

Cabinet Secretary for Transport

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Scottish Parliament
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9 May 2024

Dear Edward,

UK Automated Vehicles Bill – Update on Clause 50 and Amendments to Clause 89

I wish to thank the Net Zero, Energy and Transport Committee for their consideration of the Legislative Consent Memorandum (LCM) and Supplementary Legislative Consent Memorandum (SLCM), along with the helpful recommendations set out in the report published on 27 March 2024.

Update on Clause 50

Following the Committee's recommendation to continue discussing the disagreement in relation to clause 50, to try to reach a position with which everyone can be content, I met with the Minister for Decarbonisation, Aviation and Technology, Anthony Browne, on Wednesday 24 April 2024.

I made a strong case for there to be a requirement on the face of the Bill to consult with, or seek the consent of the Scottish Ministers when making regulations under clause 50. However, it was clear that the UK Government did not consider that such a requirement was necessary on the face of the Bill. Minister Browne agreed to consider this further and wrote to me on 29 April 2024 to advise that the UK Government will always consult with the Scottish Government where they propose to use the regulation-making power in Clause 50. Attached is a copy of the letter and a copy of my response.

I do not consider this adequately reflects the potential for clause 50 to be exercised for devolved purposes and in particular for determining how or in what circumstances devolved enactments relating to the driving or use of vehicles apply to a user-in-charge. The appropriate course continues in my view to be for a consultation or consent mechanism as regards this clause to be placed on the face of the Bill. It appears clear, however, that we will not reach a consensus on this matter. Accordingly, I acknowledge and note the written reassurance that the Scottish Government will be consulted where the UK Government proposes to use the regulation-making power under clause 50.

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The Scottish Government will continue to engage with the UK Government to support proactive, meaningful and timely engagement as regulations are being developed under this Bill.

Amendments to Clause 89

Furthermore, I wish to inform you that on 17 April 2024, my officials were notified that the Secretary of State for Transport, Mark Harper had tabled an amendment to the Automated Vehicles Bill, which aims to rectify a drafting oversight in Part 5 of the Bill, which deals with permits for automated passenger services. As you are aware, the Bill provides new powers for the Scottish Ministers to regulate the new permitting arrangements, which are needed for taxi and private hire vehicles when used to provide autonomous passenger services (APS).

These amendments were proposed in order to clarify where fees, enforcement costs and penalties collected by the Traffic Commissioners (TCs) are to be paid. As TCs are not a central government body, specific provision must be made for allocation of TC revenue.

This amendment relates to the power to make regulations under clause 89(7), which provides the appropriate national authority with the power to allow its functions to be exercisable by the TCs instead of, or in addition to, the appropriate national authority (i.e. Scottish Ministers). Rule 9B.3.1.(c) of the Scottish Parliament's Standing Orders provides that an LCM be lodged for any amendment that makes "relevant provision for the first time". Clause 89 is included in the SLCM, and given this amendment clarifies the scope and application of this regulation making power, rather than adding, removing, or altering the power, our view is that it is covered under the existing SLCM. Therefore, this amendment does not engage the need for an additional legislative consent memorandum.

I trust you will find this update helpful.

Yours sincerely,



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29 April 2024

Dear Fiona,

Follow up letter to meeting of 24 April 2024

Thank you for meeting with me this week to discuss the Automated Vehicles Bill. I promised to take away the two issues we discussed around clause 50 and a review clause within the Bill.

Clause 50

I would like to provide some written reassurance around your concern regarding consultation on the future use of the clause 50 power.

I can assure you that where we propose to use the regulation-making power in Clause 50, we will always consult with the Scottish Government.

I see consultation with the Scottish and Welsh Governments as essential to develop the consistent enforcement approaches needed for successful deployment of self-driving vehicles. My officials engaged regularly with Scottish Government and Welsh Government officials throughout the joint review by the Law Commissions and whilst scoping how to address its recommendations. They have also worked closely on the creation of a self-driving section in The Highway Code, and amendment to rules on use of self-driving vehicles in The Road Vehicles (Construction and Use) Regulations.

My officials have already started discussions on enforcement with the police and public prosecutors – including both the police forces for England and Wales and the Scottish police as well as the Crown Prosecution Service and the Crown Office and Procurator Fiscal Service.

Review Clause

In our meeting we also discussed a potential review clause to consider the operation of this legislation after a defined period.

As I stated in the meeting, Clause 38 of the Bill requires the Secretary of State to monitor and assess the performance of the automated vehicle fleet every year, starting from the first authorisation of a vehicle. The conclusions from this assessment will be published annually, and the assessment will support potential amendments to our Statement of Safety Principles, thereby ensuring continual improvements to our safety framework.

