

VEHICLE TECHNOLOGY AND AVIATION BILL

EXPLANATORY NOTES

What these notes do

1. These Explanatory Notes relate to the Vehicle Technology and Aviation Bill 2017 as introduced in the House of Commons on 22 February 2017 (Bill 143).
 - These Explanatory Notes have been prepared by the Department for Transport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
 - These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
 - These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Vehicle Technology and Aviation Bill 2017 is intended to address a number of particular market failures. The Bill will help set the regulatory environment to safely take advantage of, and benefit from, new technologies and their use by starting the process of making cutting edge technology available to all consumers. It will also enable consumers in the United Kingdom to be amongst the first in the world to reap the rewards that improved transport technology will bring. The Bill will set the regulatory framework to enable the next wave of transport technology to be invented, designed, made and used in the United Kingdom. Putting the United Kingdom at the forefront of the most modern transport revolution will create new jobs and fuel economic growth around the country. Alongside this, the Bill will provide an opportunity to improve efficiencies, processes and protection for the traveling public and businesses.

Policy background

- 2 The policy background is explained separately in the commentary relating to each Part of the Bill.

Summary

- 3 The Bill comprises five Parts and contains five Schedules.
- 4 Part 1 makes provision in relation to automated vehicles.
- 5 Part 2 makes provision in relation to charging electric vehicles.
- 6 Part 3 and Schedules 1 to 4 makes provision in relation to civil aviation matters (air traffic services and flight providers).
- 7 Part 4 makes provision in relation to vehicle testing, offences in respect of the misuse of lasers and courses offered as alternative to prosecution.
- 8 Part 5 makes general provision in respect of the Bill as a whole.
- 9 Schedule 5 contains minor and consequential amendments.

Legal background

- 10 The relevant legal background is explained (where relevant) in the policy background section of these Notes.

Territorial extent and application

- 11 Clause 26 makes provision for extent. Paragraphs 13 and 14 describe the effect of this provision.
- 12 For the provisions in Part 2, and clause 22 (insofar as this provision relates to road and rail transport) and clause 23, a legislative consent motion is being sought from the Northern Ireland Assembly in respect of the application of these provisions in Northern Ireland.
- 13 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Commentary on provisions of Bill

Part 1: Automated vehicles: Liability of insurers etc.

Chapter 1: Policy Background

- 14 Automated vehicles are those that have the capability of driving themselves without human oversight or intervention for some, or all, of the journey. In an automated vehicle the driver can hand all control and responsibility to the vehicle and become a passenger, using it in automated mode for some or all of the journey. United Kingdom law on compulsory motor insurance has focused historically on ensuring that victims of road traffic collisions are compensated quickly and fairly. In the case of an automated vehicle being operated in automated mode, however, accidents could take place not as a result of human fault, but because of a failure in the vehicle itself, for which the only recourse available to an otherwise uninsured victim might be to sue the manufacturer through the courts. This Part extends compulsory motor vehicle insurance to cover the use of automated vehicles in automated mode, so that victims (including the ‘driver’) of an accident caused by a fault in the automated vehicle itself will be covered by compulsory insurance in place on the vehicle. The insurer would be initially liable to pay compensation to the innocent victim, including to the innocent driver who had handed control to the vehicle. The insurer then has the right to recover costs from the liable party under existing common and product law.
- 15 On 11 July 2016 the DfT published a consultation document Pathway to driverless cars: proposals to support advanced driver assistance systems and automated vehicle technologies which is available at: <https://www.gov.uk/government/consultations/advanced-driver-assistance-systems-and-automated-vehicle-technologies-supporting-their-use-in-the-uk> The consultation put forward proposals for the extension of the compulsory insurance requirement as set out above, so that victims have a direct route of recovery through the insurer in the same way as they would if involved in a conventional collision where the driver is at fault.
- 16 The Government published its response on 6 January 2017 and confirmed its intention to bring forward its proposals. The response is also available at: <https://www.gov.uk/government/consultations/advanced-driver-assistance-systems-and-automated-vehicle-technologies-supporting-their-use-in-the-uk>

Clause 1: Listing of automated vehicles by the Secretary of State

- 17 This clause contains a mechanism to allow for manufacturers, owners of vehicles and insurers to know if the scope of this legislation applies to their vehicle. The definition in subsection 1(1)(b) includes any vehicle that is designed to be capable of safely driving itself for some or part of the journey, such as on the motorway.
- 18 Subsection (2) requires the Secretary of State to list vehicles, identified by type or in some other way, that are automated.

Clause 2: Liability of insurer etc. where accident caused by automated vehicle

- 19 This clause places first instance liability on the insurer, or the owner, in particular situations. As compared with the compulsory insurance cover for conventional vehicles under section 145 of the Road Traffic Act 1988, the insurer’s liability here is widened to include damage (as defined in subsection (3)) to the driver where the automated vehicle is driving itself.

- 20 Subsection (7) ensures that the liability imposed on the insurer by this clause does not undermine their right of recovery from parties who are responsible for an accident.

Clause 3: Contributory negligence etc.

- 21 This clause applies contributory negligence principles to the apportioning of liability in relation to accidents involving automated vehicles.

Clause 4: Accident resulting from unauthorised alterations or failure to update software

- 22 This clause ensures that insurers should not have to bear liability to the insured person in some situations where the vehicle's software or operating system are altered, or not updated.

Clause 5: Right of insurer etc. to claim against person responsible for accident

- 23 Where clause 3 imposes an initial liability on the insurer or owner of the automated vehicle in respect of the accident, clause 5 provides that the person liable to the injured party in respect of the accident is under the same liability to the insurer or vehicle owner. This clause defines when and how the amount of the person's liability is settled and when their right of action accrues. It also sets out arrangements and limits on the amounts they can recover.

