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Dear Scott,

**MACS response to the Highly Automated Road Passenger Services (HARPS)  
Consultation**

Please see below MACS response to the consultation, prepared by Keith Robertson, Lead on the Roads, Infrastructure and Active Travel Workstream.

Yours sincerely,

Kind regards,  
Aga Lysak

MACS Secretary

# Scottish Law Commission

## Highly Automated Road Passenger Services (HARPS) Consultation

### Consultation Questions

#### 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?**

Yes, MACS believes that there should be a single national system for licensing operators.

Consultation Question 2 (Paragraph 3.86):

**Do you agree that there should be a national scheme of basic safety standards for operating a HARPS?**

Yes, there must be a national scheme of safety standards. However, these standards should be comprehensive safety standards and not basic safety standards. It is people's health, safety and well-being that are at risk.

#### 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 license 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)?**

As long as vehicles are carrying passengers that have paid for hire or reward, service providers are being rewarded in some way the above four criteria are essential. We would add to this the rights of supermarkets, car parks and areas that are akin to public highways but not part of the principal highway, otherwise how is anyone, especially a disabled person, going to manage to make a door-to-door journey.

Consultation Question 4 (Paragraph 4.34):

**Is the concept of “carrying passengers for hire or reward” sufficiently clear?**

No, the phrase ‘for hire or reward’ does not give a clear enough description as to what is meant by essentially fee paying passengers, a much clearer definition must be made.

## Exemptions

Consultation Question 5 (Paragraph 4.46):

**We seek views on whether there should be exemptions for community transport schemes or other services which would otherwise be within the scope of HARPS operator licensing.**

Given the decline of community transport operators over the past 10 or so years MACS would ask that either consideration be given to exemption for community transport organisations or a relaxed version of the license be considered for community transport providers.

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).**

MACS could only agree with this if it was for trials of new technology only that would advance innovation. Otherwise, we could not agree with any statutory exemptions for a HARPS operator licence. The exemption should only be for the duration of the trial.

## 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**

This really depends on what the statement is really talking about, is it talking about lower levels of competence approval? Is this about smaller buses, taxis or private hire vehicles? We would still argue that a certificate of professional competence is required.

Consultation Question 8 (Paragraph 4.73):

**How should a transport manager demonstrate professional competence in running an automated service?**

We believe that there should be a requirement for a specific addition to the CPC for those operating 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”?**

In general terms MACS would agree that operators should ensure roadworthiness and be able to demonstrate maintenance for the vehicles and operating systems but some fees in arrangements should be considered to be able to develop the systems and ensure that proper and adequate training provided by professional trainers is of suitable standard.

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?**

MACS would strongly suggest that any amendments to existing legislation should be better than what is in place at present and that HARPS operators are not described as ‘users’ but as ‘service providers’.

### **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?**

Yes. All legal duties should be standard across the industry. However, the wording ‘reasonable’ steps should be removed because safeguarding should be at the heart of passenger care and the words ‘reasonable’ steps have proven problematic in other legislation because whatever is regarded as reasonable can only be determined by a court of law.

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)?**

Yes, operators must be subject to additional duties to report any untoward events such as violence, bullying, harassment of any kind and hate crime. Any reporting procedures should be standardised across the country. Information about miles travelled should be strictly controlled, perhaps using something like a tachograph that is used on heavy goods vehicles.

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?**

Yes, if guidance is not issued then it is unlikely that the duties would be fulfilled.

### **Price information**

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, and/or**
- (2) withdraw the licence of an operator who failed to give price information?**

MACS believe that there is a need to regulate to have an equitable tariff across the country. However, the licence should not be withdrawn on a first offence but should remain as the ultimate penalty for persistently not giving pricing information.

## Who should administer the system?

Consultation Question 15 (Paragraph 4.138)

## Who should administer the system of HARPS operator licensing?

We would suggest that, in Scotland, the HARPS licensing system should be operated by the Traffic Commissioner.

## Freight transport

Consultation Question 16 (Paragraph 4.140)

## We welcome observations on how far our provisional proposals may be relevant to transport of freight.

Although this is not an issue for MACS directly we would, nevertheless, suggest that strict regulation should still apply.

## 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?

MACS believe that any vehicle made available to the public for passengers only should be licensed and that no exemption should be given for any exclusive use especially for an initial period as that initial period, in theory, could be extended for a further duration.

## 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?

Yes. We would agree that if a vehicle is not operated as a HARPS the keeper of the vehicle should be responsible for 1 to 4. Otherwise, if the vehicle is removed or is causing an obstruction then who is liable for the recovery costs would that be the supposed keeper of the vehicle or the owner of the vehicle?

