

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

Please note that this consultation response has been reproduced from information entered on the Citizen Space online portal.

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?

Jennie Martin

What is the name of your organisation?

ITS United Kingdom

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

As an extension of the current licensing regime and to create fewer opportunities for loopholes.

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

As an extension of the current vehicle standards regime, including current EU regulations and formal Standards, which the UK should (continue to) seek to influence.

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

Yes, but there is also a need to think about new ways of providing mobility which may come with the introduction of AVs. There should also be licence extensions for certain off-road business (e.g. farms, country events, private land). Safety should be assured right to the final destination.

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

Other

The general concept is clear, but terminology should be defined to provide further clarity ('reward' is quite vague). Previously “Hire and Reward” has included carrying the property of others in exchange for a fee (such as furniture removers). What would this mean for HARPS? It is a passenger service, but the passengers' property would be in the vehicle as opposed to the passenger themselves.

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.

Nobody should be allowed to operate HARPS without some form of legal oversight. But the way bus services are regulated now, with the same rules and cash in the bank / insurance requirements applied to all operators whether multinational corporations or tiny community enterprises is inappropriate now and should not be replicated in any new situation including HARPS. A more differentiated operator licensing should be considered.

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).

The UK has prioritised the creation of a light touch and welcoming regulatory environment for AV trials and building on this, getting (safe) trials on the road should be made as easy as possible. Trials must have assured safety: it should continue to be a legal requirement that there is a safety driver or safety operator ready and able to override the vehicle, though not necessarily within the vehicle. Detailed safety cases must be undertaken for any trials that can be made exempt from the HARPS operator license.

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.]

Other

There is a risk here of taking the easier option of cutting, pasting and lightly amending existing regulations which originate many decades ago and reflect an operational environment very different to the one HARPS will exist in. The licencing regime for HARPS operators should be created from scratch in order to work effectively in this wholly new landscape.

A very important aspect, and one where past experience in bus and freight regulation certainly does point the way to what is important, is enforcement. There is currently too little of that with freight since the decimation of road traffic policing and it is doing our safety, air quality, and criminal law compliance no good.

When designing regulations for HARPS we should think as much about how we are going to enforce as about what it is going to say in the regs.

The items listed in the question would seem to be a minimum but there are probably a lot more sensible requirements e.g. concerning ability to recover defective vehicles which will evolve with experience. Some others may be:

- o A detailed safety case, with:
 - Information on their specific planned activity, vehicles, and operational domain.
 - Alignment with the activity to legislation and regulations.
 - Evidence that activity can be performed safely.
 - Not only transport manager, but appropriate safety driver/operator.
 - Organisational responsibilities.
 - Engagements required with relevant bodies, authorities and road users.

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

A regime of training with formal examinations and issuing of certificates will be required. Demonstrating proper understanding of the safety case will be essential. When designing the certification regime, a wide range of input will be required. Training and examination providers will need to be rigorously inspected and controlled by the public sector.

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

These seem obvious requirements but there are probably more e.g. recovery of defective vehicles. In addition to the serviceability of the vehicle the data gathered/produced by the vehicle must be adequately handled in accordance with GDPR etc. It is expected HARPS will generate huge data.

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.]

No

The way insurance and roadworthiness are enforced needs to change to accommodate this new mobility, not the other way round. This needs to be redefined, rather than fitting into an existing “user” category concept. HARPS operators may not be the user, in some cases the user should be protected suitably by the HARPS operator.

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

In principle yes, but how do you define 2) and 4) in any sensible legally binding way? Operators should not only carry out supervision, but should have a legal duty to perform effective intervention in the case of defects/other issues too. Note that supervision is likely to be via remote monitoring. Operators should also report near misses as determined from the data gathered.

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

We assume that this question is about providing information to state agencies such as police, security services etc. However, it seems compatible with UK levels of acceptable surveillance that a state agency would have to get a court warrant to get this information, as they do now with taxi records, smart card ticket data etc. This type of action must always be carefully defined and audited, and undertaken in accordance with related data laws.

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

This is a sensible approach as laws take a long time whereas Statutory Instruments, licence conditions, guidance etc. can be more readily modified.

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.]

Yes

This follows the principles of the recent Bus Services Act and bus open data, and is an essential requirement for all future mobility services. The information is required to incorporate into travel planning and ticket selling platforms.

Transparent pricing is also a good in its own right. Of course, different operators may offer different prices reflecting service quality, market conditions etc.

