This Supplementary Legislative Consent Memorandum relates to the Commercial Payments Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 6 August 2026

# Supplementary Legislative Consent Memorandum

## Commercial Payments Bill

## Background

1. This Supplementary Legislative Consent Memorandum ("the second LCM") has been lodged by the Cabinet Secretary for Economy, Tourism and Transport, Stephen Flynn MSP, under Rule 9B.3.1(c) of the Scottish Parliament's Standing Orders. It should be read in conjunction with the Scottish Government's previous memorandum on the Bill, LCM-S7-5 ("the first LCM"): [Commercial Payments Bill | Scottish Parliament Website].

2. The Commercial Payments Bill ("the Bill") was introduced by the UK Government in the House of Lords on 19 May 2026. The Bill is available on the UK Parliament website via this link: [Commercial Payments Bill [HL] - Parliamentary Bills - UK Parliament].

3. Since the first LCM was lodged, the UK Government tabled a number of amendments for House of Lords Committee Stage, which were agreed to on 21 July 2026. These amendments affect provisions relating to payment terms under the Procurement Act 2023 ("PA 2023") and the Housing Grants, Construction and Regeneration Act 1996 ("HGCRA 1996") and provisions concerning the powers and functions of the Small Business Commissioner. The Scottish Government considers that most of these amendments would be relevant provision in terms of the legislative consent process, to the extent that they represent new relevant provision which is outwith the scope of the first LCM.

## Content of the Bill

4. The Bill is intended to tackle poor payment practices in business-to-business contracting and retention practices in relation to construction contracts, alongside reforms to the Small Business Commissioner ("SBC") regime.

5. The Bill is structured as follows:

### Part 1 (Commercial payments)

6. Chapter 1 (Commercial payments) makes amendments to the Late Payment of Commercial Debts (Interest) Act 1998 including: changing the title of that Act to

"the Commercial Payments and Interest on Late Payment Act 1998" ("CPILPA 1998"); introducing a statutory framework for maximum payment terms in commercial contracts (30 days for public authorities, where the contract is not covered by the Procurement Act 2023, and 60 days for non-public authorities), subject to limited exemptions; strengthening the statutory interest regime (including voiding contractual terms in relevant contracts that purport to exclude or alter the right to statutory interest for late payments of qualifying debts); and implying a term into relevant contracts which allows a supplier to recover a fixed sum from a purchaser where the purchaser raises a dispute late or without sufficient information.

7. Chapter 2 (Payments under construction contracts) makes amendments to the Housing Grants, Construction and Regeneration Act 1996 in relation to retentions under construction contracts, including: providing that, after the end of a 2 year "transition period", retention clauses in construction contracts which were agreed by the parties to such a contract after the end of that 2 year period are void; providing that retention clauses agreed or varied by the parties to a construction contract during the 2 year "transition period" are ineffective after a certain period; and implying a term into construction contracts that, after the end of the 2 year "transition period", where a party is owed a debt ("the supplier") and the other party is making an unauthorised retention of the sums that they owe, the supplier has an entitlement to a fixed sum in addition to any entitlement to statutory interest and compensation arising.

## Part 2 (Small Business Commissioner)

8. This part amends primary legislation to make provision in connection with the powers of the Small Business Commissioner (the "SBC") including: introducing an SBC adjudication scheme for "relevant payment disputes", conferring powers on the SBC to adjudicate contractual payment disputes between small and larger businesses outside of the court process and to make binding interim decisions; conferring powers on the SBC to investigate the payment practices of larger businesses suspected of persistently engaging in poor payment practices and of breaching payments legislation; and conferring enforcement powers on the SBC, including the powers to give directions and, where certain conditions are met, to impose financial penalties where the SBC is satisfied beyond reasonable doubt that a larger business has persistently engaged in specified types of poor payment practices (up to a maximum of 1% of the larger business' annual turnover in the UK).

## Part 3 (General)

9. This part makes general provision, including provision in respect of the Bill's extent, Crown application, powers to make consequential provision and to make commencement, transitional and savings provision, the interpretation of the Bill, and the short title of the eventual Act (the Commercial Payments Act 2026).

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# Provisions which require the consent of the Scottish Parliament

10. The UK Government amendments agreed at House of Lords Committee Stage on 21 July 2026 fall into two categories for the purposes of legislative consent. A list of amendments to the Bill is available on the UK Parliament website via this link: HL Bill 4—I.

