



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Rt Hon Mark Harper MP
Secretary for State for Transport
By email

T1.01
Chamber Office
EDINBURGH
EH99 1SP

DPLR.Committee@parliament.scot

28 February 2024

Dear Secretary of State

Automated Vehicles Bill

At the meeting of the Scottish Parliament's Delegated Powers and Law Reform Committee on 27 February, the Committee considered the delegated powers exercisable within devolved competence for Scotland in the above Bill, as referred to in the [Legislative Consent Memorandum](#) ("the LCM") lodged by the Scottish Government with the Scottish Parliament on 20 December 2023.

To assist the Committee in its consideration of the LCM, it agreed to request further information in relation to **clause 50(1) - Power to change or clarify existing traffic legislation**.

The Committee noted that the Scottish Government considers that the legislative consent of the Scottish Parliament is required for this clause, as the regulation-making power may be used to modify legislation (including Acts of the Scottish Parliament and SSIs) relating to the driving or use of a vehicle in devolved areas. From the LCM, the Committee understands the UK Government's view to be that the clause relates to reserved matters, and that the UK Government is therefore not seeking the Scottish Parliament's legislative consent for this power.

However, the [UK Government's Delegated Power Memorandum](#) ("DPM") notes that the power can be used to amend Scottish primary and subordinate legislation, and states (in the context of the justification for the choice of procedure):

"The affirmative procedure will ensure that Parliament (as well as the Scottish Parliament and Senedd Cymru, where Scottish or Welsh legislation is amended) can closely scrutinise any regulations changing or clarifying how existing primary legislation applies to the user-in-charge."



The Scottish Parliament
Pàrlamaid na h-Alba

The Committee noted that there appears to be no provision in the Bill that would enable Scottish Parliament scrutiny of such regulations.

The Committee therefore asks:

- (i) The Delegated Powers Memorandum, at paragraph 123, states that the Scottish Parliament will be able to scrutinise subordinate legislation made under clause 50. How would this be achieved given that the power is conferred on the Secretary of State only, and is to be exercised by regulations laid only in the UK Parliament?**
- (ii) Given the statement in the DPM, was consideration given to either conferring this power also on Scottish Ministers for exercise within devolved competence, which would have enabled such scrutiny by the Scottish Parliament; or making its exercise by the Secretary of State subject to a requirement for the consent of the Scottish Ministers, which would have facilitated a degree of such scrutiny?**
- (iii) The Committee understands the UK Government's position to be that the legislative consent process is not engaged for this clause. Could clarification be provided in this regard?**

For your information, the Committee is also writing to the Scottish Ministers seeking an update on progress in the discussions between the Scottish Government and UK Government regarding clause 50 since the position set out in the LCM lodged on December 2023.

I would be grateful if you could please email your response to dplr.committee@parliament.scot by **Tuesday, 5 March**. The Committee will then consider your response (and the Scottish Government's) at a future meeting, and report to the Scottish Parliament's lead committee on the Bill, the Net Zero, Energy and Transport Committee (copied into this letter).

Yours sincerely

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