

IUA Response to Law Commission Automated Vehicles Consultation: Passenger Services and Public Transport

About the IUA

The International Underwriting Association of London (IUA) represents international and wholesale insurance and reinsurance companies operating in or through London. It exists to promote and enhance the business environment for its members. The IUA's London Company Market Statistics Report shows that overall premium income for the company market in 2018 was £28.437bn. Gross premium written in London totalled £19.559bn while a further £8.877bn was identified as written in other locations but overseen by London operations.

Chapter 3: Operator licensing – A single national system

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

We believe that this is paramount and follow and agree with the Law Commission's view that the primary objective of any HARPS legislation is to ensure their safe operation. Without such a system, the ability to supervise operators will be complex, leading to safety concerns and a fragmented network. In the context of highly automated vehicles, maintaining cybersecurity and ensuring that safety critical updates are carried out is of the utmost importance and, therefore, identifying the individual or organisation responsible for this maintenance is key to the safe operation. Such a system would also facilitate the smooth running of the network in order to avoid congestion by identifying and notifying individuals responsible for ensuring that malfunctioning and / or 'frozen' vehicles are removed from the road.

We also note the considerations in paragraph 3.84 of the Consultation Paper discussing the reasons why utilising the fragmented system of taxi/private hire would not be appropriate. Specifically, in respect of concerns around the resources of local authorities and the increased burden on HARPS operators in dealing with different regulatory standards.

We are aware that operators of such vehicles have a legal duty of care to fare paying passengers from both a Road Traffic Act (RTA) perspective, no injury through poor driving (e.g. falling down through harsh acceleration or deceleration) as well as their security. Operators using this technology will need to demonstrate that they are able to adequately perform their duty of care without a 'driver' being present. Current licencing for UK Operators issued by traffic commissioners obliges operators to abide by specific 'Undertakings'. These 'undertakings' should be reviewed and adapted in light of the introduction of such technology.

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

Yes

It is logical for a national scheme of basic safety standards to be introduced alongside the operator licencing system. Any service that will be utilised by members of the public, particularly in the absence of a user-in-charge, must be offered in a manner that ensures, to the best possible level, that users are safe. Such a requirement will be present during the manufacturing, ongoing upkeep and use of HARPS. It would be appropriate for the standards to address insurance, updates, maintenance, cyber security and remote supervision.

However, it is important to ensure that the introduction of minimum standards does not lead to HARPS providers simply seeking to meet the minimum, rather than achieve the best possible standards.

One member stated that the European Whole Vehicle Type Approval and associated processes should govern the standards of vehicle manufacture and the safety systems of the technology. It was suggested that the Traffic Commissioner should enforce the safe operation of such vehicles through the operators' licensing process, as per the current regulatory infrastructure for the UK. However, a review of those processes should be undertaken and updated where necessary to accommodate the use of such vehicles.

Chapter 4: Operator licensing - scope and content

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 the services of a human driver or user-in-charge in the vehicle (or in line of sight of the vehicle)?

Partly

One of our members has suggested that not-for-profit and charity status companies should also be included within the requirement for an operator licence.

Whilst we are comfortable with (2) above, we have some questions regarding (1), (3) and (4), the first of which we will address in our response to Question 4.

(3) – We do not think that HARPS operated on private land, such as to carry individuals from car parks into venues across open spaces should be exempt from the requirement to gain an operator licence. Therefore, we would question the approach by the Law Commission of adopting the narrower definition of 'road', rather than 'road or other public place', as is utilised for traffic provisions such as the main driving offences.

There are ongoing questions about the meaning of ‘use of a vehicle’ as posed by the case of *Damijan Vnuk v Zavarovalnica Triglav* (C-162/13) in the Court of Justice of the European Union (CJEU), as well as a number of subsequent cases. As discussions regarding the scope of the Motor Insurance Directive continue at a European Commission level, we think the Law Commission should continue to be aware of the implications of terms such as ‘road’. It is imperative to avoid discrepancies between the operator licencing requirements and liability provisions.

