

# **The Welsh Government's Legislative Consent Memorandum on the Automated Vehicles Bill**

February 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. At the time we agreed our report, the Bill was scheduled to have its Third reading in the House of Lords on 19 February 2024.

## The Welsh Government's Legislative Consent Memorandum

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.

6. On 24 November 2023, Julie James MS, Minister for Climate Change (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.<sup>3</sup>

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

<sup>2</sup> [Automated Vehicles Bill, Explanatory Notes](#), November 2023

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

**7.** The Business Committee agreed that the Legislation, Justice and Constitution Committee, and the Climate Change, Environment and Infrastructure Committee should report on the Memorandum by 1 March 2024.<sup>4</sup>

### **Provision for which the Senedd's consent is required**

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**8.** The Welsh Government's assessment is that the following provisions in the Bill require Senedd consent, as set out in paragraphs 10 to 18 of the Memorandum:

- clause 40 (Power to require reports from police and local authorities);
- clause 82 (Power to grant permits);
- clause 83 (Disapplication of taxi, private hire vehicle and bus legislation);
- clause 84 (Civil sanctions for infringements);
- clause 85 (Consent requirement for services resembling taxis or private hire vehicles);
- clause 87 (Further requirements);
- clause 88 (Collection, sharing and protection of information);
- clause 89 (Procedural and administrative matters);
- clause 90 (Interpretation);
- clause 97 (Regulations); and
- Schedule 6 to the Bill (Civil sanctions for infringing passenger permit scheme).

**9.** Annex A of the Explanatory Notes to the Bill<sup>5</sup> provides details of the UK Government's assessment of the territorial extent and application in the UK. Its opinion is that the legislative consent process is engaged, in relation to Wales, for:

- clause 40;
- clauses 82 to 90; and

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<sup>4</sup> Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Automated Vehicles Bill](#), November 2023

<sup>5</sup> Explanatory Notes, Annex A

- Schedule 6.

**10.** The UK Government therefore considers that clause 86 requires the legislative consent of the Senedd, but that clause 97 does not.

### **Delegated powers**

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**11.** New regulation-making powers are conferred on the Welsh Ministers as follows:

- Clause 82 gives the Welsh Ministers (as the appropriate national authority) the power to grant a permit to a person for the purpose of providing an automated passenger service. The Welsh Ministers are given the power to grant a permit in Wales for an automated passenger service which resembles a taxi or private hire vehicle, alongside the Secretary of State for Transport granting these permits in England. Where an automated passenger service resembles a public service vehicle, existing legislation in this area is a reserved matter and the Secretary of State for Transport will be responsible for granting permits in England, Scotland, and Wales.
- Schedule 6 to the Bill confers powers on the Welsh Ministers (as the appropriate national authority for taxis and private hire vehicles permits) to issue civil sanctions in relation to those permits.
- Clause 89 confers certain regulation-making powers on the Welsh Ministers (as the appropriate national authority) in relation to the varying, renewing, suspending or withdrawing of permits.

**12.** New regulation-making powers are also conferred on the Secretary of State. Clause 40 gives the Secretary of State a regulation-making power, through which reports may be required from a chief officer of police and certain authorities which include local authorities in Wales.

**13.** On the delegation of powers in the Bill, the Minister states:

*“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.”<sup>6</sup>*

**14.** Clause 93 of the Bill gives the Secretary of State a regulation-making power to make provision requiring a traffic regulation authority to provide prescribed information about a relevant traffic regulation measure. Clause 93 does not currently require the consent of the Senedd. In the Memorandum, the Minister states:

*“We are exploring whether amendments could be made to clause 93, which enables the Secretary of State by regulations to make provision requiring a traffic regulation authority to provide prescribed information about a relevant traffic regulation measure in England, to confer the equivalent power on the Welsh Ministers in relation to Wales. 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 powers for the Welsh Ministers in clause 93 would enable us to work effectively with the UK Government on this.”<sup>7</sup>*

## **The Welsh Government's position, and reasons for making provision for Wales in the Bill**

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**15.** In the Memorandum, the Minister states that:

*“The relevant provisions in the Bill can only be made by way of primary legislation. I have considered the First Minister's principles for recommending consent to provisions in UK Bills and consider that the following circumstances apply in this case:*

