

Supplementary Legislative Consent Memorandum

Automated Vehicles Bill

Background

1. This memorandum has been lodged by Fiona Hyslop, Cabinet Secretary for Transport, under Rule 9B.3.1(a) of the Parliament's Standing Orders. The Automated Vehicles Bill was introduced in the House of Lords on 8 November 2023 and an LCM (LCM-S6-42) was lodged on 20 December 2023, without any recommendation on consent, and noted that a supplementary LCM outlining the Scottish Government's recommendation on consent would be lodged in February 2024. The Bill can be found at [Automated Vehicles Bill \[HL\] \(parliament.uk\)](#)

Content of the Automated Vehicles Bill

2. The Bill implements the recommendations of a 4 year review of the regulation of automated vehicles carried out jointly by the Law Commission of England and Wales and the Scottish Law Commission. The Explanatory Notes to the Bill state that "[i]t is intended to set the legal framework for the safe deployment of self-driving vehicles in Great Britain". The regulation of automated vehicles ("AV") involves provision about both the design of vehicles and also driver liability and traffic management.

3. The Bill includes provisions to establish a regulatory scheme for automated vehicles, including licensing of operators for vehicle use without users-in-charge and powers to require information from and to investigate the premises of such bodies, and powers to issue civil sanctions against such bodies; new offences related to automated vehicles and appointment of inspectors of automated vehicle incidents; policing and investigation; marketing restrictions; new interim regulatory regime for automated passenger services; adaptation of existing regimes such as the power to amend the "type-approval" framework; and general in areas such as the application of data protection legislation, crown application, regulation making procedures.

4. The Bill is comprised of 7 Parts and 6 Schedules. The provisions relevant to this memorandum are:

- Part 1, Chapter 6, clause 40 (Power to require reports from police and local authorities);
- Part 2, Chapter 1 (Legal position of user in charge ('UIC'));
- Part 5, Permits for automated passenger services, clauses 82 to 85 and 87 to 90;
- Schedule 6 - Civil sanctions for infringing Passenger Permit Scheme.

5. Since the LCM (LCM-S6-42) was lodged on 20 December 2023, the UK Government tabled amendments ahead of Report Stage in the House of Lords on 6 February 2024, and these were accepted. In particular, amendments were made to clause 88 that engage the legislative consent process.

6. Parts of the Bill, not mentioned in this memorandum, are not considered to engage the legislative consent process and have therefore not been included.

Provisions which require the consent of the Scottish Parliament

7. The Scottish Government agrees with the UK Government that a number of the Bill's provisions make provision for a devolved purpose, or alter the executive competence of the Scottish Ministers, and as such require the legislative consent of the Scottish Parliament. The provisions relate to:

- Part 1, Chapter 6, clause 40;
- Part 5, clauses 82 to 85 and 87 to 90 and Schedule 6 (including the UK Government's amendments to clause 88).

8. The Scottish Government considers that legislative consent is required for the following additional provisions which the UK Government has not identified as part of their analysis:

- Part 2, Chapter 1, clauses 46 to 51

Reasons for considering legislative consent

Part 1, Chapter 6, clause 40 – Power to require reports from police and local authorities

9. Clause 40 permits the Secretary of State to make regulations requiring the Scottish Ministers, among others, to report incidents of a kind described in those regulations to the Secretary of State. The kinds of incidents that may be described in those regulations are incidents that occur within the area of the authority, which are incidents on a road or other public place, which involve an authorised automated vehicle and which reveal grounds for enquiring into whether any of the enforcement powers created by the Bill has become exercisable. Such incidents require to be reported only so far as the authority in question has obtained information about them in the performance of its functions.

10. This provision will result in a new function being conferred on the Scottish Ministers via regulations to provide the above noted reports. As such, this will alter the executive competence of the Scottish Ministers and will therefore engage the legislative consent process.

11. The Scottish Government is content with the proposals around the sharing of information on incidents providing it is at an appropriate time. The sharing of

information can support learning and collaboration across partners to enhance road safety. For example, the Scottish Government already shares information across partner agencies with conventional vehicles at various safety boards/ meetings to allow learnings from certain incidents. DfT receives this information which forms an annual publication on road casualties within Great Britain. The implementation of the sharing of the information and the format would need to be in an agreed format with Police Scotland and Local Authorities to ensure there is alignment with their investigation and reporting processes. The Scottish Government will work closely with the UK Government as the regulations are being developed.

