

Net Zero, Energy and Transport Committee

11th Meeting, 2024 (Session 6)

Tuesday, 19 March 2024

Legislative Consent Memorandum on the UK Automated Vehicles Bill

Background

1. The [Automated Vehicles Bill](#) was introduced in the House of Lords on 8 November 2023. The Bill implements the recommendations of a [joint report by the Law Commission of England and Wales and the Scottish Law Commission](#) that followed their 4-year review of the regulation of automated vehicles. The Explanatory Notes to the Bill state that the Bill is “intended to set the legal framework for the safe deployment of self-driving vehicles in Great Britain”. This includes provision about the design of vehicles, driver liability and traffic management.
2. On 20 December 2023, the Scottish Government lodged a [Legislative Consent Memorandum](#) (LCM) on the Bill. At that time, the Scottish Government did not take a position on whether or not consent should be granted, stating:

“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.”
3. A [supplementary LCM](#) was lodged on 29 February. This recommends consent to all but one provision in the Bill (clause 50).
4. The Net Zero, Energy and Transport Committee has been designated lead Committee for scrutiny of the LCM and supplementary LCM. This means the Committee must consider and report on these.
5. The Bill is expected to undergo Committee Stage in the House of Commons on 19 and 21 March. It will then move to Report Stage. Report Stage is the last amending stage in the House of Commons, so in order for any views of the Scottish

Parliament to be taken into account, they must be expressed before this stage is complete.

Consent process for UK Bills making provision about devolved matters

6. Chapter 9B of the Scottish Parliament's Standing Orders sets out a formal process to give the Scottish Parliament the opportunity to consent (or not) to UK legislation making provision in relation to devolved matters. An LCM lodged by the Scottish Government must —

- summarise what the Bill does and its policy objectives;
- specify the extent to which the Bill makes provision about devolved matters; and either—
 - include the draft of a legislative consent motion that the Scottish Government intends to lodge in due course, explaining why it intends to lodge it; or
 - where the Scottish Government does not intend to lodge a legislative consent motion, explain why not.

7. A legislative consent motion is a motion seeking the Scottish Parliament's consent to those provisions in the UK Bill affecting devolved matters. The absence of a draft legislative consent motion is therefore a signal from the Scottish Government that it does not support the way or ways in which the UK Bill proposes to legislate in relation to devolved matters (or does not support some of those ways), for reasons that the LCM will set out.

Content of the LCM and supplementary LCM

8. The LCM sets out that the provisions the UK Government is seeking consent to are:

- Clause 40 – this gives the Secretary of State the power to require reports from police, local authorities and Scottish Ministers on incidents involving automated vehicles.
- Part 5 and schedule 6 – Part 5 sets out a scheme for obtaining permits for automated passenger services and schedule 6 creates civil sanctions for infringing that scheme.

9. Additionally, the Scottish Government considers clauses 46 to 51 to require the consent of the Scottish Parliament, although the UK Government does not. These relate to criminal liability in respect of the use of automated vehicles.

10. The Scottish Government does not object to clauses 46 to 49 or clause 51. However, it does not recommend consent to clause 50. This gives the Secretary of State a regulation-making power to clarify the application of other legislation to the user in charge of an automated vehicle. The Scottish Government's objection to this

clause is that the power can be exercised in devolved areas without having to seek the consent of, or consulting, the Scottish Ministers or Scottish Parliament.

11. The Scottish Government intends to lodge a legislative consent motion (excluding clause 50), a draft of which is provided in the supplementary LCM:

“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.”

Delegated Powers and Law Reform Committee Scrutiny

12. The Delegated Powers and Law Reform (“DPLR”) Committee published a [report on the LCM and supplementary LCM](#) on 13 March.

13. The report draws the power in clause 50 to the attention of the lead committee. It is content with all other powers, and the parliamentary procedure to which their exercise will be subject to. In relation to the power in clause 50, the DPLR Committee states:

“30. In the absence of an explanation from the UK Government in relation to:

- 1. the apparent contradiction between the statement in the DPM that the Scottish Parliament will be able to scrutinise the use of this power and the absence of any mechanism in the Bill that would enable such scrutiny, and*
- 2. what consideration the UK Government gave to conferring this power also on Scottish Ministers for exercise within devolved competence, or making its use by UK Ministers subject to a consent requirement,*

the Committee highlights, in relation to this power, its position in relation to powers in UK bills conferred on UK Ministers in devolved areas, that:

- 1. The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.*
- 2. Where such powers are exercised by UK Ministers in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.*
- 3. If such powers contain a requirement for the Scottish Ministers’ consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers’ consent decision. The Committee will scrutinise powers conferred on UK Ministers not subject*

to a requirement for Scottish Ministers' consent and may suggest matters for the lead committee to consider.

