Supplementary Legislative Consent Memorandum

Sustainable Aviation Fuel Bill

Background

1. This memorandum has been lodged by Fiona Hyslop MSP, Cabinet Secretary for Transport, under Rule 9B.3.1(a) and (c) of the Parliament's Standing Orders.

2. The Bill was introduced by the UK Government in the House of Commons on 14 May 2025. The Bill is available on the UK Parliament website via this link: Sustainable Aviation Fuel Bill.

3. The Scottish Government lodged a Legislative Consent Memorandum (LCM-S6-61) on 24 July 2025, noting that it was not in a position to make any recommendation to the Scottish Parliament on consent for clauses 1, 3, 10, 11(2) to (5) and the schedule, so far as they relate to devolved matters. These clauses include, among other things, powers for the Secretary of State which could be exercised, by way of regulations, in relation to devolved matters.

4. The Scottish Government noted that a supplementary LCM was likely to be required following discussion between the UK Government and the Scottish Government.

5. The Scottish and UK governments have discussed the regulation-making powers provided at clauses 1(6), 3(1), 10(1) and 11(4), further over recent months, with no agreement reached for amendments to be made so as to require the consent of the Scottish Ministers where the Secretary of State intends to make regulations that could be exercised in relation to devolved matters. The Minister for Agriculture and Connectivity, Jim Fairlie MSP, also met with the then UK Minister for Aviation, Maritime and Security, Mike Kane MP, where he took the opportunity to discuss the Bill and the clauses noted, but the discussions were inconclusive.

6. The Secretary of State noted in her response to the Delegated Powers and Law Reform Committee, on 25 September 2025, that the UK Government considers its current position appropriate and proportionate, and therefore does not intend to amend the Bill to grant consenting powers on the Scottish Ministers with regard to those clauses.

7. A meeting between Jim Fairlie MSP and the new UK Minister for Aviation, Maritime and Decarbonisation, Keir Mather MP took place on 16 October 2025. Both Ministers agreed that officials continue to discuss further to reach a resolution. A meeting between the Scottish Government and UK Government has subsequently taken place to discuss a potential proposal, with a further meeting planned on 28 October to continue the discussions in the hope that a resolution can be reached which better reflects devolved responsibilities.

8. The UK Government tabled amendments on 6 October 2025 which were accepted at Report Stage in the House of Commons, on 15 October 2025. One proposed amendment is considered to relate to devolved matters.

Content of the Bill

9. The Bill enables the Secretary of State to fund financial assistance, by way of a levy imposed on suppliers of aviation fuel, to a designated counterparty (a company limited by shares, with shares held by a Minister of the Crown) so that the counterparty may, at the direction of the SoS, enter into revenue certainty contracts with sustainable aviation fuel (SAF) producers. This is intended to reduce revenue risk in relation to the production of SAF and support SAF production in the UK, leading to a reduction in aviation emissions.

10. The Explanatory Notes accompanying the Bill set out the UK Government's view of its purpose and main functions. The Bill contains 19 clauses and a schedule, and extends to England, Wales, Scotland and Northern Ireland. The Scottish Government supports the Bill's overall aims, which should help to increase the production and uptake of SAF, thereby reducing aviation emissions, and could help to encourage the establishment of commercial SAF production facilities in Scotland.

11. The purpose of clauses 1 to 5, 10, 11(2) to (5), and 12 to 19 is to reduce aviation emissions by incentivising SAF production. It is well established that control of pollution and the protection of the environment are generally matters that fall within the devolved competence of the Scottish Parliament, subject to any reservations.

12. The provisions of the Bill which enable a levy to be imposed on suppliers of aviation fuel (clauses 6 to 9 and 11(1)) are considered to relate to taxation and are reserved by way of Head A1 of Schedule 5 of the Scotland Act 1998, which reserves fiscal, economic and monetary policy. These provisions enable the Secretary of State, by way of regulations, to impose a levy on relevant suppliers of aviation fuel to fund the revenue certainty mechanism.

13. This supplementary LCM relates to clauses 1, 3, 10, 11(2) to (5) and the Schedule, as well as one of the proposed amendments which will modify clause 1 and is considered to relate to devolved matters.

14. A supplementary LCM is required as:

- The UK Government has tabled a proposed amendment to clause 1 of the Bill, which was not covered by the original LCM; and
- The Scottish Government has now reached a position in relation to clauses 1, 3, 10, 11(2) to (5) and the schedule, along with a proposed amendment to clause 1, and is recommending that the Parliament withhold consent to these clauses.