Clause 6: Application of enactments

- 24 This clause has the purpose of preserving the various forms of liability in measures such as the Fatal Accidents Act 1976, the Damages (Scotland) Act 2011, and all the other Acts to which this clause refers, and ensuring that the new system of liability being created by this Act is joined up with them. For example, the Fatal Accidents Act 1976 provides for a victim's dependents to be able to recover damages where the victim's death was caused by "wrongful act, neglect or default". This form of liability from the Fatal Accidents Act 1976, by means of this clause, is being preserved and linked to the system of liability being created by this Act, such that where an accident involving an automated vehicle causes death, it will be deemed to be due to the liable person's "wrongful act, neglect or default" within the meaning of the Fatal Accidents Act 1976, so that the provisions of that Act are brought to bear. The effect of the other provisions is being similarly linked to the relevant provisions of this Bill.
- 25 Subsection (4) clarifies that the liability being created in clause 2 is liability in tort, as opposed to liability in contract or criminal law.

Clause 7: Interpretation

24. This clause defines terms used in Part 1.

Schedule 5: Minor and consequential amendments

- 26 Part 1 of this Schedule makes a number of minor and consequential amendments.
- 27 Paragraphs 1 to 6 make amendments to the Prescription and Limitation (Scotland) Act 1973 in order to make a similar regime of limitation on actions for automated vehicles as the one in the Limitation Act for England and Wales, but specific to Scottish law.

- 28 Paragraphs 7 to 14 insert provisions into the Limitation Act 1980 in order to establish a regime of limitation on actions regarding automated vehicle accidents, both under clause 2 and under clause 5. The purpose of these paragraphs is to provide for a clear time limit which avoids uncertainty arising from differences between existing limitation periods relating to product liability and personal injury.
- 29 Paragraphs 15 to 19 insert provisions into Part VI of the Road Traffic Act 1988 which extend the compulsory insurance requirement in respect of third party risks to cover automated vehicles in an adapted manner. For example, the compulsory insurance for an automated vehicle will include more than just third party victims and is extended to cover the disengaged driver where the accident takes place when the vehicle is in automated mode (see paragraph 17(2) which inserts subsection (3A) into section 145 of the Road Traffic Act 1988). The option which currently exists for conventional vehicles, as an alternative to holding a third party insurance policy, of depositing a security with the Accountant General of the senior courts, will not be available for automated vehicles.

Part 2: Electric Vehicles: Charging

Chapter 2: Policy Background

- 30 The Government has stated that by 2050 nearly all cars and vans should be zero emission vehicles (zero carbon dioxide and other harmful tailpipe emissions). Government funding and private investment have already spurred the development of more than 11,000 public charge points, and an initial network of hydrogen refuelling stations. Significantly increased provision of infrastructure will be required to support mass market uptake of electric vehicles.
- 31 It will also be important that it is simple and straightforward to use. At present, in the early market, there are multiple networks with different offers to consumers. The accessibility and convenience of vehicle charging is frequently raised by consumers as a key concern in choosing an electric vehicle.
- 32 Electric vehicle charging has the potential to avoid network pressures and capitalise on cheaper off peak electricity generation by modulating or delaying charging. The use of ‘smart’ charge points will help enable these services, and could provide savings to electric vehicle owners and energy bill payers.
- 33 On 24 October 2016 the DfT and Office for Low Emission Vehicles published a consultation document proposed ultra-low emission vehicles measures for inclusion in the Modern Transport Bill which is available at: www.gov.uk/government/consultations/proposed-ulev-measures-for-inclusion-in-the-modern-transport-bill. The consultation put forward proposals for new legislative powers which would allow Government to introduce regulations to address these priorities for electric vehicle infrastructure.
- 34 The Government published its response on 9 February 2017 and confirmed its intention to bring forward its proposals, with the detail informed by consultation input from stakeholders and members of the public. The response document is also available at: www.gov.uk/government/consultations/proposed-ulev-measures-for-inclusion-in-the-modern-transport-bill.

Clause 8: Definitions

- 35 This clause provides definitions of the nomenclature used in Part 2.

Clause 9: Public charging points: access and connection

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35. Clause 9 provides a power for the Secretary of State to make Regulations which address a current problem with the diversity of different means of accessing public charging point services. Regulations could require operators to provide an appropriate uniform method of accessing public charging points (charge points and refuelling points). The clause also enables Regulations which could address any lack of interoperability between public charging point connectors on electric vehicles and the charge points themselves. This would ensure that an electric vehicle could charge at any charge (or refuelling) point.

Clause 10: Large fuel retailers etc.: provision of public charging points

- 36 This clause provides the Secretary of State with the power to make regulations requiring large fuel retailers and service area operators to provide public charging points and to ensure that public charging points are maintained and easily accessible to the public. For example, regulations could provide that public charge points are available 24 hours a day, and supported by a maintenance service.

Clause 11: Information about public charging points

- 37 Clause 11 provides a power for the Secretary of State to make regulations which address the lack of consistency in the content and format of publicly available information on public charging points. It is currently open to each charge point operator to decide what information it makes available in relation to its charge points. The Secretary of State will be able to make regulations to place an obligation on charge point operators to make certain types of information (including real-time data comprising a live feed of current availability) publicly available in an open and transparent format thus providing certainty to the consumer.

