



Future of Transport Regulatory Review
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FBHVC Response to
Future of transport regulatory review consultation:
Modernising vehicle standards

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INTRODUCTION

The Federation

The Federation of British Historic Vehicle Clubs (FBHVC or Federation) represents over 500 member clubs with a total membership of around 250,000 historic vehicle owners and enthusiasts. Interest in historic vehicles sustains economic activity worth £7.2 billion annually to the UK economy and supports the employment of nearly 35,000 people.

Vehicles owned by Federation members include historic vehicles of many kinds, including cars, motorcycles, buses, coaches, lorries, vans, utility vehicles, military vehicles, tractors and other agricultural vehicles and steam engines. Our members restore and preserve these vehicles for their historic interest, exhibit them at exhibitions, shows, community fetes, etc. and currently use the country's highways both in order to attend at those events, but also to participate in touring events and for general leisure purposes.

The Federation, both itself and through its membership, is thus the primary national repository of knowledge and expertise on the subject of historic vehicles in general.

The members of the Federation affiliated clubs possess a greater number and more extensive variety of historic vehicles, particularly those dating from before the Second World War, than in any other EU Member State. This reflects the different historical experiences of the UK, especially the absence of land war on its territory.

Historic vehicles do not form a part of the contemporary transportation structure of the nation. The primary purpose of their journey is seldom the transportation of either goods or people from one point to another but is rather the movement of the vehicle itself. Such use is largely an incidental part of their preservation, enjoyment and presentation to the public and to those having an interest in mobile heritage.

The Federation includes among its member clubs those catering for both passenger carrying vehicles and those designed for the haulage of goods. These vehicles represent a significant aspect of the social and economic history of the Country.

The Federation considers that a number of its members within these organisations and a number of manufacturing, supply and installation businesses could be adversely affected by the proposals made in the Consultation by potential outcomes and wishes to advise Department for Transport (DfT) of its concerns.

The Consultation

The Department for Transport (DfT) seeks views on the development of a national framework allowing it to adapt the regulation of vehicles. It states that this is essential for the safe deployment of **automated and other innovative vehicles**. It wishes to implement improved environmental standards and enforcement to better meet **current** and future challenges.

There are 4 areas where it is proposing to make changes and seeks views on:

- providing a modern framework for tomorrow's vehicles –regulating safety, security and environmental performance
- establishing a flexible, proportionate, and responsive approach to regulating safety, security and environmental performance of vehicles
- tackling tampering
- improving compliance, safety and security

For automated vehicles, the Law Commission have stressed the importance of an appropriate authorisation process before vehicles are allowed for use on roads as self-driving. The proposals set out in the Consultation seek to ensure the government has the necessary powers to achieve that outcome.

Final recommendations from the Law Commission, due at the end of 2021, will clarify what further requirements will be needed to ensure that liability for the driving task can be fairly and effectively reallocated in the absence of a human driver. It seeks powers to amend (or repeal and replace) retained relevant sections of EU law. This would allow such legislation to be updated to reflect technological changes and ensure GB law continues to be fit for purpose, enabling the DfT to make regulations on the approval of the design, construction, marking and labelling of:

- vehicles
- vehicle parts and equipment
- engines for non-road mobile machinery (NRMM)

In this context, the term 'vehicle' includes not only passenger and goods vehicles, but also trailers, 2- and 3-wheeled vehicles and quadricycles, agricultural and forestry tractors and their equipment.

The DfT states it needs the requirements and powers to be wider than those in the Road Traffic Act 1988 to reflect the rapidly developing technological landscape which was not envisaged when the legislation was enacted.

It also wants to have powers to introduce provisions to permit the safe introduction of new technologies and new vehicle categories that do not meet existing approval requirements.

It also wants to develop consumer information schemes such as tyre labelling.

