



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 27 March 2024  
SP Paper 561  
6th Report, 2024 (Session 6)

## **Net Zero, Energy and Transport Committee**

# **Report on the Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum on the Automated Vehicles Bill (UK Parliament legislation)**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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# Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero and Just Transition, with the exception of matters relating to just transition; on matters relating to land reform, natural resources and peatland, Scottish Land Commission; Crown Estate Scotland, and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands; and on matters relating to energy within the responsibility of the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy.



[netzero.committee@parliament.scot](mailto:netzero.committee@parliament.scot)



0131 348 6039

# Committee Membership



**Convener**  
**Edward Mountain**  
Scottish Conservative  
and Unionist Party



**Deputy Convener**  
**Ben Macpherson**  
Scottish National Party



**Bob Doris**  
Scottish National Party



**Jackie Dunbar**  
Scottish National Party



**Monica Lennon**  
Scottish Labour



**Douglas Lumsden**  
Scottish Conservative  
and Unionist Party



**Mark Ruskell**  
Scottish Green Party

# Introduction

1. The [Automated Vehicles Bill](#) (the Bill) was introduced in the House of Lords on 8 November 2023. The Bill regulates the use of automated vehicles on roads and in other public places and makes other provision in relation to vehicle automation. As currently amended the Bill consists of 100 clauses and 6 schedules.
2. 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.
3. A [Legislative Consent Memorandum](#) (LCM) on the Bill was lodged by the Scottish Government on 20 December 2023. The Scottish Parliament subsequently agreed to designate the Net Zero, Energy and Transport (NZET) Committee as lead committee for considering the LCM.
4. The Scottish Government did not take a position in the initial LCM 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.”
5. On 29 February 2024, a [supplementary LCM](#) was lodged by the Scottish Government and this too was referred to the NZET Committee as lead committee. The supplementary LCM recommended consent, other than in relation to clause 50. Further detail on the Scottish Government’s position is set out below.
6. This is a report to the Scottish Parliament on both the LCM and the supplementary LCM.

# Content of the Legislative Consent Memorandum

7. The LCM sets out that the provisions the UK Government is seeking the Scottish Parliament's consent to are:
  - Clause 40 – this gives the UK 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.
8. 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.
9. The supplementary LCM sets out the reasons for the Scottish Government's view:

” 21. The Scottish Government has undertaken significant engagement with the UK Government on clauses 46 to 51. The UK Government’s view is that Chapter 1 of Part 2 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 roads, with impacts on 5 devolved matters being considered incidental to this reserved matter. The Scottish Government does not agree with this assessment. The reserved purpose offered by the UK Government is regulating the use of AVs which in their view falls within the subject matter of the Road Traffic Act 1988. The Scottish Government’s view continues to be that this takes too broad an approach to the subject matter of that Act. That subject matter does not extend to any and all regulation of the use of vehicles. It is instead concerned, so far as relating to the construction and use of vehicles, with the regulation of minimum standards for the safe use of vehicles. Accordingly, any and all regulation of the use of automated vehicles is not a reserved matter, just as any and all use of conventional vehicles is not a reserved matter.

22. The UK Government has highlighted the importance of a consistent approach to liability for UICs across Great Britain. Scottish Government accepts that a consistent approach is required. However, it does not accept that all the provisions required to secure consistency are reserved. The LCM process exists to ensure that devolved interests are respected where UK Government policy requires consistency of approach between reserved and devolved matters in the delivery of UK Government policy.

23. It has also been suggested by the UK Government that changes to devolved offences are “incidental” to the reserved purpose of regulating AV use. This argument is not accepted by the Scottish Government given that the intention of these clauses is to remove or clarify liability for offences (and perhaps civil penalties in the case of clause 50) in circumstances where there is a UIC. Accordingly modifying offences (reserved or devolved) to remove or clarify liability cannot be incidental; it appears to be the primary reason that these provisions are being made.

