



Law Society
of Scotland

Consultation Response

Automated Vehicles: Passenger Services and Public Transport

February 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We welcome the opportunity to consider and respond to the second phase of the Law Commission of England and Wales and the Scottish Law Commission's consultation on Automated Vehicles, which focuses on Passenger Services and Public Transport. We have the following comments to put forward for consideration.

We note that in the maritime sector the Maritime UK Autonomous Systems Regulatory Working Group has published Conduct Principles and a Code of Practice, although not a legal text as such.¹

Response to questions

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. Such a system should also be compatible with any reformed regulatory system for non-bus vehicle transport,² and should take account of developments and collaborations in neighbouring countries.

We note that under Scotland Act 1998, Schedule 5, Part 2, Regulation 3, head E1(b) reserves the subject matter of the "the Public Passenger Vehicles Act 1981 and the Transport Act 1985, so far as relating to public service vehicle operator licensing".

¹ <https://www.maritimeuk.org/media-centre/publications/maritime-autonomous-surface-ships-industry-conduct-principles-code-practice/>

² <https://www.lawcom.gov.uk/project/taxi-and-private-hire-services/>

Question 2 (Paragraph 3.86): Do you agree that there should be a national scheme of basic safety standards for operating a HARPS?

Yes. Just as exists at present, there needs to be a consistent way in which to enforce and maintain standards. That is achieved under the current licensing provisions, which should be replicated under any legislation regarding the use and performance of automated vehicles. The Public Passenger Vehicles Act 1981 provides a model for this in that section 12(1) provides that a public service vehicle shall not be used on a road for carrying passengers for hire or reward, except under a Public Service Vehicle operator's licence granted in accordance with the provisions of the Act, thereby imposing standards through legislation.

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)?**

Regarding the use of highly automated vehicles carrying passengers for hire or reward, this would be similar to the requirements at present which operate for taxi and private hire operators. They cannot operate without a relevant licence issued by the appropriate local authority. We acknowledge that many of their requirements relate to the driver, and result in conditions being attached to the issue of such a licence which can be relatively detailed. For example, that the driver must not ply for hire or must not knowingly allow the vehicle to be utilised for any immoral or illegal purpose.³ How these requirements would be dealt with under an automated system would need to be considered, as breach of conditions would result in the loss of a licence.

A road would normally mean a place to which the public has a right of access. We are not sure why the operator licence should only be relevant in relation to passengers being carried by automated vehicles when they are on a road. Consideration would need to be given to automated vehicles operating on a private estate or land.

Consideration should also be given to the possibility of licences becoming tradeable, the desirability or otherwise of such a system, and any controls or restrictions that may be appropriate.

³ <https://www.gov.uk/private-hire-minicab-licence-scotland>

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

We consider that this is sufficiently clear. We note that “reward” would go beyond monetary payment – for example a service that was free to passengers who were willing to watch advertising and/or provide feedback on products would still constitute a reward. We also note that the concept would include situations where ‘free’ transport is provided to those accessing particular facilities such as shops or shopping centres.

Under the current licensing system in Scotland, taxi drivers are restricted as to monetary reward by scales for fares fixed by the licencing authority. No such restrictions currently apply to private hire operators. This may be a factor to be considered.

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 do not consider that there should be exemptions. The HARPS operator licensing is intended to guard the safety of passengers and others and it would not be appropriate to provide any exemptions where there is a risk of injury or death.

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).

We consider that a modified licence might need to be applied in situations where trials are being carried out but the trials themselves should still be subject to rigorous safety procedures and clear provisions regarding liability and scope.

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?**

Yes. Overall, we consider that these are all sensible licence provisions to impose. Please see our answer to Question 3.

However, we consider that there should be a separate requirement for an insurance certificate providing coverage up to a particular threshold (see further at Q11 below).

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

We have no comment on this question other than noting transport managers should require to have completed all relevant training which should no doubt include certain mandatory aspects.

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”?

Yes.

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?

Yes.

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. There needs to be consideration given the requirements of civil and criminal law. We note that criminal and civil liability were considered in Consultation Paper 1⁴ and we refer to our response to that paper.⁵ The following comments also apply:

- Insuring vehicles in the UK is mandatory. Failure to insure is an offence under section 143 of the Road Traffic Act 1988.
- We are not sure what exactly supervision of vehicle means in this content. If it means compliance with certain operating standards, then the similar provisions regarding a MOT certificate would be relevant. Failure to show a MOT certificate in relation to relevant vehicles is a criminal offence – furthermore insurance cover cannot be obtained. This has the effect of ensuring that vehicles are kept up to roadworthy standards.
- Under section 170 of the Road Traffic Act 1988 it is a criminal offence not to report an accident.

The policy requirements regarding the use of criminal law would need to continue and apply to automated vehicles.

Regarding the fourth requirement, the need to take reasonable precautions to safeguard passengers from assault, abuse and harassment replicates the provisions that apply to the grant of a licence to an operator. They could face sanction to the removal of a licence without recourse to the criminal law. The behaviour itself may amount to criminal conduct and the offender will be prosecuted. In what circumstances a failure would arise would need to be looked at to consider exactly how such a duty would apply and what sanctions should be imposed to require compliance. Reasonable steps are not necessarily a high standard and there would be questions as to what this means in practice.