*· The UK Government's legislative proposal is appropriate for Welsh circumstances, as the Welsh Government recognises the need to facilitate the safe and efficient deployment of self-driving vehicles.*

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<sup>6</sup> Memorandum, paragraph 20

<sup>7</sup> Memorandum, paragraph 21

*· The interconnected nature of the transport system in Wales and England, and the combination of reserved and devolved matters involved, mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument. For these reasons it is unlikely that making provision via the taxi and/or bus Bills planned to be introduced into the Senedd would be satisfactory.*

*· As indicated above, technology is advancing rapidly in this area and it is important that the legislative framework keeps pace and is fully aligned across the UK.”<sup>8</sup>*

**16.** The Minister concludes:

- it is appropriate to deal with the provisions included in the Memorandum, apart from clause 40 as currently drafted, in this UK Bill;
- she will provide a further update to the Senedd on the discussions with the UK Government in respect of clauses 40 and 93 in due course.<sup>9</sup>

## **Reports from committees in the UK Parliament**

**17.** On 8 December 2023, the Delegated Powers and Regulatory Reform (DPRR) Committee in the House of Lords published its report on the Bill.<sup>10</sup> In relation to the regulation-making power in paragraph 2(7) of Schedule 6, the DPRR Committee noted that it gives an appropriate national authority power to determine, by negative procedure regulations, the maximum amounts payable by way of civil monetary penalties by a holder of a permit for the provision of automated passenger services for (a) an infringement of the permit scheme, or (b) failure to comply with a compliance notice. The DPRR Committee states:

*“The Memorandum cites two precedents for these powers: section 40A(3) of the Competition Act 1998 and section 111(4) and (6) of the Enterprise Act 2002. However, those powers are limited in a way that the powers in the Bill are not. They allow maximum amounts payable by way of civil penalties to be specified by negative procedure regulations but this is subject to an important limitation: the Acts that confer those powers*

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<sup>8</sup> Memorandum, paragraph 23

<sup>9</sup> Memorandum, paragraphs 25 and 26

<sup>10</sup> House of Lords [Delegated Powers and Regulatory Reform Committee, 3rd Report of Session 2023-24](#), published 8 December 2023

*both provide that any sum specified in the regulations cannot exceed ceiling amounts specified in the Acts themselves. The Memorandum does not mention this. No explanation is therefore provided for a key divergence from the two precedents to which the Memorandum itself refers.*

*We consider that—*

- it is inappropriate for the maximum amounts payable by way of civil penalties to be left entirely to negative procedure regulations; and*
- in the absence of provision in the Bill setting ceiling amounts above which any amount specified in the regulations cannot go, the powers in clause 36(9) and paragraph 2(7) of Schedule 6 to set maximum monetary penalties are inappropriate and should be removed from the Bill.”<sup>11</sup>*

**18.** On 31 January 2024, Lord Davies of Gower, Minister for Maritime, International and Security for the Department for Transport, wrote to the DPRR Committee, stating:

*“We have carefully considered the Committee’s recommendations in this area and appreciate the concerns that were set out in the Committee’s report. The Government agrees with the Committee’s specific concern that it is inappropriate to leave the setting of maximum amounts payable by way of civil penalties in Clause 36 and Schedule 6 entirely to negative procedure regulations.*

*The Government has tabled an amendment to apply the affirmative procedure to these clauses ahead of report stage on 6 February. We hope this provides reassurance to the Committee that this issue will receive the appropriate level of parliamentary scrutiny.”<sup>12</sup>*

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<sup>11</sup> House of Lords Delegated Powers and Regulatory Reform Committee, 3rd Report of Session 2023–24, paragraphs 20 and 21

<sup>12</sup> House of Lords Delegated Powers and Regulatory Reform Committee, 9th Report of Session 2023–24, published 2 February 2024

## 2. Committee consideration

**19.** We considered the Memorandum at our meeting on 29 January 2024<sup>13</sup> and agreed our report on 19 February 2024.<sup>14</sup>

### Our view

#### Provisions requiring legislative consent

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**20.** We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum.

**21.** We note that the UK Government's assessment differs from that of the Welsh Government in respect of clauses 86 and 97.

