

# Supplementary Legislative Consent Memorandum

## Sustainable Aviation Fuel Bill

### Background

1. This further Supplementary Legislative Consent Memorandum (LCM) has been lodged by Fiona Hyslop MSP, Cabinet Secretary for Transport, under Rule 9B.3.1(c)(ii) 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 - Parliamentary Bills - UK Parliament](#).
3. The Scottish Government lodged a [Legislative Consent Memorandum](#) (LCM-S6-61) on 24 July 2025, which recommended consent for clauses 2, 4, 5 and 12 to 19, but noted 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 in the Bill.
4. A [Supplementary Legislative Consent Memorandum](#) (LCM-S6-61a) was lodged on 27 October 2025 to include [an amendment to clause 1](#), and to recommend withholding consent for clauses 1, 3, 10, 11(2) to (5) and the Schedule, as well as the amendment.
5. Following constructive and positive engagement between the Scottish Government and the UK Government, the UK Government agreed to bring forward amendments to require the Secretary of State (SoS) to consult with the Scottish Ministers where regulations will be made under powers conferred by clauses 1, 3, 10 and 11. The UK Government tabled the [amendments](#) on 3 December 2025 and these were accepted on 10 December 2025.

### Content of the Bill

6. The Bill enables the SoS 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.

7. The [Explanatory Notes](#) accompanying the Bill set out the UK Government's view of its purpose and main functions. The Bill, as currently drafted, 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.

8. Clauses 1–5, 10, 11(2) to (5), and 12–19 aim to reduce aviation emissions by incentivising SAF production which is for a devolved purpose and therefore within the legislative competence of the Scottish Parliament, with clause 10(4), as currently drafted, requiring the Scottish Ministers to be consulted if regulations are to be made which contain provision relating to devolved matters.

9. The provisions of the Bill which enable a levy to be imposed on suppliers of aviation fuel (clauses 6-9 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 SoS, by way of regulations, to impose a levy on relevant suppliers of aviation fuel to fund the revenue certainty mechanism.

10. This second supplementary LCM relates to UK Government amendments which were tabled and accepted requiring the Secretary of State (SoS) to consult with the Scottish Ministers where regulations will be made under powers conferred by clauses 1, 3, 10 and 11. It also updates the Scottish Government's position on all relevant provisions: clauses 1, 3, 10, 11(2) to (5) and the Schedule (including a previously accepted UK Government amendment to clause 1). The Scottish Government is now recommending that the Scottish Parliament consent to all relevant provisions.

## Provisions which require the consent of the Scottish Parliament

11. The Scottish Government considers that legislative consent is required for clauses 1, 3, 10, 11(2) to (5) and the Schedule, including the accepted amendment to clause 1, and the accepted amendments which include a new clause 14, as they make provision for a devolved purpose by providing a statutory consultation role for the Scottish Ministers and are within the legislative competence of the Scottish Parliament and also alter the executive competence of the Scottish Ministers.

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

13. The Bill is accordingly a relevant Bill under Rule 9B.1.1 of the Standing Orders of the Scottish Parliament, as it applies to Scotland for devolved purposes that are within the legislative competence of the Parliament and includes amendments that alter the executive competence of the Scottish Ministers.

14. 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

15. Clause 1 enables the SoS 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.

16. 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.

17. No direction may be given after a period of ten years from the date on which the Bill becomes an Act, unless the SoS makes regulations to extend the period by up to five years at a time. However, the accepted amendment introducing new clause 14 ensures that the SoS must consult the Scottish Ministers before making regulations under this clause.

18. The UK Government does not expect to use this clause as it considers that 10 years will be sufficient, but it wants to have sufficient flexibility if the market for and production of SAF do not develop as anticipated.

19. It is sensible from a policy perspective to be able to extend the period noted above as it is not possible to predict now the likely state of the future UK SAF market.

20. This clause also includes an accepted UK Government amendment that will enable the SoS 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 SoS 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 SoS to make payments to the relevant company in respect of that assistance.

21. The UK Government considers this amendment to be relatively minor and technical. The UK Government advises that one of the options for contract allocation for the revenue certainty mechanism is an auction, as is carried out by low carbon electricity Contract for Difference and is being considered for future hydrogen production business model allocations.

22. It seems reasonable that the UK Government would wish to consider options for contract allocation for the revenue certainty mechanism if that would serve to improve the overall process. The Scottish Government's Directorate for Energy & Climate Change, Energy Industries Division, Hydrogen Unit has advised that it supports the hydrogen production business model as it gives long-term confidence to hydrogen producers. However, some Scottish projects which applied to the model have commented that they feel the process takes too long to administer and make decisions, and that the allocation of risk in events such as a hydrogen off-taker ceasing trading is yet to be resolved.

23. From a SAF perspective, with it being at the early stages, the Scottish Government would welcome a similar incentive mechanism. The Scottish Government continues to engage with the UK Government on the design and delivery of the hydrogen business models, and will seek to engage in the process of designing any such model for SAF.

24. The Scottish Government is recommending that the Parliament consent to clause 1, including the accepted amendments.

### **Clause 3 - Revenue Certainty Contracts - Registration and publication of contracts**

25. Clause 3 enables the SoS 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).

26. While the DC will have shares held by a Minister of the Crown, the Scottish Ministers have a clear interest in how it will function. Similar to the point above, it is not known how the currently nascent SAF industry will develop in the future, particularly in Scotland.

27. The accepted amendment, introducing clause 14, ensures that the SoS must consult the Scottish Ministers before making regulations under this clause.

28. The Scottish Government is recommending that the Parliament consent to clause 3.

### **Clause 10: Payment of surpluses to levy payers**

29. The SoS 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.

30. 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.

