RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

9th Meeting, 2018 (Session 5)

Wednesday 21 March 2018

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. Laser Misuse (Vehicles) Bill (UK Parliament legislation): The Committee will consider the legislative consent memorandum lodged by Cabinet Secretary for Rural Economy and Connectivity (LCM(S5)14) and will take evidence from—

   Humza Yousaf, Minister for Transport and the Islands, Bertrand Deiss, Head of Road Safety Policy, and Stephen Rees, Solicitor, Scottish Government.

2. Islands (Scotland) Bill: The Committee will consider the Bill at Stage 2.

Steve Farrell
Clerk to the Rural Economy and Connectivity Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5211
Email: steve.farrell@parliament.scot
The papers for this meeting are as follows—

**Agenda Item 1**

Laser Misuse (Vehicles) Bill LCM  

REC/S5/18/9/1
Background

1. The Legislative Consent Memorandum (LCM) process is the mechanism for the Scottish Parliament to give its consent to the UK Government to legislate in the UK Parliament on matters which are within the legislative competence of the Scottish Parliament.

2. Legislative Consent Memorandums are usually lodged in the Scottish Parliament by the Scottish Government. They relate to Bills under consideration in the United Kingdom Parliament which contain what are known as “relevant provisions”. These provisions could:
   - change the law on a “devolved matter” (an area of policy which the UK Parliament devolved to the Scottish Parliament); or
   - alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).

3. Under an agreement known as the ‘Sewel Convention’, the UK Parliament will not normally pass Bills that contain relevant provisions without first obtaining the consent of the Scottish Parliament. Committees will undertake scrutiny of the Memorandum after which the Government will lodge a Legislative Consent Motion which is taken in the Chamber.

4. The procedure for scrutiny of Legislative Consent Memorandums and Motions is set out in Chapter 9B of the Parliament’s standing orders.

Laser Misuse (Vehicles) Bill

5. A LCM has been lodged regarding the Laser Misuse (Vehicles) Bill. The memorandum and the Bill can be found on the Scottish Parliament website: [http://www.scottish.parliament.uk/parliamentarybusiness/Bills/107989.a.spx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/107989.a.spx). The LCM has also been made available at Annexe A.

6. This is a UK Government Bill. The LCM states that:
   
   “The Bill, as amended, seeks to create an offence of shining or directing a laser beam towards a moving vehicle (or one that is ready to move) where the laser beam dazzles or distracts, or is likely to dazzle or distract, a person with control of the vehicle.”

7. All of the Bill extends to Scotland and the Bill makes provision on devolved matters. Only Clause 2 relates to reserved matters, this covers shining a laser
beam towards an air traffic control facility. The Bill did not originally require legislative consent as it only related to air traffic (a reserved matter) but amendments to the bill at Westminster have widened its scope to include other forms of vehicular traffic including cars and bikes. So legislative consent is now required.

8. The Bill requires Scottish Parliament consent because the offence covers a wide range of circumstances, affecting any vehicles used for travel by land, water or air. Some of the possible circumstances of vehicle use, covered by the Bill, relate to devolved matters, for example, bicycles used away from the road.

9. The Minister for Transport and Islands has drafted a motion recommending that the Parliament gives its consent to the relevant provisions within the Bill:

“That the Parliament agrees that the relevant provisions of the Laser Misuse (Vehicles) Bill 2017-19, which completed House of Lords report stage on 27 February 2018, relating to the creation of a new offence regarding the misuse of lasers in relation to vehicles, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Committee consideration

10. It is anticipated that the Rural Economy and Connectivity Committee will be designated as lead Committee as the LCM is being introduced by Fergus Ewing, the Cabinet Secretary for Rural Economy and Connectivity. No other Committee will consider the LCM.

11. Humza Yousaf, Minister for Transport and the Islands, will attend the Committee meeting to give evidence on behalf of the Scottish Government.

12. The Committee is required to reflect upon the Memorandum, agree whether it is content with its terms, and report its findings to the Parliament. The Committee may also, in its report, recommend to the Parliament whether or not to agree to the motion.

Annexe A – Legislative Consent Memorandum
Annexe B – Letter from the Minister for Parliamentary Business to the Presiding Officer

Rural Economy and Connectivity Committee Clerks
March 2018
Annexe A

LEGISLATIVE CONSENT MEMORANDUM

LASER MISUSE (VEHICLES) BILL

Background

1. This memorandum has been lodged by Fergus Ewing, Cabinet Secretary for Rural Economy and Connectivity, supported by Humza Yousaf, Minister for Transport and Islands, under Rule 9B.3.1(c)(ii) of the Parliament’s standing orders. The Laser Misuse (Vehicles) Bill (“the Bill”) was introduced in the House of Lords on 19 December 2017 and completed report stage on 27 February. The Bill can be found at:

   https://services.parliament.uk/bills/2017-19/lasermisusevehiclesbill.html

Content of the UK Laser Misuse (Vehicles) Bill

2. As introduced, the Bill contained only two clauses and sought to create an offence of shining or directing a laser beam towards a vehicle which is on a journey where the laser beam dazzles or distracts, or is likely to dazzle or distract, a person with control of the vehicle. “Vehicle” was defined by reference to certain vehicles only, namely an aircraft, motor vehicle (on a road), pedal cycle (on a road), train, vessel, hovercraft or submarine. The Bill provided for a defence if the person had a reasonable excuse for shining the laser beam towards the vehicle or did not intend to do so and exercised all due diligence to avoid doing so.

