LEGISLATIVE CONSENT MEMORANDUM
LASER MISUSE (VEHICLES) BILL

Background

1. This memorandum has been lodged by Fergus Ewing, Cabinet Secretary for Rural Economy and Connectivity, supported by Humza Yousaf, Minister for Transport and Islands, under Rule 9B.3.1(c)(ii) of the Parliament’s standing orders. The Laser Misuse (Vehicles) Bill ("the Bill") was introduced in the House of Lords on 19 December 2017 and completed report stage on 27 February. The Bill can be found at:
https://services.parliament.uk/bills/2017-19/lasermisusevehiclesbill.html

Content of the UK Laser Misuse (Vehicles) Bill

2. As introduced, the Bill contained only two clauses and sought to create an offence of shining or directing a laser beam towards a vehicle which is on a journey where the laser beam dazzles or distracts, or is likely to dazzle or distract, a person with control of the vehicle. “Vehicle” was defined by reference to certain vehicles only, namely an aircraft, motor vehicle (on a road), pedal cycle (on a road), train, vessel, hovercraft or submarine. The Bill provided for a defence if the person had a reasonable excuse for shining the laser beam towards the vehicle or did not intend to do so and exercised all due diligence to avoid doing so.

3. The Bill, as amended, seeks to create an offence of shining or directing a laser beam towards a moving vehicle (or one that is ready to move) where the laser beam dazzles or distracts, or is likely to dazzle or distract, a person with control of the vehicle. In the amended Bill, “Vehicle” has a wider meaning, being “any vehicle which is used for travel by land, water or air”. The same defence provisions apply. The amended Bill also creates a separate but similar offence of shining or directing a laser beam towards an air traffic facility, or towards a person providing air traffic services, so as to dazzle or distract them (or be likely to).

4. The Bill as amended contains 4 clauses. Clause 1 concerns the offence of shining or directing a laser beam towards a moving vehicle. Clause 2 concerns offences relating to air traffic services. Clause 3 is an interpretation clause. Clause 4 concerns the extent, commencement and short title of the Bill.

Provisions Which Relate to Scotland

5. This is a short Bill with (in its current, amended form) four clauses. At introduction, and as presently drafted, all of the provisions will extend to Scotland.

6. Further detail and the reasons for seeking the legislative consent of the Scottish Parliament are set out below as regards the provisions falling within the legislative competence of the Scottish Parliament.
Reasons for seeking a legislative consent memorandum

7. The legislation is principally aimed at addressing the shining of laser pens or pointers at pilots of commercial aircraft – of which there have been increasing incidents in recent years. The regulation of aviation and matters of aviation security are reserved. The legislative consent of the Scottish Parliament is accordingly not required for clause 2 of the Bill, which concerns shining a laser beam towards an air traffic control facility.

8. However, as amended, the Bill will also criminalise the shining or directing of laser beams towards any vehicle used for travel by land, water or air. The legislative consent of the Scottish Parliament is required for Clause 1 of the amended Bill (offence of shining or directing a laser beam towards a vehicle) because the wide definition of “vehicle” means that the behaviour in question will be proscribed in some contexts where proscription of that behaviour is not reserved, such as in relation to carriages drawn by horses or other animals, and motor vehicles and bicycles being used away from a road. The Bill is accordingly a “relevant Bill” for the purposes of Chapter 9B of the Standing Orders of the Scottish Parliament, in that it makes provision applying to Scotland for a purpose within the legislative competence of the Parliament.

9. The legislative consent of the Scottish Parliament is sought in relation to the Bill because it would seem prudent for Scotland to have legal coverage proscribing this behaviour in any devolved areas to ensure parity across the UK.

Consultation

10. There has been no formal consultation on the Bill by the Scottish Government. However, the UK Government carried out a formal call for evidence in 2017, receiving responses from groups such as ophthalmologists, airline pilots, amateur astronomy societies and other users of laser pointers, Trading Standards authorities, professional laser safety advisors and members of the public. Of the 265 responses, many raised the potential health hazards of shining a laser pen in a person’s eye, the need for more awareness on the risks of the issue and the danger this can pose to airline pilots in flight.

Financial Implications

11. Although there are existing criminal offences in Scotland which the prosecuting authorities can pursue regarding allegations of laser pens being shone in the eyes of someone operating a vehicle, the Bill creates a more bespoke offence for this specific scenario. No additional financial implications are predicted from the legislation.

Conclusion

12. It is the view of the Scottish Government that it is in the interests of the people of Scotland and of good governance that the relevant provisions which fall within the legislative competence of the Scottish Parliament should be considered by the UK Parliament in order to ensure that Scotland has as robust laws in these areas as England and Wales.
Draft Legislative Consent Motion

13. The draft motion, which will be lodged by the Minister for Transport and Islands, is:

“That the Parliament agrees that the relevant provisions of the Laser Misuse (Vehicles) Bill, which completed House of Lords report stage on 27 February 2018, relating to the creation of a new offence regarding the misuse of lasers in relation to vehicles, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
March 2018