(4) – We question whether references to ‘(or in line of sight of the vehicle)’ are appropriate and provide sufficient clarity. We think that careful consideration of the implications of this phrase are required and that its meaning should potentially be limited to scenarios where the vehicle is in the process of parking.

More broadly, one member suggested that standards for remote operation and control should be established. The current UK Code of Conduct for Automated Vehicle Trialling should apply to this development and any lack of confidence should be researched and tested to ensure acceptability.

Consultation Question 4: Is the concept of "carrying passengers for hire or reward" sufficiently clear?

Other

The test for hire or reward is well established and understood. However, we think that any further clarification around ‘service for which payment is made go beyond the bounds of mere social kindness’ would be welcome. We follow the discussion of the cases of *Albert v Motor Insurers’ Bureau*, *DPP v Sikondar* and *Rout v Swallow Hotels Ltd*, but do not think there is absolute clarity as to whether an individual, for example, lending their vehicle to a friend to use once a week, whereby a payment is made for running costs, would qualify as ‘social kindness’. This is irrespective of the fact that legal precedent discussing the phrase ‘social kindness’ typically result in the service being deemed a Public Service Vehicle (PSV). In the context of HARPS, relying on the decisions of courts would not give operators that are unsure if they classify as HARPS the certainty as to whether to gain a licence. The framework built should clarify at the outset in every circumstance whether the operator requires a licence.

We would welcome consideration of whether a better test is if the service is publicly available (irrespective of cost) or is a private arrangement (i.e. one individual to another). However, we are uncertain as to whether this approach may also expose loopholes for entities carrying passengers for hire and reward to not make the service be seen as ‘publicly available’.

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 licencing.

We do not agree that it would be appropriate for exemptions for community or other services to be exempted from the operator licencing. It is necessary that regulations maintain the strictest controls at the outset of the introduction of new technology. Consideration for any relaxation of such controls can only be considered once widespread adoption and safety is assured. It is not advised to consider this for any operator type at this stage.

We further question whether exemptions from licencing payment would be more appropriate than broad exemption of such services from the scheme. This would ensure that safety standards are in place across the board for this complex, new technology, without discouraging groups of people from utilising HARPS as a method of transport.

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

We would, in principle, support any methods to encourage the trial of new HARPS technology and potentially modified licence provisions for such trials undertaken in accordance with the UK Code of Conduct for Automated Vehicle Trialling, but only in the event they do not compromise the safety of the public as demonstrated by a 'stringent safety case'. Therefore, exemptions would have to be considered on a case-by-case basis, following set guidelines, and we support the onus being on manufacturers to provide such use cases.

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 follow the points raised in the Consultation Paper and do not have specific concerns.

One of our members has suggested that it is necessary to ensure that the obligation to provide evidence of appropriate insurance cover and the passing of all relevant safety standards are made clear to applicants. As the requirements will be technical in nature, it has been proposed that it may be more appropriate for applicants to apply for a Certificate of Professional Competence (CPC) for the use of automated vehicles.

Furthermore, it was suggested that few transport managers would be sufficiently knowledgeable and equipped to provide a comprehensive safety case meeting insurer and other regulator expectations. Therefore, it is recommended that the Government consider developing an educational programme to address this issue. It was questioned whether existing management CPC courses should be amended to accommodate such technology changes.

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

Insurers asked to provide products for automated services will inevitably take their own view on the competence of transport managers running an automated service, as well as the safety case for the service itself. In the early stages of HARPS development, where transport managers would have limited specific experience, it would be feasible to ask transport managers to provide a detailed safety case to demonstrate their professional competence in running an automated service.

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 follow the rationale behind the proposal outlined in the Consultation Paper and agree that this is fundamental in order to ensure the safe operation of HARPS. We would highlight the importance of the point made in Paragraph 4.86, around it being too early to understand the challenges of maintaining automated vehicles. It would be appropriate for these duties to be supported by guidance, which would have to be constantly reviewed in light of new understanding and technological development.

