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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum: delegated powers relevant to Scotland in the Automated Vehicles Bill



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. The Committee considered the [Automated Vehicles Bill](#) (“the Bill”) at its meetings on 27 February and 12 March 2024ⁱ.
2. At its meeting on 27 February, the Committee agreed to [send questions to the UK Government](#) and to the [Scottish Government](#) on one of the powers (clause 50).
3. A [response has now been received from the Scottish Government](#). At time of writing, there has been no response yet from the UK Government. The Committee notes its disappointment in relation to this.
4. In the interim, the Scottish Government has also lodged a [Supplementary Legislative Consent Memorandum](#) (“sLCM”).
5. The Committee- has considered the [Legislative Consent Memorandum](#) (“LCM”) and sLCM for the Bill under the following rules of Standing Orders:
 - Rule 9B.3.6, which provides that where the Bill that is subject to an LCM contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions; and
 - Rule 6.11.1(b), under which the Committee’s wider remit includes considering and reporting on other proposed powers to make subordinate legislation in particular bills or other proposed legislation. Under this rule, the Committee may consider and report on the powers in the Bill for UK Ministers to make subordinate legislation within devolved competence.

ⁱ Oliver Mundell MSP and Jeremy Balfour MSP submitted apologies for this meeting.

Overview of the Bill

Progress of the Bill

6. The Automated Vehicles Bill was introduced by the UK Government in the House of Lords on 8 November 2023. It has completed its scrutiny in that House and had its second reading in the House of Commons on 5 March 2024.
7. The Bill was amended in the House of Lords. This report refers to the version of [the Bill as brought from the Lords to the Commons](#) on 20 February 2024.

The Scottish Government's position in the LCM

8. The Scottish Government lodged the [original LCM for the Bill](#) on 20 December 2023. At that time, the Scottish Government indicated that it was in discussions with the UK Government, and did not make a recommendation on whether, in its view, the Parliament should give its consent.
9. The Scottish Government is now recommending that the Parliament does give legislative consent all the relevant clauses in the Bill except for one (clause 50).ⁱⁱ

The Bill

10. This is a substantial Bill made up of 100 clauses and 6 Schedules. Most of the Bill extends and applies to England, Wales and Scotland. The stated purpose of the Bill is to regulate the use of automated vehicles on roads and in other public places; and to make other provision in relation to vehicle automation. It is intended to set the legal framework for the safe deployment of self-driving vehicles in Great Britain.ⁱⁱⁱ
11. The Bill comes after a 4 year review on the regulation of automated vehicles which was carried out jointly by the Law Commission of England and Wales and the Scottish Law Commission.
12. The reserved/devolved division of responsibility between the UK and Scottish Parliaments in relation to the regulation of road transport is mixed. The reservation is contained in [section E1 of Schedule 5 of the Scotland Act 1998](#). Very broadly:
 - The areas which are reserved to the UK Parliament include the subject matter of the Road Traffic Offenders Act 1988 and most of the subject matter of the Road Traffic Act 1988.
 - In the field of passenger transport:
 - taxi and private hire regulation is devolved;

ii [1] The draft motion in the sLCM is: "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."

iii [Explanatory Notes](#), paragraph 1

Delegated Powers and Law Reform Committee

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- public service vehicle (“PSV”) operator licensing is reserved.
 - Devolved areas also include the law of delict and criminal offences other than those contained in reserved road traffic legislation.
13. Again broadly, the devolved aspects of the Bill are principally the provisions setting up a permit regime for automated passenger services (Part 5 of the Bill).
 14. The lead committee for the LCM is the Net Zero, Energy and Transport Committee.

Delegated Powers

15. The UK Government has published a [Delegated Powers Memorandum](#) to accompany the Bill (“DPM”). It explains in each case the purpose of the power, why a delegated power is appropriate, and the parliamentary procedure that has been selected. The [supplementary DPM](#) which was lodged on 31 January 2024 relates to the amendments made in the House of Lords.
16. As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government’s view on the relevant clauses is set out in the LCM and sLCM.
17. The powers in the Bill which are relevant to this Committee’s remit are considered individually below. These powers divide into three categories:
 - the power in clause 50 to modify existing traffic legislation (this is the clause for which the Scottish Government is recommending that consent be withheld).
 - the powers in Part 5 (and Schedule 6) of the Bill, which all relate to permits for automated passenger vehicles.
 - the ancillary power in clause 99(4), to make transitional or saving provision.