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?

We do not necessarily agree that the registered keeper is the person who keeps the vehicle. Perhaps technology needs to be investigated more thoroughly to be able to ascertain who is the registered keeper at any given time, perhaps the registered keeper could be identified through something like facial or speech recognition.

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?**

MACS thinks that the suggestions in question 20 are rather overly complicated and that something much better has to be developed that will readily identify what responsibilities the lessor and the Lessee are to be.

**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. MACS would agree with the suggestions in question 21.

**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.**

MACS believes that immaterial of the enforcement systems of regulation put in place that someone somewhere will find a way to exploit any loopholes that may not initially be obvious. If we remember back when tachograph's were introduced for heavy goods vehicles many drivers found ways to exploit the regulation of systems that had been put in place. We further believe that many loopholes will not be able to be identified until they have been commercially tested.

**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.**

We would suggest that it is imperative that consumers are given as much information as possible so that they can make informed decisions as to the ongoing costs of owning automated vehicles.

## **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.**

Any regulation that is designed to promote accessibility of highly automated road passenger services must be inclusive across all disabilities so that services are available to everyone and that no one is left behind.

### **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?**

Although we would agree with the overall principle that protects against discrimination are put in place problems are never-the-less likely to arise when we, yet again, make any duties subject to 'reasonable adjustments'. The problem with reasonable adjustments is that what is reasonable for one operator may not be for another and reasonability can only be determined in a court of law. In the meantime we know from experience that this can leave many disabled people excluded for a considerable length of time, which in turn can lead to further isolation and a rapid deterioration in mental health.

### **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?**
- (2) Requiring reassurance when there is disruption and accessible information?**
- (3) Expansion of support at designated points of departure and arrival?**

1. MACS could foresee considerable difficulties for boarding and awaiting vehicles if no driver or responsible person is available to assist disabled people to gain access to the vehicle and to ensure that disabled people have been seated and/or secured safely when the vehicle is in motion.
2. Disruption to services are not always informed to service users at present, therefore, the entire system of conveying information when services are disrupted needs to be overhauled immaterial if this is HARPS vehicles or indeed the more traditional vehicles that are used at present.
3. Problems exist with information about services at present and the entire system, related to the above, and types of format, size of font and the manner in which accessible information is conveyed needs to be revisited and made accessible. Accessible information should be a standard and not the exception. As an example, as more routes are being formed the timetables that are posted at bus stops have not increased in size, therefore, the font is getting smaller to the extent that someone who does not have a sight, cognitive impairment or mental health disability can't read what is being displayed at present.
4. Service providers in coproduction with disabled people need to take a very close look at what support is available at all points of departure and arrival. As things are at present there is likely to be no support unless prior notice is given to the service provider, in turn this means that disabled people are seldom able to take spontaneous journeys. The aim should be for equity and as such disabled people should be able to travel spontaneously.

## 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.**

MACS would certainly agree that national minimum standards of accessibility for HARPS must be developed and include everything from the design of the vehicles to support services at departure and arrival points and the links between modes of service so that when someone is taking a multimodal journey the modes of transport are interlinked with enough time being allowed to change from one mode of service to another. This is even more important with regard to HARPS as there is likely to be no method of being able to communicate between modes of transport.

It is also important that the minimum standards are not the bare minimum that people can expect because practice across all standards, to date, has meant that well they may be accessible for some they are certainly not accessible for all. We would suggest that minimum standard meet a high threshold on accessibility.

### 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.**

This is a difficult question to answer because operators of HARPS need to comply with GDPR and any disclosure of disability or age must always be voluntary because many people, especially those with hidden disabilities, may not want to disclose. Perhaps systems should be developed by where the person who is older or disabled could enter the relevant information via an app, in writing, or verbally depending on the individual's abilities.

Whatever method of voluntary disclosure is put in place it must be a consultation and in coproduction with older people and disabled people to ensure accessibility and that any request for such information is not perceived to be mandatory and intrusive. Disclosure must at all times be voluntarily without any pressures being put on the individual.

We do however see the benefits of collecting this data particularly for service design and improvements and ensuring the sustainability of services used by older people and disabled people to keep them connected.

## 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.**

MACS would envisage some changes being made to traffic regulation orders to accommodate HARPS. However, what specific changes are required is an unknown factor at present given the embryonic stage that the introduction of HARPS is at. However, any changes to TROs should be consulted upon before their introduction to ensure that any changes encompass accessibility.