12. The Scottish Government **recommends consent** is given to clause 40.

Part 2, Criminal Liability for Vehicle Use, Chapter 1 (Legal position of user in charge ('UIC'))

13. Chapter 1 of Part 2 of the Bill establishes the legal liability of the UIC for the operation of a vehicle. The UIC is a person in a position to exercise control of a vehicle which is being operated for the time being by an authorised automated function.

Clause 46 - Meaning of "user-in-charge"

14. Clause 46 sets out the new legal concept of UIC. An individual is the UIC if the vehicle is an authorised automated vehicle with an authorised user-in-charge feature, the feature is engaged and that the individual is in the vehicle. In addition, the UIC must be in a position to exercise control of the vehicle, but is not controlling it.

Clause 47 - User-in-charge not liable for manner of driving

15. Clause 47 provides that an individual does not commit an offence arising from the way in which a vehicle is driven in certain circumstances. Those circumstances are that the individual is the UIC of the vehicle at the time of the act that would constitute the offence. The immunity also applies where the act that would constitute the offence results from something done 'by the vehicle' while the individual was the UIC and also does not result from that individual's conduct after ceasing to be the UIC. The way in which the vehicle is driven relates to the behaviour of the car and does not include the condition or qualification of the driver.

Clause 48 - Exceptions from immunity

16. Clause 48 provides certain exceptions from the immunity mentioned in clause 47. Subsection (1) explains that UIC immunity ceases to apply when the period for responding to a valid transition demand issued by the vehicle expires. Subsection (2) ensures, however, that the driver will not be liable if the vehicle does not behave in accordance with agreed authorisation requirements regarding how it will handle situations where the UIC does not take control within the transition period. Subsection (3) provides that the immunity does not apply in relation to parking

offences or offences arising from the position where the vehicle is stopped or left stationary where the UIC has voluntarily left the vehicle. Subsection (4) provides that the immunity does not apply in relation to offences arising from the vehicle's entering or remaining on a particular road or other area without a required toll or charge being paid. This clarifies that the UIC will need to verify whether the route followed incurs any toll or charge. Subsections (5) and (6) clarify that the immunity in clause 47(1) does not apply to an offence that has arisen when the vehicle is driving itself outside of an authorised location or circumstance due to deliberate interference with vehicle equipment.

Clause 49 - User-in-charge otherwise liable as driver

17. Clause 49 provides that the UIC of a vehicle is, although benefiting from the immunity provided in clause 47, to be taken for the purposes of any enactment (which includes an Act of the Scottish Parliament/Scottish Statutory Instrument) to be the driver of, and driving, the vehicle. Their status as driver continues until the point at which someone else assumes the role of UIC or the UIC feature is disengaged.

Clause 50 - Power to change or clarify existing traffic legislation

18. Clause 50 makes provision for a regulation-making power to clarify the application of other existing legislation (including devolved legislation) to the UIC. The Secretary of State may, by regulations, make provision for the purpose of changing or clarifying whether, how or in what circumstances a "relevant enactment" applies to the UIC of a vehicle. This includes enactments made before or after the Bill is passed. The power extends to making amendments to enactments. A relevant enactment is one that relates to the driving or use of a vehicle. 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.

Clause 51 - Supplementary provision

19. Clause 51 makes supplementary provision in relation to this Chapter. It provides that an enactment passed or made after this Act is to be read as subject to sections 47 to 49 unless a clear intention to the contrary appears.

20. Subsections 2 and 3 of clause 51 set out how the burden of proof applies in criminal proceedings in relation to clauses 47(1) and 48(1) and (2).

Scottish Government's position and recommendation on consent for clauses 46 to 51

21. The Scottish Government has undertaken significant engagement with the UK Government on clauses 46 to 51. The UK Government's view is that Chapter 1 of Part 2 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 does not agree with this assessment. The reserved purpose offered by the UK Government is regulating the use of AVs 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.

22. The UK Government has highlighted the importance of a consistent approach to liability for UICs across Great Britain. Scottish Government accepts that a consistent approach is required. However, it does not accept that all the provisions required to secure consistency are reserved. The LCM process exists to ensure that devolved interests are respected where UK Government policy requires consistency of approach between reserved and devolved matters in the delivery of UK Government policy.