Review of relevant powers

Clause 50(1) – Power to change or clarify existing traffic legislation

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative if the power is exercised to amend any primary legislation, otherwise negative

Provision

18. Under this power, the Secretary of State can make regulations to change or clarify whether or how an offence applies to a “user-in-charge” of an automated vehicle.
19. This applies to any legislation, both primary and secondary, and both UK and Scottish.
20. This clause appears in the Part of the Bill that governs criminal liability for the use of automated vehicles, and in the chapter relating to the legal position of the user-in-charge of the vehicle.^{iv} The “user-in-charge” is the human driver when the vehicle is in self-driving mode. The DPM explains that a user-in-charge will not be responsible for the way the vehicle drives (described as “dynamic driving”), but will retain responsibility for issues such as insurance, roadworthiness and paying tolls, in line with the Law Commissions’ recommendation that a user-in-charge should not be liable for a criminal offence or civil penalty arising from the way the vehicle drives itself.^v The Bill gives the “user-in-charge” immunity from driving offences (subject to some exceptions).^{vi}
21. This is a “Henry VIII” power, meaning that it can be used to amend primary legislation.

Committee consideration

22. The UK Government’s DPM recognises that the power can be used to amend Scottish primary and subordinate legislation^{vii}. It states (in the context of the justification for the choice of procedure):

“The affirmative procedure will ensure that Parliament (**as well as the Scottish Parliament** and Senedd Cymru, where Scottish or Welsh legislation is amended) can closely scrutinise any regulations changing or clarifying how existing primary legislation applies to the user-in-charge.”^{viii} (emphasis added)
23. However, there is no provision in the Bill that would enable Scottish Parliament

iv Part 2 of the Bill, chapter 1

v Bill clauses 46-49

vi DPM paragraphs 107-111

vii DPM paragraph 110

viii DPM paragraph 123

scrutiny of such regulations. The regulations would be made by the Secretary of State by UK statutory instrument, laid in the UK Parliament only.

24. The Committee sought further information from the Scottish and UK Governments on the questions noted below (by [letter to the UK Government](#) and [letter to the Scottish Government](#) each dated 28 February 2024).
25. The Committee asked the UK Government:
- (i) “The Delegated Powers Memorandum, at paragraph 123, states that the Scottish Parliament will be able to scrutinise subordinate legislation made under clause 50. How would this be achieved given that the power is conferred on the Secretary of State only, and is to be exercised by regulations laid only in the UK Parliament?
 - (ii) Given the statement in the DPM, was consideration given to either conferring this power also on Scottish Ministers for exercise within devolved competence, which would have enabled such scrutiny by the Scottish Parliament; or making its exercise by the Secretary of State subject to a requirement for the consent of the Scottish Ministers, which would have facilitated a degree of such scrutiny?
 - (iii) The Committee understands the UK Government’s position to be that the legislative consent process is not engaged for this clause. Could clarification be provided in this regard?”
26. As noted above, a response from the UK Government has not yet been received.
27. The Scottish Government’s position, as set out in the original LCM, was that legislative consent is required for this clause, as it permits modification of any enactment, including those relating to devolved matters, and permits modification of both Acts of the Scottish Parliament and SSIs.^{ix} The original LCM suggested that there could be further engagement with the UK Government in this regard.
28. The Committee therefore asked the Scottish Government:
- “to provide an update on progress in the discussions between the Scottish Government and UK Government regarding clause 50 since the position set out in the LCM in December 2023.”
29. The [Scottish Government’s response](#), in summary, is as follows:
- Scottish Government officials have undertaken extensive engagement with the UK Government on the Bill provisions that are considered to engage the LCM process, not least in relation to clause 50.
 - the Scottish Government remains of the view that clause 50 engages the LCM process (for the reasons set out in the response and in the original LCM).
 - the Scottish Government states that the UK Government’s position throughout has been that this is reserved because it relates to the subject matter of the Road Traffic Act 1988 so far as it is concerned with the use of vehicles on

ix LCM paragraph 9 and 10

roads, with impacts on devolved matters being considered incidental to this reserved matter.

- the Scottish Government agrees with the Committee that there is no mechanism in the Bill for the Scottish Government to give consent or to be consulted on regulations made under this power which amend devolved legislation. The Scottish Government states that it has sought to discuss this with the UK Government but that the UK Government indicated that it could not discuss this until the sLCM had been lodged.

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.