11. First, a number of amendments introduce new provision relating to public procurement and construction contracts which was not covered by the first LCM and therefore require a supplementary legislative consent memorandum. These amendments are:

- amendments 41 and 53; and related consequential amendments 12, 14, 15, 26, 27, 30, 31, 33, 34, 35, 38, 39 and 40.

12. These amendments make provision applying in Scotland in devolved areas of public procurement and construction contract law and are discussed in detail below (see paragraphs 16 to 36 below).

13. Secondly, the UK Government has brought forward a number of minor and technical amendments relating principally to the Small Business Commissioner and associated provisions. Of these tabled amendments, amendments 28, 29, 76, 77, 82 and 102 make provision within devolved competence to the extent that they extend to Scotland and the Scottish Government considers them to fall within the scope of the policy already addressed in the first LCM lodged on 19 June 2026. Accordingly, these amendments do not alter the Scottish Government's recommendation on legislative consent for these provisions. They are summarised later in this memorandum for completeness (see paragraphs 39 to 47 below).

## Public procurement

14. Some of the provisions amend the PA 2023, which regulates the procurement activity of contracting authorities and utilities – but specifically excludes "devolved Scottish authorities", defined as being those whose functions are exercisable only in or as regards Scotland, and which do not have functions which relate wholly to reserved matters. The only bodies in Scotland whose procurement activities are regulated by the PA 2023 are cross-border bodies and those whose functions are wholly reserved. The Scottish Government and its agencies, local authorities, universities and colleges and registered social landlords continue to be regulated by Scottish procurement legislation. The PA 2023 does apply to procurements carried out by "devolved Scottish authorities" under a reserved procurement arrangement (e.g. utilising a framework managed by a contracting authority subject to the PA 2023).

15. Therefore, in terms of its application to Scotland, the PA 2023 regulates the procurement activity of cross-border bodies or bodies whose functions are entirely reserved, and other public bodies procuring under a reserved procurement arrangement. Accordingly, the PA 2023 extends to Scotland and makes provision applying to Scotland for purposes (public procurement) within the legislative competence of the Scottish Parliament (although in practice, the PA 2023 has limited application to Scottish contracting authorities and utilities). The agreed amendments would make amendments to the PA 2023 and further consequential amendments. As the PA 2023 extends to Scotland and regulates procurement activity in Scotland, the amendments make further provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament. Therefore, the Scottish Government considers that these provisions engage the legislative consent process. This aligns with the UK Government’s view that the amendments engage the legislative consent process.

16. The amendments are as listed: 12, 26, 27, 30, 31, 33, 34, 38, 39, and 40 – minor drafting amendments consequential to provisions under amendment 41.

17. Amendment 41 inserts a new Part 3 into Schedule 1 of the Bill which will amend the PA 2023 relating to payment terms in public contracts and public construction contracts, and sub-contracts to those contracts. The current PA 2023 does not cover implied payment terms for public contracts which are also construction contracts (as defined under the HGCRA 1996). The provisions provide further clarity in relation to the power to shorten implied payment terms and in relation to implied payment terms for below threshold sub-contracts.

18. The detailed provisions of amendment 41, which amends the PA 2023, are as follows:

19. Section 68 (Implied payment terms in public contracts) is amended so as to require any sum due to be paid under a public contract by the contracting authority within a period of 30 days beginning with the day on which an invoice is received by the contracting authority for that sum. Under the current provisions of section 68 of the PA 2023 the 30-day period can begin from a later date specified in the invoice, but this will no longer apply under the amended provisions. A “relevant construction contract” (as defined in the new section 68A of the PA 2023) will be exempt from the provisions of section 68, because these contracts will now fall under the application of section 68A. This amendment makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament, insofar as it regulates contracts entered into by certain public bodies in Scotland.

