

# Legislative Consent Memorandum

## Sustainable Aviation Fuel Bill

### Background

1. This memorandum has been lodged by Fiona Hyslop MSP, Cabinet Secretary for Transport, under Rule 9B.3.1(a) of the Parliament's Standing Orders.
2. The Bill was introduced by the UK Government in the House of Commons on 14 May 2025. The Bill is available on the UK Parliament website via this link: [Sustainable Aviation Fuel Bill - Parliamentary Bills - UK Parliament](#).

### Content of the Bill

3. The Bill enables the Secretary of State (SoS) for Transport to fund financial assistance, by way of a levy imposed on suppliers of aviation fuel, to a designated counterparty (a company limited by shares, with shares held by a Minister of the Crown) so that the counterparty may, at the direction of the SoS, enter into revenue certainty contracts<sup>1</sup> with sustainable aviation fuel ("SAF") producers. This is intended to reduce revenue risk in relation to the production of SAF and support SAF production in the UK, leading to a reduction in aviation emissions.
4. The Explanatory Notes accompanying the Bill set out the UK Government's view of its purpose and main functions. The Bill contains 19 clauses and a schedule, and extends to England, Wales, Scotland and Northern Ireland. The Scottish Government support the Bill's overall aims which should help to increase the production and uptake of SAF, thereby reducing aviation emissions, and could help to encourage the establishment of commercial SAF production facilities in Scotland.
5. The policy intent behind clauses 1 to 5, 10, 11(2) to (5), and 12 to 19 is to reduce aviation emissions by incentivising SAF production. They do so by making provision for the establishment and administration of the revenue certainty mechanism which will be administered by a designated counterparty whose primary role will be to issue (and manage) revenue certainty contracts to SAF producers as directed by the SoS. These clauses relate to the environment and economic development, which is for a devolved purpose and therefore within the legislative competence of the Scottish Parliament, with clause 10(4) requiring the Scottish Ministers to be consulted if regulations are to be made which contain provision relating to devolved matters. Paragraphs 17 to 57 provide further detail on these clauses.

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<sup>1</sup> A contract that provides for payments between the designated counterparty and the SAF producer. A revenue certainty mechanism is intended to mitigate risks to providers of finance by guaranteeing a price for a project's eligible SAF over a defined period.

6. The provisions of the Bill which enable a levy to be imposed on suppliers of aviation fuel (clauses 6 to 9 and 11(1)) are considered to relate to taxation and are reserved by way of Head A1 of Schedule 5 of the Scotland Act 1998 (which reserves fiscal, economic and monetary policy). These provisions enable the Secretary of State, by way of regulations, to impose a levy on relevant suppliers of aviation fuel to fund the revenue certainty mechanism.

## Provisions which require the consent of the Scottish Parliament

7. The Scottish Government agree with the UK Government's assessment that the LCM process is engaged for the following clauses:

- Clauses 1-3 enable the SoS, by way of regulations, to direct a counterparty to offer a SAF producer to enter into a revenue certainty contract. The SoS must comply with notice requirements and may revoke a direction. Regulations may require the counterparty to maintain a register and publish contracts (which may be capable of redaction).
- Clauses 4-5 provide the SoS with powers to designate a counterparty and to make one or more schemes to enable the transfer of a company's property etc where a direction is revoked.
- Clause 10 enables the SoS to make regulations requiring the counterparty to pay surplus costs to persons who have paid the levy, and for customers to receive such benefits as specified. Clause 10(1) is subject to a duty on the Secretary of State to consult with the Scottish Ministers when making regulations in respect of devolved matters, see clause 10(4).
- Clause 11(2) to (5) enables the SoS to impose financial penalties on a person if they have breached a requirement imposed by clause 10(1)(b), which requires a person receiving a surplus levy payment to ensure a specified benefit to customers. Schedule 1 makes further provision in relation to these financial penalties.
- Clauses 12 and 13 enable the SoS to direct the counterparty in relation to its functions and provide the SoS with information and advice when requested.
- Clause 14 relates to financial assistance for the counterparty, enabling the SoS, by way of regulations, to provide financial assistance by way of grants, loan or other specified forms, and subject to conditions the SoS considers appropriate.
- Clauses 15- 19 are general provisions in relation to the Bill, relating to the general power to make regulations, interpretation provision, extent, commencement and the short title of the Act once passed.