Clause 12: Smart charge points

- 38 This clause provides the Secretary of State with the power to introduce regulations prohibiting the sale or installation of charge points in the United Kingdom, unless they can meet certain requirements, which will be prescribed in regulations. This includes charge points that may be given away for free or on hire (for example, as part of the sale of a vehicle).
- 39 Subsection (2) provides that the prescribed requirements relate to the “smart” functionality of the charge point and can include (but are not limited to) provision about the ability of the charge point to: send and receive electronic communications to and from a third party; react to the information sent or received from the third party and adjust the charge points charging (or discharging) rate; monitor and record the charge point’s own energy usage; contain sufficient security software to ensure that it is resilient to a cyber-attack; work towards energy efficiency standards; and require any protocols to be open.

Clause 13: Enforcement

- 40 This clause confers power on the Secretary of State to make regulations so as to enforce compliance with the requirements in this Part. These regulations may set out a civil penalty regime and the process for determining whether there has been a failure to comply with any of the requirements. If it is found by the enforcement authority that there has been a failure to comply, the enforcement authority will be able to issue a financial penalty that is payable into the consolidated fund.

Clause 14: Exceptions

- 41 This clause allows the regulations to create exceptions from the requirements under this Part. The exceptions can apply to persons or devices. This ensures that the requirements are not unjust or too onerous.

Clause 15: Regulations

- 42 This clause sets out what regulations made under this Part may do and contain, and the Parliamentary procedure to which the power to make any such regulations is subject

Part 3 Civil Aviation

Chapter 3: Policy Background - Air traffic services

- 43 Air traffic services are currently provided in the United Kingdom by NATS (En Route) plc (“NERL”), a wholly owned subsidiary of NATS Holdings Limited (“NATS”) by virtue of a licence granted to it by the Secretary of State under Part 1 of the Transport Act 2000 (“the 2000 Act”). The Civil Aviation Authority (“the CAA”) regulates NERL’s operations under and compliance with the licence. This Part of the Bill updates the regulatory framework governing the provision of air traffic services by repealing and replacing much of the provision in Part 1 of the 2000 Act. The new provision is modelled on the framework in Part 1 of the Civil Aviation Act 2012 and contains a more comprehensive suite of regulatory and enforcement tools.
- 44 On September 2016, the Government published a consultation document “Modernising the licensing framework for air traffic services”, which is available at: <https://www.gov.uk/government/consultations/modernising-the-licensing-framework-for-air-traffic-services>. The consultation related to proposals for:
- amending the licence modification process to enable the CAA to make changes to the licence after consultation and conferring a right of appeal to affected parties;
 - conferring a wider range of enforcement tools on the CAA, and enabling the licence holder to appeal decisions to an appropriate body;
 - updating the Secretary of State’s powers to be able to amend certain licence provisions so as to extend the licence termination notice period.
- 45 The Government published its response to the consultation on 8 February 2017 and confirmed its intention to bring forward the proposals. The response is available at: <https://www.gov.uk/government/consultations/modernising-the-licensing-framework-for-air-traffic-services>

Clause 16: Licensed air traffic services: modifying the licence and related appeals

- 46 This clause inserts new sections 11 to 11B into the 2000 Act. New section 11 enables the CAA to modify a condition of a licence condition and the Secretary of State to modify a term of a licence which relates to its duration, subject in either case to the procedural constraints set out in these new sections. The licence when granted contains provisions which are either terms or conditions (each is defined in section 40(6) of the 2000 Act) A term relates to matters such as the duration of a licence and the area in respect of which the licence authorises the provision of air traffic.
- 47 New section 11A sets out the licence modification procedure and the steps that the CAA and Secretary of State must follow when modifying a licence, including provision for which persons must be consulted about a proposed modification, giving reasons for making or not making the proposed modification and the timeline governing this process. Provisions for appeals against licence modifications and the procedure for such appeals is contained in Schedules 1 and 2 respectively.
- 48 New section 11B prohibits the CAA from making a modification if the Secretary of State directs it not to do so.

Clause 17: Air traffic services licensed under Part 1 of the Transport Act 2000: enforcement

- 49 This clause amends Chapter 1 of Part 1 of the 2000 Act. New sections introduce new Schedule C1 (power to obtain information) and make provision for the imposition and recovery of penalties and the requirement on the CAA to publish a statement of policy governing its use of penalties.

Schedule 1: Modification of licence conditions under section 11 of the Transport Act 2000: Appeals

- 50 This Schedule inserts new sections 19A to 19F into the 2000 Act. These new sections make provisions for appeals in respect of a decision of the CAA to modify a licence condition; this includes provision for which persons may appeal and which person determines the appeal (new section 19A), the grounds on which an appeal may be allowed (new section 19B), what occurs on the determination of an appeal (new section 19C), the time by which such appeals must be determined (new section 19D) and requirements governing the publication of the determination (new section 19E). The appeal may be brought by a licence holder and certain other persons (e.g. airline and airport operators which are materially affected by the decision) and is determined by the Competition and Markets Authority ("the CMA") which may quash the decision appealed against, remit the matter to the CAA for reconsideration or substitute its decision for that of the CAA. New section 19A(3) confers power on the Secretary of State to make regulations which specify the airport operators which may bring an appeal under this framework.

Schedule 2: New Schedule A1 to the Transport Act 2000

- 51 This Schedule inserts new Schedule A1 into the 2000 Act. This Schedule makes provision for the procedure governing appeals in respect of decisions by the CAA to modify a licence condition. This includes provision relating to the time by which an appeal may be brought; the requirement to obtain permission to appeal; the right of certain persons to intervene in an appeal; the right to apply to suspend the effect of the decision being appealed pending the determination of the appeal; the powers of the CMA on determining the appeal; the production of documents and giving oral and written evidence (including expert evidence); costs; and the publication of the determination.
- 52 Paragraphs 23 and 25 of this Schedule respectively confer power on the CMA to make rules governing the conduct and disposal of appeals and the Secretary of State to make regulations which modify time limits prescribed in the Schedule.