4. *As a minimum, powers when exercised by UK Ministers in devolved areas should be subject to the process set out in the SI Protocol 2 where the power is within the scope of that protocol.*

31. *The Committee draws the power to the attention of the lead committee.*

32. *The Committee invites the UK Government to give further consideration to whether the power should be conferred also on Scottish Ministers for exercise within devolved competence, or at least made subject to a statutory requirement for the Scottish Ministers' consent when exercised by the UK Minister within devolved competence."*

NZET Scrutiny

14. The Committee agreed to seek written evidence from the [Confederation of Passenger Transport](#) and the [Scottish Taxi Federation](#) given the potential implications of the Bill for bus and taxi operators. A response was received from the Confederation of Passenger Transport, which is included in the **Annexe**.

15. On 19 March, the Committee will hold an evidence session with the Cabinet Secretary for Transport to explore in further detail the Scottish Government's views on the LCM. The Committee will then consider a draft report on the LCM at its meeting on 26 March.

Clerks
Net Zero, Energy and Transport Committee

Annexe

Correspondence to the Deputy Convener from the Confederation of Passenger Transport

Automated Vehicles Bill – CPT Scotland Response

Thank you for your letter regarding the Automated Vehicles Bill. As the trade association that represents the bus and coach sectors, CPT is happy to give our views on the passenger service vehicle (PSV) aspects of the Bill in its current form.

How big an impact is this Bill likely to have on bus operators in Scotland – how many operators use automated vehicles in their services at present?

Only one operator currently deploys an automated vehicle in service in Scotland. This is the UK's first autonomous bus service, the Stagecoach AB1, which runs between Ferrytoll Park & Ride and Edinburgh Park. The service is a pilot, created by CAVForth and its partners Fusion Processing Ltd, Stagecoach Plc, Alexander Dennis Ltd, Transport Scotland, Napier University and Bristol Robotics Lab. Further information about the vehicle and the trial can be found here:

<https://www.cavforth.com/>

As such, the impact of the Bill is limited to one current service. However, this is an area of technology that will only grow in use as it matures and gains greater passenger confidence.

Are the provisions in the Bill likely to encourage or discourage their use?

The provisions of the Bill set out the legal framework for the safe deployment of selfdriving vehicles. I do not believe the Bill does this in a way that discourages further trials.

Any operator considering autonomous vehicles will look at a raft of factors including the ability of new and emerging technologies, driver and passenger safety, cost, routing, and infrastructure, among the wider business case. The provisions within the Bill will likely form part of this consideration but it is my view that they do not represent an impediment to further progress in this field.

Does the permit scheme set out in Part 5 of the Bill seem to strike the right balance between regulation and allowing operators to make use of new technology?

The supplementary legislative consent memorandum is correct in acknowledging that there are many unknowns in this policy area, and that an interim permit system that allows for a degree of co-design to address issues of accessibility, safeguarding of passengers and road safety is appropriate.

Part 5 of the Bill requires the national authority to consult with traffic authorities and emergency services that may be affected before granting a permit. This is fair and

proportionate. The Bill requires the national authority to have regard as to what extent the granting of a permit is likely to lead to an improvement in the understanding of how automated passenger services should best be designed for, and provided to, older or disabled passengers. The permit holder must also publish reports about the automated passenger service, with particular regard to the steps taken to ensure its accessibility. Again, I do not believe this is too onerous on the national authority or the permit holder.

The collection and sharing of data as laid out in paragraph 88 is central to the purpose of such trials and appears focussed on informing government and trial partners such as vehicle manufacturers, rather than providing commercial information to potential competitors. As such, this seems an acceptable approach.

The deployment of autonomous technology within passenger service vehicles is still very much in its infancy. Scotland should be proud that we are leading the way with the UK's first autonomous bus service.

As the technology evolves and progresses so should the legislation that governs it – a point recognised by the joint report by the Law Commission and Scottish law Commission.¹ The Law Commissions also note the potential opportunities autonomous vehicles provide.

“The possible benefits of this technology are far-reaching. AVs have the potential to improve road safety, give greater independence to people unable to drive, and provide new opportunities for economic growth.”²

Regulation in this field is a balancing act of minimising risk while not impeding innovation. My reading of the bill at this stage is that the provisions as they relate to bus are fair and hopefully give the flexibility to allow schemes like the CAVForth trial to grow and shape future autonomous trial and services in Scotland.

Yours sincerely,

Director, CPT Scotland

¹ Paragraphs 1.4-1.6, [Automated Vehicles Joint Report](#), Law Commission and Scottish law Commission,

² Paragraph 1.3, [Automated Vehicles Joint Report](#), Law Commission and Scottish law Commission,