One member recommended that engagement with trade bodies, such as the IRTE and SMMT, is undertaken to ensure that maintenance standards are updated. It is crucial that both in-house engineering and specialist third party independent repair and maintenance bodies are suitably educated to new standards. This is to ensure that the safety of new vehicle technology is maintained.

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

Responsibility must be attributed to an individual overseeing the use of HARPS. As the only stakeholder in regular contact with vehicles, it should be down to operators to ensure the relevant insurances are in place and to take responsibility for the roadworthiness of vehicles. Responsibility cannot be attributed to passengers as they do not have regular contact with one particular vehicle and, even if they did, would not necessarily have the understanding of the vehicle to identify issues impacting upon roadworthiness.

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

It would also be appropriate to consider further obligations such as the provision of data as required by authorities and insurers and ensuring that technical updates are completed.

We would welcome further guidance around what may be considered 'reasonable' steps to safeguard passengers and have identified this as a key area potentially requiring further consideration.

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)?

Yes

Please explain:

It is incredibly important that information regarding untoward events be collated in order to monitor the safety of individual HARPS operations and HARPS more broadly, when compared to individual use of connected and autonomous vehicles.

Using ‘miles without accident’ as a measure for safety of operations potentially encourages misreporting, particularly in the context of minor incidents which could provide valuable information if reported. Additionally, this may not accurately reflect the safety of one service in comparison to another depending on the type of road (if any) or location of the service. A better measure may be accidents per mile with a breakdown by road type, in order to provide some context to the data. It may also be appropriate to collect and distribute information regarding factors that may have contributed to an accident, such as weather conditions.

Consideration should also be given to the legal and practical issues surrounding the transfer and sharing of data. In our response to the *Law Commission Consultation on Automated Vehicles: a joint preliminary consultation paper*, we advised that it was of the utmost importance that an agreement with insurers is reached to ensure that in-vehicle data is provided to them in a usable format, following an incident, to ensure that consumers receive speedy and appropriate redress. Primarily, in-vehicle data will ensure that liability can be established in the event of an accident. We recommended exploring the possibility of a statutory requirement to collect, hold and transfer such data.

The following types of in-vehicle data were highlighted as being required in an accessible format following an incident involving an automated vehicle, in order to distinguish liability and ensure the rapid settlement of claims (please note that this list may not be exhaustive):

- time and location of event;**
- status of ADS (engaged or unengaged);**
- details of actions taken by ‘user-in-charge’ or ‘fallback-ready user’;**
- details of any recent handovers;**
- speed of vehicle prior to and at collision; and**
- camera footage.**

It should also be considered that this duty apply in respect of incidents, not directly related to the driving of a vehicle, such as dangerous passenger behaviour.

It is fundamental to consider the potential for data that is collected more broadly by the vehicle, as opposed to specifically at the time of an accident. This data may help identify problem areas and potential accident blackspots that are caused or derive from the inability of HARPS to operate effectively within their normal parameters.

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

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?

Other

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

Other

The IUA supports any measures that increase the public's trust in this new technology, but do not have any specific comments in respect of HARPS pricing.

Consultation Question 15: Who should administer the system of HARPS operator licensing?

We do not believe that we are best placed to answer this question.

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

Please share your views:

The IUA agree that freight operators are a likely route for automated vehicle take-up and so would logically need appropriate regulation and legislation to reflect that usage. It is imperative that issues that develop out of international transportation, such as cross-border differences in safety standards and regulations for the operation and maintenance of such vehicles are considered.

It was commented that consideration needs to be given to domestic and international operator licencing broadly, both in respect of tourism to the UK and the use of such vehicles on UK roads.

Chapter 5: Privately-owned passenger-only vehicles

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

We agree with the Law Commission's reasoning outlined in Paragraph 5.10 that a family hiring a vehicle for one month and renewing the arrangement on a monthly basis, would not be subject to HARPS requirements and that this would fall to the vehicle provider.

Consultation Question 18: Do you agree that where a vehicle which is not operated by a HARPS licence-holder is authorised for use without a user-in-charge, the registered keeper 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?

