

Supplementary Legislative Consent Memorandum

Commercial Payments Bill

Background

1. This Supplementary Legislative Consent Memorandum has been lodged by the Cabinet Secretary for Economy, Tourism and Transport, Stephen Flynn MSP, in accordance with Rule 9B.3.1(c) of the Scottish Parliament's Standing Orders.
2. It should be read in conjunction with the Scottish Government's [previous memorandums](#) on the Bill, [LCM-S7-5](#) ("the original LCM") and [LCM-S7-5a](#) ("the first supplementary LCM"). Both memorandums remain under consideration by the Scottish Parliament.
3. 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](#).
4. Following the lodging of those memorandums, [further amendments](#) were tabled for Lords Report Stage on 8 and 10 September 2026 and agreed on 15 September 2026. The amendments tabled on 8 September were UK Government amendments. Further amendments tabled on 10 September were non-Government amendments, a number of which were subsequently supported and co-signed by Lord Leong on behalf of the UK Government.
5. As a consequence of the amendments agreed at Report Stage, provisions of the Bill have been renumbered. References to Clauses and Schedules in this memorandum are to the Bill as amended at Report Stage on 15 September 2026. In particular, for provisions previously identified as requiring legislative consent:
 - Clauses 3 to 22 are now Clauses 3 to 23, reflecting the insertion of new Clause 4;
 - Clause 25 is now Clause 26; and
 - Clauses 27 to 32 are now Clauses 28 to 33.
6. These changes in numbering do not alter the Scottish Government's previous assessment of those provisions for legislative consent.
7. A number of the amendments make provision within devolved competence or alter the executive competence of the Scottish Ministers.

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8. The Scottish Government considers that a number of these amendments are 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 original LCM and first supplementary LCM.

9. This memorandum should be read alongside the detailed descriptions of the Bill and the provisions previously identified as requiring consent in the original LCM and first supplementary LCM.

Content of the Bill

10. The Commercial Payments Bill is intended to strengthen the statutory framework governing payment practices between businesses and between public authorities and businesses in certain commercial contracts, including measures relating to payment terms and late payment. The Bill also makes changes to the statutory powers of the Small Business Commissioner. A fuller description of the content of the Bill is provided in the original LCM and first supplementary LCM.

11. The amendments considered in this memorandum principally:

- provide new powers for the Secretary of State to make regulations to shorten statutory maximum payment periods;
- apply an existing statutory requirement within the Bill to obtain Scottish Ministers' prior consent so that it also applies to the exercise of those new powers where the proposed regulations contain substantive devolved provision extending to Scotland;
- make consequential amendments arising from the insertion of the new regulation-making powers; and
- amend provisions concerning financial penalties which may be imposed by the Small Business Commissioner.

Provisions which require the consent of the Scottish Parliament

12. The amendments considered in this memorandum fall into two categories: UK Government amendments and amendments tabled by non-Government members which were subsequently supported and co-signed by Lord Leong on behalf of the UK Government. For the purposes of this memorandum, the amendments are described according to how they were tabled.

13. The Scottish Government considers that UK Government amendments 15, 16, 17, 18, 36, 37, 38, 39, 40 and 41, and non-Government amendments 43, 44 and 45 which were supported and co-signed by Lord Leong on behalf of the UK Government, engage the legislative consent process because they make provision within devolved competence in relation to Scotland or alter the executive competence of the Scottish Ministers. The UK Government has confirmed that it agrees that these amendments engage the legislative consent process.

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14. Non-Government amendments 30, 31 and 32, which were supported and co-signed by Lord Leong on behalf of the UK Government, concern amendments which the Bill makes to the Small Business, Enterprise and Employment Act 2015. These amendments relate to reserved matters and are not considered to require legislative consent. UK Government amendment 42 concerns an amendment which the Bill makes to the Income Tax Act 2007, therefore making an amendment to legislation on reserved matters, and is likewise not considered to require legislative consent.

UK Government amendments

Powers to make regulations to shorten payment terms

15. **Amendment 15** is now reflected in Clause 4 (Powers to shorten payment terms) of the Bill as amended at Report Stage. It inserts new section 2F into the Late Payment of Commercial Debts (Interest) Act 1998, which the Bill renames as the Commercial Payments and Interest on Late Payment Act 1998 ("CPILPA"). The amendment confers four new regulation-making powers on the Secretary of State (set out in the new section 2F(1), (3), (5) and (6)) to make regulations reducing the statutory maximum payment periods which the Bill specifies in the following new sections which the Bill will insert into CPILPA: sections 2B(2)(a) and 2D(3)(a); sections 2B(2)(b) and 2D(3)(b); section 2B(5); and section 2C(3). These regulation-making powers will allow the Secretary of State to make regulations to reduce:

- the 30-day maximum payment period where the purchaser is a public authority (see the new section 2F(1));
- the 60-day maximum payment period where the purchaser is not a public authority (see the new section 2F(3));
- the 30-day payment period which applies where a contract does not contain compliant payment terms (see the new section 2F(5)); and
- the 30-day period after the end of which a standard acceptance or verification procedure is deemed to have been carried out (if not carried out during that period) (see the new section 2F(6)).

