



Office of the Traffic Commissioner

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Automated Vehicles Team
Law Commission
(sent by email)

27 January 2020

Dear Sir / Madam

Automated Vehicles: Consultation on Passenger Services and Public Transport

I am responding to the consultation on behalf of the Traffic Commissioners for Great Britain. Traffic commissioners are appointed by the Secretary of State for Transport and are responsible for regulating operators of goods vehicles and passenger carrying vehicles as well as registering local bus services (outside of London) and considering the conduct of holders or applicants of large goods vehicles and passenger carrying vehicle driving entitlement. More information can be found at:

<https://www.gov.uk/government/organisations/traffic-commissioners>

Our responses to many of the questions set out in the consultation overlap. I have therefore attempted to set out the views of the traffic commissioners on many, but not all, of the topics raised in the consultation. If the response does not respond to a particular question that is due to the traffic commissioners having no settled view in that particular area.

The traffic commissioners see recognisable benefit to adopting a single licence approach to HARPS. Changing technology particularly through the use of 'Apps' and Smartphones has already blurred the regulatory schemes that are in place and the legislation has, in some areas, failed to keep pace with technology and the change in peoples' behaviours that result from that technological change.

The most important consideration for any passenger transport service is to ensure the safety of the passengers and other road users. Although the size of the vehicle and the nature of fares may differ this remains the overriding principle of regulation.

The existing PSV operator licensing scheme has successfully regulated the PSV industry for nearly 90 years. Throughout this period there has been a constant development of vehicle and type of use. The existing PSV operator licensing system provides a national, consistent approach to safety through effective regulation. This consistency has been difficult to achieve in those regulatory schemes that comprise of a number of different and autonomous bodies. The consultation recognises this in paragraph 3.24 in relation to the differing standards for private hire operators.

The traffic commissioners comment that, other than the area of automation, there is little practical difference in the nature of operation between those that may use automated vehicles and those that continue to use conventional vehicles. The requirements to maintain standards of safety remain the same and the vehicles share a great deal of common components. It is also likely that operators of larger vehicles will rely upon both types of vehicle to provide services. Splitting the regulation across several bodies presents an additional risk to ensure safety standards are maintained and would create a disproportionate burden on industry.

For these reasons the traffic commissioners would recommend that any operator of passenger services provided for 'hire or reward' are brought under the operator licensing scheme, regardless of the level of automation. Relevant amendments can be made to the existing legislation to strengthen the arrangements. Many operators of smaller vehicles currently hold a PSV operator's licence as part of their taxi/private hire operation and therefore have experience of the scheme. It is the view of the traffic commissioners that incorporating these vehicles into an existing scheme would ensure simplicity for operators and negate the need for multiple licences from different regulatory bodies.

The traffic commissioners would also strongly recommend that the type approval of automated vehicles remains separate from the safety regulation and the need to continuously comply. This position reflects lessons learnt from other regulatory environments and aligns with the current arrangements regarding public service vehicles and type approval. This position would ensure that safety regulation is robust whilst not preventing innovation and development of the technology.

The concept of 'hire or reward' is explained in the Senior Traffic Commissioner's Statutory Document No. 13 which states:

Under section 1(5) of the Public Passenger Vehicles Act 1981 a vehicle is to be treated as carrying passengers for hire or reward if payment is made for, or includes, the carrying of passengers, irrespective of the person to whom the payment is made including on behalf of a member of any association. A payment made for the carrying of a passenger (excluding those connected with an air replacement service) is to be treated as a fare notwithstanding that it is made in consideration of other matters in addition to the journey and shall be treated as made for the carrying of a passenger if it gives a person the right to be carried, for one or more journeys and whether or not the right is exercised.

Changes to business models have tested the commonly held view of 'hire or reward' and an element of greater clarity would be welcomed for all providers of passenger services. It is especially important to provide this clarification to ensure that people continue to invest in the development of vehicles that are intended to provide niche services.

The consultation asks whether there should be exemptions for community services that would currently operate under a section 19 or section 22 permit. The traffic commissioners have no view on this aspect other than to state that safety remains the priority and they have experience of presiding over cases where services in the voluntary sector have not been operated to the high levels of safety required of commercial operators. To remove community services from regulation may have a negative impact and a balance over the need to regulate against the non-commercial nature of the services provided should be achieved.

Operator requirements

It is recognised that there is a need for a new legal definition of ‘operator’ to reflect the changing technology.¹

Adopting the current licensing model would ensure that the operator’s requirement to satisfy the traffic commissioner of good repute, financial standing, stable establishment and professional competence would be retained. The benefits in Great Britain’s licensing system is recognised by Government and internationally, especially by those who have sought to emulate the current model. The current model ensures that the operator of the vehicle retains responsibility for ensuring that it is operated in a roadworthy condition and to continually demonstrate that there are adequate facilities or arrangements for maintaining vehicles and operating systems “in a fit and serviceable condition.