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

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

Yes

Who should administer the system?

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

Our existing licensing agencies should be extensively involved in this, to ensure continuity of knowledge and experience. As it must be a national scheme it has to be central government or an agency of central government e.g. similar to the Civil Aviation Authority. CCAV and Zenzic should also be closely involved. This function is too sensitive to be privatised.

Freight Transport

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

There are many parallel issues and one can envisage transporting both passengers and freight simultaneously (as airlines do now). This allows cross-subsidising and better business models. The public do not much care if a vehicle is transporting people or goods as long as it behaves sensibly and is safe. Therefore the regime should be as similar as possible for both activities.

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.]

Other

Individual ownership (whether leasing or buying) should not be on a “casual” basis as with existing cars. It should be more like owning an aircraft where the owner effectively becomes responsible for HARPS operations. This responsibility can be discharged either by contracting with a third party HARPS licence holder or by obtaining a “HARPSminus“ (in this concept the “HARPSminus” which requires everything of a HARPS licence holder but does not permit using the vehicle for hire or reward).

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

Same principle as Q17.

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

There needs to be an incentive to update records.

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?

Surely this will be a normal part of the lease contract.

(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?

This appears to set up an unnecessary loophole. If you are the “registered keeper” in current terms then the obligations are on you. Ignorance of regulations is no defence now, and why give up this excellent principle? “Being explained at” is not enough. The obligations will be onerous and only a very few individuals will have the capabilities. The lessee has to discharge the responsibilities of the “HARPSminus” licence. This responsibility can be discharged either

by contracting with a third party HARPS licence holder or by obtaining a “HARPSminus” licence themselves (in this concept the “HARPSminus” which requires everything of a HARPS licence holder but does not permit using the vehicle for hire or reward). Many people would struggle to understand their obligations and duties. There needs to be an element of education and hence there should be courses to obtain said licence.

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

Unless the registered keeper obtains a “HARPSminus” licence themselves. This would help to address issues of people not doing the appropriate checks (most breakdowns of traditional vehicles are caused by running out of fuel and bald tyres. With more intricate systems including sensors and communications, registered keepers are unlikely to be able to supervise and maintain vehicles themselves appropriately. Requiring registered keepers to have this contract in place with a licensed provider would help to ensure all vehicles are safe.

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.

No

No more so than they do now for traditional vehicles, particularly in terms of insurance requirements. We cannot see any loopholes if the registered keeper has to contract with a third party licence holder (or becomes a HARPSminus licence holder themselves).

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.

Caveat emptor is an excellent principle and anything else is surely unworkable. For example, car dealerships in Cornwall have no legal obligation to tell customers about salt spray damage when they buy a car. This type of service is best left to customer organisations (AA, RAC, Which etc).

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.

This is an excellent point. As DDA applies to buses, trains and taxis, so to it should apply to anyone providing HARPS based services to the public.

We hope that HARPS will turn out to be beneficial for less able users but we are concerned that this has not been properly thought through and used as a public acceptability/ tick-box exercise. Presumably, eventually, HARPS will be lower cost but in just about every other respect as currently envisaged they provide less advantages for users with special needs than current taxis.

We must ensure that HARPS are designed to suit less able users as well as those who are able. Human assistance needs to be thought through, in particular at origins and destinations to help people in and out of the vehicle. Drop off/pick up locations need to be carefully considered, as you cannot drop a person with restricted mobility near a high kerb. The key benefit would be unlocking mobility for less able users, but this can only be realised if they have the correct support and reassurance in helping to use the vehicle. There is a role for people here, whether that be family/carers to assist or company employees.

Accessibility with respect to human machine interface to interact with the HARPS also has to be regulated to ensure meaningful and crucial interaction can occur between the passenger/user on the one hand and the HARPS and the organisation operating it on the other. The requirements of Person with Reduced Mobility/Cognition also needs to be regulated but there precious little work available to base any regulation on.

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.]

Yes

See Q24

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.]

Yes

This is where disabled access may scupper driverless unless we decide we can cope with some exceptions, and this requires careful consideration and in depth consultation with relevant representative bodies in order to achieve an equitable outcome.

With rail this is all undertaken on a case by case basis and information is key. Staff at stations are made aware that a passenger is on board with a particular need, and given information of what seat number they are at, what support they require, what time they will get in at, and at what platform (search TOCAbility project). There could be a similar model with driverless vehicles, in that there is a human support network to help passengers board and alight, all

underpinned by specific detailed information. The support network could take the form of a company that solely provides that support, or as part of the HARPS operator. Although, the company solely focusing on support would likely provide a better service. Regulation could be that HARPS operators are required to have looked into provisions for less able in detail, and have outlined possible provisions.