23. It has also been suggested by the UK Government that changes to devolved offences are "incidental" to the reserved purpose of regulating AV use. This argument is not accepted by the Scottish Government given that the intention of these clauses is to remove or clarify liability for offences (and perhaps civil penalties in the case of clause 50) in circumstances where there is a UIC. Accordingly modifying offences (reserved or devolved) to remove or clarify liability cannot be incidental; it appears to be the primary reason that these provisions are being made.

24. The Scottish Government's view is that determining the liability of a UIC, or any other person, for devolved offences involving the use of a vehicle would be within the legislative competence of the Scottish Parliament. The Scottish Government also considers that it would be within the legislative competence of the Scottish Parliament to confer enabling powers to clarify the application to a UIC of devolved legislation relating to the driving or use of vehicles. To these extents, the provisions in Chapter 1 of Part 2 of the Bill engage the LCM process.

25. 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.

26. The Scottish Government considers Part 2, Chapter 1 makes provision within the legislative competence of the Scottish Parliament.

27. The Scottish Government is content with the policy position of clauses 46 to 49 and 51 on the basis that the Law Commission has undertaken an extensive multi year expert led review and the principle of these clauses aligns with the recommendations of the 'Automated Vehicles: Joint Report' by the Law Commissions of England and Wales and The Scottish Law Commission.

28. However, the Scottish Government does not support clause 50 as this clause provides the Secretary of State with the power to change and or clarify existing

legislation (including Acts of the Scottish Parliament) without a mechanism to seek the consent of or consult with the Scottish Ministers or Scottish Parliament.

29. The Scottish Government's position remains that where the UK Government intends to take powers to make secondary legislation in devolved areas, that must be accompanied by effective mechanisms to respect the devolution settlement and to recognise the responsibilities of Scottish Ministers and the Scottish Parliament.

30. The Scottish Government **recommends giving consent** to clauses 46 to 49 and 51.

31. The Scottish Government **does not recommend** that the Scottish Parliament gives its consent to clause 50.

Part 5, Permits for automated passenger services and, Schedule 6 Civil sanctions for infringing Passenger Permit Scheme

Clause 82 - Power to grant permits

32. The clauses in Part 5 introduce a new regulatory regime for No User In Charge ("NUIC") vehicles. Specifically, the Bill proposes a new procedure that would provide the Secretary of State for Transport, the Scottish Ministers and the Welsh Ministers with the power to grant interim permits to providers of passenger services using NUIC vehicles.

33. As there are many unknowns in this policy area, the Bill proposes a high level framework that includes a new form of interim permit for these services that will pave the way for future NUIC services to be formulated through an element of "co-design" to address issues of accessibility, safeguarding of passengers and ultimately road safety.

34. Clause 82 of the Bill provides the "appropriate national authority" with the power to grant a permit to a person for the purpose of providing an automated passenger service. The "appropriate national authority" is defined in section 90(4) as being in relation to a permit for the provision of a service in Scotland, the Scottish Ministers except where an automated passenger service resembles a "public service vehicle", the responsibility for which will lie with the Secretary of State.

35. An "automated passenger service" is defined in subsection (2) as a service that consists of the carrying of passengers in a road vehicle that (a) is designed or adapted to travel autonomously, or (b) is being used for a trial with the aim of developing vehicles that are so designed or adapted.

36. A permit can be granted for two purposes. Firstly, for securing the disapplication of taxi, private hire vehicle and bus legislation, and secondly satisfying a requirement imposed by regulations on the holder of a NUIC operator licence under clause 12. Subsection (4) sets out what the permit must contain and (5)

enables the appropriate national authority (i.e. Scottish Ministers) to impose conditions on the permit.

37. This clause confers a statutory function on Scottish Ministers to grant permits for the provision by a person of automated passenger services. This therefore alters the executive competence of the Scottish Ministers.

Clause 83 – Disapplication of taxi, private hire vehicle and bus legislation

38. Clause 83 provides that where a permit holder is providing an automated passenger service in an area which, and in a vehicle in which, services may be provided under the permit, the vehicle is not to be treated for any purpose as being a hire car within the meaning of section 23 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”).