⁴ Automated Vehicles: A joint preliminary consultation paper (8 November 2018), Law Commission Consultation paper No 240; Scottish Law Commission Discussion paper 166
https://www.scotlawcom.gov.uk/files/8315/4166/7851/Joint_Consultation_Paper_on_Automated_Vehicles_DP_No_166.PDF

⁵ <https://www.lawsco.org.uk/media/361826/05-02-18-cons-automated-vehicles-consultation-response.pdf>

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. Such requirements would serve a similar purpose to the current tachograph requirements.

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. Any statutory guidance should be subject to public consultation and be approved by Parliament.

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?

We agree that price information should be clear and comparable, so far as possible. The question of whether the licence of the operator is appropriate will depend on the circumstances of the case. Operators should be provided with an opportunity to correct price information if it is felt that it is unclear and financial penalties also offer a possible sanction. We note that innovation in this area may include innovative pricing structures and a conversation with the licensing agency may be required to ensure that the requirements of transparency are satisfied.

Question 15 (Paragraph 4.138): Who should administer the system of HARPS operator licensing?

Any agency or body administering a system of HARPS licensing would need to be adequately trained and resourced to do so.

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

Current goods vehicle licences⁶ are issued by the Traffic Commissioner who has the powers to take regulatory action against a licence holder where they fail to meet the expected standards of operation. These actions include curtailment (limiting or reducing the number of vehicles an operator is able to operate), suspension (temporarily stopping operations) or revocation (permanently removing an operator's licence to operate commercial vehicles). These would need to be factored into any system for automated vehicles.

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?

We note that this ties in with the six-month framework for hire of commercial vehicles. We note that under the Consumer Credit Act three months is the time period which takes something into/out of being a lease. This would avoid, for example a two week holiday hire as six months appears to be quite a long period of time to hire a car.

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, as a general rule. Installing the safety-critical updates can only be the responsibility of the person who is able to make them. If, for example, the updates are handled remotely by the car manufacturer then it should be their responsibility. If the keeper is notified that an update is needed, then the responsibility would sit with them to do so.

⁶ <https://fta.co.uk/compliance-and-advice/road/operator-licencing/information-about-operator-licensing>

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, but this presumption should be rebuttable.

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?

We agree. The process for a lessee signing a statement might be automated and this could perhaps be reflected in the language to ensure express consent.

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. Such contracts should be easily switchable.

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.

We have no comments to make on this question, other than to note the need for clear and transparent overarching regulation to preclude such loopholes.

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 are of the view that consumers should be given the necessary information regarding ongoing costs of ownership. There does not seem to be a direct safety assurance link so it may be that another body is better placed to fulfil this function.

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.

We note the potential benefits to disabled and older people of accessible, well-regulated HARPS as part of a wider system of inclusive transport. We agree that accessibility should be embedded within the regulatory framework from the outset. We further agree that it is important that regulation of HARPS preserves and where appropriate improves upon existing regulatory provisions promoting accessibility and preventing discrimination.

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?

Yes.

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?**

We note the wide range of possible services and business models for HARPS, and suggest that regulation should be capable of applying effectively across a range of service models without unduly constraining innovation. At the same time, the regime should ensure at least the same levels of accessibility as traditional public transport and must not compromise passenger safety.

People with disabilities, including disabilities resulting from cognitive impairments, and older people tend proportionally to be large users of public transport. A particular issue for many of them will be how to find, identify and board automated vehicles. Some of the issues apply also to other users, such as people with infants in pushchairs or prams. A particular complaint from people with disabilities is that a vehicle may be well adapted and (where it is staffed, as at present) staff are appropriately trained, but roadside facilities can be a problem or even a barrier. Minimum regulatory standards should accordingly require fully accessible roadside facilities, with clear signage for people with visual impairments, located in relation to their surroundings so as reasonably to maximise accessibility, and with fully accessible means of identifying which vehicle to board, when to board it, and exactly where and how to board it. Vehicles should be equipped with lifts for wheelchairs, persons with significant mobility difficulties, prams and pushchairs (recognising that assistance in boarding given by staff on manned vehicles will no longer be available). Boarding instructions, including those using such facilities, should be clear. The means for related transactions, such as paying fares, require to be fully accessible. Consideration should also be given to requiring audible as well as physical instructions.

Where HARPS require contact with remote communication systems, or GPS provision, consideration should be given to the practicality of their use in, for example, vehicle ferries or tunnels where such communication systems may be disrupted.

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.

We agree that national minimum standards of accessibility for HARPS may be helpful in ensuring consistently high levels of accessibility across services and business models. However, we would also support the development of mechanisms to encourage innovative and best practice, over and above minimum standards, to promote accessibility in HARPS.

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.

User feedback is often the most valuable way to improve services, and there should be a requirement to facilitate and report user feedback.

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.

We have no comment on this question.

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?

It is not clear why a wider range of considerations should operate for HARPS.

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.

We have no comment on this question.

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.**

It is not clear why a separate road pricing scheme should operate for HARPS.

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 have no comments to make on this question.

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?

We have no comments to make on this question.

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?

Yes.

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.

We have no comment on this question.

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?

We have not identified any problems with this approach.

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.

It is not clear why such platforms would be specific to automated vehicles. As a general rule, we expect that most HARPS would wish to participate in platforms informing the public about their services, although this might change depending on whether or not a charge was imposed for participation.

For further information, please contact:

Carolyn Thurston Smith

Policy Team

Law Society of Scotland

DD: 0131 476 8295

carolynthurstonsmith@lawscot.org.uk