16. Such regulations may not increase these statutory maximum payment periods beyond the limits already set out in these new sections which will be inserted into CPILPA. The new section 2F being inserted into CPILPA also requires a consultation exercise within five years of whichever is the latest date on which sections 2B and 2D of CPILPA come into force.

17. To the extent that these regulation-making powers may be exercised to make provision in relation to devolved matters which extends to Scotland, amendment 15 makes provision for purposes within the legislative competence of the Scottish Parliament. The powers may be exercised to make provision in relation to Scots contract law as it applies to specified types of business-to-business and public authority to business commercial contracts and provision in relation to procurement policy in Scotland, to the extent that regulations made under these powers apply to certain commercial contracts where the purchaser is a Scottish public authority.

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18. **Amendments 16, 17 and 18** are consequential on amendment 15 and amend what is now Clause 5 (Statutory interest) of the Bill as amended at Report Stage. They update references to reflect the insertion of the new section 2F into CPILPA and the consequent need to renumber the section on statutory interest being inserted into CPILPA as section 2G. These amendments form part of the same package of changes as amendment 15 and make provision within devolved competence to the extent that the underlying provisions apply to relevant commercial contracts in Scotland, for the same reasons outlined above for amendment 15.

19. **Amendment 36** is an amendment to what is now Clause 29 (Power to make consequential provision) of the Bill as amended at Report Stage. It widens the existing regulation-making power conferred by Clause 29 on the Secretary of State and the Chancellor of the Duchy of Lancaster to make provision which is consequential on the eventual Act, so that the power may also be exercised to make provision which is consequential on regulations made under the eventual Act.

20. To the extent that regulations made under Clause 29 could be used to make provision extending to Scotland which is consequential on the relevant provisions in Parts 1 and 2 of the Bill previously identified as requiring legislative consent, amendment 36 makes provision applying to Scotland for a purpose within the legislative competence of the Scottish Parliament. This is because those underlying provisions concern matters within devolved competence in terms of aspects of Scots contract law as it applies to specified types of business-to-business and public authority-to-business commercial contracts (including specified types of construction contracts) and in terms of procurement policy and business support policy in Scotland.

21. The Scottish Government considers amendment 36 to fall within the scope of the policy already addressed in the original LCM and first supplementary LCM. Accordingly, amendment 36 does not alter the Scottish Government's recommendation on legislative consent in relation to Clause 29.

Schedule 1 and Scottish Ministers' consent

22. **Amendments 37, 38 and 41** make consequential changes to Schedule 1 Part 1 to reflect the insertion of new section 2F into CPILPA and the consequential need to renumber provisions and are considered to form part of the same package of amendments as amendments 15, 16, 17 and 18. Amendments 37, 38 and 41 make provision within devolved competence to the extent that the underlying provisions extend to Scotland, for the reasons outlined above in respect of amendment 15.

23. **Amendment 39** amends Schedule 1 Part 1, paragraph 10 of the Bill, which substitutes a new section 15 into CPILPA. Amendment 39 amends the existing statutory consultation requirement at section 15(3) to provide that it also applies to the Secretary of State's four new regulation-making powers in the new section 2F(1), (3), (5) and (6) being inserted into CPILPA by Clause 4 of the Bill.

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24. This amendment to section 15(3) extends the existing statutory requirement at section 15(7) for the Secretary of State to obtain the consent of the Scottish Ministers before making regulations including provision which extends to Scotland and which would be within the legislative competence of the Scottish Parliament and is not merely incidental to, or consequential on, provision that would be outwith that legislative competence, so that this statutory consent requirement also applies in relation to regulations to be made under the Secretary of State's powers in new section 2F(1), (3), (5) and (6) being inserted into CPILPA. As amendment 39 therefore alters the executive competence of the Scottish Ministers, by extending this statutory consent mechanism, legislative consent is required.

25. **Amendment 40** amends Schedule 1, Part 1, paragraph 10 of the Bill to insert a new subsection (3A) into the new section 15 being inserted into CPILPA, which makes provision concerning the interaction between the consultation requirements which apply in relation to the new regulation-making powers in the new section 2F(1), (3), (5) and (6) being inserted into CPILPA. The new section 15(3A) provides that the consultation duty which applies to the exercise of these regulation-making powers under section 15(3)(e) to (h) may be satisfied by consultation that took place in compliance with the consultation duty which applies in relation to such regulations under the new section 2F(7) being inserted into CPILPA. To the extent that amendment 40 relates to consultation on the exercise of regulation-making powers which are capable of being used to make substantive devolved provision extending to Scotland and that it would be within devolved competence to impose corresponding consultation requirements on the Scottish Ministers if they had corresponding regulation-making powers exercisable within devolved competence in relation to Scotland, amendment 40 is considered to engage the legislative consent process.