8. The aim of these provisions is to reduce greenhouse gases and contribute to the decarbonisation of the aviation industry for the purpose of reducing pollution and protecting the environment. These matters are not captured by any of the reservations in schedule 5 of the Scotland Act 1998 and are therefore within the legislative competence of the Scottish Parliament.

9. The Bill is a relevant Bill under Rule 9B.1.1 of the Standing Orders. Clauses 1 to 5, 10, 11(2) to (5) and 12 to 19 contain provision for a purpose within the legislative competence of the Scottish Parliament. The LCM process is therefore engaged. The provisions of the Bill which require the legislative consent of the Scottish Parliament are set out in detail below.

## Reasons for recommending legislative consent

10. Emissions from national and international aviation are included in the Scottish Government's statutory commitment to achieve net zero by 2045. Continuing to increase the production and use of SAF is one of the main means of reducing aviation emissions for the foreseeable future because its use significantly reduces CO<sub>2</sub> emissions in comparison to the use of traditional aviation fuel. There is also the potential for SAF to be produced commercially in Scotland which, if realised, could bring associated economic and employment benefits.

11. The UK Government states, in the Bill's Explanatory Notes, that "by reducing key risks to investors, the revenue certainty mechanism will support successful final investment decisions for UK SAF projects and get first-of-a-kind plants built at commercial scale" and that "The associated greenhouse gas emissions from SAF are on average 70% less than fossil jet fuel on a lifecycle basis. SAF is expected to play a critical role in decarbonising aviation up to and beyond 2050."

12. The Bill is one of a number of approaches being pursued by the UK Government to encourage SAF production and use, in addition to the introduction of a SAF mandate ([Sustainable Aviation Fuel \(SAF\) Mandate](#)) and the creation of the Advanced Fuels Fund (AFF) which is designed to develop SAF production plants in the UK. While the aviation sector is taking other measures to progress decarbonisation, for example, to improve aircraft efficiency, there is a requirement for government support to stimulate the SAF market as it is still at a relatively early stage and volumes of SAF produced are small.

13. There are currently no commercial SAF production facilities in Scotland. However, the UK Government's AFF has provided funding for the development of a demonstration production module operating in Orkney and a commercial scale plant. Project Willow, a feasibility study to identify potential alternative projects that could be developed to secure a long term, new industrial future at Grangemouth, included two SAF projects. The Scottish Government continue to work closely with the UK Government to try to realise the SAF opportunities identified. Scottish Enterprise stands ready to support inward investors looking to progress any of these potential projects and has already received several early-stage enquiries relating to SAF production.

14. The Bill's Explanatory Notes do not speculate on the degree to which UK SAF production volumes may increase as a result of the Bill or the cost of SAF may fall (it is currently significantly more expensive than traditional aviation fuel). However, they do state that, while the SAF Mandate can be legally met with imports, international demand for SAF is expected to be high (the EU, for example, has also introduced a SAF mandate, while the US has adopted tax credits for SAF). Given this context, and that the Bill aims to mitigate various identified risks to providers of finance by guaranteeing a price for a

project's eligible SAF, the Bill should help to make Scotland and the UK, in general, a more attractive proposition for SAF production.

15. In conclusion, the Scottish Government support the Bill's overall aims as they are designed to help increase the production and uptake of SAF, and could help to encourage the establishment of commercial SAF production facilities in Scotland. It is sensible to legislate on a UK-wide basis.

