

Economy, Tourism and Energy Committee
Tuesday 03 November 2026
9th Meeting, 2026 (Session 7)

Legislative consent memorandum (LCM) and supplementary legislative consent memorandums on the Commercial Payments Bill (UK Parliament legislation)

Note by the Clerk

1. Legislative consent memorandum [LCM-S7-5](#) was lodged on 19 June 2026 by Stephen Flynn MSP, Cabinet Secretary for Economy, Tourism and Transport ('the Cabinet Secretary') and has been referred to the Economy, Tourism and Energy Committee for scrutiny.
2. Following amendments to the Bill as it progressed through the UK Parliament, the Cabinet Secretary lodged two further supplementary legislative consent memorandums (sLCM).
3. The first of these, [sLCM-S7-5a](#), was lodged on 06 August 2026. A second supplementary legislative consent memorandum, [sLCM-S7-5b](#), was lodged on 09 October 2026.
4. Further detail on the purpose of the UK Bill and the content of the LCMs is set out below.

Background

5. The UK [Commercial Payments Bill](#) strengthens existing legislation and introduces new measures to improve commercial payment practices and address persistent late payment of commercial debts.
6. Recent [research for the Small Business Commissioner](#) found that:
 - Late payments are estimated to cost the UK economy almost £11 billion per year
 - 14,000 businesses close each year because of late payments, equivalent to 38 businesses every day
7. Evidence given to the House of Commons Business and Trade Committee as part of [its inquiry into the UK Government's Small business strategy](#) from software firm Sage suggested that 44% of invoices from small and medium-sized enterprises are paid late.

Commercial Payments Bill

8. The Bill was introduced in the House of Lords on 19 May 2026 by the UK Department for Business and Trade. Its purpose is to strengthen the statutory framework that governs payment practices between businesses and between public authorities and businesses in certain commercial contracts, including measures relating to payment terms and late payments. The Bill also makes changes to the statutory powers of the Small Business Commissioner (SBC).
9. The proposals in the Bill fall into three categories:
 - **reforms to the existing statutory framework on commercial payments** to remove the ability to contract out of maximum payment periods¹ and interest payments. The Bill also contains provisions intended to limit the opportunities for purchasers to abuse quality control/verification procedures to delay payment
 - **reforms to the statutory framework covering construction contracts to phase out retention payments** over three years. Retention payments are where a contractor retains up to 5% of the invoice value from a sub-contractor to protect against later claims by the purchaser
 - **reforms to the powers of the Small Business Commissioner** to enable the Commissioner to investigate poor payment practice, take enforcement action, and set up a payment dispute resolution scheme for businesses.
10. The Bill deals primarily with contractual relationships between businesses/public bodies (touching on procurement requirements) and support to businesses. These subjects are not reserved under the Scotland Act 1998 and therefore fall within the devolved competence of the Scottish Parliament and Government.
11. The UK and Scottish Governments agree that most of the provisions in the Bill are within devolved competence.

The Scottish Government's LCM and supplementary LCMs

12. In the original LCM-S7-5, the Scottish Government recommended consent to the relevant provisions of the Commercial Payments Bill and reserved the option to lodge a supplementary LCM should material amendments be made to the relevant provisions of the Bill.
13. The first sLCM (sLCM-7-5a) deals with amendments at Committee Stage in the House of Lords. Some of these were considered to be minor or technical and adequately covered by the original LCM. Other amendments relate to payment under the Procurement Act 2023 (dealing primarily with procurement in a reserved context) and construction contracts. The Scottish Government considered that the UK Government amendments strengthened and clarified the operation of the

¹ Broadly, 30 days for public bodies and construction contracts, and 60 days for businesses, with some exceptions. These periods have been subject to debate and amendment during parliamentary progress of the Bill. It has been amended to include regulation-making powers to reduce these periods.

payment framework established by the Bill, and that it improved the effectiveness of the Small Business Commissioner regime.