20. New section 68A (Implied payment terms in public construction contracts) provides clarity over implied payment terms in public construction contracts. It applies to “relevant construction contracts” which are defined within Part 2 of the HGCRA 1996 or the Construction Contracts (Northern Ireland) Order 1997 (“NI Order 1997”) as applicable. Section 68A provides that such contracts will be subject

to implied payment terms where it does not provide for a final date for payment in respect of the relevant sum (as required by HGCRA 1996 or NI Order 1997, as applicable), or the final date for payment provided does not fall within the "permitted period". In such cases, a term is implied into the contract so that the final date for payment for the relevant sum is the last day of the permitted period, which is the period of 30 days beginning with the date after payment due date. Parties cannot agree a term which provides for a payment date longer than the permitted period allows. Section 68A also provides that a contracting authority may not arrange for third party payment unless the payee has consented to the arrangement. This section 68A does not apply to sums which are not a "construction payment" (defined by reference to s.15A of the CPILPA 1998), in which case the terms of section 68 will apply. This amendment makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament, insofar as it regulates contracts entered into by certain public bodies in Scotland.

21. New section 68B (Power to shorten implied payment terms) sets out provisions which allow a Minister of the Crown, Welsh Minister or Northern Ireland department to shorten the 30-day period for implied payment terms. The number of days must be consistent for the payment periods implied by sections 68 and 68A. This represents a minor amendment to what is currently section 68(10) of the PA 2023.

22. There is a minor amendment to section 69 of the PA 2023 so that a compliance notice now refers to a contracting authority's "payment performance".

23. Section 73 of the PA 2023 is amended to clarify that the implied payment term of 30 days outlined in section 73(1) is not implied into a public construction sub-contract, except for sums due under the contract that are not "construction payments". A "public construction sub-contract" is defined as a public sub-contract (as defined by section 73(5) of the PA 2023) which is a relevant construction contract (as defined in the new section 68A(9) of the PA 2023). This amendment makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament, insofar as it applies to contracts entered into by certain public bodies in Scotland.

24. New subsections (4A) - (4F) inserted into section 73 provide that the 30-day payment period set out in section 68A(3) is implied into a public construction sub-contract where the final date for payment is not provided in the contract (in breach of HGCRA 1996 or NI Order 1997 as applicable) or where the final payment date provided in the contract falls outwith the permitted period. Parties cannot agree a payment term longer than the permitted period. A contracting authority cannot arrange for third-party payment without the payee's consent. If any payments due under the public construction sub-contract are not a construction payment (as defined in s.15A CPILPA 1998), the terms set out in section 68 apply instead. This amendment makes provision applying to Scotland for purposes within the legislative

competence of the Scottish Parliament, insofar as it regulates contracts entered into by certain public bodies in Scotland.

25. Amendments to section 88 of the PA 2023 clarify that the terms implied by that section do not apply to regulated below-threshold contracts which are a relevant construction contract, except in respect of sums which are not construction payments. It is also amended to reflect that sums must be paid within 30 days of the contracting authority receiving the invoice, and removes the ability for the invoice to specify a later payment date. This amendment makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament, insofar as it regulates the procurement activity of certain public bodes in Scotland.

26. New section 88A (Implied payment terms in regulated below-threshold construction contracts) extends implied payment terms to regulated below-threshold construction contracts. This amendment makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament, insofar as it regulates contracts entered into by certain public bodies in Scotland.

27. Section 88A will apply to a regulated below-threshold contract which is a "relevant construction contract" (as defined in the HGCRA 1996 or the NI Order 1997 as applicable). Section 88A provides that such contracts will be subject to implied payment terms where it does not provide for a final date for payment in respect of the relevant sum (as required by HGCRA 1996 or NI Order 1997 as applicable), or the final date for payment provided does not fall within the "permitted period". In such cases, a term is implied into the contract so that the final date for payment for the relevant sum is the last day of the permitted period, which is the period of 30 days beginning with the date after payment due date. Parties cannot agree a term which provides for a payment date longer than the permitted period allows. This amendment makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament, insofar as it regulates the procurement activity of certain public bodies in Scotland.

28. Section 88A also provides that a contracting authority may not arrange for third party payment unless the payee has consented to the arrangement. This section 88A does not apply to sums which are not a "construction payment" (defined by reference to s.15A of the CPILPA 1998), in which case the terms of section 88 will apply. This amendment makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament, insofar as it regulates the procurement activity of certain public bodies in Scotland.

29. New Section 88B (Power to shorten implied payment terms) contains provisions which allow a Minister for the Crown or Welsh Minister to shorten the 30 day period for implied payment terms. This represents a minor amendment to what is currently section 88(12) of the PA 2023.