16. However, the Scottish Government highlight specific provisions, concerning the conferral of regulation-making powers on the SoS, which could be exercised in relation to devolved matters. The particular provisions, namely clauses 1, 3, 10,11 and the schedule, are considered in turn below but, in general, the Scottish Government wish to secure appropriate respect for devolved responsibilities in these provisions. These provisions are subject to ongoing discussion with the UK Government to understand the reasons for the UK Government's position on why the consent of the Scottish Ministers is not required in respect of these provisions. The Scottish Government therefore are not presently in a position to make any recommendation to the Scottish Parliament as to consent. A Supplementary Legislative Consent Memorandum will be lodged when these discussions have concluded.

## Clauses 1 to 3: revenue certainty mechanism

17. Clause 1 enables the SoS to direct a Designated Counterparty (DC) to offer to enter into a revenue certainty contract with a producer of SAF. The revenue certainty contract will provide that producers of SAF will be paid the difference where the strike price is higher than the market reference price for SAF, and the producer will pay the difference to the DC where the market reference price is higher than the strike price. "Market reference price" is defined as an amount determined in accordance with the contract as the reference price for SAF sold during a specified period with "strike price" meaning an amount determined in accordance with the contract as the strike price for SAF sold during that period.

18. A direction must be made in writing and must include the name of the producer, the period within which the DC must comply with the direction, the terms and period of the offer.

19. No direction may be given after a period of ten years from the date on which the Bill becomes an Act, unless the SoS makes regulations to extend the period by up to five years at a time.

20. Clause 1(6) enables the SoS to make regulations to extend this period by up to five years at a time. It is sensible from a policy perspective to be able to extend the period noted above as it is not possible to predict now the likely state of the future UK SAF market. However, there is no role for Scottish Ministers in the clause as drafted and the Scottish Government is exploring how devolved responsibilities can best be recognised for this provision.

21. The Scottish Government is therefore not presently in a position to make any recommendation to the Scottish Parliament as to consent for clause 1.

22. Clause 2 requires the SoS to send a copy of a direction to the named producer and enables the SoS to revoke a direction by giving notice. Where a direction is revoked, any offer made in pursuance of the direction but not yet accepted lapses.

23. The clause supports the overall aims of the Bill which should help to increase the production and uptake of SAF, and could help to encourage the establishment of commercial SAF production facilities in Scotland.

24. The Scottish Government therefore recommend consent is given to Clause 2.

25. Clause 3 enables the SoS to make regulations to require the DC to maintain registers and publish contracts (which may be capable of redaction, depending on the terms of subsequent regulations).

26. Clause 3(1) enables the SoS to make regulations requiring the DC to maintain a register, including the information to be contained, and to publish revenue certainty contracts or details about them. The UK Government considers these provisions to be minor and technical and the Scottish Government is again exploring how devolved responsibilities can best be recognised for this provision.

27. The Scottish Government is therefore not presently in a position to make any recommendation to the Scottish Parliament as to consent for clause 3.

## Clauses 4 and 5: designated counterparty

28. Clauses 4 and 5 provide the designation process and enable the SoS to designate a company (which is a company registered under the Companies Act 2006, limited by shares with each share being held by a Minister of the Crown) as a counterparty.

29. The company requires to consent to the designation and the provisions also enable the counterparty to withdraw consent.

30. The SoS is required to ensure that at all times there is a designation that has effect.

31. The SoS may revoke a counterparty's designation and make one or more schemes for the transfer of the company's property etc. Such a scheme may include compensation for persons whose interests are adversely affected.

32. Providing regulation-making powers to enable the SoS to designate a counterparty, the terms of that designation, enabling revocation of directions and the making of one or more schemes to transfer a company's property, rights and liabilities to a new designated counterparty are not matters that are captured by any of the reservations in schedule 5 of the Scotland Act 1998.