31. The amendment accepted will remove clause 10(4) which requires the SoS to consult with the Scottish Ministers when making regulations that could relate to devolved matters about regulations under clause 10. A further accepted amendment will create a new clause 14, which will provide the Scottish Ministers with a consulting role in relation to regulations made under this clause, and clauses 1, 3 and 11.

32. At this early stage of the UK SAF industry, it is not clear how significant the payments to customers noted may be for Scotland.

33. The Scottish Government is recommending that the Parliament consent to clause 10.

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

34. Clause 11(2) enables the SoS to impose financial penalties on persons who are relevant suppliers of aviation fuel who receive a levy surplus payment and do not ensure that their customers receive specified benefits as defined in regulations made under clause 10(1)(b).

35. 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 set out in clause 11(3).

36. Clause 11(4) enables the SoS to amend by regulations the maximum penalty amount, in light of inflation, and to make provision as to how the turnover of persons who are relevant suppliers of aviation fuel is to be determined. Penalties are expected to be issued infrequently and impact on the courts is expected to be minimal.

37. 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.

38. The UK Government has advised that it is not aware of any precedent for the proceeds of a civil penalty imposed by the SoS 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. The UK Government has not carried out any modelling to support this assumption and its preference would be to seek to resolve the issues rather than impose a penalty.

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

40. 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.

41. Clause 14 has been accepted and ensures that the SoS must consult the Scottish Ministers before making regulations under this clause.

42. The Scottish Government is recommending that the Parliament consent to clauses 11(2) to (5) and the Schedule.

## Proposed new clause 14 – Duty to consult about Regulations

43. The accepted amendment requires the SoS to consult any persons the SoS considers appropriate. For regulations made under clauses 1, 3, 10 or 11, this consultation must include the devolved governments.

44. This statutory consulting role for the Scottish Ministers will allow them to raise any specific issues that may be relevant to supporting SAF production in Scotland, or in which the Scottish Ministers otherwise have a legitimate interest.

45. The Scottish Government is therefore recommending that the Parliament consent to the accepted amendment relating to consulting requirements.

## Reasons for recommending legislative consent

46. Since the LCM and first supplementary LCM were lodged, there has been ongoing engagement between the Scottish Government and the UK Government. Further efforts were made to explore an amendment to the Bill by the Minister for Agriculture and Connectivity, Jim Fairlie MSP, and the UK Minister for Aviation, Maritime and Decarbonisation, Keir Mather MP, and at official level. Engagement has been constructive and positive, resulting in the UK Government agreeing to amend the Bill to include a requirement to consult the Scottish Ministers on the face of the Bill.

47. The UK Government has agreed to amendments that will require the SoS to consult with the Scottish Ministers where regulations will be made under powers conferred by clauses 1, 3, 10 and 11.

48. The Scottish Government has agreed an approach with the UK Government on how the consult mechanism would work in practice to ensure transparency, and timely and early engagement. The Scottish Government would be formally consulted during development stage where proposed regulations impact on devolved matters. The UK Government intends to discuss with and seek views from the Scottish Government at regular points during policy development and drafting. UK Government Ministers will also write formally to the Scottish Ministers in advance (at least one week) of the publication of any consultation on draft regulations to inform them of the launch and invite any formal comments they may have.

49. Agreement by the UK Government to include a consult mechanism for the regulation making powers, which could be exercised in relation to devolved matters, on the face of the Bill will allow the Scottish Ministers to raise any specific issues for SAF production in Scotland or a particular SAF policy issue in which the Scottish Ministers have a legitimate interest. In the context of this Bill, the Scottish Government believes that this is an appropriate level of engagement.

50. The Scottish Government will ensure that the Scottish Parliament is informed of these consultations and its responses going forward.

51. Based on the above, and the positive outcome to ensure that the Scottish Ministers are consulted in a devolved area, the Scottish Government is recommending that the Parliament consent to these clauses.

## Consultation

52. 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

53. 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 the development of secondary legislation.

## Post EU scrutiny

54. 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.

## Further requirement for an LCM

55. Further amendments (non-government) were tabled on 4 December 2025 for Committee Stage in the House of Lords. The Scottish Government is engaging with the UK Government on these amendments and will arrange to lodge a further supplementary LCM if required.

## Conclusion

56. In conclusion, the UK Government agrees with the Scottish 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. SAF is also crucial for reducing aviation emissions in line with Scotland's net zero targets.

57. Although there are concerns that the Bill does not require the Scottish Ministers to give consent to the regulation making powers in the Bill, the Scottish Government considers that a consult requirement is sufficient to recommend that the Scottish Parliament provides consent for the Bill. This will provide the Scottish Ministers with an opportunity to raise any specific issues for SAF production in Scotland or a particular SAF policy issue in which they have a legitimate interest.

## Draft motion on legislative consent

58. The intention is to lodge a Motion on Legislative Consent seeking the Parliament's consent to the provisions discussed in this supplementary LCM and the original LCM.

59. The draft motion covering the provisions in this supplementary LCM, which will be lodged by the Cabinet Secretary for Transport, is:

"That the Parliament agrees that the relevant provisions of the Sustainable Aviation Fuel Bill, introduced in the House of Commons on 14 May 2025, and subsequently amended, relating to clauses 1, 3, 10, 11(2) to (5) and the Schedule (including the accepted amendment to clause 1), and the amendment which provides a new clause 14, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament".

Scottish Government  
December 2025





This Supplementary Legislative Consent Memorandum relates to the Sustainable Aviation Fuel Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 17 December 2025

# Sustainable Aviation Fuel Bill – Supplementary Legislative Consent Memorandum

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