39. The effect of the clause is to disapply existing taxi/private hire car licensing legislation in circumstances where a person is providing an “automated passenger service” i.e. using an automated vehicle as a passenger carrying service which resembles a taxi/private hire car service.

40. Licensing for taxi/ private hire cars is devolved therefore this clause makes provision for devolved purposes and alters the executive competence of Scottish Ministers.

Clause 84 – Civil sanctions for infringements

41. Clause 84 and schedule 6 make provision for civil sanctions for infringement of the permit scheme.

42. This clause confers statutory functions on Scottish Ministers to issue certain civil sanctions for the infringement of the permit scheme therefore altering the Scottish Ministers’ executive functions and makes provision for devolved purposes.

Clause 85 – Consent requirement for services resembling taxi or private hire vehicles

43. Clause 85 provides that the appropriate national authority (i.e. Scottish Ministers in relation to Scotland) may only grant a permit with the consent of each licensing authority in whose area the automated passenger service may be provided under the proposed permit.

44. This provision makes it a requirement, where the request for a permit resembles a taxi/private hire car service, for Scottish Ministers to obtain the consent of each licensing authority in whose area the permit is being applied for before granting the permit. This clause alters the executive competence of Scottish Ministers for devolved purposes with regards to taxi/private hire car licensing.

Clause 87 – Further requirements

45. Clause 87 imposes a requirement on the appropriate national authority (i.e. Scottish Ministers) before granting a permit to consult traffic authorities and emergency services that it considers are likely to be substantially affected if a permit is granted.

46. This clause alters the executive competence of Scottish Ministers for devolved purposes with regards to the operation of the interim permit scheme.

Clause 88 – Collection, sharing and protection of information

47. Clause 88 provides that permit conditions may include conditions as to the collection and sharing of information, including sharing with the appropriate national authority, other public authorities and private businesses including vehicle manufacturers and insurers. It makes provision for protections for information obtained under permit conditions providing for the sharing of information. In particular, subsection (5) empowers the appropriate national authority to make regulations authorising the recipient of such information to share it with other persons for specified purposes, or use it for purposes other than the purpose for which it was obtained. It also makes it an offence to use the information for purposes other than those for which it was obtained or disclose it to another person, except as authorised by regulations.

48. This clause makes provision for devolved purposes. Insofar as it relates to an automated passenger service that resembles a taxi/private hire car service, the Scottish Ministers have the legislative competence to make provision for conditionality including in relation to sharing of information.

49. Amendments have been made by the UK Government to clause 88 which relate to legislative consent. The changes were:

- Clause 88(5) – enabling the devolved administrations to make regulations about information-sharing in relation to passenger services within their competence;
- Clause 88(8) – clarifies that a fine for an offence under clause 88(6) imposed in summary proceedings in Scotland may not exceed the maximum fine generally available in such proceedings.

50. The amendment to clause 88(5) ensures it is Scottish Ministers who operate this regulation-making power where it relates to matters within their devolved competence, with accountability for the use of the power to the Scottish Parliament.

Clause 89 – Procedural and administrative matters

51. Clause 89 provides the appropriate national authority with regulation making powers to make provision about the procedure to be followed in connection with the grant, retention, renewal, expiry, variation, suspension or withdrawal of a permit.

52. This clause confers regulation-making powers on Scottish Ministers to make provision about the procedure for grant, retention, renewal, variation, suspension or withdrawal of a permit. Therefore, this clause engages the LCM requirement insofar as it alters the executive competence of Scottish Ministers.

Clause 90 – Interpretation

53. Clause 90 sets out the definitions which apply for clauses 82 to 89. These clauses either alter the executive competence of the Scottish Ministers or are for a purpose within the legislative competence of the Scottish Parliament.

Schedule 6 - Civil sanctions for infringing passenger permit scheme

54. Schedule 6 confers statutory functions on Scottish Ministers to issue certain civil sanctions for the infringement of the permit scheme (compliance notices, monetary penalties, notices of intent, costs etc, therefore altering the Scottish Ministers' executive functions and makes provision for devolved purposes.