The DfT proposes to create:

- an approval scheme for automated vehicles to set requirements for safety, security and in-use monitoring – this will cover systems, sub-systems and manufacturers' processes across the vehicle lifecycle (design, development, manufacturing and in-use operation)
- new technical regulations for road vehicles, such as approval and in-use obligations for software and cyber-security requirements over vehicle life – this will include the ability to direct vehicle manufacturers and suppliers of replacement parts to act where needed
- powers to ensure the correct maintenance and use requirements, most notably for connected and automated vehicles
- improved powers for monitoring and enforcement of in-use compliance and market surveillance activities – this will include requirements for manufacturers to provide information (such as technical specifications, performance data and access to embedded software)
- powers for the Secretary of State for Transport to amend, by statutory instrument, retained EU legislation on the type-approval of vehicles and NRMM – for example, the EU type-approval framework regulations and regulations covering engine pollutants and emissions

FBHVC Response

The Federation's concerns largely relate to the issue of retrospectivity. For those reasons, not all the questions in the consultation are seen as relevant to this concern and not all have been specifically answered.

Where appropriate, the questions not deemed relevant have been greyed out in this response.

As detailed in the introduction to this response, the Federation's task is to maintain the freedom to use 'Yesterday's Vehicles on Tomorrow's Roads' and to encourage the preservation and promotion of all types of vehicle within the broader context of our national heritage. Therefore our response is directed at concerns about any adverse effect the modernising of vehicle regulations might have on the historic vehicle community.

If there is to be any retrospective effect in any updating or reform of what we assume are The Road Vehicles (Construction and Use) Regulations 1986 (CUR86) as amended and The Road Vehicle Lighting Regulations 1989 (RVLR89), this would almost certainly have a deleterious effect on historic vehicle users. The Federation and its forebears have successfully argued for and achieved government acceptance of the principle that new vehicle design, maintenance, equipment and inspection standards are not applied retrospectively to earlier generations of vehicles. The principle is reflected in the current CUR86 and RVLR89 which require that a vehicle need only conform to the regulatory standards of its time to remain on the road. Subsequent standards are not applicable to it.

The impossibility of conforming with every new design or equipment standard would essentially bar many older vehicles from the roads. In addition, where contemporary regulations did not specify a design or build standard or that standard has been flexible enough in its provisions, the law has not barred modifications to for example ignition, brakes and suspension in older vehicles to improve safety, reliability, efficiency and performance. In addition for historic vehicles, particularly those manufactured in the last 30 to 40 years which have early generation electronic equipment, direct replacement parts are no longer available.

Alternative solutions need to be found which may involve modifications to accept alternatives.

Of vital importance to the historic community is that a major manufacturing, supply and installation industry with commensurate jobs and economic benefit to the UK, is sustained by such modifications to historic vehicles.

We note the consultation document uses phrases that suggest it is forward looking in terms of the application of new regulations, with phrases such as, *"[a] modern framework for tomorrow's vehicles" and*

"[w]e anticipate a greater range of new and innovative road vehicle designs and associated technologies.

We propose a flexible, proportionate and responsive approach to allow safe, secure and environmentally friendly vehicles to come to market. These vehicles need to be registered for use on our roads without undue delay."

We note also the reference to the Law Commission 3 year review and the fact that this new consultation 'complements' their work in relation to legal frameworks for automated vehicle deployment. All this is suggestive that the new legal provisions are directed at the next generation of vehicles rather than those in the past.

² Email dated 16 November 2021

Federation of British Historic Vehicle Clubs

However the area which has aroused most interest and indeed concern in the historic vehicle community is the one entitled '*Tampering*'. As I referred to above many historic vehicles and those on the cusp of becoming historic vehicles were and are subject to modifications for the legitimate reasons stated. The many businesses, either manufacturers or installers, referred to earlier are reliant on this trade. The danger identified in the consultation is that new statutory provisions may either intentionally or accidentally encompass modification activities which are not currently barred by CUR86 or RVL89.

The Federation has already made a preliminary submission on the above concerns containing a number of questions.¹ These were directed at ensuring that any Government response to the Consultation makes it clear that any new regulatory framework will:

- a) Follow the long existing policy principle that revised CUR will not have retrospective effect.
- b) Specifically not apply tampering provisions retrospectively but confine them to 'tomorrow's' vehicles as envisioned in the consultation.
- c) Consider a specific provision in the regulations exempting historic vehicles.

