

Law Commission and Scottish Law Commission:

Automated Vehicles – Consultation Paper 2 on Passenger Services and Public Transport

Comments provided by Mills & Reeve LLP

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INTRODUCTION

This document is in response to Automated Vehicles: Consultation Paper 2 on Passenger Services and Public Transport issued by the Law Commission of England and Wales and the Scottish Law Commission in October 2019 (the “**Consultation Paper 2**”).

Mills & Reeve is a national UK law firm with 116 partners and a total strength of over 1,000 staff operating from six offices including London, Manchester, Birmingham and Cambridge. Mills & Reeve is one of the top performing law firms in the UK when it comes to client satisfaction, according to the latest editions of legal directories Chambers UK and The Legal 500, and has been named for a record sixteenth year running as one of the 100 Best Companies to Work For in The Sunday Times annual survey. Mills & Reeve acts for a range of clients who have an interest in the development of automated vehicles including automotive manufacturers and suppliers to automotive manufacturers and insurers as well as new entrants to the market that propose alternative automated transport solutions. We advise a range of clients on issues relating to automated transport and therefore have a close interest in seeing that a robust legal and regulatory framework is put in place.

General comments

We welcome the approach put forward in Consultation Paper 2. A single, coordinated system for the operation of vehicles either empty or with only passengers on board is, in our view, a sensible proposal.

As we explained in our response to Consultation Paper 1, we have concerns regarding the “user-in-charge” concept put forward in Consultation Paper 1 of November 2018. In our view, imposing dynamic driving responsibilities on a “user-in-charge” introduces substantial risks into the system. It may be that, for practical reasons, the concept of a “user-in-charge” is the quickest approach to get the first wave of automated vehicles “driving themselves” on public roads. However, even if that were the case, we would not view it as an appropriate long-term solution.

As the technology develops, the practical reality of automated vehicles will move further and further away from human driving. With increasing levels of automation, the role of the “user-in-charge” will become narrower, meaning that an individual given that responsibility has very little involvement for much of the time. As that happens, a more radical overhaul of the relevant legislation will be required to avoid an outdated legal framework restricting

innovation and/or human-centred concepts being inappropriately strained. We welcome the Law Commissions' intention to return to the issue of conditional automation in their next consultation paper.

Consultation Paper 2 introduces the concept of Highly Automated Road Passenger Services or "HARPS". Consultation Paper 2 focuses on highly automated vehicles providing journeys to passengers without a human driver or "user-in-charge", including car rental arrangements, and services resembling taxi, minicab and bus services. It also deals with personal vehicles owned or leased by individuals that have exclusive access to them. In our view, this range reflects well the spectrum of automated passenger transport vehicles that will be required in the longer term. We support the development of a comprehensive system for this range of vehicles, rather than an intermediate focus on partially automated vehicles that remain heavily reliant on the concept of a "user-in-charge".

We also welcome the emphasis on accessibility for older or disabled users. We consider this to be one of the major advantages promised by the introduction of autonomous vehicles and it is particularly important to keep it at the centre of regulatory proposals.

We do not wish to comment on all of the detailed proposals set out in Consultation Paper 2. The Paper rightly identifies numerous issues that will need to be addressed in developing a comprehensive system.

However, as a general comment, we are concerned by the approach of mapping future automated transport services onto the existing types of human operated and driven services. This, we believe, may give rise to artificial boundaries between different types of service, which are no longer relevant once the services become automated. This is highlighted by the difficulty set out in paragraphs 5.6-5.12 in relation to drawing a distinction between HARPS and private leasing. A better approach, we believe, is to design a single system applicable to all automated vehicles, with recognition of sub-classes having different features. We appreciate that the various responsibilities regarding maintenance, insurance etc. may need to be allocated differently for different classes of vehicle. However, we do not feel that this justifies establishing entirely different systems for these different categories, simply based on the current make-up of the transport services sector.

In our view, the law should focus on (i) identifying the responsibilities associated with owning, using and operating automated vehicles and (ii) assigning these responsibilities appropriately (ie where the person in the vehicle is not automatically the most appropriate choice). For example, where a vehicle is capable of "driving itself" within the meaning of the Automated and Electric Vehicles Act 2018, responsibility for roadworthiness may more naturally sit with the manufacturer or developer, even where the vehicle still requires a human fall-back driver to take back control in certain circumstances in order to ensure safety.

If separate regulatory systems are developed for HARPS and privately owned passenger-only vehicles, and for other types of highly automated vehicles, we foresee a situation arising

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which would require innovators to build their products and services to fall within one category or another, rather than creating something that better meets the needs of users, within a single regulatory system.

In the following section, we have quoted the questions from Consultation Paper 2 followed, where applicable, by our responses.

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?

Yes. A single structure for the whole range of HARPS is sensible. To attempt to subdivide these services into categories risks creating artificial boundaries and introducing difficulties where services may have the potential to be used in more than one category.

Consultation Question 2 (Paragraph 3.86):

Do you agree that there should be a national scheme of basic safety standards for operating a HARPS?

Yes, subject to our general remarks above.

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)?**

This definition specifically excludes vehicles without a human driver or user-in-charge. As discussed above, we consider that the user-in-charge concept is at most only suitable as a temporary concept and that in the medium to long term, automated vehicles will operate

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without human control. Vehicles would eventually all fall into the HARPS or the privately owned or leased categories. We therefore consider that it would be better to avoid defining the HARPS in this way.