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

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

Yes

It will not be easy to legislate for this – the standard should of course be “timely and accurate information” but how do you define and enforce that legally? Real-time information should be an expected service. Where disruption occurs and information is not available, support teams must be on hand to help less able. Therefore, I think the regulation is that each HARPS operator should have a sufficient support team in place.

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

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

Yes

At designated points, it should be regulated that design must be fit-for-purpose for less abled people (dropped kerbs, tactiles, plenty of space to board and alight, appropriate signage around designated points). We cannot provide a service for the less abled if they will then be dropped in an area that makes life extremely difficult for them. Support should also be available with the provision of support staff as mentioned previously.

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.

Yes, the standards should cover accessibility provisions particularly for:

- o Alighting
- o Disembarking
- o 24/7 contact (in-vehicle button, e-call or other provision)
- o Lighting required
- o Requirements for drop off/pick up locations
- o Requirements for on-hand support staff
- Accessibility with respect to:
 - o Human Machine Interface

- o Gathering processing and dissemination of data

See also Q24

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.]

Yes

With the example of support staff, it should be known exactly which member of support staff helped which individual and on what date, so that if claims against were to come in, the HARPS operator would be able to discuss with the individual. Staff support could come in pairs to avoid 1vs1 claims.

As the population ages and the need for inclusivity increases the inclusion of data reporting by the operators for all persons with reduced mobility or cognition will have to be part of the regulatory duties. What the operators or the legislator do with the data is another matter to be legislated for.

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.

As long as there are clear assessment criteria for classifying HARPS functionality, then the current legislation structures should be fine. As required to support local policies and conditions, specific orders can be made to apply to some or all HARPS.

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.]

Yes

Amendments should allow a wider range of considerations when setting charges but not pure revenue raising.

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.

Of course we could give financial incentives for HARPS in this way. The question is, would we want to? For safety, probably yes. For congestion, no. For air quality, yes assuming they are all electric. For public health, no, since they may take non-driving users from cycling and walking.

HARPS should be subject to both parking and (smart) road pricing charges. The balance between the two and overall level of charging will depend on local conditions. So, there needs to be one national scheme overall (for information, payment etc) but local implementation for level setting.

Local-level setting for road pricing is extremely important. Cost models and road pricing will be extremely important to implementing HARPS in the correct way. I.e. if circling with no passenger in, it should be priced high. But as mentioned, this could be applied to vehicles more generally, not just HARPS. Parking could be priced zonally, most expensive in city centre and as move out getting cheaper and encouraging people to walk a bit further.

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.]

No

HARPS is but one class of vehicle. Any national scheme should apply to all vehicles and allow for different charges by type of vehicle, use, time of day road etc. i.e. a smart road pricing system.

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

One year would allow experience with all four seasons. There should be a trial period so that HARPS are not just happening to areas, and they're actually benefiting people and their area. But it will be very important to define and resource the enforcement of this.

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?

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

Yes

Number of vehicles should respond to market forces rather than be centrally restricted (after the initial introductory period).

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.]

Yes

Only regulate it as a bus while it is functioning as a bus.

(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.]

Yes

As 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.

Regulation-wise, no specific issues can be foreseen at this time. A bus service should operate the same way and be subject to the same oversight etc. whether it has a driver or not. The users are buying a service and the service is essentially the same

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.

A bus service should operate the same way and be subject to the same oversight etc. whether it has a driver or not. The users are buying a service and the service is essentially the same with and without a driver.

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.

Mechanisms for encouraging or requiring MaaS are at an early stage and the whole concept is not proven commercially. Any legislation should be cautious and flexible. Having said that, in principle HARPS are no different from other potential participants of a MaaS scheme and so, if legislation is to be introduced, HARPS should be treated as conventional buses/taxis

etc. (as appropriate) and included with the same obligations and advantages. More funding to transport authorities would also be required to provide these facilities.

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

There is a lack of attention to the huge amount of data that will be produced by HARPS. Both from a GDPR point of view but also from an R&D point of view. CAV will remain an arena of R&D for some time after commercial deployment and it is data that will be at the heart of any development. This data gathering and dissemination will pose challenges and opportunities to the operators and manufacturers but needs be regulated.