24. The Scottish Government’s view is that determining the liability of a UIC, or any other person, for devolved offences involving the use of a vehicle would be within the legislative competence of the Scottish Parliament. The Scottish Government also considers that it would be within the legislative competence of the Scottish Parliament to confer enabling powers to clarify the application to a UIC of devolved legislation relating to the driving or use of vehicles. To these extents, the provisions in Chapter 1 of Part 2 of the Bill engage the LCM process.”

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 the UK Government having to seek the consent of, or consulting, the Scottish Ministers or Scottish Parliament.

11. The supplementary LCM states:



” “the Scottish Government does not support clause 50 as this clause provides the Secretary of State with the power to change and or clarify existing 6 legislation (including Acts of the Scottish Parliament) without a mechanism to seek the consent of or consult with the Scottish Ministers or Scottish Parliament.

29. The Scottish Government’s position remains that where the UK Government intends to take powers to make secondary legislation in devolved areas, that must be accompanied by effective mechanisms to respect the devolution settlement and to recognise the responsibilities of Scottish Ministers and the Scottish Parliament.”

12. 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

13. The Delegated Powers and Law Reform (DPLR) Committee considered the LCM at its meeting on 27 February 2024 and the LCM and Supplementary LCM on 12 March 2024. It [reported on both on 12 March](#) and the NZET Committee has taken account of its views in preparing this report.
14. The DPLR Committee drew one delegated power in the Bill to the attention of the lead committee. In relation to the others, it was content with the powers in principle and with the parliamentary procedure to which their exercise would be subject.
15. The power drawn to the attention of the lead committee was the power in clause 50.<sup>i</sup> As outlined above, 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. This applies to any legislation, both UK and Scottish, and both primary and secondary (its ability to modify primary legislation making it a “Henry VIII” power).
16. In relation to the clause 50 power, the DPLR Committee report states:

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<sup>i</sup> The DPLR Committee wrote to the UK Government seeking their views in relation to this power but [the response](#) was not received until after the DPLR Committee had reported, and after the NZET Committee had finished taking evidence. The response restates the UK Government’s view that clause 50 does not require legislative consent.

” 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.”

# Net Zero, Energy and Transport Committee scrutiny


## Evidence from the Confederation of Passenger Transport

17. The NZET Committee agreed to seek written submissions on the Bill from the Confederation of Passenger Transport (CPT), which represents Scotland's bus sector, and the Scottish Taxi Federation given that a number of the provisions requiring consent (particularly those in Part 5 of the Bill) relate to, or may impact upon, passenger services that use automated vehicles. The CPT [replied](#).
18. This response did not raise any concerns about the Bill. It indicated that there is currently only one automated bus service in Scotland- the UK's first autonomous bus service, a pilot service between Ferrytoll Park & Ride and Edinburgh Park ("CAVForth"). However, the CPT noted that "this is an area of technology that will only grow in use as it matures and gains greater passenger confidence".
19. The CPT also commented that they do not believe that the Bill discourages further trials, explaining:
  - ” "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."
20. In relation to the permit scheme set out in Part 5 of the Bill, CPT stated 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". Some of the specific provisions of the Bill were discussed, with no concerns raised about any element.
21. The response concluded:
  - ” "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."

## Evidence from the Cabinet Secretary for Transport

22. The NZET Committee held an [evidence session](#) with the Cabinet Secretary for Transport on 19 March 2024 to explore in further detail the Scottish Government's views on the LCM. The Cabinet Secretary also wrote to the Committee on 21 March 2024 with follow-up information requested by the Committee.