Schedule 3: New Schedule B1 to the Transport Act 2000

- 53 This Schedule inserts new Schedule B1 into the 2000 Act. This Schedule makes provision governing the CAA's powers to enforce breaches of the licence holder's duties under section 8 of the 2000 Act or a licence condition, and the licence holder's appeal rights in respect of orders and penalties made or imposed by the CAA. Paragraph 14 of this Schedule confers power on the Secretary of State to make regulations which amend the basis on which a fixed penalty is to be calculated.

Schedule 4: New Schedule C1 to the Transport Act 2000

- 54 This Schedule inserts new Schedule C1 into the 2000 Act. This Schedule makes provision which enables the CAA to give notice to a person requiring that person to provide the CAA with information for the purpose of exercising certain functions. It contains related provision which enables the CAA to take enforcement steps if a person fails without reasonable excuse to comply with the notice (including the imposition of a financial penalty); to impose penalties

in respect of the provision of false information or the destruction etc. of documents; and the right of appeal to the Competition Appeal Tribunal in respect of any of these steps.

- 55 Paragraph 2(9) confers on the Secretary of State a power to make regulations to amend the amount of the penalty specific in paragraphs 2(4) and (5) for failure to comply with an information notice.

Schedule 5: Minor and consequential amendments

- 56 Part 2 of this Schedule makes a number of minor and consequential amendments to Part 1 of the 2000 Act (e.g. to insert new definitions or amend existing ones) and one provision in Schedule 4 to the Enterprise and Regulatory Reform Act 2013. Paragraph 28 inserts new section 40A into that Act to make provision for “connected persons” for the purpose of Part 1 of the 2000 Act. New section 40(3) confers power on the Secretary of State to make regulations to make provision about when one person is connected with another for the purposes of Part 1 of the 2000 Act.

Chapter 4: Policy Background – Flight providers

- 57 The Bill amends the Secretary of State’s existing powers to regulate the provision of flight accommodation. These powers are the basis of the Air Travel Organisers’ Licence (“ATOL”) scheme. The current ATOL scheme, managed by the Civil Aviation Authority (“the CAA”), applies to flight accommodation sold in the United Kingdom. It was set up in the 1970s to protect passengers purchasing seats on flights (mainly where these form part of a package holiday or more recently a “flight-plus” arrangement) in the event of insolvency. It protects over 20 million holiday-makers each year, and is one of the ways in which the United Kingdom provides mandatory protection under the European Package Travel Directive. It is necessary to update the ATOL scheme to respond to innovation in the travel market and to ensure the scheme is harmonised with an updated EU Package Travel Directive (2015), when it comes into force in 2018.
- 58 The amendments in this Bill will allow ATOL protection to extend to a broader range of holidays, and make it easier for United Kingdom businesses to sell flight arrangements covered by the new regulations seamlessly across Europe. This will enable the United Kingdom to comply with the Package Travel Directive obligations in the short term while retaining an ability to adapt the scheme as appropriate when the United Kingdom leaves the EU.
- 59 The amendments will also enable the structure of the ATOL scheme to respond more flexibly and effectively to these changes. They will update existing powers to enable separate trust arrangements to be set up for different classes of business model or risk, for example “Linked Travel Arrangements”. The primary purpose of any new trust will still be consumer protection in relation to the sale of flight accommodation. A further amendment will ensure that the CAA’s information powers are aligned with the evolving ATOL scheme, so that they are able to continue to manage and enforce the scheme effectively.
- 60 On 28 October 2016, the Department published a consultation document ‘ATOL reform – modernising consumer protection’. <https://www.gov.uk/government/consultations/atol-reform-modernising-consumer-protection>. This sought views on proposals to strengthen ATOL and align it with the Package Travel Directive (2015), through: ensuring ATOL is consistent with the new definition of “package” in the Directive; ensuring ATOL is consistent with the scope of the Directive, so that it can protect all eligible flight sales made by businesses established in the United Kingdom, including sales across the EEA; and potentially amending ATOL to cover emerging business practices regulated under the Directive, including Linked

Travel Arrangements.

- 61 The Government published its response on 8 February 2017 and confirmed its intention to bring forward its proposals. Those proposals requiring primary legislation are provided for in this Bill. The consultation and Government response can be found at: <https://www.gov.uk/government/consultations/atol-reform-modernising-consumer-protection>

Clause 18: Air travel organisers' licences

- 62 This clause amends section 71 of the Civil Aviation Act 1982 ("the 1982 Act") to enable regulations to be made covering the sale of flight accommodation by United Kingdom established organisers, elsewhere in the EEA. The making of such regulations will support the United Kingdom's implementation of the Package Travel Directive 2015, which will need to be brought into force by July 2018. Once the Directive is in force, any business established in the United Kingdom and licensed under ATOL for sales within scope of the Directive, will no longer need to comply with the different insolvency protection rules of other EEA States, making cross-border trade easier.
- 63 This clause also inserts new subsection (1E) into section 71 of the 1982 Act to clarify that the Secretary of State may make regulations to exempt any form of flight only arrangement from the ATOL licensing arrangements.

