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Economy, Tourism and Energy Committee
The Scottish Parliament
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13 November 2026

Dear Convener,

Commercial Payments Bill : Legislative Consent Memorandum

Thank you for your letter of 5 November regarding the Legislative Consent Memorandums (LCMs) for the Commercial Payments Bill.

The Scottish Government has engaged with Local Government and wider construction sector stakeholders on payment practices and construction retentions over a number of years. Issues raised in relation to the prohibition of construction retentions; and the availability and affordability of alternative assurance arrangements have informed the Scottish Government's ongoing assessment of the Bill and were taken into account during preparation of the further Supplementary Legislative Consent Memorandum.

As set out in the Scottish Government's earlier submissions to the committee, concerns about the operation of retentions have been raised consistently across the construction sector, particularly in relation to cashflow, delayed release of funds and impacts on smaller businesses. The Bill's intention to address these concerns is welcome.

In assessing the Bill, the Scottish Government considered the issues raised through CoSLA around any potential financial, commercial and operational implications, including potential impacts on procurement processes, contract management, project assurance and cashflow. Ministers concluded that these concerns could be appropriately managed through the phased implementation approach provided for in the Bill, together with continued engagement with stakeholders and the development of alternative assurance arrangements prior to implementation.

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The Scottish Government therefore supports the proposed phased approach to reform which allows alternative assurance arrangements to be developed before any prohibition takes effect. Scottish Government officials recognise the importance of ensuring that local authorities and other contracting authorities retain appropriate mechanisms to manage risks associated with defective, incomplete or delayed construction works. The phased implementation approach in the Bill allows time for alternative assurance arrangements to be developed and considered before any prohibition on retentions is commenced. Alternative assurance arrangements include warranties, guarantees, insurance products, sureties and enhanced contract management arrangements. Many of these mechanisms are already used within the construction sector, particularly for larger and more complex projects, and the phased implementation approach provides time for their wider development and consideration before any prohibition takes effect.

In addition to the Bill's phased approach to implementation, the Scottish Government also noted the UK Government's commitment to undertake further engagement on the development of alternative assurance mechanisms before any prohibition on retentions is brought into force.

In relation to the use of UK Parliament legislation in areas that fall within devolved competence, the Scottish Government considers each Legislative Consent Memorandum on its individual merits. In this instance, our preferred position was for corresponding regulation-making powers within devolved competence to be conferred directly on Scottish Ministers. While that outcome was not secured, provisions within the Bill require the consent of Scottish Ministers to be obtained before relevant regulation-making powers may be exercised by the Secretary of State where the proposed regulations would make substantive devolved provision in relation to Scotland. Although corresponding powers for Scottish Ministers would have been preferable, the Scottish Government considers that the statutory consent requirements contained within the Bill (as amended) provide an acceptable level of oversight in areas of devolved competence. The recommendation to grant legislative consent therefore reflects both the policy benefits the Bill is expected to deliver and the safeguards in respect of devolved competence.

I hope this information is helpful to the Committee's consideration of the Legislative Consent Memorandums.

Yours sincerely,

TOM ARTHUR

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