

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

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Any personal email addresses and phone numbers have been excluded from this document.

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What is your name?

Peter Whitfield

What is the name of your organisation?

P.Whitfield Consulting Ltd

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

Local policy making is not robust and is also fragmented for existing operating regimes. Any new and complex operating regime must have a national basis.

This opportunity must also be used to look at existing licensing processes also.

**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

Safety standards need to be defined otherwise there is no baseline for operating regimes or licenses.

We would suggest that the word "basic" is not used as it wrongly infers a light touch approach to safety.

## **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

The criteria are clear. However we would suggest a check is made on whether "road" is the correct term/definition. The concern is that operators that provide services to the public on private land may not be covered, but should be. For example vehicles transporting people around airport car parks to terminals and similar.

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

Yes

### ***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.

Because the topic matter is safety, there does not appear to be reason why particular exclusions should be built into the new framework at source.

**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).

Exemptions may be possible for off-road trials where risks are deemed negligible by the licensing entity. Where trails are on-road and the public are at risk then no full exemptions should be applied. There may be scope to relax some requirements though if control and monitoring measures are in place with time bound conditions.

### ***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

Yes to 1 and 2. It is not clear why point 3 applies so long as UK law applies. Topic 4 requires further thought as there needs to be an emphasis on corporate level competence as well as individuals. Reference may be needed to ISO 39001:2012 certification as this specifies requirements for a road traffic safety management system to enable an organization that interacts with the road traffic system.

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

ISO 39001:2012 specifies requirements for a road traffic safety management system to enable an organization that interacts with the road traffic system. This standard includes requirements for training.

### ***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

This area should include a performance requirement to remove vehicle blockages within a specified time period. Highways England have a national vehicle recovery contract and this may be a suitable model for private vehicle operators to enter into commercial contracts for recovery. It should not fall to the police or local highway authorities to arrange removals, but it is possible that existing public contracts can be amended to add in private services with charges back to operators.

**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.]

Yes

### ***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

The definition of supervision would need definition for primary safety issues. For example should the operator be required to ensure occupants used seat belts?

**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.]

Yes

Consideration should also be given to automating the flow of data on a near real time basis rather than simply waiting for formal annual reports. The data should distinguish between collisions with injury and collisions without injury and also other incidents (to be defined e.g. breakdown )

**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

The legislation should be broad enough to not require regular change. This means that the emphasis would rightly be on statutory guidance been developed and updated as knowledge increases. The guidance updates would also allow stakeholders to retain influence.

**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.]

Other

A weakness of the current Uber type service is that pricing advertised is often an underestimate of the true likely price. The price offered at point of purchase should be capped and not a range.

Overall our answer is "Yes" but true price comparison should fall to the user not the service provider. Commercial platforms could emerge to provide the comparison outside of the websites of the operator.

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?

It would seem that an existing arm of DfT should be the first consideration. DVSA or DVLA.

## ***Freight Transport***

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

Broadly all the criteria would apply. However the risks are higher for heavier vehicles and those with hazardous loads. Therefore there is likely to be a need to limit the scope of HARPS for some payloads. In particular many freight operations require drivers to perform tasks to secure loads and carry out other checks along the journey. Also in the event of accidents, drivers would need to take mitigating actions to reduce secondary risks of spills etc.

## **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.]

No

Such vehicles will have safety critical features and therefore an arbitrary boundary at six months does not make sense. We believe that whilst private ownership for exclusive use should not be discouraged, it does not allow many of the benefits of HARPS to be released to UK plc (e.g. more vehicles would result). Therefore there should not be a regulatory benefit/encouragement towards private HARPS. The concept of service provision should prevail with users determining how they will obtain their service: exclusively (for a premium price) or not exclusively. Safety should be equitable and placed in the hands of the HARPS operator. No reliance should be placed on private individuals having any role in software update etc.

### ***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.]

No

see response to No.17.

**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?

Other

See response to No.17

**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?

See response to No.17

(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?

See response to No.17.

### ***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?

Other

See response to No.17.

### ***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.

Other

See response to No.17.

## **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.

Operators should be asked to conform to vehicle design and operations guidance that will need to be developed under the tests of reasonableness. A key issue is whether every vehicle should be compliant with a single set of rules, or whether a dual approach can be taken so that sufficient enabled vehicles are available alongside non-adapted vehicles. The proportion of each type of vehicle could be set out based on population data so that no user group is directly disadvantaged in terms of either price or vehicle availability.

### ***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

### ***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.]

Other

See Q24 response. Additionally it seems unreasonable to mandate that an operator would need to provide a person to help boarding and alighting. This would negate the benefits of not having the costs of a paid driver. This needs to be tackled by innovative vehicle design.

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

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

Yes

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

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

No

This seems impractical as a mandatory requirement. Also users may wish to vary their journey en-route.

### ***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.

See Q24 response

### ***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

We would envisage that each service users would need to register details once only (with at least annual update), not on every journey. Examples should be sought from train and plane operators on how they manage these issues now.



## **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.

TROs are not the best method to tackle this issue.

### ***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.]

No

Parking fees should be equitable for all cars and simple for everyone to understand.

### ***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 is a very complex area and ideally would be better solved now i.e. before HARPS become common place. The stark reality is that most governments are nervous of road pricing and hence a firm legal commitment to it must be obtained soon, or else no reliance should be placed on it and other methods should be used.

**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.]

Other

See Q31

### ***Quantity restrictions***

**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.]



Other

The question should refer to quantity restrictions.

The "market" should be left to decide. This is an issue of supply and demand and government agencies should tend to remove themselves from imposing caps.

## **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

(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.]

Do not know / not answering

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

P.Whitfield Consulting specialises in road safety policy matters. Please let us know if we can offer further input in the future e.g on working groups.