

Stuart McMillan MSP
Convener of the Delegated Powers and Law
Reform Committee

By email - dplr.committee@parliament.scot

29 February 2024

Dear Convener,

Automated Vehicles Bill

Thank you for your letter dated 28 February 2024 in relation to clause 50(1) of the UK Government's Automated Vehicles Bill - Power to change or clarify existing traffic legislation.

The Delegated Powers and Law Reform Committee has asked the Scottish Government to provide an update on progress in the discussions between the Scottish Government and UK Government regarding clause 50 since the position set out in the Scottish Government's Legislative Consent Memorandum ("the LCM") in December 2023.

Since the LCM was lodged on 20 December 2023, my officials have undertaken extensive engagement with the UK Government on the Bill provisions that are considered to engage the LCM process, not least in relation to clause 50.

It is the Scottish Government's view that clause 50 engages the LCM process as this power could be used to clarify the application to a UIC of devolved legislation relating to the driving or use of a vehicle. This may include legislation in the criminal sphere in relation to dynamic driving offences such as contraventions of traffic orders under the Road Traffic Regulation Act 1984, as well as, for example, legislation on matters such as low emission zones, parking and bus lane contraventions. Throughout engagement the UK Government has maintained that Chapter 1 of Part 2, which includes clause 50, is reserved because it relates to the subject matter of the Road Traffic Act 1988 so far as it is concerned with the use of vehicles on roads, with impacts on devolved matters being considered incidental to this reserved matter.

The Scottish Government's position on these matters is fully set out in the Supplementary Legislative Consent Memorandum lodged on 29 February 2024. But in summary, the Scottish Government does not agree with this assessment. The reserved purpose offered by

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the UK Government is regulating the use of automated vehicles which in their view falls within the subject matter of the Road Traffic Act 1988. The Scottish Government's view continues to be that this takes too broad an approach to the subject matter of that Act. That subject matter does not extend to any and all regulation of the use of vehicles. It is instead concerned, so far as relating to the construction and use of vehicles, with the regulation of minimum standards for the safe use of vehicles. Accordingly, any and all regulation of the use of automated vehicles is not a reserved matter, just as any and all use of conventional vehicles is not a reserved matter. It is also not accepted that impacts on devolved matters would be merely incidental so far as clause 50 may allow changes to be made to devolved road traffic legislation. Providing a means to modify both reserved and devolved traffic legislation appears to be the primary reason that these provisions are being made.

It is also clear that the broad regulation-making power in clause 50 may be used to modify legislation relating to the driving or use of a vehicle in devolved areas. We agree with the Committee's view that there is no provision in the Bill that would enable Scottish Parliament scrutiny of such regulations.

Officials have tried to open dialogue with the UK Government in relation to a mechanism for the Scottish Government to give consent or to be consulted on regulations that would amend/or clarify devolved legislation. However, the UK Government indicated that they could not discuss this until the supplementary LCM has been lodged.

On the basis that this power could be exercised for devolved purposes with no means of oversight by the Scottish Ministers or the Scottish Parliament, the Scottish Government has lodged a supplementary LCM on 29 February 2024 with a recommendation to withhold consent to clause 50.

I hope you find the response helpful.

Yours sincerely,

FIONA HYSLOP

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St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

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