

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Automated Vehicles Bill

March 2024



1. Background

The UK Government's Automated Vehicles Bill

1. The Automated Vehicles Bill¹ (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."²

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. At the time we agreed our report, Committee Stage in the House of Commons was yet to be scheduled.

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.

¹ [Automated Vehicles Bill](#), as introduced (Bill 1)

² [Automated Vehicles Bill, Explanatory Notes](#), November 2023

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.³
7. We reported on the Memorandum on 22 February 2024 (our first report).⁴
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 Deputy Minister for Climate Change (the Deputy Minister), responded to our first report on 6 March 2024.⁵

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

13. On 30 January 2024, the UK Government tabled amendments to the Bill for consideration at Lords' Report Stage.
14. The Deputy Minister laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) on 13 February 2024.⁶
15. 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 19 April 2024.⁷

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

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

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

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

⁷ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Automated Vehicles Bill](#), February 2024

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

16. Clause numbering in Memorandum No. 2 refers to the Bill introduced into the House of Lords.

17. The Welsh Government's assessment is that the following amendments⁸ made to the Bill require Senedd consent, as set out in paragraph 13 of Memorandum No. 2:

- an amendment to clause 88(5) "which corrects a drafting mistake, enabling the Welsh Ministers to make regulations about information-sharing in relation to passenger services within their competence" (we believe this to be amendment 25), and
- an amendment to clause 97 so that the affirmative procedure is applicable to the powers in paragraph 2(7) of Schedule 6, meaning that "regulations setting the maximum monetary penalties under the automated vehicle authorisation scheme and the passenger service permitting scheme will be subject to the affirmative procedure" (we believe this to be amendment 33).

18. As regards amendment 33, it contains typographical errors. In two places "Cymru" is spelled incorrectly. At paragraph 14 of Memorandum No. 2, the Deputy Minister states that the errors have been drawn to the attention of the UK Government.

19. At paragraph 18 of Memorandum No. 2, the Deputy Minister states that the UK Government's view on the need for consent "accords with the Welsh Government's".

20. The Deputy Minister confirms that the amendments do not alter the Welsh Government's view "that the relevant provisions in the Bill can only be made by way of primary legislation...".⁹

21. On clause 40, at paragraph 22 of Memorandum No. 2 the Deputy Minister states:

⁸ Automated Vehicles Bill [HL], [Marshaled List of Amendments to be moved on Report](#), 2 February 2024

⁹ Memorandum No. 2, paragraph 19

“Discussions continue with the UK Government about clause 40 of the Bill, which impacts on devolved matters by conferring reserved functions on devolved Welsh authorities (local authorities in Wales), and therefore requires the Senedd's consent. By regulations made under clause 40, the Secretary of State may require reports from a chief officer of police and certain authorities which include the Scottish Ministers and local authorities in Wales, but not the Welsh Ministers. As I set out in the previous Memorandum, we believe the omission of the Welsh Ministers may be an oversight.”

22. At paragraph 23 of Memorandum No. 2 the Deputy Minister confirms that he will provide a further update to the Senedd on the discussions with the UK Government on clause 40 in due course.

Delegated powers

23. In Memorandum No. 2 the Deputy Minister confirms that the amendment to clause 88(5) confers an additional delegated power on the Welsh Ministers. The Deputy Minister also highlights that the amendment to clause 97 changes the scrutiny procedure, to the draft affirmative procedure, attached to the existing delegated power in paragraph 2(7) of Schedule 6.¹⁰

24. At paragraph 17 of Memorandum No. 2, the Deputy Minister states:

“We are continuing to explore 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

¹⁰ Memorandum No. 2, paragraph 16

for the Welsh Ministers in clause 93 would enable us to work effectively with the UK Government on this."

25. At paragraph 23 of Memorandum No. 2 the Deputy Minister confirms that he will provide a further update to the Senedd on the discussions with the UK Government on clause 93 in due course.

26. At paragraph 15 of Memorandum No. 2, the Deputy Minister also confirms that "The delegated powers for the Welsh Ministers in clauses 82 and 90 are not affected by the amendments set out above".

2. Committee consideration

27. We considered Memorandum No. 2 at our meeting on 4 March 2024¹¹ and agreed our report on 11 March 2024.¹²

Our view

Provisions requiring legislative consent

28. 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. 2.

29. We agree with the Welsh Government that the amendments to clauses 88 and 97, as set out in Memorandum No. 2, fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29.

30. It would have assisted our scrutiny if the Deputy Minister had made it clear when the UK Government tabled the amendments which are the subject of Memorandum No. 2.

31. We would also have found it helpful if, in Memorandum No. 2, the Deputy Minister had specified the formal amendment numbers attached to the described amendments to clauses 88(5) and clause 97.

Conclusion 1. We consider that the amendments to the Bill as set out in Memorandum No. 2 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.

¹¹ [Legislation, Justice and Constitution Committee](#), 4 March 2024

¹² [Legislation, Justice and Constitution Committee](#), 11 March 2024

Delegated powers

32. We note that the amendments made to the Bill which are the subject of Memorandum No. 2 confer an additional delegated power on the Welsh Ministers in clause 88(5), and change the scrutiny procedure, to the draft affirmative procedure, attached to the existing delegated power in paragraph 2(7) of Schedule 6. The latter change was the subject of conclusion 2 in our first report.

33. As regards clause 93 of the Bill, we note that, in response to recommendation 1 in our first report, the Deputy Minister has confirmed that the Welsh Government is seeking provision conferring a similar power on the Welsh Ministers to that of the Secretary of State under clause 93(1) to make provision by regulations requiring a traffic regulation authority to provide prescribed information about a relevant traffic regulation measure. We also note that the Deputy Minister considers that “Discussions with the UK Government are progressing well.” We further note that the Deputy Minister believes that this would:

“... enable the Welsh Ministers to, for example, require local authorities as highway authorities to produce Traffic Regulation Orders in a digital format which could be read by automated vehicles and/or electronic driving assistance software and devices, provided they are satisfied in accordance with clause 93(4) that the provision of information in accordance with the regulations is necessary to make available to autonomous vehicles or electronic equipment designed to undertake or facilitate the driving of other vehicles on roads.”¹³

The Welsh Government's approach to legislating

34. Recommendation 2 in our first report asked for 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 taxi and private hire vehicle (PHV) legislation. We note the Deputy Minister's response, that:

“The provisions currently in the Bill which require Senedd consent were not requested by the Welsh Government; they were drafted at the behest of the UK Government. However, we consider that it is appropriate for these provisions to be made in the Bill for the reasons outlined in the Legislative Consent

¹³ Letter from the Deputy Minister, 6 March 2024

*Memorandum. These provisions are not within the scope of our planned legislation and therefore have no impact upon it.*¹⁴

¹⁴ Letter from the Deputy Minister, 6 March 2024