

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

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What is your name?

Stefan Maurice

What is the name of your organisation?

Transform Scotland

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.]

No

There should be separate national operator licensing systems for England, Scotland and Wales.

**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

The national safety standards should apply equally to England, Scotland and Wales to ensure compatibility of vehicle types, and to pool safety standards expertise across the UK. The introduction of autonomous vehicles operating on the public roads raises huge issues of public safety and accountability. It should be a guiding principle that the operation of an autonomous vehicle should not in any way diminish the vehicle operator's responsibility and culpability for

accident and harm to other people and property, and should not place additional responsibilities on other road users (including pedestrians) which they would not be expected to assume when interacting with a vehicle with a human operator. No national basic safety standards should override this principle.

## **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

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

Other

Clarification may be appropriate. For example, given the increasing prevalence of vehicle leasing, is a leasing agreement equivalent to carrying passengers for hire and reward? Maybe it should be, especially if the lessor also provides the guidance system, since this would be an effective means of managing autonomous vehicles which were leased to private individuals.

### ***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.

We suggest there should be no exemptions initially until safety issues are better understood. The public needs protection whatever the status of the operator. A community operator with little financial substance is likely to pose a bigger risk to other road users because of the limited opportunity for financial redress for accident and injury.

**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).

There should be no means for a Secretary of State to make exemptions from statutory provisions.

### ***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.]

Yes

It should be self-evident why – these are the normal tests for any commercial vehicle operator.

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

As HARPS systems will depend on a high level of computer technology, transport managers could be required to have a good understanding of the technology involved in automated road transport. Demonstrating competence in this field could therefore involve a written examination. Transport managers should also demonstrate relevant qualifications and experience, which must relate specifically to the operations of automated vehicles, as well as the normal requirements of conventional fleet management.

### ***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

Yes absolutely, otherwise HARPS operators will be under a lesser obligation than conventional 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

The inbuilt control systems of HARPS vehicles are what determines how they perform on public roads and interact with other users, and it must be absolutely clear that there is no diminution of the chain of accountability and responsibility for consequences of their operations.

### ***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

Yes, and there must also be a strong and clear definition of “reasonable” under subquestion (4). The public is entitled to expect the same level of protection when using a HARPS vehicle as they are when travelling by conventional taxi bus or taxi.

**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

Yes, especially in view of the untried nature of HARPS transport.

**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

Yes, but again with a “no diminution” provision so far as statutory guidance is concerned. The legislation, while broad, should set very specific boundaries in all matters relating to public safety and protection.

**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

Experience of technology-based services, and indeed rail ticket pricing systems, indicate that users often don't understand properly how pricing works. However, regulation shouldn't inhibit innovation in pricing.

We agree, however, that giving price information should be a requirement for all operators.

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?

In Scotland this should be administered on a national countrywide-wide basis but recognising the different characteristics of urban, rural, remote and island. Ongoing operator regulation should be the primary purpose of the administrator. This suggests that the function properly belongs to the Traffic Commissioner, rather than 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.

In virtually every respect the proposal should apply to the freight transport sector but with strengthened safety requirements in view of the additional hazards that the greater mass of freight vehicles creates when operating in a public space.

## **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

This seems a reasonable proposal, however we have some concerns around creating exemptions for reasons listed in earlier question responses.

### ***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

Yes but we are concerned at and confused by any suggestion that a vehicle could be operated without a user-in-charge by a non HARPS-licensed holder.

**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

Yes. These assets are by definition mobile, and such a presumption is essential to maintaining accountability.

**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 answer to Q18. Because of the particular nature of HARPS vehicles, the lessor should not be able to transfer duties to a non-licensed lessee. What is the point of a licensing system if a signed statement of acceptance of responsibility is sufficient to by-pass it?

### ***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

Yes. Due to the complexity of autonomous vehicles and potential danger to other road users, particularly pedestrians and cyclists, it is essential that such vehicles are properly maintained and provided with software updates including critical safety updates. However this question also causes some confusion; either a vehicle is HARPS or it isn't, and there should be no half-way house.

### ***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.

Information on ongoing costs and other matters should be made available on a central website by the safety agency.

## **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.

HARPS vehicles should meet at least the same standards as other public service vehicles, but should also ensure that accessibility is available in the absence of a human operator.

### ***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

Yes, otherwise HARPS operators will have a commercial advantage over other operators.

### ***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

Clearly the economic benefit of HARPS would be undermined if onerous staffing requirements are imposed to cater for passengers with disabilities. Similar considerations may apply for children. This is a fundamental issue for unattended HARPS. If no such provision is made, HARPS vehicle operators would gain an unfair commercial advantage over conventional vehicles.

(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.]

Yes

### ***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.

National minimum standards of accessibility for HARPS should be developed. The accessibility standards required should provide the equivalent outcome for users that is provided for conventional public service vehicles.

