

**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.

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What is your name?

Prue Hopley, Head of Client Insight

What is the name of your organisation?

Horwich Farrelly, Solicitors

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

A single licensing system would help to regulate and standardise the industry and ensure that reputable companies can produce and properly manage such systems and maintain a record of any faults that occur.

**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

To provide a universal framework of safety standards and to share information on any errors or accidents that can be accessed by members to monitor data and for companies operating HARPS to access and exchange information and improve the systems for the benefit of the end user, and other road users.

## **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.]

Yes

Any business which seeks to make profit for transporting passengers should have a license, as taxi drivers do currently, in order to ensure correct procedures are in place to maintain safety standards.

If a company is not licensed, this would disadvantage current licensing authorities and could compromise safety. The operators can then be subject to license endorsements if they fall short of the required standards, or could have licenses revoked.

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

Yes

We believe that there would be benefit in providing a definition for consumers.

### ***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.

At this stage, we do not believe that there should be exceptions but in the future there could be scope for vehicles such as disability support charities, church groups, retirement village transportation, or transport within the grounds of national trust properties for instance. Obtaining licenses for small groups could be too onerous to upkeep and may hinder such organisations from obtaining the benefit of automated vehicles.

**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).

We believe in principle that that the legislation implemented should enable the Secretary of State to make exemptions to the requirement for a HARPS operator licence or to modify licence provisions but the circumstances where it is allowed should be limited and narrowly defined.

### ***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

Sections 13A(2) and (3) of the Goods Vehicles (Licensing of Operators) Act 1995 currently require an Applicant for a standard licence to meet the aforementioned criteria and we are of the view that this should also be applied to HARPS licencing.

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

We are of the view that the criteria referred to in the Goods Vehicles (Licensing of Operators) Act 1995 should also apply to a transport manager wishing to demonstrate professional competence in running an automated service i.e. if, and only if:

- (a) he has demonstrated that he possesses the requisite skills by passing a written examination organised by an approved body and is the holder of a certificate to that effect issued by that body; or
- (b) he is the holder of any other certificate of competence, diploma or other qualification recognised by the Secretary of State.

#### ***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

We are of the view that a new safety assurance scheme or agency should be created in order to develop a roadworthiness test and HARPS operators should be legally obliged to ensure roadworthiness to prevent the risk of an accident and earn the public trust.

It should also be a legal requirement that HARPS operators demonstrate that they have regularly assessed and audited maintenance procedures in place to ensure that the vehicle and operating systems are updated and serviced in accordance with the standards set out by the said agency.

**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.]

Yes

Given that that it has been proposed that a HARPS operator is defined as any business which carries passengers for hire or reward, we agree that legislation should be amended to state

that HARPS operators are users for the purposes of insurance and roadworthiness offences in line with the current PSV operator licencing.

### ***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.]

Yes

We agree that given the nature of automated road vehicles, HARPS operators should have a legal duty to undertake the above requirements. These are essential duties to ensure the safety of passengers and other road users alike.

PSVs currently require insurance to be in place and this should be applied to HARPS. Likewise, there is a legal duty for PSV operators to report accidents which should also apply to operators of HARPS.

Given the anticipated challenges and the new concept of what supervision for HARPS will involve, we agree that at this stage a requirement for “adequate” supervision should be in place. This basic level of supervision can then be developed at a later stage through statutory guidance as further information is known regarding the best ways to provide optimal supervision.

In respect of safeguarding passengers, we believe that operators should have a legal responsibility for this, whether through heavily monitored remote supervision or employing “stewards”. Safeguards should include CCTV and audio recordings for real time monitoring that are properly stored and retrievable.

**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.]

Yes

Given this new technology and the evolving nature of automated vehicles, we agree that HARPS operators should be subject to some additional duties in respect of reporting untoward events. This is to guarantee the safety of passengers and the continued safe development of automated vehicles. A system of data capture to record such incidents is needed to be in place.

**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.]

Yes

We agree that the main legislation should set out the broad legal duties of HARPS operators and believe that any future changes can be supplemented by statutory guidance, as is currently carried out for PSV operators. Given the uncertainty regarding this technology, the legislation will need to be adaptable to allow for changes and developments which can be done through the continued use of statutory guidance. This can be issued at appropriate times when needed as more is known about the operation of automated vehicles.

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

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

We believe that the new agency responsible for authorising the automated driving systems should also be responsible for administering the system of HARPS operator licensing. Given the complexities of this new technology, we do not feel it would be suitable for the existing regime of Traffic Commissioners to administer the systems of HARPS as well as the current system of PSVs.

Although there would be the advantage of having only one regulatory body for both licenses, given the significant difference between the two types of vehicles, we do not feel that this would be appropriate. Whilst both agencies will still need to work closely to ensure a coordinated approach, there will need to be a distinct separation. This will allow the new agency for automated driving systems to develop a specific expertise for these vehicles which can be continually reviewed.

### ***Freight Transport***

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

## **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.]

Yes

We believe that the proposed period of at least six months is a reasonable time period to separate the two. This distinction would need to be clearly set out to anyone entering into an agreement beyond a period of six months so that consumers are adequately protected.

Any arrangement lasting less than six months should require the company supplying the vehicle to be licensed as a HARPS operator to ensure that such companies comply with their legal duties and all road users are adequately protected.

### ***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.]

Other

We agree that there should be clarity as to who is legally responsible for the above. Under current legislation, these duties are shared between the keeper, owner and registered keeper. Often, these three are the same person, albeit this is not always the case.

We agree that the person who keeps a passenger-only vehicle is likely to be the best person to fulfill these obligations as they are likely to be best placed to have the relevant information to order to comply.

We believe that a definition of and further guidance should be provided to confirm who is deemed the keeper of the vehicle before they become legally responsible in order to minimise any disputes.

**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?

Yes

Given the issues with identifying who is the keeper of the vehicle we agree that there should be a statutory presumption that this is the registered keeper. However the registered keeper should be able to rebut this presumption if they are able to prove that they were not the true keeper of the vehicle (i.e. not the individual with overall control) or the vehicle has been sold.

**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?

Yes, we believe that 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?

Yes, we believe that 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.

***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?

Other

We believe that there is a forceful argument that 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; at least in the short term.

The practical reality is that most manufacturers are likely to require that they (or their agents) are the suppliers of such contracts in view of their potential liability under the Act and that it would be akin to existing warranties provided by manufactures. However, what is put in place must be fair for consumers.

We believe this should be continually reviewed following the roll out. If it becomes clear that individuals can safely supervise and maintain the vehicles then the requirement can be removed.

### ***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.

#### **Other**

We believe that the current proposals will be appropriate for most peer-to-peer lending and group arrangements. If the statutory presumption places the legal responsibility on the registered keeper this will create certainty as to who is legally responsible for the various obligations but there needs to be clear and concise guidance so that joint owners are aware of their obligations and liabilities.