14. Since the original LCM and first supplementary LCM were lodged, COSLA 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.
15. The second supplementary LCM, sLCM-S7-5b, states that the issues raised above do not alter the Scottish Government's assessment of the amendments. The Scottish Government is considering the issues raised and will continue to engage with COSLA.
16. The second supplementary LCM also considers amendments made at Report Stage in the House of Lords. These would:
 - introduce new powers to make regulations to shorten statutory maximum payment periods
 - extend an existing statutory requirement for the Secretary of State to obtain Scottish Ministers' consent
 - make associated consequential amendments
 - make changes to the Small Business Commissioner's financial penalty regime.
17. The Scottish Government states these changes are in line with the overall policy objective of improving payment practices, which it supports. It notes disappointment that the Scottish Ministers do not have separate regulation-making powers covering issues within devolved competence. However, it considers the existing statutory consent mechanism to be acceptable.
18. **The Scottish Government is recommending consent to all of the relevant provisions of the UK Bill, namely, Clause 1, Clause 2 (1) to (4), Clauses 3-23, Clause 26, Clauses 28-33, 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.**
19. More detail on the provisions requiring consent and the Scottish Government's reasons for recommending consent is set out in [sLCM-S7-5b](#). A draft motion seeking legislative consent is included at the end of sLCM-S7-5b.

Legislative consent procedure

20. Under the Sewel Convention, the UK Parliament does not normally legislate on devolved matters, or to alter the legislative competence of the Parliament or the executive competence of the Scottish Government, without the consent of the Scottish Parliament. Consent is given by means of a resolution of the Parliament.
21. Under Chapter 9B of the Standing Orders, the Scottish Government must lodge a legislative consent memorandum (LCM) in relation to each UK Parliament Bill that contains provision ("relevant provision") that would require the Parliament's consent under the Convention. Sometimes the Scottish Government may be required to lodge

one or more supplementary LCMs during the passage of a Bill. It is also possible for an LCM to be lodged by an individual MSP.

22. Every LCM lodged is referred to a lead committee for scrutiny and may also be referred to other committees. If the Bill confers power on the Scottish Ministers to make subordinate legislation, the Delegated Powers and Law Reform Committee (DPLRC) must also consider the LCM and may report on it to the lead committee.
23. Once the lead committee has reported, the Scottish Government normally lodges a motion on legislative consent for consideration in the Chamber. Such a motion may give consent to relevant provision in the Bill, refuse consent to such provision, or a mixture of the two. A draft of the motion is normally included in the LCM.

Delegated Powers and Law Reform Committee scrutiny

24. The Delegated Powers and Law Reform Committee (DPLRC) considered the LCM and the first supplementary LCM on [08 September 2026](#) and agreed to write to both the [Scottish Government](#) and the [UK Government](#) seeking clarification on delegated powers, scrutiny arrangements and the implications for devolved matters.
25. The DPLR Committee considered the second supplementary LCM on [27 October 2026](#) and [will report](#) to the Economy, Tourism and Energy Committee in due course.

Options for scrutiny

26. The Committee is invited to consider the LCMs and decide on next steps.
27. The Commercial Payments Bill was introduced in the House of Lords and has completed its passage through that House. The Bill is currently at 1st reading in the House of Commons. A date for 2nd reading is yet to be announced, but the Committee should ideally be looking to report on the LCMs by December 2026.
28. If Committee Members are content to recommend agreement to the Scottish Government's draft motion, the next step is to report that conclusion to the Parliament. The Committee could delegate responsibility to the Convener to finalise the wording of a short report expressing the view agreed at today's meeting.
29. Other options include:
 - writing to the Scottish Government (and/or the UK Government) to seek further information
 - inviting written and/or oral evidence on the LCM from relevant stakeholders
 - inviting the Cabinet Secretary and officials to attend a future meeting of the Committee to give oral evidence on the issues raised in the LCM.

Decision

- 30. The Committee is invited to consider the LCMs and decide on next steps.**
- 31. If Members are content at this meeting to recommend agreement to the Scottish Government's draft motion giving consent, the Committee is also invited to agree to delegate responsibility to the Convener to finalise a short report on the LCMs.**
- 32. Alternatively, Members may wish to seek further information before reporting on the LCMs.**

**Clerks to the Committee
November 2026**