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21 March 2024

Dear Convener

**UK Government's Automated Vehicles Bill –
Net Zero, Energy and Transport (NZET) Committee: Evidence Session - 19 March 2024**

Thank you for inviting me to give evidence on the Legislative Consent Memorandum (LCM-S6-42) and Supplementary Legislative Consent Memorandum (LCM-S6-42a) at the Net Zero, Energy and Transport Committee, on 19 March 2024.

I agreed to follow up on specific points raised by members of the Committee. Please find below a response to each of the queries raised.

Welsh Government's position on clause 50 of the Bill

The Welsh Government laid a Legislative Consent Memorandum on the Bill before the Senedd on 24 November 2023 and laid a Supplementary LCM on 13 February 2024. Neither LCM identified clauses 46 to 51 as provisions for which consent is required.

Officials of the Scottish and Welsh Governments met in January 2024 to discuss the Bill. It was highlighted during these discussions 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. Officials have sought further information from the Welsh Government on their view of clause 50, and are awaiting a response.

In relation to devolution generally, the Automated Vehicles: joint report of the Law Commission of England and Wales and the Scottish Law Commission relevantly commented at paragraphs 2.73 and 2.74 that:

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“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.”

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.

Recent correspondence between UK Government and Scottish Government

Please find attached recent correspondence between the UK Government and the Scottish Government as follows:

- Letter to Anthony Browne MP, dated 22 February 2024, confirming an In-Principle Agreement to engage the legislative consent process in the Scottish Parliament.
- Letter from Anthony Browne MP, dated 13 March 2024, in response to my letter of 22 February 2024.
- Letter to Anthony Browne MP, dated 15 March 2024, in response to my letter dated 13 March 2024.

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Chapter 2, Offences, Clause 54 (2)

The Committee has asked a further question following the evidence session.

“The Bill creates a new offence of “Causing danger to road-users resulting in automated vehicle killing or seriously injuring”. This offence will not apply to Scotland. Can you explain why this offence will not apply in Scotland and whether you intend to legislate in this area?”

The new offence of “Causing danger to road-users resulting in automated vehicle killing or seriously injuring” is contingent on the commission of the existing offence under section 22A of the Road Traffic Act 1988 (relating to causing anything to be on or over a road or interference with a vehicle or traffic equipment). The existing offence under section 22A does not extend to Scotland, and therefore the new offence also does not extend to Scotland.

The joint report by the Law Commissions considered (at paragraphs 12.36 to 12.49) whether the introduction of automated vehicles necessitated the extension of section 22A to Scots law. The Law Commissions explained that the existence of Scots common law offences covering the whole conduct covered by section 22A appeared to be the reason for the non-extension of section 22A to Scots law when it was enacted. It was concluded in the joint report that extending section 22A to Scotland was still not required now, as behaviour constituting this offence in the context of automated vehicles should be capable of being prosecuted as the Scots common law offence of culpable and reckless conduct, which has a broad scope. The Law Commissions also noted in their report that interference with an automated vehicle that amounts to culpable and reckless conduct and which causes death, could be prosecuted in Scotland as the common law offence of culpable homicide. There is no intention to legislate in this area as this is considered unnecessary for Scotland.

Update on the clause 50 amendments tabled at Committee Stage at the House of Commons

Ben MacPherson MSP, asked to be updated on Committee Stage at the House of Commons, specifically in relation to the amendment tabled on clause 50 of the Bill.

The Automated Vehicles Bill had its first and final committee day in the House of Commons on Tuesday 19 March 2024. The day comprised of two sessions; two hours in the morning and three hours in the afternoon. As the Committee finished in one day there will be no further Committee sessions for the Bill taking place.

Whilst Gavin Newlands MP acknowledged that the Scottish Government is generally supportive of the Bill, he proposed amendments to clause 50 which would mean that the Secretary of State could not amend legislation of the devolved administrations for the purposes of changing or clarifying traffic legislation in respect of automated vehicles, to add a requirement to seek the consent of the Scottish Parliament or the Senedd before exercising clause 50 in relation to devolved legislation, or to extend the same powers to the Scottish and Welsh Ministers.

The Response from Anthony Browne MP 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.

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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).

The proposed amendment to Clause 50 was rejected at committee stage at the House of Commons. UK Government officials have confirmed that all amendments were considered on the first committee day, and there will be no further committee sessions.

Yours sincerely,



FIONA HYSLOP
Cabinet Secretary for Transport

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