33. The purpose of the provisions is to support the revenue certainty mechanism to incentivise SAF production and contribute to the decarbonisation of the aviation industry, which are devolved matters and which Scottish Ministers support for this purpose.

34. The Scottish Government therefore recommend that consent be given for clauses 4 and 5.

## Clause 10: surplus

35. The SoS may make regulations requiring the counterparty to pay surplus costs to persons who have paid the levy and require persons receiving any surplus to ensure that customers receive specified benefits.

36. Regulations may make provisions about what amounts to a surplus, the method of determining a surplus, the period in which a surplus is to be determined and the method by which the amount of payment is to be determined.

37. Before making any such regulations the SoS must consult with the Scottish Ministers where regulations contain provision that would be within the legislative competence of the Scottish Parliament if contained in an Act of the Scottish Parliament. This clause provides for the only duty on the SoS, when making regulations in a devolved area, to consult with the Scottish Ministers.

38. Providing regulation-making powers to enable the SoS to require a counterparty to make surplus payments to persons who have paid the levy, the terms of the surplus and method of payments could be made for devolved purpose and are therefore within the legislative competence of the Scottish Parliament. The Scottish Government is discussing with the UK Government whether the current drafting sufficiently recognises devolved responsibilities.

39. The Scottish Government is therefore not presently in a position to make any recommendation to the Scottish Parliament as to consent for clause 10.

## Clause 11(2) to (5) and the Schedule: financial penalties

40. Clause 11(2) relates to financial penalties and enables the SoS to impose financial penalties on a person who receives a levy surplus payment and does not ensure that its customers receive specified benefits (this provision relates to clause 10(1)(b)).

41. The amount of financial penalty that may be imposed must not exceed the lesser of £100,000 and an amount equal to 10% of the turnover of the person on whom the penalty is imposed.

42. Clause 11(4) enables the SoS to amend by regulations the maximum penalty amount in light of inflation and to make provision as to how a person's turnover is to be determined. Penalties are expected to be issued infrequently and impact on the courts is expected to be minimal. The UK Government considers these provisions to be limited in

scope, administrative and technical in nature and the Scottish Government is again exploring how devolved responsibilities can best be recognised for this provision.

43. The Schedule provides that any unpaid penalties may be enforced, in Scotland, through the sheriff court. Any penalty sums received in Scotland, England or Wales are to be paid into the UK Consolidated Fund. The Scottish Government is continuing to explore whether penalty sums received in Scotland might instead be paid into the Scottish Consolidated Fund.

44. The Schedule also provides that appeals to a court in Scotland are to the Court of Session. For recovery, in Scotland, the unpaid amount may be enforced in a sheriff court, by way of a warrant. The UK Government expects to undertake a justice impact test during development of secondary legislation, which will consider the impact of the legislation on the courts.

45. Making provision on financial penalties is not a matter that is captured by any of the reservations provided by schedule 5 of the Scotland Act 1998 and is therefore devolved.

46. The Scottish Government is therefore not presently in a position to make any recommendation to the Scottish Parliament as to consent for clause 11 and the Schedule.

## Clauses 12 and 13: directions, information and advice

47. Clauses 12 and 13 enable the SoS, by way of regulations, to direct the counterparty in relation to its functions, and provide the SoS with information and advice when requested by the SoS. The SoS is required to publish any direction given.

48. It would be within the legislative competence of the Scottish Parliament to make equivalent provision in relation to a counterparty's duty to the Scottish Ministers.

49. These clauses support the Bill's overall aims as they are designed to help increase the production and uptake of SAF, and could help to encourage the establishment of commercial SAF production facilities in Scotland.

50. The Scottish Government recommends that consent is given to clauses 12 and 13.

## Clause 14: financial assistance

51. Clause 14 enables the SoS to provide financial assistance to the counterparty by way of grants, loan or other specified forms, or by incurring expenditure for the benefit of the counterparty, subject to conditions that the SoS considers appropriate.