Clause 19: Air Travel Trust

- 64 The Air Travel Trust is the trust arrangement first established by deed dated 5 January 2004 ("the 2004 deed"), under which contributions from ATOL holders are held and CAA trustees are given powers to compensate consumers. The 2004 deed permits amendment of its provisions by the Secretary of State. This clause amends section 71A of the 1982 Act to distinguish the existing and continuing flexibility of the current Air Travel Trust from wholly new qualifying trusts that may be enabled by subsection (2).
- 65 Subsection (2) enables the Secretary of State to incorporate, by way of regulations, new forms of qualifying trust into the ATOL trust arrangement. The primary purpose of any new trust will still be consumer protection in relation to the sale of flight accommodation. Since 2004, the market for flight sales has become increasingly diverse. Both CAA experience and feedback from the consultation on modernising ATOL suggests that in future it may be necessary to enter into separate trust arrangements for different classes of business model, for example "Linked Travel Arrangements". This will give greater transparency for business and consumers, particularly if there are significant differences between the trust arrangements for different classes of consumer or contributor.
- 66 Subsections (3) and (4) provide that the affirmative resolution procedure will apply should the Secretary of State propose to make regulations under the new subsection.

Clause 20 Provision of information

- 67 This clause amends section 84(1) of the Civil Aviation Act 1982, which sets out the powers under which CAA are able to request information from persons.
66. Subsection (2) of this clause extends the scope of the power to request information to ensure it matches the new scope of the power to make regulations introduced by clause 18. Subsection (3) ensures that the information power applies to any airlines selling ATOL licensable holidays in the United Kingdom (and airlines established in the United Kingdom selling such holidays in the EEA), that are not covered by section 84(1)(a). For example, subsection (3) would apply to European airlines that have an air service operator's licence from another EU

Member State and therefore do not need any of the licenses granted by the CAA mentioned in section 84(1)(a).

Part 4: Miscellaneous

Chapter 5: Policy Background – Vehicle Testing

- 68 The law requires all large vehicles (lorries, buses and coaches) to pass annual roadworthiness tests to ensure that they are safe to be driven on-road. The Driver and Vehicle Standards Agency (“the DVSA”) (an executive agency of the Department for Transport) carries out these tests on behalf of the Secretary of State. The DVSA also carries out a number of other specialist, statutory tests.
- 69 In December 2012, the Department for Transport published the Consultation on Motoring Services Strategy, which proposed to transform Heavy Goods Vehicle (“HGV”), bus and coach testing. One of the proposals was to have as few government owned test stations as possible.
- 70 Following the consultation, the annual roadworthiness tests have begun to be delivered in partnership with the private sector. The majority of tests are now delivered from private sector owned sites (known as an Authorised Testing Facility, or “ATF”) with the DVSA still providing the independent examiners. The ATF sites operate pursuant to a contract with the DVSA and are contractually permitted to charge a fee for the use of the premises. There are now over 581 ATFs in operation across Great Britain.
- 71 The use of ATFs has helped the DVSA rationalise its estate to make public sector savings in accordance with commitments outlined in the 2012 Consultation on Motoring Services Strategy and reiterated in the more recent strategy document published in April 2016 - “Safe, Secure, Sustainable – the motoring services agencies”.
<https://www.gov.uk/government/consultations/motoring-services-strategy-a-strategic-direction-2016-to-2020>
- 72 To complete the move from Secretary of State owned vehicle testing sites (i.e. DVSA sites) to private sector owned sites, the other specialist testing schemes conducted by the DVSA will be moved into an ATF type arrangement. The fee for the use of the testing facilities (and capping of it) will be moved onto a statutory basis. .

Clause 21: Powers to designate premises for vehicle testing and cap testing station fees

- 73 Subsection (1) of this clause inserts new sections 65B and 65C into Part 2 of the Road Traffic Act 1988 (construction and use of vehicles and equipment).
- 74 New section 65B confers power on the Secretary of State to designate (by notice in writing) any premises as an authorised premises where the DVSA examiners can perform specialist kinds of vehicle tests referred to as “listed procedures”. The listed procedures are contained in new section 65B(2) and are statutory tests that are performed on lorries, buses and coaches. These tests may only be carried out at an authorised premises or a premises provided for by the Secretary of State (new section 65B(6)).
- 75 New section 65C confers power on the Secretary of State (by way of regulations) to “cap” any fees charged by designated premises payable by the vehicle owner for use of the designated premises to carry out the test. Different amounts can be set for different tests and different circumstances.

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Schedule 5: Minor and consequential amendments

75. Part 3 of this Schedule makes minor and consequential amendments to other pieces of legislation as a result of changes being introduced to define a designated testing station and the specialist vehicle tests that will be delivered from those stations.

Chapter 6: Policy Background - Offence of shining or directing a laser at a vehicle

- 76 This measure will create an offence of shining laser pointers at aircraft and other modes of transport. This new offence is intended to capture the use of laser pens and pointers, and other means of producing a laser beam, so as to dazzle or distract a person when driving a vehicle in the course of a journey. It will apply to most forms of vehicles, including aircraft, road vehicles, trains, trams, ships, hovercrafts, invalid carriages, and cycles. The new offence will be a strict liability offence.