Introduction to the powers in part 5 and schedule 6 of the Bill

33. The following powers, which are all in or introduced by Part 5 of the Bill, all relate to the permit scheme for automated passenger services.
34. The “Appropriate National Authority” is defined in clause 90(4) of the Bill as follows:
- (4) Subject to subsection (5), the “appropriate national authority” is—
- (a) the Secretary of State, in relation to a permit for the provision of a service in England;
 - (b) the Scottish Ministers, in relation to a permit for the provision of a service in Scotland;
 - (c) the Welsh Ministers, in relation to a permit for the provision of a service in Wales.
- (5) In relation to a permit for the provision of a service in a public service vehicle, the “appropriate national authority” is the Secretary of State.
- (6) A permit is of that description if, under the permit, a service could be provided in a vehicle that, by virtue of its use in providing that service, would count as a public service vehicle within the meaning of the Public Passenger Vehicles Act 1981 (assuming that section 83 did not apply).
35. Accordingly, in the powers below, “Appropriate National Authority” means the Scottish Ministers where the provision relates to permits for automated passenger services in Scotland for vehicles other than public service vehicles. This reflects the division of reserved/devolved responsibility.

Clause 88(5) – Automated passenger service permit scheme: Collection, sharing and protection of information

Power conferred on: Appropriate National Authority

Power exercisable by: Regulations

Parliamentary procedure: Negative

Provision

36. At introduction, the Bill conferred this power on the Secretary of State (only). After an amendment proposed by the UK Government at Report Stage in the House of Lords, the power is now conferred instead on the Appropriate National Authority (as defined above). The Member’s explanatory statement for the amendment was:

“This amendment corrects a drafting mistake, enabling the devolved administrations to make regulations about information-sharing in relation to passenger services within their competence.”^x

37. The Bill allows the Appropriate National Authority to attach conditions to permits for automated passenger services. Clause 88 provides that those conditions may include conditions as to the collection and sharing of information, in particular regarding sharing that information with the Appropriate National Authority, or other public authorities, and with private businesses (such as vehicle manufacturers or insurers).
38. This power relates to information that is obtained by a person through such a permit condition. Disclosing such information, or using it for a purpose other than that for which it was obtained, can be an offence under clause 88(6). The power enables the Appropriate National Authority to make regulations that authorise such recipients of such information to disclose it to another person for purposes that the regulations can specify; or to use the information for a purpose other than the original purpose.
39. Clause 88(9) limits the power to the extent that regulations made under it are not to be taken to authorise disclosure or use that would be liable to harm the commercial interests of anyone except to the extent that the regulations provide for that, or to the extent that the person disclosing the information reasonable considers the disclosure to be necessary in view of the purpose of the regulations.

Consultation

40. There is a consultation requirement in clause 97(2) of the Bill which attaches to every regulation-making power in the Bill (except for the power to make transitional provision). Under the requirement, the Appropriate National Authority (or the Secretary of State, as appropriate) must consult with such representative organisations as that person thinks fit before making the regulations.

Consequential etc. provision

41. Under clause 97(4) of the Bill, every regulation-making power in the Bill (except for the power to make transitional provision) can also make consequential, supplementary, incidental, transitional or saving provision; different provision for different purposes or areas; and provision that allows for the exercise of discretion.

Committee consideration

42. The UK Government's justification for the power in the DPM is:

“In the Department's view, it is appropriate for regulations to set out the precise circumstances in which information obtained further to permits can be used and disclosed, rather than clarifying these circumstances in the primary legislation. The permit scheme is a novel scheme designed to enable experimental passenger services, and it is not yet known precisely how recipients of information gathered under permit conditions may need to share or use this information. The delegated power in clause 88(5) will provide flexibility to identify and change permitted disclosures and uses as the need arises through real-world experience, but subject to the criminal sanction for unauthorised use and disclosure which is set out on the face of the Bill. The approach is also in line with the approach taken in clause 42(3) of the Bill,

which similarly includes a delegated power for the Secretary of State to authorise disclosure and use of information collected as part of in-use regulation procedures set out in the Bill.”^{xi}

43. The Committee is content with this power now that it is conferred on the Scottish Ministers for exercise in relation to the devolved aspects for Scotland.

- 44. The Committee is content with the power conferred on the Scottish Ministers in principle and that it is subject to the negative procedure.**

Clause 89(1) - Automated passenger service permit scheme: Procedural and administrative matters (circumstances for grant, variation, renewal, suspension and withdrawal of permits)

Power conferred on: Appropriate National Authority

Power exercisable by: Regulations

Parliamentary procedure: Negative

Provision

45. This power enables the Appropriate National Authority to make regulations that specify the circumstances in which a permit for a passenger service can be varied, renewed, suspended or withdrawn.
46. The consultation requirement and the ability to make consequential etc. provision mentioned in relation to the power in clause 88(5) above apply also to this power.

