

Legislative Consent Memorandum

Automated Vehicles Bill

Background

1. This memorandum has been lodged by Mairi McAllan, Cabinet Secretary for Transport, Net Zero and Just Transition, under Rule 9B.3.1(a) of the Parliament's standing orders, and is supported by Minister for Transport, Fiona Hyslop. The Automated Vehicles Bill ("the Bill") was introduced by the UK Government in the House of Lords on 8 November 2023. 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 ([Automated Vehicles - Law Commission](#)) of the regulation of automated vehicles ("AV") 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 AV involves provision about both the design of vehicles and also driver liability and traffic management.

3. The Bill is comprised of 7 Parts and 6 schedules:

- Part 1 (Regulatory scheme for automated vehicles) in particular establishes:
 - A regulatory scheme for a vehicle to be authorised for use as an AV by the Secretary of State ("SoS"), which is the process by which systems will be assessed as "self-driving". The authorisation will also identify an "authorised self-driving entity" ("ASDE") which will be responsible for ensuring that the automated vehicle continues to meet the self-driving test.
 - A scheme for the licensing of operators for vehicle use without users-in-charge (some self-driving features will not require an individual to be in the vehicle, and in a position to exercise control of the vehicle at any point in the journey (a "user-in-charge")). In addition to having an "authorised self-driving entity", these vehicles must be overseen by a licensed no-user-in-charge operator ("NUIC operator"). The licensed operator will be required to have "oversight" of the vehicle.

- Regulatory powers and duties in relation to ASDEs and NUIC operators (known as “regulated bodies”), including powers to require information from and investigate the premises of such bodies, and powers to issue civil sanctions against such bodies.
- A duty on the SoS to monitor the general performance of AVs and investigate incidents with potential regulatory consequences. In relation to the latter duty the SoS may require reports of incidents from various authorities, including the Scottish Ministers.
- Part 2 and schedule 3 (criminal liability for vehicle use) make provision for new offences related to AVs and amend existing offences in the Road Traffic Act 1988 ([Road Traffic Act 1988 \(legislation.gov.uk\)](https://www.legislation.gov.uk)). This includes provision for the user-in-charge not to be liable for both reserved and devolved driving offences in certain circumstances.
- Part 3 and schedule 4 (policing and investigation) make provision to enable existing stopping powers to be exercised against AVs and for the appointment of inspectors of AV incidents.
- Part 4 and schedule 5 (marketing restrictions) create (and make further provision in relation to) new offences for the marketing of authorised AVs, require the SoS to enforce misleading marketing provisions and grant powers in Part 3 of schedule 5 of the Consumer Rights Act 2015 ([Consumer Rights Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)); and implement the Law Commissions’ recommendation ([Automated-vehicles-joint-report-cvr-03-02-22.pdf \(cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com\)](https://www.cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com)), in Chapter 7, that it should be a criminal offence to market a vehicle as self-driving if it is not authorised as such.
- Part 5 and schedule 6 (permits for automated passenger services) make provision in respect of the licensing of automated passenger services (discussed further below).
- Part 6 (adaptation of existing regimes) make provision for the adaptation of existing regimes such as the power to amend the “type-approval” framework (i.e. the process for checking that vehicles, their systems and their components comply with applicable safety and environmental standards).
- Part 7 (general provision) makes general provision in areas such as the application of data protection legislation, crown application, regulation making procedures etc.

Provisions which require the consent of the Scottish Parliament

4. The Bill as a whole extends to Scotland, with the exception of clauses 54(2) and 93 which extend only to England and Wales. The UK Government's view is that the majority of the Bill relates to reserved matters, principally the subject matters of the Road Traffic Act 1988 ([Road Traffic Act 1988 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1988/28)) and the Road Traffic Offenders Act 1988 ([Road Traffic Offenders Act 1988 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1988/29)) which regulate aspects of dangerous driving and the type approval, construction and use of vehicles, including minimum standards for lawful use on roads. The UK Government does, however, consider that the legislative consent process is engaged in respect of clauses 40 and 82 to 90 and schedule 6 to the extent that these provisions alter the executive competence of the Scottish Ministers or make provision for a devolved purpose.

