

**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.

Unanswered questions have been deleted from this document.

What is your name?

The Rt Hon Lord Carloway

What is the name of your organisation?

Senators of the College of Justice

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.]

The senior judiciary of Scotland note that the second consultation of paper two on automated vehicles, passenger services and public transport considers the regulation, integration and responsibility for passenger only driverless vehicles and how they might be used to supply passenger transport services to the public.

There are areas of policy and policy choices within the consultation document which are not within the remit of the judiciary and therefore we make no comment on these. We consider that, like our response to the first consultation paper, our remit to comment is limited to the sections of the consultation paper which impact on criminal and civil litigation.

As a result, we consider that questions 11 - 13 and 18 - 20 and the sections (sections 4 and 5) of the consultation paper which underpin those questions are relevant; and we confine our answers to these questions.

Before answering these questions, we wish to reiterate the general points which we made in response to the first consultation paper. Firstly, it is paramount that duties are clearly allocated and expressed and that there is as much certainty as possible over the assignment of liability

for autonomous vehicle-involved accidents. Secondly, with regard to criminal liability, the criminal law should be used to influence behaviour, promote road safety and punish offenders. As with all penal law, it should be clear and unambiguous. It is important that the citizen should know what is criminal and what is not. Where possible, bespoke criminal offences should regulate the criminal law in this area. Relying on existing criminal offences in this area, drafted and designed for driver-controlled vehicles, would risk public ignorance and could result in unnecessary and protracted legal argument in court on statutory interpretation.

CHAPTER 4: OPERATOR LICENSING –SCOPE AND CONTENT

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

(Questions 11 - 13 (Section 4))

A road should be defined consistently and as a result, for Scotland, the definition of road in the Road Traffic Act 1988 and the Roads (Scotland) Act 1984 (see paragraph 4.27 of the consultation paper) should be adopted.)

Question 11.

The answer to all four questions posed by question 11 is Yes. Remote supervision for HARPS (highly automated road passenger services) is a step into the unknown. Issues such as connectivity or control issues, cyber security (both applicable to the manufacturer and operator), safety critical operators' recruitment, training, working hours and loading, systems failure practices and procedures and dealing with mishaps and emergencies to promote minimal risk will inevitably arise. It is therefore important that clear duties are ascribed to deal with such eventualities. Persons carrying out safety critical work should be subject to appropriate CRO checks, particularly where they interact with the public (including children). The use of CCTV in public vehicles is becoming more and more common as operators consider that this is a good means of deterring and recording incidents in public vehicles. There are of course counter arguments involving data protection and unnecessary intrusion and we do not express a view on this matter. However, we agree that a general duty to take reasonable steps to safeguard passengers from assault or abuse is appropriate. A degree of flexibility supported by good guidance would appear appropriate in this area.

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

Question 12.

Yes. It is particularly important to report and record untoward events to contribute to improving the safe deployment of automated vehicles. The duty to report and record should also be wide enough to provide perspective and the duty should therefore include such data as distance travelled without incident.

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

Question 13.

Yes. We agree that legislation should include a list of broad duties. In doing so, it is important that those duties are clearly designated to avoid ambiguity. We agree that the regulatory regime should be flexible. This is sensible when dealing with new technologies with no experience and track record to fall back on. Statutory guidance promoting best practice issued under a statutory power will give flexibility and the ability to update and amend the guidance to respond to experience and knowledge gained.

CHAPTER 5: PRIVATELY-OWNED PASSENGER-ONLY VEHICLES

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.]

Yes to all questions. We agree that clarity on who is legally responsible for a privately owned vehicle authorised for use without a user-in-charge is desirable. The legal responsibilities should include insurance, roadworthiness and safety updates, reporting accidents and removal to prevent obstruction.

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

It is sensible and appropriate that the default legal responsibility should rest with the keeper of the vehicle with a rebuttable statutory presumption that this is the registered keeper. The keeper of the vehicle is a well understood concept embedded in road traffic law and understood by the public.

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?

It is important that there is clarity in this area. The leasing of vehicles is a common form of acquiring vehicles and the law should clearly regulate duties in this area. We agree that the

default position should be that the registered keeper should be the duty holder. This will be clear to the lessor and lessee. As the consultation documents put it, “that strikes us as a satisfactory position: these are matters which the individual is likely to want to see performed by a professional organisation”. We agree that this presumption should be able to be expressly overridden, in which case the duty can be transferred. Where a transfer of duty occurs, it should be incumbent on the lessor to expressly draw this in writing, in clear terms, to the attention of the new duty holder. The new duty holder should be required to sign acceptance of the transfer. This will ensure that responsibilities for the performance of the duties are clear and unambiguous. This will formalise the transfer of duties. As breach of duties could have penal consequences (and civil liability) it is important that the transfer of duties is formal and clear, rather than an informal matter.