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Calum Kerr MSP
Convener
Delegated Powers and Law Reform Committee,
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23 September 2026

Dear Convener,

Commercial Payments Bill Legislative Consent Memorandum

Thank you for your letter of 10 September to the Cabinet Secretary for Economy, Tourism and Transport regarding the Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum for the Commercial Payments Bill.

As Minister for Business and Fair Work, with responsibility for this policy area, I have been asked to reply.

I welcome the Delegated Powers and Law Reform Committee's consideration of these matters and have set out below the Scottish Government's response to the Committee's questions.

The Scottish Government recognises the Committee's concerns regarding the breadth of the regulation-making powers conferred on the Secretary of State by the new sections 2B(7)(b), 2D(7)(b) and 2E(4) which the Bill will insert into the Late Payment of Commercial Debts (Interest) Act 1998 (which the Bill will re-name as the Commercial Payments and Interest on Late Payment Act 1998 ("CPILPA")).

While amendments could be sought to the Bill to further constrain the exercise of these powers, including by imposing additional conditions, limitations or statutory criteria, the Scottish Government does not consider such amendments to be necessary for the reasons set out below.

The Scottish Government considers that the current drafting strikes an appropriate balance in retaining the flexibility required to operate an effective UK-wide payment framework.

The regulation-making powers are intentionally framed to accommodate variation across sectors and commercial arrangements, while also allowing the regime to respond proportionately to future developments in commercial practice, market conditions and implementation experience that may not be foreseeable during the Bill's passage.

Further narrowing of the powers could unduly restrict the ability to make necessary adjustments to ensure the continued effectiveness and consistency of the framework and could necessitate further primary legislation for matters that are properly dealt with through delegated powers.

The Scottish Government has therefore focused on securing robust safeguards in relation to the exercise of these three regulation-making powers. While equivalent regulation-making powers for Scottish Ministers have not been provided for in the Bill, the Bill does provide an important statutory safeguard in relation to the exercise of those powers by the Secretary of State.

In particular, where regulations made under these powers would make provision extending to Scotland within devolved competence, and that provision is not merely incidental to or consequential on reserved provision, the Secretary of State is required to obtain the consent of the Scottish Ministers before making those regulations. As a result, substantive changes affecting devolved matters in Scotland through the exercise of these powers could not be made without the prior consent of the Scottish Ministers.

The Scottish Government considers that this statutory consent requirement, together with equivalent consent requirements that apply to the exercise of other substantive regulation-making powers in the Bill capable of making devolved provision extending to Scotland, provides a meaningful safeguard for devolved interests. It also ensures that the Scottish Ministers have a clear and effective role in influencing how the powers in sections 2B(7)(b), 2D(7)(b) and 2E(4) are exercised in relation to Scotland in the future.

The Scottish Government also recognises the Committee's interest in how Parliament will be kept informed of future intergovernmental discussions on proposed uses of these powers as the policy develops. The UK Statutory Instrument (SI) protocol agreed between the Scottish Government and the Scottish Parliament at the end of Session 6 will apply to the use of these powers within devolved competence. The protocol also recognises the Scottish Government's commitment, where possible, to engage with the Scottish Parliament in advance on certain policy developments likely to lead to the making of a UK SI containing provision within devolved competence extending to Scotland.

Accordingly, in addition to the formal notification requirements under the protocol, the Scottish Government would, where appropriate, keep the relevant parliamentary Committees informed of any significant developments as policy proposals are developed. This would include, for example, through correspondence setting out matters under consideration together with the Scottish Government's position on relevant proposals.

The Scottish Government therefore considers that these arrangements strike an appropriate balance between flexibility in the operation of the regime, protection of devolved interests, and keeping the Parliament informed about future developments in the exercise of these powers.

Yours sincerely,

TOM ARTHUR

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