Clause 22: Offence of shining or directing a laser at a vehicle

- 77 This new offence is intended to capture the use of laser pens and pointers, and other means of producing a laser beam, so as to dazzle or distract a person when driving a vehicle in the course of a journey. The new offence will be a strict liability offence.
- 78 Subsection (1) will make it an offence to direct or shine a laser beam at a vehicle in such a way as to dazzle or distract the person driving, piloting, or navigating that vehicle.
- 79 Subsection (2) will provide that it is a defence for a person charged with the offence to show that he or she did not intend to commit the offence, and that they exercised all due diligence and took all reasonable precautions to avoid committing the offence. The person charged will have to adduce sufficient evidence of each fact referred to in subsection (2) as to raise an issue with respect to it (subsection (3)). The intention of subsection (2) is to provide a defence which can be relied on by persons who accidentally dazzle or distract a person with control of a vehicle when using a laser for a legitimate reason.
- 80 Subsection (4) will lay down penalties for a person convicted of an offence under subsection (1) on either summary conviction or on indictment. A person convicted of the offence on indictment could face imprisonment up to 5 years, a fine, or both. Subsections (5) to (8) makes provision for the interpretation of this clause, including on what “in the course of a journey”, “driver” and “vehicle” mean. The offence will cover most forms of vehicles, including aircraft, road vehicles, trains, trams, ships, hovercrafts, invalid carriages, and cycles.

Chapter 7: Policy Background – Courses offered as an alternative to prosecution

- 81 Persons who commit certain low-level road traffic offences may, under existing powers, be offered educational courses. Such courses are offered as an alternative to a fixed penalty, and therefore a driver who successfully completes a course is not required to pay a financial penalty in relation to the offence, or to have points endorsed on his driving record. A fee is charged to a driver who enrolls on a course, which covers the cost of the course as well as other expenses. The provisions set out a specific statutory basis for this charging regime.
- 82 The provisions put the existing charging regime on a specific statutory basis for the avoidance of doubt and out of an abundance of caution. They do not, therefore, change the way in which courses are offered, administered or run, although they will enable greater transparency over the way that fees are set. Those offered courses will not, therefore, see any change, and consequently there has been no consultation in relation to these provisions.

Clause 23: Courses offered as an alternative to prosecution

- 83 This clause inserts Part 3B, comprising sections 90G to 90I, into the Road Traffic Offenders Act 1988, and inserts equivalent provisions into the Road Traffic Offenders (Northern Ireland) Order 1996. New section 90G(1) confers power on policing bodies to charge a fee to a person who enrolls on a course offered in England and Wales in relation to a specified fixed penalty offence; and new section 90G(2) allows for the fee charged to be set at a level which exceeds the cost of the course and related administrative expenses. Any excess generated by the charge must be used for the purpose of promoting road safety.
- 84 New section 90G(3) confers power on the Secretary of State to specify in regulations the level of fees, use of fee income, and how fees are to be calculated. This will not affect policing bodies' duty to be open and transparent about the way they account for expenditure. New section 90G(6) confers power on the Secretary of State to make regulations which specify the fixed penalty offences to which the charging power will apply. A fee may only be charged in relation to a course approved by a specified body and, therefore, new section 90G(6) contains a power to specify the body which will approve courses.
- 85 New section 90H allows provision to be made, in regulations, to prevent courses being offered to repeat offenders.
- 86 New section 90I specifies that regulations made under Part 3B are subject to the negative resolution procedure.
- 87 New sections 90G to 90I Road Traffic Offenders Act 1988 will make provision for fees to be charged in relation to courses offered in England and Wales.
- 88 Clause 23(3) provides a power to further amend the Road Traffic Offenders Act 1988, to make corresponding or similar provision in relation to courses offered in Scotland.

Part 5: General

Clause 24: Minor and consequential amendments

- 89 This clause confers on the Secretary of State with a general power to make consequential provision in relation to any provision of the Bill. The power includes power to amend primary legislation passed before the end of the Session in which the Bill is passed. This power is subject to the affirmative resolution procedure in cases in which the power is exercised in relation to primary legislation (subsection (5)) and the negative resolution procedure in all other case (subsection(6)).

Commencement

90 Clause 25 provides for commencement of the provisions in the Bill. With the exception of clauses 18, 19, 24(2) to (7) and 25 to 27, the provisions of this Bill come into force on the days appointed by the Secretary of State by regulations. Clauses 18, 19, 24(2) to (7) and 25 to 27 will come into force on the day on which the Bill is passed.

Financial implications of the Bill

90 Full details of the financial implications of the Bill are set out in the summary Cover Impact Assessment. The cumulative net present value of the policies contained in the Bill is approximately £16.4 million. Further details of the costs and benefits of individual provisions are set out in more detail in the published impact assessments. The summary Impact Assessment for the Bill and individual Impact Assessments can be found at <https://www.gov.uk/government/publications>.

Parliamentary approval for financial costs or for charges imposed

91 There are two provisions in the Bill that have tax implications. One is in relation to the extension of the power enabling ATOL to apply to cross border sales by United Kingdom businesses (the ATOL scheme is funded by a levy, which was classified as a tax in 2012). The Exchequer Secretary to the Treasury approved the ATOL proposals to include powers in the Vehicle Technology and Aviation Bill enabling appropriate tax provisions to be made in relation to the transfers provided for in the Bill. The other is in relation to the provisions on courses offered as an alternative to prosecution, which will provide income to police forces which explicitly goes beyond recovery of the costs of the courses themselves and their administration. These course charges are likely to be classified as a tax. With the consent of the Chief Secretary to the Treasury, a Ways and Means Motion relating to this Bill will be moved in the House of Commons.

Compatibility with the European Convention on Human Rights

92 The Government considers that the Vehicle Technology and Aviation Bill is compatible with the European Convention on Human Rights ("ECHR"). Accordingly, the Right Honourable Chris Grayling MP, Secretary of State for Transport, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect. Further explanation of key human rights issues is provided below. References to articles are to articles of the ECHR.

Part 2: Electric vehicles: Charging

93 The provisions in Part 2 raise a number of issues which engage Article 1 of Protocol 1 ("A1P1"), by imposing requirements on persons which could interfere with their commercial decisions, their infrastructure and products and their business goodwill. The Government, however, considers in each case that any potential interference is justified on public interest

grounds, as expressly permitted by A1P1.