Changing technology would mean that the transport manager Certificate of Professional Competence would need to be updated for autonomous vehicles. This qualification has already shown its ability to adapt to changing circumstances since its introduction in the 1970s.

Traffic commissioners can offer no other option but for the legislation to clarify that the operator of the vehicle is the user for the purpose of regulation and insurance.

Compliance with the law

The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 offers a basis to set out the responsibility of operators and those travelling on vehicles, including passengers, to ensure the safety of all users.

The operator licensing legislation sets out broad duties with a power for the Senior Traffic Commissioner to issue statutory guidance and statutory directions. Similarly, section 16 of the Health and Safety at Work Act 1974 sets out Approved Codes of Practice which can be continually updated without the need for Parliamentary time or approval. These two practices currently work well in providing the guidance and being able to respond to changing circumstances or case law.

Traffic commissioners have noted the reference to the remote supervision of vehicles as described in the definition of “Supervisor (of passenger-only vehicles)” at page xii. If it is intended that this person be able to intervene effectively in emergency situations, then there would need to be appropriate restrictions, such as on the consumption of alcohol and drug use, and for duty time and rest periods as well as a basic requirement of competence. A statutory framework for regulating the conduct of vocational drivers exists at sections 110 – 122 of The Road Traffic Act 1988. There is an argument for a parallel framework for Remote Supervisors.

Price information

The Department for Transport is currently working on the principle of Bus Open Data. This includes ensuring that information on bus services is fully accessible to the travelling public. This work also includes fare and it is suggested that this may provide useful background for this area.

¹ The Senior Traffic Commissioner has issued Statutory document No. 7 on Impounding that reflects the current legal test and the definition of operator within the Public Passenger Vehicles Act 1981. This can be found at:

Freight transport

The PSV and goods operator licensing systems share a great deal of commonality. The traffic commissioners see the clear benefit in bringing autonomous goods vehicles into the current national operator licensing model for the reasons set out for passenger vehicles.

Accessibility

Public transport is an important facility to ensure that all members of society have access to opportunity, either for work or leisure. The PSV industry has invested heavily in accessible transport and it is the view of traffic commissioners' that accessibility requirements should be the same regardless of whether the vehicle is conventional or an automated. This position reflects the diverse need of society.

Road pricing

The traffic commissioners make no comment on the issue of road pricing and parking charges. These are matters for national and local politicians. The traffic commissioners do recognise that tackling congestion in urban areas is important to the development and reliability of public transport services. Good public transport provision reduces the reliance on private motor vehicles in these areas. However, this is not an issue that can be answered through a single solution. Automated Vehicles alone will neither cause nor resolve the issue of congestion.

Quantity restrictions

The existing operator licensing model is designed to ensure that a qualitative assessment is undertaken on whether an applicant or licence holder is competent to operate the number of vehicles applied for or authorised.

The current approach has proven success of ensuring that an operation does not become over stretched impacting on safety or reliability whilst allowing good operators to develop and deliver increased services for the travelling public. Adopting this existing model would allow similar assessments to be undertaken across an entire operation rather than on a specific vehicle type.

Restricting automated vehicles in any given area may be challenging to enforce and restrict service delivery to the public.

Integrating Harps with Public Transport

The suggestion to limit bus service regulation to those vehicles with more than eight passengers relates to the current, general position with which the traffic commissioners are well-acquainted, and which works effectively. It should be remembered that vehicles with eight or less passenger seats can currently operate as a bus service if certain criteria are met. This is particularly useful in communities with low patronage or difficult road networks. In the alternative, those vehicles can provide services in urban areas to connect to larger transport hubs or routes. The traffic commissioners see no strong benefit in removing these vehicles from the ability to operate as a local bus service.

The ability for operators to register flexible bus services has been in place since 2004. Operators provide flexible services to connect people with transport hubs or to provide

transport in areas where low patronage would make running a scheduled service uneconomical. These services provide a lifeline for a number of people who otherwise would have limited public transport options.

Flexible services can be operated as a mixture between fixed stopping places and specified geographical area, but may also be registered with no fixed stopping places solely operating within a defined geographical area. Although the monitoring of the reliability of these services can be difficult, they do not account for many of the complaints made to the traffic commissioner on bus compliance issues.

The traffic commissioners remain to be convinced of the benefits of imposing restrictions as described in the consultation on these services. To do so would create a two-tier system for conventional and automated vehicles with no clear reasoning or obvious benefit.

The Transport Act 2000 contains powers for local authorities to introduce a selection of partnership schemes in a local area. These schemes can contain requirements on joint marketing, ticketing and information platforms and offer a good basis for further development to introduce HARPS into the scope of the existing legislation.

I hope this response is of use in considering how the law in this area should develop. If I can be of any assistance in providing further explanation of the points made please let me know.

Yours sincerely

(sent by email)

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