory guidance, we believe that any legislation should specify that guidance should be produced along with Industry (through its connections with the main Trade Associations) rather than it being imposed on the industry.

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?

[Respondents chose from the following options: yes; no; other.]

Other

If the UK is wanting to adopt a pricing framework aimed to be adaptable, in order to encourage users transition from single-use private transport to multi-use HARPS, then we would suggest any pricing structure and strategy needs to be flexible enough to allow the operator to facilitate this position. Achieving this outcome may require interdependence cooperation of operators to allow a flexible payments system for its consumers.

And/or (2) withdraw the licence of an operator who failed to give price information?

[Respondents chose from the following options: yes; no; other.]

No

See comments above.

Who should administer the system?

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

FTA would agree that the remit of the Office of the Traffic Commissions (OTC) would align with regulatory requirements for HARPS, however we would suggest that the current operating framework of the OTC and its relationship with DVSA (which may also change, due to other considerations being made in relation to regulatory powers for automated vehicles) needs to be considered.

Freight Transport

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

FTA has stated on several occasions that the operational functionality of freight is different to that of passenger transportation, especially regarding the connectivity and transportation of trailers, to what would be autonomous vehicles. Following a discussion with Jessica Ugucconi, we agreed that there should be a separate meeting to discuss the issues and challenges automation brings to the transportation of goods by road. We are awaiting this meeting and think that this would be a more suitable opportunity to cover these issues.

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?

[Respondents chose from the following options: yes; no; other.]

No

This proposal appears to be a rather simplistic given the complexity of the situation. As the continued safe use of an autonomous vehicle is in question, then the context of “Exclusive use” would need future clarification.

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?

[Respondents chose from the following options: yes; no; other.]

Yes

Subject to clarification of the role “Keeper”, then FTA would be supportive.

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?

Other

As outlined in the document, there are a number of issues associated with the term “registered keeper” in respect to accountability. FTA would question the suitability of DVSA’s V5 process in an era of HARPS (privately owned or otherwise) and would recommend a review of the registration on HARPS in line with accountabilities where these vehicles may be operating without passengers in a fully autonomous mode, makes decisions, and takes action, based on data received – to which the “keeper”, “registered keeper”, or others, may have no awareness of, yet they be accountable for.

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?

As with question 18 & 19, this will dependant upon the definition of the Lessee and the limitations or otherwise imposed.

(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?

As with question 18 & 19, this will dependant upon the definition of the Lessee and the limitations or otherwise imposed.

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?

Yes

In principle FTA would be supportive of this approach, but again this would be subject to the detail terms of “supervision” and maintenance.

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.

Yes

Based on the current issues faced with illegal PSV and Taxi/Private Hire operation, then the introduction of HARPS will potentially presents a greater level of opportunity for misappropriation for those choosing to do so. The implementation of the principles in Q21 may go somewhat to mitigating this situation

Protecting consumers from high ongoing costs

Consultation Question 23 (Paragraph 5.60): 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.

FTA would endorse this approach but is unclear how in a growing global market of software development and deployment, this will be realistically feasible in the future

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.

FTA would suggest that any change to regulation is evidence based. On that basis we would suggest that a review be undertaken on the percentage of DDA compliant vehicles in circulation and the use that is being made of such provisions. Although we applauded the aspiration to make HARPS accessible to all, there needs to be consideration to both the feasibility and cost implications of compliance, balanced against the potential for use. It may be more viable in some situation to have a mobility only HARPS solution.

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?

[Respondents chose from the following options: yes; no; other.]

Other

Operating vehicles with a driver/conductor/assistant in attendance can often enable compliance to the Act, via those facilitating the “reasonable adjustment”. Although provisions can be made within the vehicles, their use and/or adaptation can often necessitate human intervention – which would not be available in HARPS environment. FTA considers that the context of operating HARPS within this context, needs to be given greater consideration and we therefore do not agree with this proposal.

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?

[Respondents chose from the following options: yes; no; other.]