It is also the case that future Governments are likely to undertake reviews of primary legislation, if the legislation is found to not be operating in line with its intended purpose. These reviews will be done even without an explicit requirement written into Bills. As discussed in our meeting, writing a requirement into the Bill for reviews within specified time periods may not be appropriate. A time-bound requirement would limit flexibility if the need for a review arose earlier than the specified time, or later. A review requirement which was not time-bound would seem to add little to future Governments' existing ability to undertake legislative reviews, as described above. I am therefore unconvinced that a review clause in the Bill is necessary.

I can reassure you that monitoring and assessment of the future regime will be carried out by the Secretary of State but will of course consider the views of the operation of the regime in Scotland and Wales.

Post Royal Assent

I would also like to update you that following Royal Assent of the Bill, a comprehensive programme of secondary legislation will follow the Bill, establishing the detailed mechanics of the new regulatory framework. This will incorporate several statutory instruments, and statutory guidance in the form of the Statement of Safety Principles.

Formal consultation will be supported by extensive engagement throughout the process including with the Scottish Government. We expect to have the core elements of the framework in place by 2026. Among the first elements to be consulted on will be:

- Regulations on misleading marketing, as these can apply before the authorisation system has been established. We expect consultation on these to commence later this year.
- Digitisation of Traffic Regulation Orders. We plan to consult on draft regulations in the Autumn, to come into force in Spring 2025.


Early work on the Statement of Safety Principles will begin this year, as we build and review the evidence base that will underpin them. We expect to consult on the Principles in 2025.

The detailed regulations establishing the authorisation, operator licensing, and in-use regulation functions will then follow. Full details on the programme will be made available in due course and we will of course share these with your officials.

I would like to restate my thanks to you and your officials for your engagement on this Bill and I would suggest that we continue to take the same approach of openness and engagement throughout this future implementation process.

Please let us know if you have any further questions or concerns.

Yours sincerely,

A handwritten signature in black ink that reads "Anthony Browne". The signature is written in a cursive style and is underlined with a single horizontal stroke.

ANTHONY BROWNE MP

MINISTER FOR DECARBONISATION, AVIATION AND TECHNOLOGY

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01 May 2024

Dear Anthony,

Automated Vehicle Bill - Follow up letter to meeting of 24 April 2024

Thank you for your letter, dated 29 April 2024, setting out your position following our meeting on 24 April 2024. I welcomed the opportunity to meet you to discuss our respective positions and to try to reach an agreement on clause 50 and a review clause on the face of the Bill.

Clause 50

My position remains this does not adequately reflect the potential for clause 50 to be exercised for devolved purposes and in particular for determining how or in what circumstances devolved enactments relating to the driving or use of vehicles apply to a user-in-charge. The appropriate course continues in my view to be for a consultation or consent mechanism as regards this clause to be placed on the face of the Bill. It appears clear, however, that we will not reach a consensus on this matter. Accordingly I acknowledge and note the written reassurance that the Scottish Government will be consulted where the UK Government proposes to use the regulation-making power under clause 50. I would expect that consultation to be proactive, timely and meaningful to ensure that I am provided with sufficient advice to consider the implications of any such regulations for devolved interests.

I am aware our officials have already started engagement to map out a timeline which takes these matters into account.

I am pleased to note that the UK Government has commenced engagement to discuss enforcement with police and public prosecutors, including Police Scotland, as well as the Crown Prosecution Service and the Crown Office and Procurator Fiscal Service. My officials have engaged with some of these parties since the Bill was introduced in November 2023 and will continue to engage with them as regulations are being developed.

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Review Clause

Thank you for providing written clarification setting out your views relating to the inclusion of a review clause. I have taken on board your comments and consider that with a challenging programme of secondary legislation to be progressed by the UK Government over the next couple of years, it would seem sensible to provide flexibility for reviews to be undertaken as and when it would be appropriate to do so, and in conjunction with the Devolved Governments.

Post Royal Assent

Your update is helpful and I look forward to seeing a comprehensive programme of the Secondary legislation that will follow after the Bill.

Our officials have started to discuss how we can continue to work together going forward to ensure the Scottish Government plays a crucial role in supporting the development of regulations.

I welcome the engagement that has taken place to date between officials on the Bill, and expect proactive, meaningful and timely engagement to take place as regulations are being developed.

Yours sincerely,



FIONA HYSLOP
Cabinet Secretary for Transport

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