30. New section 88C (Implied payment terms in regulated below threshold sub-contracts) extends the implied terms set out in sections 88(2) and (5) of the PA 2023 (that payment must be made within 30 days and third-party payment cannot be made without the payee’s agreement) to regulated below-threshold sub-contracts. The relevant threshold amounts are set out in Schedule 1 of the PA 2023. Section 88C clarifies that those terms are not implied into regulated below-threshold construction sub-contracts, except where sums due under that contract are not construction payments. Instead, the terms of section 88A are implied into such contracts for those payments. This amendment makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament, insofar as it regulates contracts entered into by certain public bodies in Scotland.

31. Under section 88C, a “regulated below-threshold sub-contract" means a contract that is wholly or substantially for the purpose of performing (or contributing to the performance of) all or any part of a regulated below-threshold contract. Other references have the same meaning as in section 88A of the PA 2023. A “regulated below-threshold construction sub-contract" is a contract which is both a regulated below-threshold sub-contract and a relevant construction contract.

## Housing Grants, Construction and Regeneration Act 1996

32. A number of consequential amendments are also made to the HGCRA 1996 and other provisions of the Bill to ensure that the new PA 2023 payment regime operates consistently with the wider payment framework established by the Bill. Construction contract law is a devolved matter and the amendments outlined below therefore make provision applying to Scotland for devolved purposes within the legislative competence of the Scottish Parliament.

33. Amendment number 14 – minor consequential amendment to include a reference to the PA 2023 into the HGCRA 1996.

34. Amendment number 15 – amends section 110(B) of the HGCRA 1996 (which is to be inserted by the Commercial Payments Bill if enacted) by inserting new subsections (3A), (3B) and (3C). This amendment is consequential to the amendment to Schedule 1 amending the PA 2023 (amendment number 41), so that the HGCRA 1996 refers to the correct sections of the PA 2023 which relate to the relevant 30-day payment terms for public construction contracts.

35. Amendment number 53 - amends section 110 of the HGCRA 1996 to clarify that relevant provisions in the Scheme for Construction Contracts (Scotland) Regulations 1998 will apply a payment mechanism in a construction contract that does not specify a final date for payment. The amendment excludes public construction contracts covered by the PA 2023 from this, clarifying that the implied term in that Act applies instead, relating to the “permitted period” therein, i.e. 30 days beginning with the day after the payment due date.

36. Amendment number 35 – minor consequential amendment to update references following amendment number 53.

37. The amendments to the HGCRA 1996 will bring its detailed provisions into alignment with the Bill to ensure that contracts (including sub-contracts) for construction operations as defined by the HGCRA 1996 will operate to the same statutory maximum payment periods set out in the Bill.

## Additional UK Government amendments

38. The following amendments do not form part of the basis for this supplementary LCM. While the following amendments make provision within devolved competence to the extent that they extend to Scotland, the Scottish Government considers that they fall within the scope of the policy and consent recommendation already set out in the first LCM lodged on 19 June 2026. The Scottish Government's position on legislative consent in relation to those provisions is therefore unchanged.

39. Amendments 28 and 29 make minor drafting changes to the new text of section 4(8) (Period for which statutory interest runs) which Clause 5 of the Bill will insert into CPILPA 1998. Amendments 28 and 29 amend the text of the new section 4(8)(a) and (b) of CPILPA 1998 by replacing the word "day" in both paragraphs with the word "date".

40. These minor drafting amendments improve the wording of the provision but do not alter its legal effect or policy intent. Amendments 28 and 29 are considered to fall within the scope of the policy covered by the first LCM and the Scottish Government's recommendation on legislative consent in relation to Clause 5 remains unchanged.

41. Amendment 76 removes text from the new section 2P(2) (Regulations about investigations) which Clause 19 will insert into the Enterprise Act 2016. The removed text is reproduced in the new subsection (2A) being inserted into section 2P by amendment 77 (explained below).

42. This is a minor drafting amendment and does not make any substantive change to the operation of the new section 2P being inserted into the Enterprise Act 2016. Amendment 76 is considered to fall within the scope of the policy covered by the first LCM and the Scottish Government's recommendation on legislative consent in relation to this element of Clause 19 remains unchanged.