Committee consideration

47. The justification for the power in the DPM is:

“Since permits are designed to enable experimental passenger services, the appropriate national authority will require flexibility to adapt the circumstances in which permits can be varied, renewed, suspended or withdrawn in the future as automated technology and services develop. This will ensure that the permit scheme remains up to date with such developments. There may also be a difference of approach in the Devolved Administrations to the procedure for issuing permits. For these reasons, the Department considers that these matters are more appropriately dealt with by the appropriate national authority in secondary legislation rather than in primary.”

- 48. The Committee is content with the power conferred on the Scottish Ministers in principle and that it is subject to the negative procedure.**

Clause 89(2) – Automated passenger service permit scheme: Procedural and administrative matters (procedure for grant, retention, renewal, expiry, variation,

xi DPM paragraph 258

suspension, and withdrawal of permits)

Power conferred on: Appropriate National Authority

Power exercisable by: Regulations

Parliamentary procedure: Negative

Provision

- 49. This power enables the Appropriate National Authority to make regulations specifying the procedure to be followed in connection with the grant, retention, renewal, expiry, variation, suspension or withdrawal of a permit for an automated passenger service.
- 50. The clause provides that this may, in particular, include provision about the form and content of an application for a permit or its renewal, and the fees payable in respect of an application, retention or renewal of a permit. It also provides that if the regulations are setting fees, the amount of the fee may be determined by reference to costs incurred by the Appropriate National Authority in connection with its functions under the Bill regarding the permit scheme.
- 51. The consultation requirement and the ability to make consequential etc. provision mentioned in relation to the power in clause 88(5) above apply also to this power.

Comment

- 52. The justification for the power given in the DPM is:

“Since permits are designed to enable experimental passenger services, the appropriate national authority will require flexibility to adapt the procedure for obtaining a permit as automated technology and services develop. This will ensure that the procedure remains up to date with such developments and will allow periodical changes to fees. There may also be a difference of approach in the Devolved Administrations to the procedure for issuing permits. For these reasons, the Department considers that these matters are more appropriately dealt with by the appropriate national authority in secondary legislation rather than in primary.”^{xii}

- 53. The Committee is content with the power conferred on the Scottish Ministers in principle and that it is subject to the negative procedure.**

Clause 89(6) – Automated passenger service permit scheme: Procedural and administrative matters (maximum validity period for permits)

Power conferred on: Appropriate National Authority

Power exercisable by: Regulations

Parliamentary procedure: Negative

xii DPM paragraph 264

Provision

54. This power enables the Appropriate National Authority to make regulations setting a maximum period for which a permit for an automated passenger service is valid. At this point it would expire or have to be renewed.
55. The consultation requirement and the ability to make consequential etc. provision mentioned in relation to the power in clause 88(5) above apply also to this power.

Comment

56. The justification for the power given in the DPM is:

“Given permits are designed to enable experimental passenger services, it is appropriate for the appropriate national authority to have flexibility to set and adapt maximum validity periods in secondary legislation as automated technology and services develop. Ensuring there is an appropriate maximum period of validity for any permit will support the licensing and enforcement regime for automated passenger services and ensure passenger safety. The permit renewal process will provide the appropriate national authority with the opportunity to check that the permit holder has been complying with safety and accessibility standards which are requirements of operating passenger services under the permit, this will inform the decision as to whether the permit holder remains a suitable person to continue holding a renewed permit for the purposes of providing automated passenger services. There may also be a difference of approach in the Devolved Administrations to the issuing of permits, so it is appropriate to allow flexibility for procedural matters such as the maximum validity period, in the event a different approach is taken.”^{xiii}

- 57. The Committee is content with the power conferred on the Scottish Ministers in principle and that it is subject to the negative procedure.**

Clause 89(7) – Automated passenger service permit scheme: Procedural and administrative matters (Delegation of functions to traffic commissioners)

Power conferred on: Appropriate National Authority

Power exercisable by: Regulations

Parliamentary procedure: Negative

Provision

58. This power allows the Appropriate National Authority, by regulations, to provide for its functions under any provision made by or under Part 5 (regarding permits for automated passenger services) to be exercisable by a traffic commissioner instead of, or in addition to, by the Appropriate National Authority.
59. The consultation requirement and the ability to make consequential etc. provision mentioned in relation to the power in clause 88(5) above apply also to this power.

Committee consideration

60. The DPM states:

“The automated passenger services permitting regime will cover a range of compliance and enforcement procedures that mirror the existing procedures and powers that Traffic Commissioners already have for various types of vehicles. Traffic Commissioners will continue to be responsible for the licensing and regulation of those vehicles. This delegated power allows the appropriate national authority to extend Traffic Commissioners’ responsibilities to include automated versions of the vehicles that provide passenger services.