Non-Government amendments supported by the UK Government

Financial penalties and the Small Business Commissioner

26. **Amendments 43, 44 and 45** amend Schedule 3 of the Bill, specifically paragraphs 2(1), 2(2) and 8(2)(b), respectively, of the new Schedule 1A being inserted into the Enterprise Act 2016. Those provisions concern the financial penalties which the Small Business Commissioner may impose on larger businesses who persistently engage in poor payment practices.

27. These amendments remove references in each of those provisions to turnover "in the United Kingdom", with the effect that financial penalties imposed by the Small Business Commissioner need not be calculated solely by reference to a larger business's United Kingdom turnover.

28. To the extent that amendments 43, 44 and 45 concern financial penalties which the Small Business Commissioner may impose on larger businesses in Scotland, they make provision applying to Scotland for a purpose within the legislative competence of the Scottish Parliament in relation to business support policy. The Scottish Government therefore considers that amendments 43, 44 and 45 require legislative consent.

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Reasons for recommending legislative consent

29. The Scottish Government's position on the Bill remains as set out in the original LCM and first supplementary LCM. The Scottish Government supports the overall policy objective of improving payment practices, strengthening protections for businesses and promoting prompt payment across the economy.

30. The principal substantive change considered in this memorandum is the introduction of the new regulation-making powers in Clause 4 which can be used to reduce statutory maximum payment periods in future. Although these powers may be exercised to make substantive provision within devolved competence in relation to Scotland, an existing statutory requirement within the Bill to obtain Scottish Ministers' prior consent has been extended so that it will apply where regulations proposed to be made under these new regulation-making powers contain substantive devolved provision extending to Scotland.

31. While it remains disappointing that the UK Government has not agreed to provide the Scottish Ministers with corresponding regulation-making powers enabling them to make corresponding provision within devolved competence in relation to Scotland, the Scottish Government's view is nevertheless that the statutory consent requirements provide Scottish Ministers and the Scottish Parliament with an acceptable level of control and oversight over the use of the Secretary of State's substantive regulation-making powers within devolved areas in relation to Scotland. This is consistent with the position set out in the original LCM.

32. The remaining UK Government amendments requiring legislative consent are consequential on those changes or extend an existing power to make regulations containing consequential provision. The non-Government amendments supported by the UK Government make limited changes to the Small Business Commissioner's financial penalty regime. The Scottish Government considers that these amendments are consistent with the overall policy intent of the Bill.

33. The Scottish Government therefore recommends that legislative consent be given to the new and amended relevant provisions.

Consultation

34. No separate formal consultation has been undertaken by the Scottish Government specifically in relation to the amendments considered in this memorandum. Stakeholder engagement on the wider Bill has, however, continued since the original LCM and first supplementary LCM were lodged.

35. Since the original LCM and first supplementary LCM were lodged, COSLA has raised concerns about the potential financial, commercial and operational implications of aspects of the wider Bill for local authorities, including in relation to payment practices and banning retentions in construction contracts. These concerns relate principally to

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provisions in the wider Bill rather than to the amendments considered in this memorandum. The Scottish Government is considering the issues raised and will continue to engage with COSLA.

36. The concerns raised do not alter the Scottish Government's assessment of the amendments considered in this memorandum or its recommendation that legislative consent should be given to the relevant provisions.

Financial implications

37. The Scottish Government does not anticipate significant additional financial implications arising directly from the amendments considered in this memorandum beyond those already identified in the original LCM and first supplementary LCM.

38. Future exercises of the new regulation-making powers to shorten statutory maximum payment periods could have operational or financial implications for businesses and public bodies depending on how those powers are exercised. Where regulations contain substantive devolved provision extending to Scotland, Scottish Ministers' consent will be required before the relevant regulations can be made.

Post EU scrutiny

39. The Scottish Government's assessment of the Bill's implications for alignment with EU law remains as set out in the original LCM.

40. The amendments considered in this memorandum do not materially alter that assessment.

Conclusion

41. The Scottish Government remains supportive of the overall aims of the Commercial Payments Bill.

42. The UK Government amendments considered in this memorandum introduce new powers to make regulations to shorten statutory maximum payment periods, extend an existing statutory requirement within the Bill for the Secretary of State to obtain Scottish Ministers' consent so that this requirement will apply to the exercise of those powers where the proposed regulations make substantive provision within devolved competence extending to Scotland, and make associated consequential amendments.

43. The non-Government amendments supported and co-signed by Lord Leong on behalf of the UK Government make changes to the Small Business Commissioner's financial penalty regime.

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44. The Scottish Government considers that the extension of an existing statutory consent requirement within the Bill will provide an appropriate safeguard where the Secretary of State proposes to exercise their new regulation-making powers to make regulations containing substantive devolved provision which extends to Scotland.

45. The Scottish Government therefore recommends that the Scottish Parliament gives legislative consent to the relevant provisions of the Bill.

Draft motion on legislative consent

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

"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 and further amended on 15 September 2026, makes further provision that falls within the legislative competence of the Parliament and alters the executive competence of the Scottish Ministers, agrees to give consent to such provision as is made by Clause 1, Clause 2(1) to (4), Clauses 3 to 23, Clause 26, Clauses 28 to 33, 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
October 2026

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