52. Such provision is not a matter that is reserved by way of schedule 5 of the Scotland Act 1998 and is therefore devolved.

53. These clauses support the Bill's overall aims as they are designed to help increase the production and uptake of SAF, and could help to encourage the establishment of commercial SAF production facilities in Scotland.

54. The Scottish Government therefore recommends that consent is given to clause 14.

## General: clauses 15-19

55. Clauses 15-19 are general provisions in relation to the Bill including general regulation-making powers, interpretation provision, extent and commencement provisions. These provisions are expressed in broad and general terms and could relate both to reserved and devolved matters. As far as the devolved matters which are provided for in this Bill, it would be within the legislative competence of the Scottish Parliament to make equivalent provision.

56. These clauses support the Bill's overall aims as they are designed to help increase the production and uptake of SAF, and could help to encourage the establishment of commercial SAF production facilities in Scotland.

57. The Scottish Government therefore recommend that consent is given to clauses 15 to 19.

## Consultation

58. The UK Government published a [consultation](#) in April 2024 on four shortlisted options for a revenue certainty mechanism. The UK Government [response](#) to this consultation was published in January 2025. Of most relevance to the Bill, the response confirmed that the counterparty would need to be a government-backed entity. It also stated (on page 43) that formal responses from the devolved administrations were submitted prior to the consultation going live. However, the Scottish Government did not respond to this consultation, nor was it asked to do so. A further UK Government [consultation](#) ran in May 2025 to seek views on how the revenue certainty mechanism would be funded. The [UK Government response](#) stated that the costs associated with the mechanism must be funded by the aviation industry.

## Financial implications

59. There appear to be only minor costs potentially falling on the Scottish Government from the Bill, through the Scottish Courts and Tribunals Service, although this may be clarified by the justice impact test to be undertaken by the UK Government as part of secondary legislation. The SoS can make regulations "requiring relevant suppliers of aviation fuel to pay a levy to the counterparty ... to meet the costs of the scheme. Costs include payments to the counterparty and other costs incurred by virtue of the Bill, including those incurred by the counterparty in administering the scheme." The SoS can also give financial assistance to the counterparty to administer and meet its liabilities under revenue certainty contracts.



## Post EU scrutiny

60. These provisions are not relevant to the Scottish Government's policy to maintain alignment with the EU. It does not appear that the EU is actively proposing to introduce a SAF revenue certainty mechanism (there is an EU SAF mandate, which is broadly similar to the UK SAF mandate). It may be the case, therefore, that the introduction of the mechanism in the UK could help to stimulate greater SAF production in the UK than would otherwise be the case. The Scottish Government is not aware of any UK Government analysis to suggest whether that is the case or not.

## Conclusion

61. In conclusion, the Scottish Government agree with the UK Government's view on the devolution position for this Bill. The Scottish Government support the overall aims of the Bill which should help to increase the production and uptake of SAF, and could help to encourage the establishment of commercial SAF production facilities in Scotland.

62. The Scottish Government is therefore recommending consent to clauses 2, 4, 5, and 12 to 19 of the Bill.

63. The Scottish Government is still to reach a position on consent in relation to clauses 1, 3, 10, 11 and the schedule as far as it relates to devolved matters. These provisions are subject to ongoing discussion with the UK Government and will be the subject of a supplementary legislative consent motion.

## Draft motion on legislative consent

64. The draft motion, which will be lodged by the Cabinet Secretary for Transport, is:

“That the Scottish Parliament agrees, in relation to the Sustainable Aviation Fuel Bill introduced to the House of Commons on 14 May 2025, clauses 2, 4, 5 and 12 to 19, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament”.

Scottish Government  
July 2025

This Legislative Consent Memorandum relates to the Sustainable Aviation Fuel Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 24 July 2025

## Sustainable Aviation Fuel Bill – Legislative Consent Memorandum

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