

# **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Automated Vehicles Bill**

April 2024



# 1. Background

## **The UK Government's Automated Vehicles Bill**

1. The Automated Vehicles Bill<sup>1</sup> (the Bill) was introduced into the House of Lords and had its first reading on 8 November 2023. It is sponsored by the Department for Transport.

2. The Explanatory Notes to the Bill provide the following overview:

*"The Automated Vehicles Bill implements the recommendations of the 4-year review of regulation for automated vehicles carried out jointly by the Law Commission of England and Wales and the Scottish Law Commission (the Law Commissions). It is intended to set the legal framework for the safe deployment of self-driving vehicles in Great Britain."*<sup>2</sup>

3. The long title to the Bill states that it is a Bill to:

*"Regulate the use of automated vehicles on roads and in other public places; and to make other provision in relation to vehicle automation."*

4. The Bill completed its passage through the House of Lords on 19 February 2024, and had its first reading in the House of Commons on 20 February 2024. Second reading took place on 5 March 2024, and Committee Stage was completed on 19 March 2024. At the time we agreed our report, Report Stage in the House of Commons was due to begin on 1 May 2024.

## **The Welsh Government's Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum (Memorandum No. 2)**

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

---

<sup>1</sup> Automated Vehicles Bill, as introduced (Bill 1)

<sup>2</sup> Automated Vehicles Bill, Explanatory Notes, November 2023

- 6.** On 24 November 2023, Julie James MS, the then Minister for Climate Change (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.<sup>3</sup>
- 7.** We reported on the Memorandum on 22 February 2024 (our first report).<sup>4</sup>
- 8.** Paragraphs 8 to 10 of our first report set out the provisions of the Bill which, at the time, the Welsh Government considered to require the Senedd's consent, and identified where disagreement existed between the Welsh and UK Governments.
- 9.** Paragraphs 11 to 14 of our first report set out the delegated powers in the Bill being conferred on both the Welsh Ministers and the Secretary of State.
- 10.** Paragraphs 15 and 16 of our first report set out the Welsh Government's position on the Bill, as set out in the Memorandum.
- 11.** Our first report contained two conclusions and two recommendations.
- 12.** Lee Waters MS, the then Deputy Minister for Climate Change (the Deputy Minister), responded to our first report on 6 March 2024.<sup>5</sup>
- 13.** On 13 February 2024, the Deputy Minister laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2).<sup>6</sup>
- 14.** We reported on Memorandum No. 2 on 15 March 2024 (our second report).<sup>7</sup>
- 15.** Paragraphs 16 to 22 of our second report set out the position since the publication of the Memorandum, and provisions for which the Welsh Government considered to require the Senedd's consent as set out in Memorandum No. 2.
- 16.** Paragraphs 23 to 26 of our second report set out an updated position on the delegated powers in the Bill (being conferred on both the Welsh Ministers and the Secretary of State).

---

<sup>3</sup> Welsh Government, [Legislative Consent Memorandum on the Automated Vehicles Bill](#), November 2023

<sup>4</sup> Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memorandum on the Automated Vehicles Bill](#), February 2024

<sup>5</sup> [Letter from the Deputy Minister for Climate Change](#), 6 March 2024

<sup>6</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Automated Vehicles Bill](#), February 2024

<sup>7</sup> Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Automated Vehicles Bill](#), March 2024

---

**17.** Our second report contained one conclusion.

## **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)**

**18.** On 13 March 2024, the UK Government tabled amendments to the Bill for consideration at Commons' Committee Stage.

**19.** On 5 April 2024, Ken Skates MS, the Cabinet Secretary for North Wales and Transport (the Cabinet Secretary) laid a further Supplementary Legislative Consent Memorandum (Memorandum No. 3).<sup>8</sup>

**20.** The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Climate Change, Environment and Infrastructure Committee should report on Memorandum No. 3 by 22 April 2024.<sup>9</sup>

### **Update on the position since the publication of the Memorandum, and provisions for which the Senedd's consent is required**

---

**21.** Clause numbering in Memorandum No. 3 refers to the Bill as brought from the House of Lords.<sup>10</sup>

**22.** The Welsh Government's assessment is that the following amendments made to the Bill require Senedd consent, as set out in paragraph 13 of Memorandum No. 3:

- an amendment to clause 40 which adds "the Welsh Ministers to the list of authorities in Clause 40(3) of the Bill, in effect bringing the Welsh Ministers in their capacities as highways authority and traffic authority, within the ambit of the power in Clause 40" (we believe this to be amendment Gov 1)<sup>11</sup>, and
- amendments to clause 93 which confer on the Welsh Ministers the equivalent regulation-making power in relation to Wales as given to the Secretary of State to make provision requiring a traffic regulation authority to provide prescribed information about a relevant traffic

---

<sup>8</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Automated Vehicles Bill](#), April 2024

<sup>9</sup> Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Automated Vehicles Bill](#), April 2024

<sup>10</sup> [Automated Vehicles Bill as brought from the House of Lords](#) (Bill 167)

<sup>11</sup> Automated Vehicles Bill, [Notice of Amendments as at 13 March 2024](#)

regulation measure in England (we believe these to be amendments Gov 2 to 5).<sup>12</sup>

**23.** As regards clause 40, in both the Memorandum<sup>13</sup> and Memorandum No. 2<sup>14</sup> the Welsh Government stated that it believed the omission of the Welsh Ministers from clause 40 was an oversight.