Other

There maybe a case for limitation of provision on the basis of an overall mobility strategy across towns/cities, etc. Clarification of multi-user service provision (what we would think of as bus services); timetables, accessibility, ingress/egress/assistance provision, etc; along with intermediary provision (what we think of as a taxi provision), in conjunction with alternative provision (single-user HARPS), could provide a solution to address the issue. This however

would necessitate a legislative package requiring all parties (government, local authorities, HARPS providers, etc) to work together to offer mobility solutions tailored to the particular needs of its citizens/visitors.

(2) Requiring reassurance when there is disruption and accessible information?

[Respondents chose from the following options: yes; no; other.]

Other

See above

(3) Expansion of support at designated points of departure and arrival?

[Respondents chose from the following options: yes; no; other.]

Other

See above

Developing national minimum accessibility standards for HARPS

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.

FTA would agree that having a defined standard would be beneficial, but we believe that the development of such should be undertaken with those who have a better understanding of their needs. We would also suggest that consideration is given to the profile of future users so that these standards are set against both current and future needs. I.e. despite the average size and weight of persons increasing over the past few decades, current legislation for PSV has failed to keep pace, or to take account of such changes.

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.

[Respondents chose from the following options: yes; no; other.]

Other

FTA considers this requirement to fall under the regulators responsibilities and should be accounted for in the provisions that needs to be made for them.

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.

We agree that the law on TROs for HARPS needs to change.

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 112 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?

[Respondents chose from the following options: yes; no; other.]

Other

FTA would suggest that parking provisions, charges and conditions need to be reviewed in light with both HARPS and other future autonomous vehicles. Additionally, we would recommend that this be a nationwide review in order to prevent the introduction of localised practices, that make it hugely burdensome for operators and/or privately-owned HARPS/fully autonomous vehicles.

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.

FTA's view for any change in road policy, is that it should be fair and proportionate. In regards to HARPS, as the intention is to transition passengers away from their own vehicles onto public transport (for all the reasons outlined at the beginning of the consultation document), then consideration need to be given to the cost implications of any road pricing/parking charges. Failure to do so could mean the costs and lack of convenience of using HARPS may not outweigh that of car usage. More work needs to be done to move the mindset of transport and parking, being seen as a source of revenue, to being one that aids economic and welfare benefits.

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.

[Respondents chose from the following options: yes; no; other.]

Other

FTA would oppose Transport Authorities having any new statutory powers in establishing road pricing, as we would see this as just another financial burden on transport. Government already taxes road users through Vehicle Duty and VAT on fuel, but perhaps it is time to review the whole funding arrangement to ensure that revenue for government will pay for the infrastructure needed for the future as well as encouraging more effective and environmentally friendly choice for users.

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?

[Respondents chose from the following options: yes; no; other.]

Yes

In principle FTA would support such a move, providing it does not create and monopoly situations, or lead to substantial variation in volumes which fail to meet the user's needs. Perhaps licences should be conditional to the service offering – akin to subsidised bus routes. Government should learn lessons from the de-regulation of the bus industry, which led to a vast increase in the numbers buses competing for a fixed number of passengers. A review of the necessity to increase volumes should be undertaken annually, until such a time where stability is sustained.

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

[Respondents chose from the following options: yes; no; other.]

Yes

See comments in Q32.

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 if it:

(1) can transport more than eight passengers at a time and charges separate fares?

[Respondents chose from the following options: yes; no; other.]

No

As the safe operation of these vehicle is paramount then regulation should apply to al HARPS operation, though concessions made be provided where the level of risk is deemed to be minimised.

(2) does not fall within an exemption applying to group arrangements, school buses, rail replacement bus services, excursions or community groups?

[Respondents chose from the following options: yes; no; other.]

No

See above

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.

This would depend on what regulation that is intended to be applied. The current regulation needs to be considered in light of the operation mode of a HARPS in order to ensure that its application would be relevant and effective.

Consultation Question 37 (Paragraph 8.95): We welcome views on whether a HARPS vehicle 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.

Yes

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

Surely this would depend on the types of operation that each HARPS is undertaking and is perhaps more relevant to an operation you define as "local bus service".