

AUTOMATED VEHICLES: CONSULTATION PAPER 2 ON PASSENGER SERVICES AND PUBLIC TRANSPORT

CONSULTATION BY THE LAW COMMISSION AND SCOTTISH LAW COMMISSION, OCTOBER 2019

The Confederation of Passenger Transport (CPT) represents the operators of bus and coach services across the UK. We have more than one thousand enterprises in membership, including major PLCs, municipally-owned companies and family businesses with fewer than ten vehicles.

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

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

Yes

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)?

Yes

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

The concept of “carrying passengers for hire or reward” is one that already exists in legislation and guidance. It is considered to be any payment, in cash or kind, which gives a person the right to be carried on the vehicle, regardless of whether or not that right is exercised. Hire or reward takes place if the journey is organised in a way that goes beyond the bounds of mere social kindness.

Government guidance says that the payment may be made by the passenger or on the passenger’s behalf. It may be a direct payment, e.g. a fare or an indirect payment such as a membership subscription. Where indirect payments are made in respect of other services (rather than specifically for the transport) they are still likely to be viewed by the courts as hire or reward because anyone who hadn’t made the payment would have no right to be carried.

We therefore believe that the concept is already well enough established to be sufficiently clear.

Exemptions

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.

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A key purpose of an operator licence is to ensure the safe and proper use of the vehicle(s). We should have serious concerns around the safety of a community or other exempt operation that is unable to show financial standing or professional competence.

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 agree that there will need to be some trial operation to learn the lessons needed to formulate effective HARPS operator licenses and so the ability for the Secretary of State to exempt specified trials from the need for such a licence makes sense, notwithstanding the need to ensure the safe and proper use of the vehicle(s).

Operator requirements

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

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

The transport manager should show they are able to ensure adherence to a standard for the automated driving system, assuming a legal standard should be of course established before widespread adoption of HARPS becomes reality. Such a standard and system should align to the current post responsibilities regarding the current CPC and licensing of human drivers, and may include: calibration checks of sensors; certification of software and safety critical systems and audit of updates; oversight of competences of people checking such systems; CPD requirement to stay in touch with improvements; reporting of near misses or other software glitches to an open database; replacing driver walk round checks; ensuring that the vehicle supplier's maintenance regime is in place and is being adhered to; ensuring that any 'safety driver' or 'safety operator', whether on board or remote, has the appropriate qualifications and vehicle specific training, is managed appropriately and undertakes CPC ongoing training (or equivalent as this evolves); establishing and maintaining the safety case for operation, etc.

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?

Agree

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?

(1), (2) and (3), yes, agree.

(4) This seems sensible, although this will depend on the definition of ‘reasonable’.

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)?

This seems sensible. We believe that this data should be easy enough to obtain and sharing it would be in line with Bus Open Data requirements being put in place by Government.

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?

Agree

Price information

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?

Bus operators will soon be obliged to provide price information under Bus Open Data legislation. The rules applying to Open Data should be the same irrespective of whether the vehicle(s) providing the service are driven or autonomous.

Who should administer the system?

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

We suggest an enhanced Traffic Commissioner regime with additional resources and technical support.

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

Setting a boundary between HARPS and private leasing

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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?

Yes

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

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

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?

Yes to both (1) and (2)

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. This is essential – these vehicles are highly complex specialised equipment that must be maintained according to manufacturers’ specifications.

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.

It is possible that the growth of peer-to-peer lending and group arrangements could undermine the Government’s desire to increase the number of passengers travelling by mass public transport (such as buses and their autonomous successors). Peer to peer lending of autonomous vehicles and small group travel will still contribute to congestion on the roads. It is important that such developments do not make it even harder to promote modal shift towards mass public transport.

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.

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This seems sensible.

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 suggest that existing regulation governing accessibility on public transport is taken as a starting point. A key concern is operation of ramps or lifts without a driver or operative present.

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?

It seems sensible to make provision for points 1-3. There could be a requirement to have a [remote] person that can observe and hear the situation at the HARPS' location using camera technology and who is able to communicate with passengers and anyone wishing to board the HARPS.

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 should be developed with standards for existing mass transit vehicles such as buses- i.e. PSVAR - being taken as a starting point.

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.

If a HARPS were operating under a concessionary travel scheme, the requirements should be the same as for buses.

Traffic regulation orders

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 wonder whether TROs should be digitally mapped with a requirement for HARPS operators to utilise these maps? Vehicles should be programmed to follow traffic regulations, with an appropriate override such as pulling over where safe if an emergency service vehicles needs to get through, etc.

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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?

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.

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.

This response takes Q30, Q31 and Q32 together.

We recognise the need to manage a potential move to autonomous, shared vehicles and the need to ensure they are not empty cruising as this could create considerable congestion for other road traffic and safety issues for pedestrians. Nevertheless, it is important to ensure that road pricing and parking provisions for HARPS does not encourage the growth of vehicles for individual or small group use to the detriment of the Government's drive to increase use of mass transit solutions. Whilst new technologies may mean that these vehicles are less/zero polluting in the future, their proliferation would still contribute to congestion, slowing journey times for everyone on the roads and posing a safety risk for pedestrians and cyclists. The principle should be in favour of modal shift towards public transport. Any road pricing schemes should tackle congestion and funds raised should be ring-fenced for public transport spending.

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?

It would be important to avoid inundation. The London approach to new mobility technology is to agree with operators that they can try things without excessive regulation as long as they do not overwhelm the infrastructure.

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, there are current powers (TRCs) in the deregulated environment to control quantity where that quantity results in congestion. Road pricing schemes could be used to stop the over-proliferation of private vehicles.

The current system of bus regulation: HARPS as mass transit

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?

We agree that the same rules should apply to HARPs as for current vehicles. We believe that the passenger number threshold might require a rethink, given that this threshold has arisen as a result of the licence required to drive such a vehicle – which will not be relevant for an autonomous/driverless vehicle. This is a new form of public transport, irrespective of numbers carried, and should have the highest standards applied to it.

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.

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?

Yes

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.

This could follow the model currently set out for bus partnerships.