### 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 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 would foresee the possibility of less expensive parking charges being made for autonomous vehicles because of their lack of emissions. However, we would also foresee these decisions being made by individual local authorities. Although this is what we would imagine would happen we would much rather see the standardisation across the country.

We would not foresee any changes to the blue badge system of parking for disabled people. For instance, smaller vehicles such as minibuses that are used for disabled people can apply for a blue badge at present and we would not foresee any changes to the criteria.

## **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.**

This question is not applicable to Scotland as there are no road toll or bridge charges in Scotland and therefore no correlation between road pricing and parking charges.

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.**

As with question 31 there being no road or bridge toll charges in Scotland and unlikely to be this question is not applicable to Scotland.

## **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?**

We feel that question 33 can't be answered at present and that it is premature to suggest any limit to the number of vehicles any given operator can use within a given operational design domain for them for an initial period or longer. We feel that this question is more in the domain of possible operators but to coin a phrase, at present is a 'bit of a crystal ball question'.

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?**

No, MACS believe that powers to impose quantitative restrictions should lie with local authorities because of the geographical divergence between rural and urban in Scotland.

## **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:**

- (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?**

If a HARPS vehicle is operating a registered local bus service then it should be subject to current bus regulation and comply with any future changes to bus regulation. The key area of interest to MACS is accessibility. Public Service Vehicle Access regulations (2000) are relevant to vehicles used on registered local bus services and regular services where individual fares and charges are made. The Office of the Rail Regulator (ORR) has recently received legal advice on rail replacement bus services which states that these vehicles should comply with PSVAR as a fare is charged for the journey. Unfortunately PSVAR only applies to vehicles over 22 passenger seats. The regulations were written to ensure “wheelchair access” and this can cause a problem for many people with mobility problems who cannot climb steps as coaches have been designed with lifts that cannot be used for standing passengers. There are no current regulations on accessibility of smaller vehicles and MACS would therefore suggest that HARPS vehicles over 8 passenger seats **should** be low floor providing step free access for passengers

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.**

As stated above the only problem MACS would foresee is the current lack of regulation for accessibility of vehicles carrying between 9 and 22 passengers.

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?**

Again, MACS is concerned about providing access to services for all disabled people. Although current regulations are imperfect it would be unfortunate if HARPS were able to opt out of regulations currently applying to bus services. **MACS would therefore ask that all HARPS vehicles are fully accessible**

### **Encouraging use of mass transit: Mobility as a Service**

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.**

In the opinion of MACS HARPS should be required to participate.

## Humanitarian statement

MACS has serious concerns on the impact to some of the world's youngest and most vulnerable citizens, children, in that two of the principal components for batteries, including those for electric vehicles, are both deadly poisonous of cobalt and lithium. Cobalt is mined in various parts of the world but over half of the world's cobalt is mined in the Democratic Republic of Congo by children from the age of four.

In the region some 40,000 children per year are being disabled or killed by cobalt poisoning in the Democratic Republic of Congo.

How can we as a society hold our heads up and say that in switching to electrically powered vehicles, we are seeking to be carbon neutral when our perceived success is at the cost of so many young lives in a foreign country. Immaterial of what country this is happening we as responsible global citizens should be condemning the practices in the Democratic Republic of Congo and not simply accepting the casualties that our demand is contributing to.

While MACS wholeheartedly agrees and supports measures to reduce climate change in reducing our carbon footprint other methods of propulsion must be explored as a matter of urgency to stop what is nothing short of juvenile genocide in the Democratic Republic of Congo.

As a committee of ministerial appointed individuals to improve access to transport and transport infrastructure in Scotland we feel strongly about the humanitarian cost of cobalt mining.

The United Nations estimates that 250 million children, ages 5 to 14, work in developing countries - 61% in Asia, 32% in Africa and 7% in Latin America. Many of these children are forced to work. They are denied an education and a normal childhood. (Source United Nations)

Sources: <https://www.forbes.com/sites/jamesconca/2018/09/26/blood-batteries-cobalt-and-the-congo/#138e746bcc6e>

<https://www.theguardian.com/global-development/2018/oct/12/phone-misery-children-congo-cobalt-mines-drc>

<https://www.ft.com/content/c6909812-9ce4-11e9-9c06-a4640c9feebb>

<https://theirworld.org/news/drc-children-dig-for-cobalt-to-power-electric-cars-phones>

<https://www.amnesty.org/en/documents/afr62/7395/2017/en/>

Submitted on behalf of MACS by:

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