43. Amendment 77 inserts a new subsection (2A) into the new section 2P (Regulations about investigations) which Clause 19 will insert into the Enterprise Act 2016. This new subsection (2A) clarifies the types of provision which may be included in regulations made by the Secretary of State under their power in the new section 2P(1) by giving illustrative examples of what may constitute “the costs of an

investigation”, which regulations made under section 2P(1) may permit the Small Business Commissioner to recover from a larger business where the conditions specified in section 2P(2) are met.

44. Amendment 77 represents a minor clarification of the types of provision which may be included in regulations made by the Secretary of State under their power in the new section 2P(1) and is therefore considered to fall within the scope of the policy covered by the first LCM. The Scottish Government's recommendation on legislative consent in relation to this element of Clause 19 remains unchanged.

45. Amendment 82 requires the Secretary of State to consult the Small Business Commissioner and such other persons as the Secretary of State considers appropriate prior to making regulations under their power in the new paragraph 8(1) of the new schedule 1A which Schedule 3 of the Bill will insert into the Enterprise Act 2016, under which the Secretary of State may by regulations "make further provision in connection with the imposition of financial penalties" by the Small Business Commissioner.

46. Amendment 82 is considered to fall within the scope of the policy covered by the first LCM. The Scottish Government's recommendation on legislative consent in relation to this element of Schedule 3 remains unchanged.

47. Amendment 102 amends Clause 28 to provide that the Clause 28(1) power to make regulations making provision which is consequential on any provision made by the eventual Commercial Payments Act may be exercised by the Chancellor of the Duchy of Lancaster, in addition to being exercised by the Secretary of State.

48. Amendment 102 is considered to fall within the scope of the policy covered by the first LCM and the Scottish Government's recommendation on legislative consent in relation to Clause 28 remains unchanged.

## Reasons for recommending legislative consent

49. The amendments relating to the PA 2023 are intended to clarify mutual alignment between the payment framework established by the Commercial Payments Bill and the payment obligations applicable to public authorities under the PA 2023. They also provide greater clarity and alignment of the Bill’s payment provisions with existing payment legislation and mechanisms for construction contracts in the HGCRA 1996. In addition, the amendments clarify how existing backstop legal requirements integrate with relevant public construction contracts including associated subcontracts in scope of the PA 2023 implied payment provisions.

50. The other UK Government amendments listed above are minor and technical in nature and are considered to fall within the scope of the policy covered by the

original LCM. The Scottish Government's recommendation on legislative consent in relation to the Bill provisions which these other UK Government amendments have amended remains unchanged.

51. The Scottish Government supports the Bill’s overall objective of improving payment practices and tackling poor payment culture across supply chains.

52. The UK Government amendments strengthen and clarify the operation of the payment framework established by the Bill, support mutual alignment across the wider payment regime, and the Scottish Government therefore recommends that legislative consent be given.

# Consultation

53. No separate formal consultation has been undertaken in respect of these UK Government amendments. The Scottish Government has been informed of the proposed amendments through engagement with the Department for Business and Trade during the Bill's Parliamentary passage.

# Financial implications

54. The Scottish Government does not expect these amendments to give rise to any significant additional financial implications beyond those identified in the first LCM. Any operational impacts arising from the new payment provisions applicable to public contracts are expected to be manageable within existing resources.

# Conclusion

55. The Scottish Government remains supportive of the overall intent of the Commercial Payments Bill and the UK Government amendments described above.

56. The Scottish Government considers that the UK Government amendments strengthen and clarify the operation of the payment framework established by the Bill and improve the effectiveness of the Small Business Commissioner regime.

57. The Scottish Government therefore recommends that the Scottish Parliament gives legislative consent to these new and amended provisions.

# Draft motion on legislative consent

58. The motion, which will be lodged by the Cabinet Secretary for Economy, Tourism and Transport, is:

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> “That the Parliament, noting that the Commercial Payments Bill, introduced in the House of Lords on 19 May 2026, makes provision that falls within the legislative competence of the Parliament and alters the executive competence of the Scottish Ministers, and that the Bill, as amended on 21 July 2026, makes provision that falls within the legislative competence of the Parliament, agrees to give consent to such provision as is made by Clause 1, Clause 2(1) to (4), Clauses 3 to 22, Clause 25, Clauses 27 to 32, Schedule 1 Part 1, Schedule 1 Part 2 paragraph 13(a), (b), (e) and (f) and paragraph 14(a), Schedule 1 Part 3, Schedule 2 Part 1, Schedule 3 and Schedule 4.”

Scottish Government
August 2026

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