5. The Scottish Government agrees that legislative consent is required as regards the provisions identified by the UK Government for the following reasons:

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

6. Clause 40 permits the SoS to make regulations requiring the Scottish Ministers, among others, to report specified incidents. The incidents that may be specified are incidents that occur, so far as the Scottish Ministers are concerned, within Scotland, which involve an authorised AV and which reveal grounds for enquiring into whether any of the enforcement powers conferred by the Bill have become exercisable as a result of the incident. Such incidents require to be reported only so far as the Scottish Ministers have obtained information about them in the performance of their functions.

7. 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 therefore engages the legislative consent process.

Part 5, clause 82-90 – Permits for automated passenger services and, Schedule 6 Civil sanctions for infringing Passenger Permit Scheme

8. As part of introducing a new regulatory regime for No User In Charge (“NUIC”) vehicles, the Bill proposes a new procedure that would provide the SoS for Transport, the Scottish Ministers and the Welsh Ministers with the power to grant interim permits to providers of passenger services using NUIC vehicles. Given that 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.

- Clause 82 confers a statutory function on the Scottish Ministers to grant a person a permit for the provision of “automated passenger services”. This alters the executive competence of Scottish Ministers.
- Clause 83 disapplies taxi and private hire vehicle legislation in relation to permits for an automated passenger service. This means that the provisions of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) ([Civic Government \(Scotland\) Act 1982 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1982/19)) regarding taxis and private hire licences will not apply to permits for automated passenger services. Scottish Ministers have particular functions under the 1982 Act, including under section 20 which confers regulation-making powers relating to taxis and private hire cars and their drivers. The effect of this provision is to alter the Scottish Ministers’ executive competence with clause 83 providing 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 1982 Act.
- 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 empowers the SoS 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. This legislates in a devolved area. 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 in relation to taxi/private hire licensing. The provision therefore legislates in an area within the legislative competence of the Scottish Parliament.
- Clause 89 confers powers on the Scottish Ministers to make provision, by regulations, about the procedure to be followed in connection with the grant, retention, renewal, expiry, variation, suspension or withdrawal of a permit. This alters the executive competence of the Scottish Ministers.
- Schedule 6 confers statutory functions on the Scottish Ministers to issue certain civil sanctions for the infringement of the permit scheme (compliance notices, monetary penalties, notices of intent, costs etc.). This alters the executive competence of the Scottish Ministers.

9. While the UK Government considers that the remainder of the Bill either relates to reserved matters or is incidental to giving effect to reserved policy, it is clear that this framework has the potential to impact on a range of devolved areas of

civil and criminal law. At this time the Scottish Government considers that the legislative consent process is also engaged in respect of Chapter 1 of Part 2 of the Bill. The provisions of this Chapter establish the legal liability of the “user-in-charge” for the operation of a vehicle. The user-in-charge 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 47 establishes the general principle that the user-in-charge is not liable for an offence arising from the manner in which the vehicle is being driven so long as certain conditions are met, displacing the usual criminal law rules which would apply to the driver of a vehicle. Clause 48 provides exceptions to that general principle and clause 49 provides that the user-in-charge is, despite clauses 47 and 48, to be treated as the driver of a vehicle for the purposes of any enactment. Clause 50 provides the SoS with a general regulation-making power to clarify enactments (which in this context includes Acts of the Scottish Parliament and SSIs under those Acts) which relate to the driving of a vehicle. This includes enactments relating to devolved matters, though there is no recognition of that in the Bill and no obligation on the SoS to engage with the Scottish Ministers before making regulations amending legislation in devolved areas.