**Clause 50**

23. The Committee asked the Cabinet Secretary for further information about the power in clause 50 (the provision to which the Scottish Government does not recommend consent), including how this might be used.
24. The Cabinet Secretary responded that this was a "broad power" that the UK Government acknowledges applies to devolved driving offences. However, the UK Government considers that the impact on devolved matters is "incidental" to the reserved policy of "use of automated vehicles on roads".<sup>ii</sup>
25. The Cabinet Secretary said the Scottish Government's view is that this takes too broad a view of the reservation. The Cabinet Secretary stated that not every use of conventional vehicles is reserved, so neither is all use of automated vehicles. The Scottish Government's view is that the Road Traffic Act 1988 (which is reserved, and this is the basis of the UK Government's view that these provisions of the Bill are reserved) is connected with the construction and use of vehicles but that clauses 46 to 51 of the Bill go beyond this. The Cabinet Secretary stated that: "The Scottish Government's view is that the primary purpose of these provisions is to clarify liability for traffic offences" so the power in clause 50 to modify offences (including devolved offences) to remove or clarify liability "cannot be incidental. Rather it appears to be the primary reason these provisions are being made".<sup>iii</sup>
26. The subsequent letter received from the Cabinet Secretary sets out that this topic was also discussed at the Committee Stage in the House of Commons in response to amendments tabled by Gavin Newlands MP. The letter stated:
-  "The Response from Anthony Browne MP [the UK Government minister] was that the purpose of clause 50 is to allow the UK Government to respond to technological changes as self-driving technology improves, as it may become appropriate to shift greater responsibility away from the user in charge.
- The UK Government considers the user-in-charge immunity to be a reserved matter because the Bill gets its authority from the Road Traffic Act 1988, which is expressly reserved under the Scotland Act 1998. It is their view that Clause 50 will predominantly affect the application of reserved traffic offences. Therefore, the immunity will have only minor incidental impact on that legislation.
- For the reasons noted earlier in this letter, the Scottish Government's view is that clause 50 does not entirely relate to reserved matters, and that the impact on devolved matters is not merely incidental (as addressed at paragraph 23 of the Scottish Government's Supplementary LCM)."
27. The Committee probed what practical issues may result from the exercise of the power in clause 50 and the potential for divergence across the UK.
28. The Cabinet Secretary responded that there is a desire for consistency across the UK, but when regulations apply to devolved areas there "needs to be, at the very least, consultation with the Scottish Ministers on issues that may impact".<sup>iv</sup>

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ii Net Zero, Energy and Transport Committee. Official Report, 19 March 2024 , col 4

iii Net Zero, Energy and Transport Committee. Official Report, 19 March 2024 , col 4

29. Examples were provided of what the clause 50 power could be used to amend. This included contraventions of traffic orders (for example, speed limits), Low Emission Zones, and parking and bus lane contraventions. The Committee discussed further the example of bus lane contraventions, asking if clause 50 could be used to set fines across the UK for automated vehicle contraventions, and if this could then cause a two-tiered system where automated vehicles may be subject to one fine, whereas a driver of a traditional vehicle owes a different fine. The Cabinet Secretary responded that clause 50 could lead to this (though would not necessarily do so as it would depend upon how the power is actually exercised). A Scottish Government official added:

” that is exactly what clause 50 could do, which is why we do not accept that it is the right thing to do. From the point of view of the rules of the road, the understanding of Scottish motorists and road users, and safety, I do not think that a two-tier approach is beneficial”.<sup>v</sup>

30. The Committee also asked if the Scottish Law Commission, or other devolved legislatures, had expressed any view on clause 50 and if they shared the Scottish Government's concerns.

31. The Cabinet Secretary undertook to provide the Committee with the information she had about the Welsh Government's position after the meeting. In relation to the Scottish Law Commission, a Scottish Government official responded that it would not be for that body to specifically undertake analysis of whether the LCM process was engaged. The joint report of the Law Commission and Scottish Law Commission did recommend that a power was included in the Bill to enable clarification of how existing legislation applies to the new concept of a user-in-charge. The official stated that she understood the intention of this recommendation to be that as the Bill comes into operation it will become apparent where gaps are and where existing legislation does not make sense with regards to a user in charge, so a power was needed to respond to these matters as they became known. The question that remains from the Scottish Government's perspective is "just how that will apply to devolved legislation in relation to civil sanctions insofar as clause 50 would be used to amend that legislation. The Scottish Government's view is that that engages the LCM process".<sup>vi</sup>

