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By email - DfT.Ministers@dft.gov.uk

22 February 2024

Dear Anthony,

UK Automated Vehicles Bill: In-Principle Agreement

Thank you for your letter, dated 30 January 2024, to advise of the amendments that were planned to be tabled ahead of Report Stage in the House of Lords. I note that you are now the promoter of the Automated Vehicles Bill in your new role. I am responding to a letter sent to me by the then Minister of State for Transport, the Rt Hon Jesse Norman MP, dated 6 November 2023, seeking confirmation on whether I agree with the devolution analysis set out and indicating if I would be content to engage the legislative consent process in the Scottish Parliament.

A holding response was issued to the Secretary of State for Transport, Mark Harper MP, dated 17 November 2023 to confirm that a further letter would be issued once I had considered advice from officials on the Bill.

It is important that my officials were given appropriate time to fully consider and scrutinise the Bill and to ensure there were meaningful discussions with your officials. I am pleased that over the last few months there has been extensive and collaborative engagement between our officials and this has resulted in the UK Government tabling amendments to the Bill. Some of these amended clauses engage the requirement to seek legislative consent from the Scottish Parliament. I am also pleased to note the tabled amendments were accepted at Report Stage in the House of Lords.

With regard to the provisions in the Bill, I concur that those identified in your letter will engage the Legislative Consent process. Having considered the relevant clauses, I can offer the following views.

I can confirm, in principle, my agreement to progress legislative consent in the Scottish Parliament to cover clause 40, clauses 82 to 90 (excluding clause 86 as this is a reserved matter) and Schedule 6 of your Bill. I consider it is a sensible use of the legislative consent

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process to seek consent from the Scottish Parliament in these areas. In particular, clauses 82 to 90 (excluding 86) provide for new powers for Scottish Ministers in relation to a system of interim passenger permits over the use of automated vehicles within a private hire and taxi regulatory regime. These powers, similar to those granted in the Bill to other national authorities in the area of private hire and taxi regulation, provide an appropriate approach to reflect the devolved nature of private hire and taxi licensing.

I also consider the provisions of Part 2, Chapter 1 – in relation to the legal position of the user in charge ('UIC') relates to devolved matters and makes provision within the legislative competence of the Scottish Parliament. There has been significant engagement between our officials on Part 2, Chapter 1, and I note the UK Government's position is that these provisions relate to a reserved matter and that impacts on devolved matters are merely incidental. It is my view that the impacts and potential impacts on devolved matters go beyond the merely incidental. Provisions relating to the regulation of a number of dynamic driving offences, including offences of failing to comply with traffic signs and the regulation of moving traffic on roads, are devolved. I also consider that the broad regulation-making power in clause 50 could be exercised for devolved purposes. It may, for example, be used to modify legislation creating criminal offences relating to the driving or use of a vehicle in devolved areas, or to modify legislation relating to devolved civil penalty regimes for road traffic. To that extent, clause 50 – and regulations made under it – would make provision within the Scottish Parliament's legislative competence. Accordingly, it is my view that the provisions of Chapter 1 of Part 2 of the Bill engage the LCM process.

From a policy perspective I am content with clauses 46 to 49 and 51, and in principle, confirm my agreement to recommend consent. However, I am not content with clause 50 as it provides the Secretary of State with the power to amend and or clarify existing legislation in a devolved area without a mechanism to consent or consult with the Scottish Ministers and the Scottish Parliament. While my officials have sought to secure a concession in that regard, I understand that no such concession has to date been offered. Therefore I can confirm that I will be recommending that consent is withheld by the Scottish Parliament in respect of clause 50.

This is, of course, subject to the final provisions of the Bill and agreement of the Scottish Government Cabinet Sub-Committee on Legislation.

It would be helpful if your officials could continue to keep my officials informed of the relevant Parliamentary time table and to keep them up to date on the progress of the Bill.

Yours sincerely,

FIONA HYSLOP

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13 March 2024

Dear Fiona,

Automated Vehicles Bill in-principle agreement response

I would like to thank you for your letter of 22 February regarding your in-principle agreement to the measures in the Automated Vehicles Bill. I would also like to reiterate my thanks to your officials for their continued engagement on the Bill.

Clause 50

Regarding Clause 50, I would like to reaffirm that the Government's position remains unchanged from our initial analysis. We believe that the user-in-charge immunity is reserved as relating to the overall reserved policy of the use of automated vehicles on roads. The purpose of the regulation-making power in clause 50 is to change or clarify the application of the user-in-charge immunity where necessary, including where:

- the application of the immunity is not clear, for instance where the offence in question does not apply to a "driver", or
- in light of future technological developments, it becomes appropriate to transfer responsibilities – for instance, the responsibility for vehicle roadworthiness, currently outside the scope of the immunity – from the human to the automated self-driving entity (ASDE).