Provisions which require the consent of the Scottish Parliament

15. The Scottish Government considers that legislative consent is required for clauses 1, 3, 10,11(2) to (5) and the schedule, along with a proposed amendment to clause 1, as the purpose of these provisions is to reduce aviation emissions, by promoting the use of SAF. It is well established that control of pollution and the protection of the environment are generally matters that fall within devolved legislative competence of the Scottish Parliament subject, of course, to any relevant reservations. No reservations are engaged in respect of these provisions, and they are accordingly considered to be within the legislative competence of the Scottish Parliament.

16. The UK Government agrees with the Scottish Government's view as regards the devolution position.

17. The Bill is accordingly a relevant Bill under Rule 9B.1.1 of the Standing Orders of the Scottish Parliament.

18. The provisions of the Bill which require the legislative consent of the Scottish Parliament are set out in detail below.

Clause 1 – direction to offer revenue certainty contract

19. Clause 1 enables the Secretary of State to direct a Designated Counterparty (DC) to offer to enter into a revenue certainty contract with a producer of SAF. The revenue certainty contract will provide that producers of SAF will be paid the difference where the strike price is higher than the market reference price for SAF, and the producer will pay the difference to the DC where the market reference price is higher than the strike price. "Market reference price" is defined as an amount determined in accordance with the contract as the reference price for SAF sold during a specified period with "strike price" meaning an amount determined in accordance with the contract as the strike price for SAF sold during that period.

20. A direction must be made in writing and must include the name of the producer, the period within which the DC must comply with the direction, and the terms and period of the offer.

21. No direction may be given after a period of 10 years from the date on which the Bill becomes an Act, unless the Secretary of State makes regulations to extend the period by up to five years at a time.

22. However, there is no role for the Scottish Ministers in the clause as drafted and the Scottish Government is continuing to explore with the UK Government how devolved responsibilities can best be recognised for this provision.

UK Government's proposed amendment: Clause 1 (new 4A) – Direction to offer revenue certainty contract: assistance and payments

23. This proposed amendment will enable the Secretary of State to direct a "relevant company" (which is defined as a company limited by shares held by a Minister of the Crown) to provide any assistance that the Secretary of State may require for the purposes of identifying producers in respect of which to make a direction to offer a revenue certainty contract. The amendment will also enable the Secretary of State to make payments to the relevant company in respect of that assistance.

24. The UK Government considers the amendment to be relatively minor and technical.

25. The UK Government advises that one of the options for contract allocation for the Revenue Certainty Mechanism (RCM) is an auction, as is carried out by low carbon electricity Contracts for Difference and is being considered for future hydrogen production business model allocations.

Clause 3 – Revenue Certainty Contracts – Registration and publication of contracts

26. Clause 3 enables the Secretary of State to make regulations to require the DC to maintain registers and publish contracts (which may be capable of redaction, depending on the terms of subsequent regulations).

27. However, there is no role for the Scottish Ministers in the clause as drafted and the Scottish Government is continuing to explore with the UK Government how devolved responsibilities can best be recognised for this provision.

Clause 10 – Payment of surpluses to levy payers

28. The Secretary of State may make regulations requiring the counterparty to pay surplus costs to persons who have paid the levy and require persons receiving any surplus to ensure that customers receive specified benefits.

29. Regulations may make provision about what amounts to a surplus, the method of determining a surplus, the period in which a surplus is to be determined, and the method by which the amount of payment is to be determined.

30. Before making any such regulations, the Secretary of State must consult with the Scottish Ministers where regulations contain provision that would be within the legislative competence of the Scottish Parliament if contained in an Act of the Scottish Parliament. This clause provides for the only duty on the Secretary of State, when making regulations in a devolved area, to consult with the Scottish Ministers.

Clause 11(2) to (5) and the Schedule: financial penalties

31. Clause 11(2) relates to financial penalties and enables the Secretary of State to impose financial penalties on a person who receives a levy surplus payment and does not ensure that its customers receive specified benefits as defined in regulations made under clause 10(1)(b).

32. The amount of financial penalty that may be imposed must not exceed the lesser of £100,000 and an amount equal to 10% of the turnover of the person on whom the penalty is imposed, as provided for in clause 11(3).

33. Clause 11(4) enables the Secretary of State to amend by regulations the maximum penalty amount in light of inflation and to make provision as to how a person's turnover is to be determined. Penalties are expected to be issued infrequently, and impact on the courts is expected to be minimal.

34. The schedule provides that any unpaid penalties may be enforced, in Scotland, through the sheriff court. Any penalty sums received in Scotland, England or Wales are to be paid into the UK Consolidated Fund.

35. The UK Government has advised that it is not aware of any precedent for the proceeds of a civil penalty imposed by the Secretary of State from this kind of scheme to be paid into the Scottish Consolidated Fund. Based on the UK Government's experience of similar schemes, this type of penalty is extremely rare in practice.