### ***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

Yes, otherwise there will be no means of knowing how effective the accessibility standards are in practice. Data of this nature would normally be extracted from ticketing or payment information.

## **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.

It is important that any changes in traffic regulations for HARPS do not adversely impact other road users, particularly pedestrians and cyclists who already are disadvantaged in most areas by priority given to motorised traffic. The fatal mistakes of “intelligent motorways” should not be repeated when reviewing regulations for autonomous vehicles under any circumstances.

### ***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.]

Other

The starting point should be that outcomes should be the same whether for HARPS or conventional vehicles, and that the legislation should be amended if necessary to ensure this. The objective should not be to facilitate HARPS vehicles per se.

### ***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.

The purpose should be about overall public benefit, not “successful deployment” of a particular mode. See Q32 answer.

**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

There is a good case for road charging to be introduced on electric vehicles as a replacement for fuel tax on petrol and diesel vehicles. Road charging revenue could be justified to the public if used to fund road maintenance and construction, compensating for the loss of fuel duty. However, there is no reason to treat HARPS differently from other electrically powered buses. In other words, we suggest that road pricing should be linked directly with electric vehicles rather than with HARPS introduction.

### ***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.]



Other

It would be prudent to introduce HARPS in a controlled manner so we would agree that the number of vehicles within an operational domain should be limited for an initial trial period. One year would be a realistic period to assess the impact on traffic and safety. However, we note that quantity licensing in the road transport sector was explicitly ruled out by government in the last century. We would also be concerned that such flexible powers may enable the agency to protect other HARPS or conventional operators at their discretion.

**Consultation Question 34** (Paragraph 7.120): Do you agree that there should be no powers to impose quality restrictions on the total number of HARPS operating in a given area?

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

No

No we don't agree. Bus deregulation has led in some cases to increased congestion in city centres due to "bus wars" between duplicated services. Unrestricted competition in provision of public transport is incompatible with the overriding need to reduce emissions and road congestion. Comparison of the declining usage of buses in the UK with the increased use of public transport in many continental countries shows that integrated public transport networks attract more use than deregulated services based on on-street competition. We strongly advise against replacing "bus wars" with unrestricted "HARPS wars", particularly as there may initially be added safety concerns about HARPS in city streets.

## **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.]

Other

This seems a reasonable approach. Yes to (1) and (2) in theory – HARPS should be subject to the same requirements as conventional buses. But what about < 8 passengers? Surely equivalence also requires that small HARPS vehicles should meet the equivalent taxi requirements.

(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.]

Other

**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 would be based on the vehicle capacity rather than the actual number of passengers being transported (many rural bus services carry fewer than eight passengers). HARPS will be competing with conventional buses, so should comply with equivalent

**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.

It would be logical to treat HARPS on the same basis as local bus services if running to a regular timetable and charging separate fares, or as Demand Responsive Transport if running on request.

**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.

It is essential where an integrated public transport system is planned or has been established by a transport authority that any HARPS should be part of this system. Otherwise a transport authority's public transport network could be undermined by HARPS.

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

While not questioning that autonomous road vehicles may offer significant benefits and could assist in delivering local sustainable travel objectives and national carbon-reduction targets, the primary purpose of legislation change where this new technology is concerned should be two-fold – to protect the general public, as other road users and as sharers of the public space which HARPS will need to access from the additional road traffic risks that will ensue, and to ensure that HARPS vehicles can be accommodated on equitable terms within the complex ecology of public transport, particular in urban areas, in a way which provides tangible benefits to all public transport users.

Software:

The software controlling autonomous vehicles and HARPS vehicles will be complex requiring regular updates including critical safety bug fixes. It is likely that sensors will also require modifications, after experience of the vicissitudes of the Scottish weather.

There needs to be a system for autonomous vehicles similar to the safety certification for aircraft. A central UK body carrying out safety appraisals in UK road conditions is needed.

The Boeing 737 max scandal shows the risk in depending on manufacturers without independent safety checks. While the scale of an aircraft crash is much higher than an individual road accident, a number of road accidents could be caused by faulty software unless robust safety procedures, including mechanisms for applying urgent corrective software updates, are enforced.

There may need to be powers for a central UK safety body to recall or temporarily order withdrawal of classes of vehicles where critical safety issues are identified.

#### Hacking and Stolen Vehicles:

The legal responsibility in this situation needs to be examined in more detail than covered in the consultation.

#### Power:

Given the First Minister's commitment to banning the sale of petrol and diesel cars by 2032, we suggest that, in practice, all autonomous vehicles registered in Scotland are likely to be electric, hydrogen or hybrid vehicles.

#### Trams:

Driverless operation of trams is not covered in the consultation, although autonomous operation of trams running on tracks on public roads should in the future be more straightforward than other public transport vehicles.