32. Further correspondence from the Cabinet Secretary, returned to this point, explaining that the Welsh Government did not identify clauses 46 to 51 as requiring consent. However, the letter stated that:

” policing and criminal justice are not devolved in Wales, whereas these matters are generally devolved in Scotland. Due to the differences in the devolution settlements in Scotland and Wales, it is possible for the Scottish Government to consider that a certain provision requires consent, whereas this is not the case for the Welsh Government.”

33. Further information was also provided on the Scottish Law Commission's position. The letter highlighted paragraphs 2.73 and 2.74 of the joint Law Commissions' report that led to the Bill, which stated:

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iv Net Zero, Energy and Transport Committee. Official Report, 19 March 2024 , col 5

v Net Zero, Energy and Transport Committee. Official Report, 19 March 2024 , cols 14-15

vi Net Zero, Energy and Transport Committee. Official Report, 19 March 2024 , col 16

- ” “The new Act will cover a mix of both reserved and devolved issues, and the dividing line between the two is not always clear cut. For example, in Chapter 8 we recommend that the user-in-charge should have an immunity from road traffic offences and civil penalties which arise from dynamic driving. Some of this immunity will relate to reserved offences, but not all.

For example, in Scotland, the immunity will be a reserved matter if it applies to most offences in the Road Traffic Act 1988 and in motorway regulations made under section 17 of the Road Traffic Regulation Act 1984. However, in Scotland, speed limits on motorways and the offence of failing to comply with road signs under section 36 of the Road Traffic Act 1988 are devolved. Similarly, in Wales, civil penalties under the Part 6 of the Traffic Management Act 2004 are devolved. We do not think that the public would be able to understand different or partial immunities based on these distinctions.”

34. The letter further stated:

- ” “The Law Commissions noted that they did not think that the public would be able to understand different or partial immunities based on these distinctions, and that it would be desirable for the UK, Scottish and Welsh governments to work together to introduce a uniform scheme that applies across Great Britain.

The Scottish Government does not disagree that consistency of approach across Great Britain is important and nor does it in principle disagree that a power should be taken to clarify by regulations the application of legislation relating to the driving of vehicles to users-in-charge. But it is the Scottish Government’s view that insofar as the user-in-charge immunity will apply to devolved offences (as acknowledged by the Law Commissions), this makes provision for devolved purposes. It is the Scottish Government’s position that where regulation-making powers exercisable by the Secretary of State could make provision in devolved areas this must be accompanied by effective mechanisms to seek the consent of, or consult with, the Scottish Ministers or Scottish Parliament. It is the lack of any mechanism in clause 50 to afford the Scottish Parliament or Scottish Ministers an opportunity for formal scrutiny of regulations (potentially making provision relating to devolved matters) to which the Scottish Government objects. It is for this reason that consent to clause 50 is not recommended. The Scottish Government does not consider that such a scrutiny mechanism would necessarily result in an inconsistency of approach to the user-in-charge immunity across jurisdictions, rather it would formalise the need for UK and Scottish Governments to work together (as suggested by the Law Commissions), while respecting the devolution settlement and recognising the responsibilities of the Scottish Ministers and the Scottish Parliament.”

### **Inter-governmental engagement**

35. The Committee also explored the engagement between the governments on clause 50.
36. The Cabinet Secretary advised that the Bill was announced in the King’s speech and moved quite rapidly which meant working to tight timescales to ensure consultation with bodies such as Police Scotland and the Crown Office. The Cabinet Secretary further stated that she had not spoken directly to the Minister in

charge of the Bill but there had been an ongoing exchange of correspondence and that "we have been as co-operative as we can be" but that the secondary legislation will be just as important.<sup>vii</sup>