36. The Scottish Government's view is that there may be practicalities in being able to distinguish penalties imposed for reserved or devolved purposes, and that it may therefore be more practical for all sums to be paid into the UK Consolidated Fund.

37. The Schedule also provides that appeals to a court in Scotland are to the Court of Session. For recovery, in Scotland, the unpaid amount may be enforced in a sheriff court, by way of a warrant. The UK Government expects to undertake a justice impact test during development of secondary legislation, which will consider the impact of the legislation on the courts.

38. The position of the Scottish Government, with which the UK Government agrees, is that clause 11(2) to (5) and the schedule, could relate to devolved matters.

Reasons for recommending withholding legislative consent

39. Engagement has taken place over recent months between the Scottish Government and the UK Government at ministerial and official level, with no solution reached on the four regulation-making powers, clauses 1(6), 3(1), 10(1) and 11(4). The Scottish Government has continued to reiterate its concerns and to explore whether amendments can be made to better reflect devolved responsibilities.

40. Efforts to reach agreement are ongoing. However, in the meantime, the Scottish Government recommends that the Scottish Parliament withhold consent to the four clauses (clauses 1, 3, 10 and 11(2) to (5) and the schedule as far as it relates to devolved matters) which include, among other things, the four regulation making powers, clauses 1(6), 3(1), 10(1) and 11(4).

41. The Scottish Government's position overall is that Scottish Ministers should have a formal role in any regulation-making powers that relate to devolved matters. This is not only a matter of constitutional principle but also of practical policy alignment, as SAF production is a key component of Scotland's ambition for aviation decarbonisation.

42. In relation to the UK Government's proposed amendment, it seems reasonable that the UK Government would wish to consider options for contract allocation for the RCM if that would serve to improve the overall process. As the Bill does not state that a certain approach will be undertaken, and as there are limited comparable examples from other legislation to reflect on, the Scottish Government will continue to discuss with its UK counterparts how the proposed approach will work and what the practical implications may be.

43. As the proposed amendment relates to clause 1, in relation to which the Scottish Government is currently recommending that consent be withheld, the Scottish Government recommends that the Scottish Parliament withholds consent on this proposed amendment until a solution can be reached on the regulation-making power, which could be exercised in relation to devolved matters, provided by clause 1(6) of the Bill.

Consultation

44. The UK Government published a consultation in April 2024 on four shortlisted options for a revenue certainty mechanism. The UK Government response to this consultation was published in January 2025. Of most relevance to the Bill, the response confirmed that the counterparty would need to be a Government-backed entity. It also stated (on page 43) that formal responses from the devolved administrations were submitted prior to the consultation going live. However, the Scottish Government did not respond to this consultation, nor was it asked to do so. A further UK Government consultation ran in May 2025 to seek views on how the revenue certainty mechanism would be funded. The UK Government response stated that the costs associated with the mechanism must be funded by the aviation industry.

Financial implications

45. There appear to be only minor costs potentially falling on the Scottish Government from the Bill, through the Scottish Courts and Tribunals Service, although this may be clarified by the justice impact test to be undertaken by the UK Government as part of secondary legislation.

Post EU scrutiny

46. These provisions are not relevant to the Scottish Government's policy to maintain alignment with the EU. It does not appear that the EU is actively proposing to introduce a SAF revenue certainty mechanism (there is an EU SAF mandate, which is broadly similar to the UK SAF mandate). It may be the case, therefore, that the introduction of the mechanism in the UK could help to stimulate greater SAF production in the UK than would otherwise be the case. The Scottish Government is not aware of any UK Government analysis to suggest whether that is the case or not.

Conclusion

47. In conclusion, the Scottish Government agrees with the UK Government's view on the devolution position for this Bill. The Scottish Government supports the overall aims of the Bill, which should help to increase the production and uptake of SAF, and could help to encourage the establishment of commercial SAF production facilities in Scotland.

48. However, in the absence of a requirement for consent of the Scottish Ministers when the Secretary of State intends to make regulations in relation to devolved matters, the Scottish Government recommends withholding consent to clauses 1, 3, 10, 11(2) to (5), and the schedule, along with a proposed amendment to clause 1.

49. A further supplementary LCM may be required following further discussions between the Scottish Government and UK Government.

Draft motion on legislative consent

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

> "That the Parliament, in relation to the Sustainable Aviation Fuel Bill introduced in the House of Commons on 14 May 2025, and subsequently amended, refuses to consent to clauses 1, 3, 10, 11(2) to (5) and the schedule, so far as these matters fall within the legislative competence of the Scottish Parliament."

Scottish Government
October 2025

This Supplementary Legislative Consent Memorandum relates to the Sustainable Aviation Fuel Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 27 October 2025

Sustainable Aviation Fuel Bill – Supplementary Legislative Consent Memorandum

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at: www.parliament.scot/documents