Accordingly, the power in clause 50 is limited by clause 50(1) to making regulations for the purpose of "changing or clarifying whether, how or in what circumstances a relevant enactment applies to the user-in-charge of a vehicle".

Insofar as the power can be used to amend a devolved enactment, therefore, it can only amend that enactment to clarify whether, how or in what circumstances it applies to a user-in-charge. It cannot be used to amend enactments more broadly, or for any other purpose. In this sense, we do not believe that the power in clause 50 can be used for devolved purposes. It is fundamentally tied to the reserved concept of the user-in-charge immunity.

I understand that this does not align with the Scottish Government's views in this area, but I would reassure you that we will continue to engage openly and transparently on the Bill and the future implementation of the legislation.

Review Clause

I understand your Cabinet Sub-Committee for Legislation (CSCL) have also considered the Bill and have recommended that the bill should contain a review clause, with a commitment to review the operation of this legislation after a defined period – and that this should be carried out in partnership between UK and devolved administrations. It is important to note that there is already a review requirement in the Bill under clause 38 which requires the Secretary of State to report on the general performance of the automated vehicle fleet every year, starting from the first authorisation of a vehicle. Whilst this report and the associated monitoring and assessment will be carried out by the Secretary of State, it will of course take accounts and views of the operation of the regime in Scotland and Wales. Therefore, we do not propose to include an additional review clause in the Bill.

I would also like to reassure the Committee that the automated vehicles regime will only be fully functional following full consultation and implementation of the secondary legislation underpinning it, which the Scottish Government will be able to contribute and feed their views into. We intend to take the same approach of openness and engagement with your officials throughout this implementation process.

Government Amendments at Committee Stage

I would also like to inform you of two amendments the Government has tabled ahead of Commons Committee Stage regarding clauses 40 and 93 as follows:

- Clause 40: Power to require reports from police and local authorities – the amendment will add Welsh Ministers to the list of authorities in Clause 40 (3) of the Bill, in effect bringing Welsh Ministers in their capacities as highways authority and traffic authority, within the ambit of the power.

- Clause 93: Provision for information about traffic regulation measures – the amendment extends the power in Clause 93 to Welsh Ministers in relation to traffic regulation measures in Wales.

We discussed the Scottish Government's position on extending powers to in Clause 93 to Scottish Ministers with your officials. They confirmed that at this time the Scottish Government does not require these powers, as you intend to make your own legislation in this area, following relevant consultations.

Please let us know if you have any further questions or concerns. My officials stand ready to continue to engage openly as we begin to implement the provisions in the Bill following Royal Assent.

Yours ever,

ANTHONY BROWNE MP

MINISTER FOR DECARBONISATION, AVIATION AND TECHNOLOGY

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15 March 2024

Dear Anthony,

Automated Vehicles Bill in-principle agreement response

Thank you for your letter, dated 13 March 2024, in response to my letter of 22 February 2024. I note your position on clause 50 of the Bill, on a Review Clause and that the UK Government has tabled two amendments ahead of Commons Committee Stage regarding clauses 40 and 93.

Clause 50

I am disappointed to note that your Government's position remains unchanged and no understanding could be reached on this matter. The Scottish Government's position to withhold consent on clause 50 of the Bill remains unchanged.

Review Clause

The Scottish Ministers noted that, as the Bill is novel, it would benefit from a review clause with a commitment to review the operation of this legislation after a defined period. The Scottish Government has considered clause 38 of the Bill and we do not consider this provision to be the type that has been requested by the Scottish Ministers. Clause 38 is a duty to monitor the performance of automated vehicles, in particular monitoring performance against the safety principles. Whereas, we would expect a review clause to cover the operation of the legislation, consultation with the Devolved Governments, reporting, and for the report to be laid in the UK Parliament. I would welcome your further consideration to include a provision on the face of the Bill or at least a commitment in writing to informally review the Bill.

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UK Government Amendments at Committee Stage

I note the two amendments your Government has tabled ahead of Commons Committee Stage regarding clause 40 - Power to require reports from police and local authorities, and clause 93 - Provision for information about traffic regulation measures.

In relation to the traffic regulation measures, I welcome and note the engagement that has taken place between our officials to understand how the database of digitised Traffic Regulation Orders (TROs) would work. During those meetings it was established that this database would be run at a cost to the DfT and would be free for local authorities throughout the UK to use. There are aspects of this service which are appealing, however further work would be required to ensure it is suitable for use by Scottish local authorities given the differences in some of our TRO legislation.

Yours sincerely,

FIONA HYSLOP
Cabinet Secretary for Transport

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