10. The UK Government’s view is that Chapter 1 of Part 2 is reserved because it relates to the subject matters of the Road Traffic Act 1988 ([Road Traffic Act 1988 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1988/26)), the Road Traffic Regulation Act 1984 ([Road Traffic Regulation Act 1984 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1984/27)) and the Vehicle Excise and Registration Act 1994 ([Vehicle Excise and Registration Act 1994 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1994/24)), with impacts on devolved matters being considered incidental to delivering reserved policy. The Scottish Government considers that this significantly underplays the potential impact of these provisions on devolved matters. Multiple provisions relating to the regulation of dynamic driving offences, including speeding offences on motorways and the regulation of moving traffic on other roads, are devolved. It is considered that assigning liability in respect of devolved driving offences has a devolved purpose and does not “relate to” the reserved subject matters of either reserved dynamic driving offences nor the construction of vehicles and the minimum standards for their use. It is 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.

Current position on legislative consent

11. Section 28(8) of the Scotland Act 1998 recognises that the UK Government will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament. Devolution Guidance Note 10 states that Bills require the consent of the Scottish Parliament if they contain provision applying to Scotland and which are for devolved purposes or if they alter the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers.

12. The Scottish Government is presently of the view that a number of the Bill’s provisions either relate to devolved matters or alter the executive competence of the Scottish Ministers, as described above at paragraphs 4 to 10. Certain of these provisions impose potentially substantial obligations on the Scottish Ministers. There was no meaningful engagement by the UK Government on the detail of these matters prior to the Bill’s introduction and as a consequence the Scottish

Government is not presently in a position to make any recommendation to the Scottish Parliament as to consent. It is anticipated that a supplementary legislative consent memorandum outlining the Scottish Government's recommendation on consent will be lodged in February, however this date is dependent on further engagement with the UK Government and no further changes arising in the Bill which necessitate the need for legislative consent.

13. The Scottish Government's position on EU alignment will also be considered as part of that further analysis.

Consultation

14. The Law Commissions' review of the law relating to AVs involved three rounds of consultation between November 2018 and December 2020, involving over 350 meetings with individuals and organisations, and analysis of over 400 written responses. The Law Commissions published their report Automated Vehicles: joint report with 75 recommendations in January 2022.

A link to the joint report: <https://lawcom.gov.uk/project/automated-vehicles/>

15. The consultation responses mostly received wide support for automated vehicles and does not point to any concerns which would give rise to a consenting position. Many of the responses placed an emphasis on the ability to revise and update the regulations for automated vehicles, as the uncertainties and fast evolution of the technologies mean the legal system needs to be adaptable; a need for clear guidance on what is required to meet regulatory requirements; importance of fostering a learning culture which monitors how vehicles operate in practice, and investigates and understands incidents, which feeds into the wider safety principles of the Bill. Consultees reported a requirement for continued engagement with local transport authorities within the regulatory scheme, in an attempt to ensure that the deployment of automated vehicles supports rather than undermines, local transport strategies.

16. The UK Government's response to the recommendations was published in the Connected and Automated Mobility 2025: Realising the benefits of self-driving vehicles in the UK (CAM 2025) in August 2022.

A link to the recommendations: [cam-2025-realising-benefits-self-driving-vehicles.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/114444/cam-2025-realising-benefits-self-driving-vehicles.pdf)

Financial Implications

17. There are no financial implications identified at this stage. However, any implications or additional costs will be highlighted in the supplementary legislative consent memorandum once a comprehensive analysis of the Bill has been concluded.

Conclusion

18. It is the view of the Scottish Government that it is preferable that to the extent that the relevant provisions make provision for a devolved purpose, or alter the Scottish Ministers' executive competence, this memorandum is lodged without any recommendation on consent at this stage.

19. It is anticipated that a supplementary legislative consent memorandum outlining the Scottish Government's recommendation on consent will be lodged in February, however this date is dependent on further engagement with the UK Government and no further changes arising in the Bill which necessitate the need for legislative consent.

Scottish Government
December 2023

This Legislative Consent Memorandum relates to the Automated Vehicles Bill (UK legislation) and was lodged with the Scottish Parliament on 20 December 2023

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