

**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?

Matthew Levine

What is the name of your organisation?

Institute and Faculty of Actuaries

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 5: PRIVATELY-OWNED PASSENGER-ONLY VEHICLES

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

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?

Q20(2) asks whether the lessor who is registered as the keeper of the passenger-only vehicle should only be able to transfer the following obligations to a lessee if the duties are clearly explained to the lessee and the lessee signs a statement accepting responsibility:

1. Insuring the vehicle
2. Keeping the vehicle roadworthy
3. Installing safety-critical updates
4. Reporting accidents
5. Removing the vehicle if it causes an obstruction or is left in a prohibited place.

Assuming this includes transferring to an individual, (3) and (5) seem quite onerous. Failure to do (3) could have quite significant consequences regarding the right of insurers to recover from those at fault. We would also question whether insurers will be proactive in checking before rather than after the event that safety critical updates are installed by the HARPS company (or individual). Regarding (5), even if a lessee had been well-briefed on the possibility of a passenger-only vehicle becoming an obstruction, they may not feel equipped to deal with moving it, especially if this happens in a congested place.

We suggest it may be premature to think about transferring all of these duties from a lessor to a lessee, since the lessor will not have a clear picture of what these duties entail until passenger-only vehicles have been up and running for a while. The lessor would be unable to give a clear explanation of scenarios that they themselves could not foresee.

In our view a statement accepting responsibility signed by the lessee might waive the lessor's liability but could fall short of a legal document that safely transfers onerous obligations.

For all the above reasons we would have serious concerns about transferring all of obligations 1-5 to an individual (or a non-HARPS company).

The IFoA and the Royal Statistical Society have jointly produced a Guide for Ethical Data Science, which identifies five key themes in this area. Two which we believe are relevant to this question are "Avoid harm" and "Maintain accountability and oversight".

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

Given the obligations stated in Q20 above and the potential consequences if things go wrong we think there should be a regulation-making power to require registered keepers to have in place a contract for supervision and maintenance services with a licensed provider. We think such regulations would allay some of the concerns set out above for Q20.

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

In principle, passenger-only vehicles would seem an ideal asset-sharing opportunity i.e. be driven to work and while at work let your vehicle be available for others to be driven around. Over-regulation could cause inefficient use of the vehicle park, or unregulated sharing ("who will know that I'm charging for it?"), while under-regulation could lead to safety being compromised.

In considering peer-to-peer lending and group arrangements we believe safety should be paramount. Care is needed to ensure that peer-to-peer lending is not seen as a way to avoid the HARPS requirements. We would support regulation-making powers to introduce some

form of peer-to-peer 'HARPS-lite' but we suggest waiting until it is easier to predict the likely consequences.

In relation to current ride-sharing and car sharing, we understand insurers have agreed that insurance is not affected if passengers are only contributing to running costs i.e. not-for-profit. We would welcome some clarification on why this should suddenly change when revenue/profit is involved. For example, is it because charging is seen by insurers and others as a change in the main use, with an increase in legal responsibilities and increased exposure?

CHAPTER 8: INTEGRATING HARPS WITH PUBLIC TRANSPORT

The current system of bus regulation: HARPS as mass transit

Consultation Question 39: Is there any other issue within our terms of reference which we should be considering in the course of this review?

Proof of insurance

Passengers getting into a passenger-only vehicle will want to be confident that it is safe to do so. We believe there is a case for requiring an insurance certificate to be displayed in such vehicles (with contact details for the insurer). At a minimum it should be a requirement to show contact details for the HARPS operator who presumably will know who the insurer is (unless they have transferred the obligation to insure the vehicle to another party).

Retrofitted technology

Retrofitted driverless car technology may introduce more complexity into the system if there are separate 'owners' of the vehicle and the retro fitted technology. When you buy the vehicle it may be 'driverless ready' but at some later stage when the [5G] infrastructure is ready it may have kit fitted that makes it capable of being a passenger-only vehicle. It may be that it is considered that such retrofitted vehicles would need a user in-charge and so are outside the scope of LCCP 245.

Safety critical updates

Perhaps proposals around safety-critical updates should be assessed in the light of current insurance requirements. Do insurers currently check that the cars they insure have a valid MOT or is this one of things sometimes checked at the point of a claim? We suspect that the current requirement for a car to be kept in a roadworthy condition is not given much prominence in the insurance sales and/or auto renewal process.