Public charging points: access and connection

- 94 Clause 9 confers power on the Secretary of State to make regulations which require operators of publically accessible charge points and hydrogen refuelling stations and networks to ensure consumers can use them without the need to utilise many different methods of access, such as smart phone, SMS text, subscription and card payment (“access”). This clause also introduces the power to specify minimum standards of design and functionality to achieve a uniform standard means of access. Moreover, there is a power to specify minimum standards of design and functionality to secure physical interoperability between electric and hydrogen vehicles and charge points (“connection”). The access provisions could interfere with current network access practice and affect business goodwill as currently operators can choose how to permit access to the services of its own charge points. The connection provisions would affect the sale and installation of certain types of infrastructure that did not meet those standards and commercial decisions on choice of infrastructure.
- 95 It is necessary to ensure that all publicly accessible charge points are accessed by the widest section of the population. This provision will build on simple ad hoc access by potentially mandating the most suitable type of access, which benefits both consumer and operator. There is currently no interoperability in the charge point industry, with several connectors serving several different vehicle types. This creates a disjointed national charge point network. A fully interoperable national network where all Ultra Low Emissions Vehicles (“ULEV”) can access charge points irrespective of make, would improve network efficiency and boost consumer confidence.
- 96 Accordingly, any interference with A1P1 rights would be a proportionate means of achieving these aims.

Large fuel retailers etc.: provision of public charging points

- 97 Clause 10 confers power on the Secretary of State to make regulations which require the minimum provision of charge points and hydrogen refuelling stations at motorway service areas and large fuel retailers. This will have some impact on the actual motorway service areas (“MSAs”) and large fuel retailers as well as commercial decisions regarding what services to provide and may affect commercial relations between MSAs and infrastructure operators. This could have financial implications and affect business goodwill.
- 98 “Range anxiety” is a real constraint to the purchase of ULEV. Whilst almost all MSAs have at least one rapid EV charge point, there is a very real need to ensure that the number increases so the growth of ULEV is not constrained, which would affect ULEV growth. Currently, commercial interests have acted to constrain growth of the long distance infrastructure network and without legislation the position may not improve.
- 99 The provision of ULEV infrastructure at fuel retailers is at an embryonic stage. A highly visible network of infrastructure in fuel retailers would support future ULEV purchasing decisions and help grow sales to meet the Government’s environmental aims. Fuel retailers are an obvious and accessible addition to charging at home and work and would complement the additional capacity to be brought on motorways.
- 100 Therefore, any interference with A1P1 rights would be a proportionate means of achieving

these aims.

Real-time and other information about public charging points

- 101 Clause 11 confers power on the Secretary of State to make regulations which require, in relation to charge points and hydrogen refuelling stations accessible to the public, operators to provide open data in an open source format on the geographical location and live availability of charging and fuelling and refuelling infrastructure and services. This may interfere with the carrying on of business activities by an operator.
- 102 Currently, there is a lack of conformity in the data that is provided informing drivers about the availability and location of charge points. The Government's aim is to ensure the availability of reliable and comprehensive open source data on public charge points and refuelling type, location and access method which could improve the offer to the consumer. On this basis, any interference with A1P1 rights would be a proportionate means of achieving these aims.

Smart charge points

- 103 Clause 12 confers power on the Secretary of State to make regulations which require infrastructure installed for the purposes of charging an electric vehicles to have 'smart' functionality that enables it to receive, understand and respond to signals sent by energy system participants (e.g. DNOs, Energy Companies, National Grid or other third parties) for the purposes of balancing energy supply and demand. This will require operators to modify their product to ensure "smart" functionality. This may constitute an interference with operators' A1P1 rights.
- 104 Electric vehicles may be plugged in for long periods and therefore hold potential to "smart charge" - not only receiving the necessary amount of electricity required by the user within the time required, but providing balancing services to the electricity system. This could involve reducing or increasing the power of a charge to balance the system's frequency, or timing charging to take advantage of off-peak periods. These functions may benefit a range of parties, including consumers, energy suppliers and network operators. Many of these functions have commercial value and could be transferred to consumers through lower energy bills.
- 105 The infrastructure installed at the present time is likely to last for many years, and if it does not contain the technical capability to communicate and control charging, it will not be possible for any third party to exercise control over the charging pattern, hampering the development of commercial offerings for this service, and risking significant network and generating capacity upgrades for the United Kingdom to meet additional peak demand. Furthermore, by developing an agreed standard with industry, the provision of smart charging infrastructure may itself aid the development of the smart tariff market, providing a base of customers with which to control and provide services to the grid. By ensuring that electric vehicle charging has the technical capability to be responsive to network and system needs, the United Kingdom has the necessary tools to manage electric vehicle load risks, and encourage the market for smart energy tariffs or other consumer propositions.

106 Accordingly, any interference with A1P1 rights would be a proportionate means of achieving these aims.

Part 3: Civil aviation

Air Traffic Services licensed under Part 1 of the Transport Act 2000

107 Provision of air traffic services in the United Kingdom. Provision of such services without a licence is an offence. A licence was granted to NERL by the Secretary of State in 2001 and the regulation of NERL's operations under this licence is carried out by the Civil Aviation Authority ("the CAA"). The licence contains conditions with which the licence holder must comply. The new provisions will enable the CAA to modify the licence conditions after consulting the licence holder. The licence holder will have a right of appeal to the Competition and Markets Authority in respect of the CAA's decision to modify a condition. The CAA will also be given a new suite of enforcement powers (to include power to impose civil penalties for breach of a licence condition). The licence holder will also have a right of appeal to the Competition Appeal Tribunal in respect of the CAA's enforcement decisions.