Consultation Question 4 (Paragraph 4.34):

Is the concept of “carrying passengers for hire or reward” sufficiently clear?

The distinction between the HARPS and privately owned or leased vehicles hinges on this concept. It introduces a boundary between two categories of automated vehicle which may not adequately meet the needs of industry as it evolves.

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.

No response.

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).

We support the concept of exempting specified trials. We believe that taking a flexible approach, with appropriate safety requirements, would support smaller and relatively new innovators.

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?**

We have concerns about excluding smaller organisations from the market by implementing these requirements for all HARPS operators. We note the reference in paragraph 4.63 of

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Consultation Paper 2 to the case for reducing the capital requirements in relation to large numbers of small vehicles.

Compared to existing operators of passenger services, we consider that there will be a greater need for technical and safety expertise for HARPS operators. The licensing process should address these requirements in order to provide a safe and effective service to customers. The use of a detailed safety case, discussed in paragraph 4.70, would be a sensible approach.

Consultation Question 8 (Paragraph 4.73):

How should a transport manager demonstrate professional competence in running an automated service?

We agree with the comments in paragraph 4.70 of Consultation Paper 2 that a transport manager in this context would need to have a different range of skills as compared to professionals in charge of existing types of service. In addition to understanding the operation of the system itself, we suggest that these should include:

- an understanding of cybersecurity and the risk of interference with the systems and communications networks used by the service, and the steps that should be taken if interference is detected; and
- an awareness of data privacy law and how to store and manage information relating to individual system users in order to run the service effectively without overstepping the mark in terms of use of personal data.

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”?

We support the approach of adopting broad duties and guidance.

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?

In our view, as discussed above, it would be preferable to introduce a single system applicable to HARPS as well as other types of automated vehicles, with the various different

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responsibilities, including insurance and roadworthiness, allocated in accordance with the model of service adopted.

We have some concerns about making the set of responsibilities too onerous, to the extent that smaller operators would be deterred or prevented from entering the market.

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?**

As for Question 10, above.

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)?

As for Question 10, above.

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?

Yes. We regard it as essential to have the flexibility to develop the legislative framework as the market develops.

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Price information

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, and/or**
- (2) withdraw the licence of an operator who failed to give price information?**

HARPS operators should be encouraged or mandated to adopt Government policy on transport pricing in order to make shared transport more affordable, and so support the sustainability agenda.

We support the view that clear information should be provided to users. However, this should not be controlled to the extent that it inhibits the development of innovative services.

Who should administer the system?

Consultation Question 15 (Paragraph 4.138)

Who should administer the system of HARPS operator licensing?

In our view, for the reasons set out above, administration of this system should fall to the same body as that having oversight of other forms of highly automated vehicle.

Freight transport

Consultation Question 16 (Paragraph 4.140)

We welcome observations on how far our provisional proposals may be relevant to transport of freight.

We would support the development of a single system that applies also to freight transport.

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?

In our view, as discussed above, it would be preferable to introduce a single system applicable to HARPS as well as other types of automated vehicles, with the various different responsibilities, including insurance and roadworthiness, allocated in accordance with the model of service adopted.

We would not support the introduction of arbitrary cut-off periods for the division of services into different categories, giving rise to very different regulatory consequences. This would, in our view, be likely to lead to distortion of the types of service developed and offered.

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?**

As for Question 17, above.

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?

We would not support reliance on the development of the existing system of vehicle regulation. Rather, we consider that this is an opportunity to develop a new, comprehensive

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system. In our view, the concept of the “registered keeper” is likely to fall away, as vehicles are increasingly used on a service basis.

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.

(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?

As for Question 17, above.

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?

This kind of arrangement might be appropriate for a broader range of automated vehicle services, as part of the comprehensive framework we have discussed above.

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.

In our view, difficulties like this are best addressed through the introduction of a single comprehensive system. For example, where a vehicle is used primarily by one user, but with the possibility of being made available at certain times by others, the responsibilities relating to the operation of the vehicle could be allocated by the main user to a service provider on a paid-for basis.

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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.

Consumers should be provided with full and accessible information about the costs and responsibilities they will incur before taking them on. However, in our view, this model of ownership is likely to become less prevalent and should not receive undue emphasis.

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.

Other than being supportive of the need to make automated vehicles fully available to all, and particularly those who are unable to drive currently, we do not have specific comments on this section.

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?

No response.

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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?
- (2) Requiring reassurance when there is disruption and accessible information?
- (3) Expansion of support at designated points of departure and arrival?

No response.

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.

No 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.

No response.

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.

No response.

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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 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?

No response.

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.

No response.

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.**

No response.

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?

No response.

If so, how long should the period be?

No response.

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?

No response.

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:

(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?

In our view, as discussed above, it would be preferable to introduce a single system applicable to HARPS as well as other types of automated vehicles, with the various different responsibilities, including insurance and roadworthiness, allocated in accordance with the model of service adopted.

We would not support the introduction of arbitrary cut-off periods for the division of services into different categories, giving rise to very different regulatory consequences. This would, in our view, be likely to lead to distortion of the types of service developed and offered.

Beyond this, we do not have specific comments on this section.

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.

No response.

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Consultation 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?

No response.

Encouraging use of mass transit: Mobility as a Service

Consultation 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.

No response.

Should you require more information on the responses above please contact Stephen Hamilton or Isabel Teare at Mills & Reeve LLP using the details below.

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