Yes

The IUA agree that where a passenger only vehicle does not fall into the definition of operating as HARPS, the above requirements would be appropriate. Furthermore, we would highlight that, due to cyber security concerns, if safety-critical updates have not been installed then the vehicle would not be classed as road legal.

We would suggest that the reporting of accidents should be automated and linked to the vehicles system to ensure consistency in reporting and a rapid response to a collision.

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

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.

Other

Please share your views:

One of our members has suggested that it may be appropriate to prohibit vehicle hire companies from being able to delegate obligations to lessees. The rationale behind this was the difference in information available to the consumer and the leasing company, meaning that consumers may not have the resource or expertise to take on this responsibility, or to understand the implications of doing so.

It has been further commented that engagement with the British Vehicle Rental & Leasing Association (BVRLA) would clarify this position, as it ensures best practice amongst its rental and short term hire members.

- (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 follow the argument that it may be appropriate for a long-term lessee with exclusive access to a vehicle to be encouraged to take on some responsibilities, for example the immediate reporting of accidents.

It would be appropriate for the Law Commission to issue further clarification on reversing the responsibility if the lessee is subsequently unable to maintain those obligations whether for financial or other reasons.

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?

Yes

Consultation Question 22: We welcome views on whether peer-to-peer lending and group arrangements relating to highly automated passenger-only vehicles might create any loopholes in our proposed system of regulation.

The main consideration is ensuring that passengers hiring a vehicle for a short time, from another private individual, can be confident of their safety regarding the road-worthiness of the vehicle, such as in respect of software updates, mechanical roadworthiness and insurance. Therefore, it is essential to provide a mechanism for two parties to agree the transfer of responsibility for a vehicle.

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.

Please share your views:

It is important that there are clear assurances given to consumers regarding the ongoing costs of automated vehicles.

CHAPTER 6: ACCESSIBILITY

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.

It is our opinion that the key concerns that regulation must address in respect of accessibility are safety, security and maintenance costs/affordability.

One member stated that existing Disability Discrimination Act (DDA) regulations that apply to public transport operations should also be applied in respect of HARPS. Inclusion is crucial as this will be one of the main benefits of such technology.

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?

Whilst we are not best placed to answer this question, we believe that as part of the publicly available transport system, it is essential to ensure discrimination of HARPS users is legislated against.

One of our members has specifically recommended that legislators undertake further analysis on the most appropriate course of action to ensure protections are in place.

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?

We have received member comments of general agreement. However, we would seek further analysis of the practical aspects of the above examples.

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.

Yes.

These should be developed and in place for HARPS in line with minimum standards for other forms of public transport, including but not limited to necessary infrastructure and vehicle adaptation.

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.

Yes.

Feedback from our members confirms that data reporting is extremely important during the rollout of new technology. This is to ensure that challenges are identified and dealt with in respect of all aspects of the use of these vehicles, including with regards to inclusivity and equality.

CHAPTER 7: REGULATORY TOOLS TO CONTROL CONGESTION AND CRUISING

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 do not have any specific comments in respect of this question.

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.

We do not have any specific comments in respect of this question.

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?

We do not have any specific comments in respect of this question.

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.

We do not have any specific comments in respect of this question

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.

We believe that the pricing model of such a scheme should reflect the positive impact HARPS are likely to have on congestion on the roads, public safety and the wider environment.

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?

Yes.

In principle we would agree with powers to limit the number of vehicles an operator is able to use within a given operational design domain, to maximise the safety of the public and build trust in this new technology. However, we would ask for further consideration to be given as to how this would be implemented, taking into consideration possible perceived infringements upon Competition Law.

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?

We do not have any specific comments in respect of this question

CHAPTER 8: INTEGRATING HARPS WITH PUBLIC TRANSPORT

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?

A member stated that further work would be required in order to synchronise with current bus regulations.

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.

We do not believe that we are best placed to answer this question.

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?

Yes.

3rd February 2020



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.

We do not believe that we are best placed to answer this question. However, we would comment that Competition Law needs to be considered by the Law Commission in this scenario.

International Underwriting Association

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