Scottish Government's position and recommendation on consent for clauses 82 to 85, 87 to 90 and Schedule 6

55. The Scottish Government considers it to be a sensible use of the legislative consent process to seek consent from the Scottish Parliament for the clauses 82 to 85, 87 to 90, and Schedule 6 as regulation of taxis and private hires is devolved and the Bill reflects this with appropriate powers for the Scottish Ministers. The Bill provides for new powers for Scottish Ministers in relation to a system of interim passenger permits over the use of automated vehicles within a private hire and taxi regulatory regime. These powers, similar to those granted in the Bill to other national authorities in the area of private hire and taxi regulation, are an appropriate approach to reflect the devolved nature of private hire and taxi licensing.

56. In addition, amendments have been made to clause 88 by the UK Government to enable the devolved administrations to make regulations about information sharing in relation to passenger services within their competence, and to clarify that a fine for an offence under clause 88(6) imposed in summary proceedings in Scotland may not exceed the maximum fine generally available in such proceedings which is accepted by the Scottish Government. The change to ensure Scottish Ministers operate the regulation-making power ensures there is accountability to the Scottish Parliament for the use of the power.

57. The Scottish Government **recommends giving consent** to clauses 82 to 85, 87 to 90 and Schedule 6, including the amendments to clause 88.

Consultation

58. The Bill is based on [a report prepared by the Law Commission of England and Wales and the Scottish Law Commission](#). During the process of preparing their report, full consultation was undertaken. As the Bill and amendments have been

drafted and introduced by the UK Government to the House of Lords, the Scottish Government has not undertaken any specific formal or informal consultation.

59. The first LCM (LCM-S6-42) explained and included links to the Law Commissions review and the UK Government's response to the recommendations.

Financial implications

60. There will be costs associated with the Permit Regime and additional duties. The UK Government advises that fee revenue will provide additional funding for national authorities to cover additional costs it incurs in performing functions under the permit scheme. However, fee revenue could not be used to cover the costs of licensing authorities and franchising bodies providing consent for taxi/ private hire car service and the UK Government would expect these bodies to cover their own costs of providing consent.

61. At this stage, no specific estimates can be provided as the development of how an interim permit regime would operate in Scotland will be undertaken following the passage of the UK Bill. However, the Scottish Government will consider and assess any relevant costs as policy on use of the powers as provided for in the Bill is developed in due course.

EU alignment

62. Given the lack of detail and the requirement for the UK Government to put in place regulation making powers, it is difficult to judge or make an assessment at this point how much it would take us away from EU alignment. The Scottish Government will consider EU alignment and engage with the UK Government as regulations are developed going forward.

Conclusion

63. The Scottish Government remains supportive of the intent of the Bill and we believe that engagement has been generally good overall between officials. The Scottish Government is pleased that amendments have been made to reflect devolved matters, and welcomes the progress that has been made on some of the issues raised.

64. The Scottish Government considers that the most effective, efficient and timely way to legislate for the provisions within devolved competence is through UK legislation, which can also make necessary changes to the competence of Scottish Ministers. The Scottish Government therefore recommends the Scottish Parliament gives its consent to the relevant provisions of the Bill as indicated in this memorandum.

65. The Scottish Government recommends granting consent to Part 1, Chapter 6, clause 40, Part 2, Chapter 1, clauses 46 to 49 and 51, Part 5, clauses 82 to 85, 87 to 90 and Schedule 6 in relation to Scotland.

66. The Scottish Government recommends withholding consent to clause 50 as this clause provides the Secretary of State with the power to change and/or clarify existing regulations (including devolved regulations) without a mechanism to seek the consent of or consult with the Scottish Ministers or Scottish Parliament.

Draft Legislative Consent Motion

67. The draft motion, which will be lodged by the Cabinet Secretary for Transport is:

“That the Parliament agrees that the relevant provisions in Part 1, Chapter 6, clause 40, Part 2, Chapter 1, clauses 46 to 49 and 51, Part 5, clauses 82 to 85, 87 to 90 and Schedule 6 of the Automated Vehicles Bill introduced in the House of Lords on 8 November 2023 and subsequently amended, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government
February 2024

This Supplementary Legislative Consent Memorandum relates to the Automated Vehicles Bill (UK legislation) and was lodged with the Scottish Parliament on 29 February 2024

Automated Vehicles Bill – Supplementary Legislative Consent Memorandum

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