37. When probed further about the UK Government's engagement with the Scottish Government prior to the Bill's introduction, the Cabinet Secretary stated that this "could have been better" but that she recognised that it is a complicated area. The Cabinet Secretary further stated that the issue is that the UK Government has not distinguished between "the technology of automated vehicle and the rules of the road" - the former the Scottish Government accepts is reserved and the latter it considers to be devolved. The Scottish Government considers clause 50 to relate to rules of the road, not the technology of automated vehicles.<sup>viii</sup>

## **Consultation**

38. The Committee also asked the Cabinet Secretary about what consultation had been carried out with bus and taxi operators in respect of the licensing system in Part 5 of the Bill.
39. The Cabinet Secretary responded that as the Bill stemmed from a joint report of the Law Commission and Scottish Law Commission a consultation had been carried out during their review. A Scottish Government official added that there was strong engagement with a range of stakeholders in this policy area generally, including with the Society of Local Authority Lawyers and Administrators in Scotland (which provides legal advice to licensing boards and licensing authorities), UNITE and private car operators. He said that the concerns from a policy perspective were considered to be the need to think about unintended consequences. This includes considerations such as the impact of taxi services more generally (for example, the impact of automated vehicles from an employment perspective) and the importance of considering the policy through an equality lens to ensure no unintended consequences for accessibility.<sup>ix</sup>
40. The Committee asked about the existing self-driving bus pilot and any consideration being given to this from a workforce planning perspective.
41. The Cabinet Secretary responded that the Scottish Government was not directly involved in this pilot but that we all have responsibility to consider workforce impacts. The Cabinet Secretary expanded that she did not have all the answers to these issues right now as this was a new area of policy but "if we do not prepare for it and anticipate things, the market will just take over". A Scottish Government official added that the workforce impact does need to be worked through but the Bill does also present opportunities. The need for safety to be at the heart of the scheme was emphasised.<sup>x</sup>

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vii Net Zero, Energy and Transport Committee. Official Report, 19 March 2024 , col 12

viii Net Zero, Energy and Transport Committee. Official Report, 19 March 2024 , col 13

ix Net Zero, Energy and Transport Committee. Official Report, 19 March 2024 , cols 8-9

x Net Zero, Energy and Transport Committee. Official Report, 19 March 2024 , col 11



## Conclusions and recommendations

42. **The Committee recognises the need for this UK Bill to provide regulation in relation to an innovative technology, use of which may be expected to increase, and that the Bill is the result of four years of careful work jointly by the Law Commissions alongside other consultation and policy development.**
43. **The Committee heard from the Scottish Government that some concerns exist about the potential for a two-tier approach to driving offences being created (with one set of rules applying to conventional vehicles, and another to autonomous vehicles). The Committee understands why the Scottish Government would have concerns that this could potentially complicate the law on road offences in a way that may not have been intended and encourages cooperation between the governments to minimise the risk of unintended consequences (in this respect and more generally) and ensure a fair and clear system.**
44. **The Committee notes that the only area of disagreement between the Scottish and UK Governments in relation to this Bill concerns the regulation-making power given to the Secretary of State in clause 50. The Scottish Government objects to the Secretary of State being able to exercise this power without having to seek the consent of, or consult with, the Scottish Ministers. The Committee notes, and agrees in principle with, the position adopted by the Delegated Powers and Law Reform Committee in relation to this provision, as set out in paragraph 16 above.**
45. **The Committee notes that the UK Government does not agree with the Scottish Government that clause 50 requires the consent of the Scottish Parliament. This being ultimately a legal dispute on the dividing line between devolved and reserved competencies, the Committee is in no position to adjudicate authoritatively, especially in the limited time available. However, it is disappointing that the governments have not been able to reach agreement in relation to matters on which any policy differences between the UK and Scottish Governments appear relatively minor.**
46. **The Committee understands that engagement between the Scottish Government and UK Government has been ongoing and encourages the relevant Ministers to continue discussing the disagreement in relation to clause 50, to try to reach a position with which everyone can be content.**