108 The exercise by the CAA of its new power to impose a licence modification on the licence holder or take enforcement action against the licence holder in respect of a breach of a licence condition (e.g. through the imposition of a civil penalty) constitutes an interference with its A1P1 rights. A licence modification which imposes a more onerous requirement on the licence holder (which in turn would result in increased cost to it in the carrying on of its business) or the imposition on it of a financial penalty for a breach of a licence is likely to represent a determination of a right in respect of which by virtue of article 6 the licence holder is entitled to a fair and public hearing before an independent and impartial tribunal.

109 The purpose of the licensing regime is to ensure the safe, efficient and coordinated provision of air traffic services in the United Kingdom. This purpose is reflected in the duties imposed on the Secretary of State, the CAA and the licence holder by the Transport Act 2000. This is a strategically important area of regulated activity which involves the management of constant very high volumes of aircraft movements. The licensing regime, and the CAA's corresponding powers to make modifications to licence conditions or take enforcement action for a breach of those conditions (e.g. through the imposition of penalties), is a proportionate means of ensuring that the statutory duties to promote safety etc. are fulfilled. The CAA, moreover, is a public body to which section 6 of the Human Rights Act 1998 applies and must therefore exercise its functions in accordance with Convention rights; these include its regulatory functions in respect of the licence holder.

110 The licence holder will have a right of appeal to an independent body in relation to the CAA's licence modification decisions (to the Competition and Markets Authority) and the CAA's enforcement decisions (to the Competition Appeal Tribunal). The existence of these appeal rights will ensure adequate oversight of the CAA's regulatory decisions by an impartial and independent tribunal and safeguard the licence holder's article 6 rights.

Part 4: Miscellaneous

Offence of shining or directing a laser at a vehicle

- 111 Clause 22, which will make provision for this new offence in relation to the misuse of lasers, raises issues in relation to article 6(2) ECHR and the presumption of innocence in criminal proceedings. Subsection (1) will create a new strict liability offence and, once the elements of the offence are shown to have occurred, subsections (2) and (3) will provide for the person charged to show the elements of a defence apply.
- 112 The European Court of Human Rights and the United Kingdom's domestic courts have considered whether offences of strict liability violate article 6(2) and have decided that they do not, provided that the prosecution retains the burden of proving that the offence was committed (see *Salabiaku v. France* (1991) 13 E.H.R.R. 379). Under clause 22(1), it will be for the prosecution to prove the elements of the new offence, i.e. those making up the actus reus, beyond reasonable doubt and therefore there will not be an interference with the presumption of innocence.
- 113 Under clause 22, once the prosecution have proved the elements of the new offence, the burden will shift to the defendant to establish the elements of the defence provided by subsection (2). This shift of the burden once the elements of the offence have been proved has also been held by the European Court of Human Rights not to infringe article 6(2) ECHR (see *G. v. U.K.* (2011) 53 E.H.R.R. SE25 at [26]). In the case of subsection (2), it will impose an evidential burden only on the person charged with the offence under subsection (1) and is therefore compatible with Article 6(2) ECHR (see, for example, *R. v. Carass* [2002] 1 W.L.R. 1714, CA).
- 114 In *G. v. U.K.* (at [27]) the European Court of human Rights also stated that it "is not the Court's role under article 6(1) or (2) to dictate the content of domestic criminal law, including whether or not a blameworthy state of mind should be one of the elements of the offence or whether there should be any particular defence available to the accused".

Related documents

115 The following documents are relevant to the Bill and can be read at the stated locations:

- Cover Impact Assessment (including Hyperlinks to the location of source material: e.g. <http://www.gov.uk/government/collections/good-law>)
- Individual Policy Impact Assessments and Regulatory Triage Assessments
- Delegated Powers Memorandum

Annex A - Territorial extent and application in the United Kingdom

1. Apart from 8 clauses, the provisions of the Bill extend and apply to England and Wales, Scotland and Northern Ireland.
2. Clauses 1 to 7 extend and apply only to England and Wales and to Scotland.
3. Clause 21 extends and applies to only England and Wales and to Scotland. ¹

Provision	Extends to E&W and applies to England?	Extends to E&W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1 - Automated Vehicles: Liability of Insurers etc.								
Clause 1 to-7	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Part 2 – Recharging Electric Vehicles								

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

These Explanatory Notes relate to the Vehicle Technology and Aviation Bill as introduced in the House of Commons on 22 February 2017 (Bill 143)

Clauses 8 to-15	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Northern Ireland)
Part 3 - Civil Aviation								
<i>Air traffic services licensed under Part 1 of Transport Act 2000</i>								
Clauses 16 to17	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Flight providers								
Clauses 18 to20	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 4 – Miscellaneous								
Clause 21	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 22	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (in relation to rail and road in Northern Ireland)
Clause 23	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Northern Ireland)
Schedules 1-4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

These Explanatory Notes relate to the Vehicle Technology and Aviation Bill as introduced in the House of Commons on 22 February 2017 (Bill 143)

Schedule 5 (Part 1)	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Schedule 5 (Part 2)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 5 (Part 3)	Yes	Yes	Yes	No	N/A	N/A	N/A	No

These Explanatory Notes relate to the Vehicle Technology and Aviation Bill as introduced in the House of Commons on 22 February 2017 (Bill 143)

VEHICLE TECHNOLOGY AND AVIATION BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Vehicle Technology and Aviation Bill as introduced in the House of Commons on 22 February 2017 (Bill 143).

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