The Federation was grateful to receive a confirmatory response that the type of activities the anti-tampering provisions are intended to counter include those that prevent a vehicle's emissions system from operating correctly and as vehicles become increasingly automated, to prevent alterations to a vehicle's integral software and sensing technologies which create safety and security risks.

It also confirmed the policy intent is to prevent modifications that have a negative impact on road safety, vehicle security and the environment and the proposals are not intended to:

- prevent legitimate motorsport activities
- prevent restoration, repairs or legitimate improvements to vehicles, such as classic cars or motorbikes
- negatively impact businesses involved in these activities.²

The Federation was also encouraged to note an amendment to the consultation in the same terms.

The above assurances notwithstanding, the Federation recalls its submission above that statutory provisions may nevertheless unintentionally have a negative impact. For example provisions should not regard the fitting of pattern parts as tampering and the legislative provisions should not prevent private individuals from being able legally to repair, service and modify their vehicles.

It therefore submits this response to the consultation to provide a fuller picture to the DfT so that examples of the areas of concern are clear when draft legislation is being prepared. It also stands ready as a formal stakeholder to review any draft legislative proposals.

² Email dated 16 November 2021

CONSULTATION QUESTIONS

Q Do you agree or disagree with our overall intention relating to modernising vehicle standards?

A Neither agree nor disagree. See below on FBHVC concerns

Q Overall, what are your comments on our intention?

A The FBHVC has already expressed concern about any adverse effect the modernising of vehicle regulations might have on the historic vehicle (as defined) community. It notes and welcomes the assurances given in a response to the Federation and in the revised Consultation paper. However, it wishes to emphasise that if there is to be any retrospective effect in an update or reform of what we assume are The Road Vehicles (Construction and Use) Regulations 1986 (CUR86) as amended and The Road Vehicle Lighting Regulations 1989 (RVLR89), this would potentially have a deleterious effect on historic vehicle users. The Federation and its forebears has successfully argued for and achieved government acceptance of the principle **that new vehicle design, maintenance, equipment and inspection standards are not applied retrospectively to earlier generations of vehicles.**

The principle is reflected in the current CUR86 and RVLR89 which require that a vehicle need only conform to the regulatory standards of its time to remain on the road. Subsequent standards are not applicable to it. The impossibility of conforming would essentially bar many older vehicles from the roads. In addition, where contemporary regulations did not specify a design or build standard or that standard has been flexible enough in its provisions, the law has not barred modifications to for example ignition, brakes and suspension in older vehicles of all types from buses to sportscars to improve safety, reliability, efficiency and performance. A major manufacturing, supply and fitting industry with commensurate jobs and economic benefit to the UK is sustained by such modifications to historic vehicles. In addition private individuals have not been barred from servicing, repairing and modifying historic vehicles.

Q Overall, do you agree or disagree with the package of proposals stated? Why and what are your comments on any of the specific proposals?

A Neither agree nor disagree. See below on FBHVC concerns

Q What aspects or potential applications of the proposed powers do you think:

- are particularly important for us to take forward and why?
- could create difficulties and why?

A So long as the latest policy undertakings that older vehicles will not be expected to comply with new type approval standards are implemented and the proposals are applied only to 'modern vehicles' or future vehicles as mentioned in the Consultation introduction and in the heading to this question, the Federation's would be lessened. However if there was to be any retrospective effect or any potential application of new powers to historic vehicles, it considers this could create difficulties. As evidenced by exemptions from MOT Testing, it is already accepted in government policy that historic vehicle struggle to comply with current regulations and testing and would similarly be unlikely to meet any further updates to safety, security and environmental regulations. Therefore the FBHVC would seek exemptions for historic vehicles from such new regulations.

- could be excessively costly for industry to meet and why?

What data or evidence can you provide, or direct us to, that would allow us to assess the potential costs and benefits of the proposals put forward?