3. The Bill, as amended, seeks to create an offence of shining or directing a laser beam towards a moving vehicle (or one that is ready to move) where the laser beam dazzles or distracts, or is likely to dazzle or distract, a person with control of the vehicle. In the amended Bill “Vehicle” has a wider meaning, being “any vehicle which is used for travel by land, water or air”. The same defence provisions apply. The amended Bill also creates a separate but similar offence of shining or directing a laser beam towards an air traffic facility, or towards a person providing air traffic services, so as to dazzle or distract them (or be likely to).

4. The Bill as amended contains 4 clauses. Clause 1 concerns the offence of shining or directing a laser beam towards a moving vehicle. Clause 2 concerns offences relating to air traffic services. Clause 3 is an interpretation clause. Clause 4 concerns the extent, commencement and short title of the Bill.

Provisions Which Relate to Scotland

5. This is a short Bill with (in its current, amended form) four clauses. At introduction, and as presently drafted, all of the provisions will extend to Scotland.

6. Further detail and the reasons for seeking the legislative consent of the Scottish Parliament are set out below as regards the provisions falling within the legislative competence of the Scottish Parliament.
Reasons for seeking a legislative consent memorandum

7. The legislation is principally aimed at addressing the shining of laser pens or pointers at pilots of commercial aircraft – of which there have been increasing incidents in recent years. The regulation of aviation and matters of aviation security are reserved. The legislative consent of the Scottish Parliament is accordingly not required for clause 2 of the Bill, which concerns shining a laser beam towards an air traffic control facility.

8. However, as amended, the Bill will also criminalise the shining or directing of laser beams towards any vehicle used for travel by land, water or air. The legislative consent of the Scottish Parliament is required for Clause 1 of the amended Bill (offence of shining or directing a laser beam towards a vehicle) because the wide definition of “vehicle” means that the behaviour in question will be proscribed in some contexts where proscription of that behaviour is not reserved, such as in relation to carriages drawn by horses or other animals, and motor vehicles and bicycles being used away from a road. The Bill is accordingly a “relevant Bill” for the purposes of Chapter 9B of the Standing Order of the Scottish Parliament, in that it makes provision applying to Scotland for a purpose within the legislative competence of the Parliament.

9. The legislative consent of the Scottish Parliament is sought in relation to the Bill because it would seem prudent for Scotland to have legal coverage proscribing this behaviour in any devolved areas to ensure parity across the UK.

Consultation

10. There has been no formal consultation on the Bill by the Scottish Government. However, the UK Government carried out a formal call for evidence in 2017, receiving responses from groups such as ophthalmologists, airline pilots, amateur astronomy societies and other users of laser pointers, Trading Standards authorities, professional laser safety advisors and members of the public. Of the 265 responses, many raised the potential health hazards of shining a laser pen in a person’s eye, the need for more awareness on the risks of the issue and the danger this can pose to airline pilots in flight.

Financial Implications

11. Although there are existing criminal offences in Scotland which the prosecuting authorities can pursue regarding allegations of laser pens being shone in the eyes of someone operating a vehicle, the Bill creates a more bespoke offence for this specific scenario. No additional financial implications are predicted from the legislation.

Conclusion

12. It is the view of the Scottish Government that it is in the interests of the people of Scotland and of good governance that the relevant provisions which fall within the legislative competence of the Scottish Parliament should be considered by the UK
Parliament in order to ensure that Scotland has as robust laws in these areas as England and Wales.

Draft Legislative Consent Motion

13. The draft motion, which will be lodged by the Minister for Transport and Islands, is:

“That the Parliament agrees that the relevant provisions of the Laser Misuse (Vehicles) Bill 2017-19, which completed House of Lords report stage on 27 February 2018, relating to the creation of a new offence regarding the misuse of lasers in relation to vehicles, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
March 2018
I am writing to let you know that the Government intend to lodge a Legislative Consent Memorandum (LCM) with the Scottish Parliament in respect of relevant aspects of the Laser Misuse (Vehicles) Bill. I would like to explain why it has not been possible to lodge an LCM in accordance with the timescales set out in Parliament’s Standing Orders.

The Laser Misuse (Vehicles) Bill will create an offence of shining or directing a laser beam towards a moving vehicle (or one that is ready to move) and towards an air traffic facility, or towards a person providing air traffic services. As amended, the Bill will criminalise the shining or directing of laser beams towards any vehicle used for travel by land, water or air and accordingly makes provision which would be within the Scottish Parliament’s legislative competence.

Scottish Parliament Standing Orders provide that an LCM should normally be lodged with the Scottish Parliament two weeks of Government amendments being lodged.

In the case of the Laser Misuse (Vehicles) Bill this would have been 6 March. This was due to Humza Yousaf, Minister for Transport and the Islands, being unable to clear on time the draft Legislative Consent Memorandum ahead of the Cabinet Sub-committee on Legislation approval, whilst he was fully dedicated dealing with transport resilience issues during the period covering the red and amber weather warnings affecting Scotland from 28 February to 2 March.

I anticipate that the LCM will be lodged by 15 March.

I am copying this letter to the Convener of the Rural Economy and Connectivity Committee.

Joe FitzPatrick