



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Stephen Flynn MSP
Cabinet Secretary for Economy, Tourism and Transport
Scottish Government

10 September 2026

Dear Cabinet Secretary,

Commercial Payments Bill LCM

I am writing regarding the Commercial Payments Bill Legislative Consent Memorandum (LCM) and supplementary LCM which was considered by the Delegated Powers and Law Reform Committee at its meeting on 8 September 2026.

At that meeting, the Committee agreed to ask a question in relation to provisions being inserted by Clauses 1, 2 and 3 into the Late Payment of Commercial Debts (Interest) Act 1998 (renamed the Commercial Payments and Interest on Late Payments Act 1998). The powers can be found in new sections 2B(7)(b), 2D(7)(b) and 2E(4), are being conferred on the Secretary of State, and may be exercised within devolved competence.

The Committee notes that in its 2nd Report of Session 2026-7 (19 June 2026), the Delegated Powers and Regulatory Reform Committee (DPRRC) of the House of Lords raised concerns that the exemption powers in Clauses 1-3 were too broad. The DPRRC recommended the removal of the delegated powers in Clauses 1-3, in the absence of a convincing justification for their retention.

While the supplementary DPM provided some additional detail regarding the intended operation of the powers, the Committee considers that the provisions as drafted do not contain sufficient parameters governing how they may be exercised. The powers confer a broad discretion on the Secretary of State to exempt categories of contracts without specifying on the face of the Bill the circumstances in which exemptions may be granted, the factors to be taken into account, or any safeguards to prevent avoidance of the statutory regime and protect weaker parties. The Committee agreed to ask the Scottish Government whether it considers that the powers could be drafted more narrowly, such as by placing criteria, conditions or limitations on the face of the Bill to govern the circumstances in which exemptions may be made.

The Committee has also written to the UK Government to ask for its position on this.

The Committee also separately agreed to ask how the Scottish Government intends to keep the Parliament informed about intergovernmental discussions on proposed

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uses of these powers, as the policy develops. It asks this question in the context that these are relatively significant powers, enabling types of contract to be carved out of the new statutory payments regime, and that any notification of uses of the powers under the UKSI Protocol would only be made to the Scottish Parliament after regulations become law.

The Committee would be grateful for a response by **Monday 28 September**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Calum Kerr', with a stylized, cursive script.

Calum Kerr MSP
Convener