“Traffic Commissioners already regulate those who operate vehicles used for passenger services, including buses and coaches, and have expertise and experience in that field. However, Traffic Commissioners do not yet have experience of regulating automated passenger services. In the [UK Department of Transport’s] view, the appropriate national authorities should have a power to delegate their functions under Part 5 of the Bill to Traffic Commissioners in due course, once there is greater experience of regulating automated passenger services. This could ensure consistency and efficiency in the regulation of operators of both conventional and automated passenger services.”^{xiv}

61. The Committee normally pays close attention to an ability to sub-delegate, and particularly to transfer to someone else, functions which the Act assigns to Ministers. In the present context however, the Committee considers this power to be acceptable. The delegation must be done by regulations which will be laid before the Scottish Parliament, and the sub-delegation or transfer can only be to a Traffic Commissioner.

62. The Committee is content with the power conferred on the Scottish Ministers in principle and that it is subject to the negative procedure.

**Schedule 6 paragraph 2(7) – Automated passenger service permit scheme:
Monetary penalties**

Power conferred on: the Appropriate National Authority

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Provision

63. Schedule 6 flows from Part 5 of the Bill, and also relates to the automated passenger services scheme.

64. Schedule 6 contains the sanctions for breaching the scheme for permits for passenger service vehicles, for example for operating a service without a permit or in breach of the conditions of the permit. These are civil sanctions. They enable a

^{xiv} DPM paragraphs 270 and 271

monetary penalty notice to be given to a permit holder who has committed such a breach, or has failed to comply with a compliance notice. In addition to the basic fine, the penalty notice can impose an additional daily penalty which is payable for each day until the breach is remedied (or until another date specified in the notice). The penalty notices are issued by the Appropriate National Authority.

65. The power in paragraph 2(7) requires the Appropriate National Authority, by regulations, to set the maximum amount of both the basic penalty and of the additional daily penalty. This may (at the option of the Appropriate National Authority) be determined by reference to the turnover of the permit holder (similar to penalties for breaches of competition law).
66. The consultation requirement and the ability to make consequential etc. provision mentioned in relation to the power in clause 88(5) above apply also to this power.

Committee consideration

67. The justification given in the DPM for taking this power is:

“The appropriate national authority requires the ability to issue monetary notices in the event a regulated body does not comply with permit conditions or compliance notices. Monetary notices will be a key part of ensuring that notices are complied with and ensure that the enforcement regime for automated passenger services is robust and adhered to.

Appropriate national authorities may need to respond to development in the sector and the technology that supports automated vehicles used for passenger services, and as a result, all enforcement measures will need to reflect the market environment that permit holders are operating in.”^{xv}

68. While the Committee considers that it is usually appropriate for the maximum level of a penalty to be contained in primary legislation (albeit subject to adjustment by delegated legislation), it considers that in this case it is acceptable for the power to be delegated because the penalties will apply in the automated passenger services sector which is currently at the earliest, experimental stage of development.
69. Regarding the procedure, in the Bill as introduced, this power was subject to the negative procedure. This was amended in the Lords (by UK Government amendment) to affirmative procedure. The supplementary Delegated Powers Memorandum states that this was done in response to a concern by the UK Parliament’s Delegated Powers and Regulatory Reform Committee that it is inappropriate to leave the setting of the maximum amounts payable by way of these civil penalties entirely to negative procedure regulations, and that this would not provide the sufficient level of scrutiny for use of the powers.^{xvi}
70. The Committee would likewise have considered that negative procedure was not appropriate for the setting of these maximum penalties, but it is content that this has now been changed to the affirmative procedure.

xv DPM paragraphs 320 and 321

xvi [Supplementary Delegated Powers Memorandum](#), paragraph 13, referring to the House of Lords Delegated Powers and Regulatory Reform Committee’s 3rd [report](#) of Session 2023-24, 8 December 2023.

71. The Committee is content with the power conferred on the Scottish Ministers in principle and that it is subject to the affirmative procedure.

Ancillary power

Clause 99(4) – Transitional or saving provision

Power conferred on: the Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: None

Provision

72. This is a power for the Secretary of State to make transitional or saving provision in connection with the coming into force of any provision of the Bill. This includes power to make different provision for different purposes or areas.

Committee consideration

73. While this power could be capable of being exercised by the Secretary of State within devolved competence, it is an inherently necessary power to make the Bill work and is sufficiently narrowly drawn that it cannot be used to make substantive provision of which the Scottish Parliament may want to have some further scrutiny.

74. The Committee is content with this ancillary power.