Are any of the proposed requirements expected to:

- give rise to challenges and why?
- be excessively costly to comply with and why?

A flexible, proportionate, and responsive approach to regulating safety, security, and environmental performance of vehicles

Q Overall, do you agree or disagree with the package of proposals stated? Why and what are your comments on any of the specific proposals?

A Neither agree nor disagree. Please see FBHVC concerns on disproportionate effect of any retrospective application of new standards to historic vehicles

Q What further provisions, beyond those proposed, relating to prototype vehicles or vehicle orders would better enable the registration and use of innovative vehicles?

Q Are there any areas of type approval where you think it may be appropriate to issue technical guidance in place of, or to supplement, secondary legislation? What type of approvals and why?

Q What data or evidence can you provide, or direct us to, that would allow us to assess the potential costs and benefits of the proposals put forward?

Q Are any of the proposed requirements expected to:

- give rise to challenges and why?
- be excessively costly to comply with and why?

A Please see earlier comments on inability of historic vehicles to be retrospectively equipped to comply with new standards.

Tackling tampering

Q Overall, do you agree or disagree with the package of proposals stated? Why and what are your comments on any of the specific proposals?

We define a system, part or component as 'software and/or hardware that impacts on the environment, road safety or security'. This would include examples such as those which assist or fulfil the driving task, control power, speed or emissions, protects road users or protects the vehicle from tampering.

A Please see comments below.

Q Do you agree or disagree with this definition? If you disagree, why and how would you define it?

A Please see comments below.

For our purposes, the scope of the measure is tampering with a system, part or component of a vehicle or NRMM. Provide any information on how widespread tampering is.

Q What if any other:

- services could be inadvertently affected by the proposals on tampering?
- products could be inadvertently affected by the proposals on tampering?
- exemptions should we consider on tampering?

A As referred to above many historic vehicles and those on the cusp of becoming historic vehicles were and are subject to modifications for the legitimate reasons stated. The many businesses, either manufacturers or installers, referred to earlier are reliant on this trade. The danger identified in the consultation is that new statutory provisions may either intentionally or accidentally encompass modification activities which are not currently barred by CUR86 or RVL89.

The Federation was encouraged to by the DfT response to its initial questions on the new regulatory framework and the undertakings in the revised Consultation paper that the type of activities the DfT want to take more effective action against include tampering activities that prevent a vehicle's emissions system from operating correctly and as vehicles become increasingly automated, to prevent alterations to a vehicle's integral software and sensing technologies which create safety and security risks.

The Federation would wish to see reflected in any legislative proposals on tampering the further undertaking that they will not prevent legitimate motorsport activities, prevent restoration, repairs or legitimate improvements to vehicles, such as classic cars or motorbikes or to negatively impact businesses involved in these activities. The Federation would wish to ensure that anti tampering provisions should not regard the fitting of pattern parts as tampering and they should not prevent private individuals from being able legally to repair, service and modify their historic vehicles.

Where not implicit, the FBHVC would seek **specific exemptions** from such new regulations for historic vehicles and repair, servicing and modification activities in relation to them.

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What data or evidence can you provide, or direct us to, that would allow us to assess the potential costs and benefits of the proposals put forward?

Are any of the proposed requirements expected to:

- give rise to challenges and why?
- be excessively costly to comply with and why? Improving compliance, safety and security

Overall, do you agree or disagree with the package of proposals stated? Why and what are your comments on any of the specific proposals?

What, if any, barriers or reasons exist that prevent manufacturers from recalling certain vehicles and which we should consider when setting minimum recall rates?

What data or evidence can you provide, or direct us to, that would allow us to assess the potential costs and benefits of the proposals put forward?

Are any of the proposed requirements expected to:

- give rise to challenges and why?
- be excessively costly to comply with and why?

Public Sector Equality Duty

Supply any data or evidence you have about any of the proposals discussed that you think would positively or negatively impact on individuals with protected characteristics.

Final comments

Any other comments?