**22.** We agree with the Welsh Government that clauses 40, 82, 83, 84, 85, 87, 88, 89, 90 and 97 of the Bill, and Schedule 6 to the Bill, fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29.

**Conclusion 1.** We consider that the provisions of the Bill as set out in the Memorandum 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.

#### Delegated powers

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**23.** We note that clauses 82 and 89 of the Bill, and Schedule 6 to the Bill, contain new regulation-making powers for the Welsh Ministers.

**24.** In respect of the regulation-making power in Schedule 6, we acknowledge the views of the DPRR Committee regarding both the scrutiny procedure attached to the exercise of the power and the absence of a provision in the Bill that would set a ceiling amount for civil monetary penalties.

**Conclusion 2.** We support the views of the Delegated Powers and Regulatory Reform Bill Committee in respect of the regulation-making power in paragraph 2(7) of Schedule 6 to the Bill, and note that the UK Government has tabled an amendment to apply the affirmative procedure to this power.

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<sup>13</sup> ~~Legislation, Justice and Constitution Committee~~, 29 January 2024

<sup>14</sup> ~~Legislation, Justice and Constitution Committee~~, 19 February 2024



**25.** As regards clause 93 of the Bill, we note the Minister's statement that the Welsh Government is exploring whether amendments could be made to clause 93 to confer a power on the Welsh Ministers in relation to Wales equivalent to that which is being conferred on the Secretary of State in relation to England.

**26.** We note the Minister's explanation for pursuing these amendments and her view that powers for the Welsh Ministers in clause 93 would enable the Welsh Government to work effectively with the UK Government.

**Recommendation 1.** The Minister should provide further details to this Committee by 14 March 2024 on the specific amendments being sought by the Welsh Government to clause 93 and what they would be able to do with the regulation-making power being sought. The Minister should also provide an update on the relevant discussions with the UK Government.

### **The Welsh Government's approach to legislating**

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**27.** In 2023, the Welsh Government consulted and sought views on proposals for new taxi and private hire vehicle (PHV) legislation.<sup>15</sup> In a statement to the Senedd on 3 October 2023, the Deputy Minister for Climate Change, Lee Waters MS, provided an update on the Welsh Government's white paper on reforming the licensing regime for taxis and PHVs. The Deputy Minister told the Senedd that the Bill was "not likely to be introduced into the Senedd until the end of this Senedd term".<sup>16</sup>

**28.** We are aware that, in its 2022 joint report on Automated Vehicles, the Law Commission of England and Wales and the Scottish Law Commission recommended that a new Automated Vehicles Act should be introduced to regulate automated vehicles on roads or other public places in Great Britain, and that the UK, Scottish and Welsh governments should work together to introduce a uniform scheme that will apply across Great Britain.<sup>17</sup>

**29.** We are also aware that the Law Commission's work was highlighted in Welsh Government annual reports on implementing Law Commission proposals in 2021-22 and 2022-23.<sup>18</sup>

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<sup>15</sup> Welsh Government, [Taxi and Private Hire Vehicle \(Wales\) Bill: white paper](#)

<sup>16</sup> [Plenary](#), 3 October 2023, RoP [238]

<sup>17</sup> Law Commission of England and Wales and Scottish Law Commission, [Automated Vehicles: joint report](#), 25 January 2022, Recommendation 1

<sup>18</sup> Welsh Government, [Report on the Implementation of Law Commission Proposals, 2021-2022](#) (Laid on 15 February 2022) and Welsh Government, [Report on the Implementation of Law Commission Proposals, 2022-2023](#) (Laid on 15 February 2023)

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**30.** We acknowledge the Welsh Government's view that making provision via the taxi and/or bus Bills planned to be introduced into the Senedd would be unsatisfactory in relation to the provisions for which consent is being sought.

**Recommendation 2.** We would welcome clarification from the Welsh Government about when it decided to use the Bill for the provisions that require consent and how this decision relates to or impacts on its own proposed legislation that it refers to in paragraph 23 of the legislative consent memorandum.

**31.** The purpose of recommendation 2 is to aid our understanding of the Welsh Government's overall approach to using UK Bills to make provision in devolved areas.