Economy, Tourism and Energy Committee
Tuesday 24 November 2026
12th 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 6 August 2026. A second supplementary legislative consent memorandum, sLCM-S7-5b, was lodged on 9 October 2026.

4. Further detail on the purpose of the UK Bill and the content of the LCMs is set out below.

5. The Committee previously considered the LCMs at its meeting on 3 November 2026 and agreed to seek further information from the Scottish Government and COSLA.

Background

6. 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.

7. 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

8. 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

9. 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 in business to business contracting, 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).

10. 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 periods[1] 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.

11. 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.

12. 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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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

21. 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.

22. 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.

23. 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.

24. 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

25. 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.

26. The DPLR Committee considered the second supplementary LCM on 27 October 2026 and reported to the Economy, Tourism and Energy Committee on 30 October 2026. The Committee drew the following points to the Economy, Tourism and Energy Committee's attention:

- Only the Secretary of State can exercise the powers within the Scottish Parliament's legislative competence.
- Regulations will be laid before and scrutinised by the United Kingdom Parliament only.
- The Secretary of State must obtain the Scottish Ministers' consent before making the regulations.
- The regulations will fall within the scope of the UKSI Protocol and will be notified to the Scottish Parliament only after becoming law.
- The Scottish Government commits, where appropriate, to keep relevant parliamentary committees informed of any significant policy developments as policy proposals are developed.

Economy, Tourism and Energy Committee scrutiny

27. The Economy, Tourism and Energy Committee considered its approach to the LCM and the two supplementary LCMs on 03 November 2026. It agreed to write to both the Scottish Government and COSLA seeking clarification on COSLA's concerns regarding the practical, financial and operational implications of the Bill for local authorities, including the proposed phasing out of construction retention payments.

28. The Minister for Business and Fair Work concluded that the concerns COSLA raised could be appropriately managed through the phased implementation approach provided for in the Bill. He 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.

29. COSLA have not yet responded to the Committee's letter.

30. The response from the Scottish Government is attached in the **Annexe.**

Options for scrutiny

31. The Committee is invited to consider the LCMs, the response received from the Scottish Government and decide on its next steps.

32. The Commercial Payments Bill was introduced in the House of Lords and has completed its passage through that House. The Bill is currently at 2nd reading in the House of Lords. 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.

33. 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.

34. Other options include:

- inviting further 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

35. The Committee is invited to consider the correspondence received from the Scottish Government and COSLA and decide whether it is content to recommend agreement to the Scottish Government's draft motion giving consent, or whether it wishes to seek further evidence

36. If Members are content at this meeting to recommend agreement to the Scottish Government's draft motion, the Committee is also invited to agree to delegate responsibility to the Convener to finalise a short report on the LCMs.

Clerks to the Committee
November 2026

Annexe A

Letter from the Minister for Business and Fair Work

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.

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