**24.** Similarly, in relation to clause 93, again in both the Memorandum<sup>15</sup> and Memorandum No. 2<sup>16</sup> the Welsh Government highlighted that it was exploring the possibility of amendments being made to the Bill.

**25.** At paragraph 13 of Memorandum No. 3, the Cabinet Secretary confirms that the UK Government agreed to the Welsh Government's request to table amendments to confer the equivalent power on the Welsh Ministers in relation to Wales. The Cabinet Secretary states:

*"Clause 93 is intended to facilitate the availability of digital information which can be used by automated vehicles, or indeed other vehicles with electronic driver assistance features, to comply with rules set out in legislation such as Traffic Regulation Orders. Given the interconnectedness of the Wales and England transport systems, we believe it would be advantageous for such information to be available at the same time, and the power in the amendments for the Welsh Ministers would enable us to work effectively with the UK Government on this."*

**26.** At paragraph 15 of Memorandum No. 3, the Cabinet Secretary confirms that, on the need for legislative consent, "The UK Government's view accords with the Welsh Government's."

**27.** At paragraph 18 of Memorandum No. 3, the Cabinet Secretary also confirms that it is his view that it is appropriate to deal with the provisions covered by Memorandum No. 3 in the Bill.

---

<sup>12</sup> Automated Vehicles Bill, Notice of Amendments as at 13 March 2024

<sup>13</sup> Memorandum, paragraph 10

<sup>14</sup> Memorandum No. 2, paragraph 22

<sup>15</sup> Memorandum, paragraph 21

<sup>16</sup> Memorandum No. 2, paragraph 17

## Delegated powers

---

**28.** In Memorandum No. 3, the Cabinet Secretary highlights that the amendments to clause 93 confer an additional delegated power on the Welsh Ministers to make regulations. At paragraph 14, the Cabinet Secretary adds:

*“Clause 97 provides that before making regulations, the person making them must consult with such representative organisations as that person thinks fit. Regulations made by the Welsh Ministers are to be made by statutory instrument; may make consequential, supplementary, incidental, transitional, or saving provision, different provision for different purposes or areas, and provision that allows for the exercise of discretion; and are subject to the negative procedure.”*

## 2. Committee consideration

**29.** We considered Memorandum No. 3 at our meeting on 15 April 2024<sup>17</sup> and agreed our report on 22 April 2024.<sup>18</sup>

### Our view

#### Provisions requiring legislative consent

---

**30.** We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in Memorandum No. 3.

**31.** We agree with the Welsh Government that the amendments to clauses 40 and 93, as set out in Memorandum No. 3, fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29.

**32.** We note that the Welsh Government has been proactively seeking changes to clauses 40 and 93 since the Bill's introduction, and both clauses have been highlighted in the Memorandum and Memorandum No. 2. While, as a Committee, we have long-standing concerns with the democratic deficit emerging as a result of Bills in the UK Parliament making provision for Wales in devolved areas, the constructive intergovernmental working on these particular matters is welcomed.

---

<sup>17</sup> ~~Legislation, Justice and Constitution Committee~~, 15 April 2024

<sup>18</sup> ~~Legislation, Justice and Constitution Committee~~, 22 April 2024

**33.** We said in our second report that it would have assisted our scrutiny if the then Deputy Minister had made it clear when the UK Government had tabled the amendments which were the subject of Memorandum No. 2. We also said that we would have found it helpful if, in Memorandum No. 2, the Deputy Minister had specified the formal amendment numbers attached to the amendments to clauses 88(5) and clause 97. It is disappointing that, again, such information has been omitted from Memorandum No. 3.

**Conclusion 1.** We consider that the amendments to the Bill as set out in Memorandum No. 3 fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

**34.** In Memorandum No. 2, the Welsh Government highlighted typographical errors included in an amendment proposed by the UK Government to clause 97 of the Bill. The amendment was agreed to, and we note that the errors remain in the Bill as amended at the Commons' Public Bill Committee Stage.

**Recommendation 1.** We would welcome clarification from the Cabinet Secretary on any further discussions the Welsh Government has had with the UK Government about the typographical errors introduced into clause 97 of the Bill during Commons' Committee Stage, and whether the Welsh Government is aware of how and when the errors will be rectified.

### **Delegated powers**

---

**35.** We note that the amendments made to clause 93 of the Bill, which are the subject of Memorandum No. 3, confer an additional regulation-making power on the Welsh Ministers. We further note that such regulations would be subject to the negative scrutiny procedure in the Senedd.