COMMERCIAL PAYMENTS BILL

Supplementary Memorandum from the Department for Business and Trade for the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This supplementary memorandum has been prepared by the Department for Business and Trade ("DBT") for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Commercial Payment Bill ("the Bill"). It supplements the memorandum which was submitted and published on 18 May 2026 before the introduction of the Bill on 19 May 2026 and should be read in conjunction with that memorandum.

2. DBT is grateful to the Committee for its careful work scrutinising the Bill. Having fully considered the observations and recommendations made by the Committee in the Report published on 19 June 2024, this memorandum seeks to substantially address the Committee's concerns and justify the retention for the delegated powers in sections 2B(7), 2D(7) and 2E(4).

3. This Supplementary Memorandum also provides details on the amendments which the Government tabled on 14th July, which amend existing delegated powers in the Procurement Act 2023 and in clause 28 of the Bill.

B. DELEGATED POWERS

4. The three delegated powers referred to in the 18 May memorandum are:
    a. new section 2E(4) (power to exempt contracts from maximum payment terms under sections 2B and 2D).
    b. new sections 2B(7) and new section 2D(7) (power to exempt collateral contracts from maximum payment terms) which have been considered together.

C. ANALYSIS OF DELEGATED POWERS

Section 2E(4) (power to exempt contracts from maximum payment terms under sections 2B and 2D)

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

<u>Justification</u>

5. Clauses 1 and 2 of the Commercial Payments Bill present decisive action following an extensive consultation to introduce reforms which make significant changes to payment terms in commercial contracts. These reforms are ambitious and have been welcomed by businesses and by Peers across the House. While we have consulted extensively, the provisions are novel and

ambitious, and the Government is keen to ensure that intervention remains proportionate to harm the Bill addresses, and calibrated to the needs of business in different sectors and industries.

6. We are aware of concerns raised by UK importers and exporters of goods and services, where maximum payment terms may restrict the ability of these entities from competing in international markets. Relevant businesses engaged in cross-border trade may, for example, operate within global supply chains where payment practices are determined by long production cycles, complex logistics or norms set by international trading partners. UK businesses in these circumstances may be at a competitive disadvantage if bound by shorter payment terms and it is not the Government's intention to impede such international trade. Correspondingly, we are minded to make a limited exemption and intend to conduct a targeted consultation for detailed provision to be set out in regulations. This will ensure that any exemption for these contracts is evidence-based and goes no further than necessary.

7. While we do not currently intend to consult on exempting other types of contracts, we will keep the maximum payment terms under careful review. Should evidence arise of unforeseen impacts from the ambitious reforms, we will consult and, where appropriate, make a targeted, limited exemption. Having the power to set out such an exemption in regulations, rather than on the face of the Bill, will enable any such exemption to be tightly drawn to be no more than is necessary to address the harm that is evidenced. For example, a need may arise for a temporary exemption (which may later sunset) for certain contracts. It also allows for any exemptions to be revisited, if subsequently the harm caused by the exemption outweighs its benefits or for it to be adapted to ensure any avoidance practices can be sufficiently and specifically dealt with.

8. We are mindful of the need to ensure appropriate Parliamentary scrutiny and have provided that the power be subject to safeguards, such as a requirement to undertake consultation, and the affirmative procedure. We also recognise considerations raised by the Committee in paragraph 16 (ii)-(v) and will take these into account during any consultation conducted in relation to section 2E(4).

Sections 2B(7) and 2D(7) (power to exempt collateral contracts from maximum payment terms)

Power exercised by: Regulations (Statutory Instrument)

<u>Justification</u>

9. Section 2B(7)(a) and 2D(7)(a) make clear that parties cannot rely on an agreement separate to the main agreement to contract out of the statutory

payment terms. As provided in section 2B(8), the policy is clear that attempts to override or vary the payment term protections in section 2B (including in settlement agreements) will be void. This reflects the clear wish of businesses to ensure protections are not undermined, which has been supported by Peers. However, as stated above, it is the Government's wish to ensure that intervention remains proportionate and calibrated to the needs of business.

10. The Government recognises that there may be circumstances where flexibility is needed to exempt certain types of agreements, for example agreements reached during the course of legal proceedings (including where proceedings are stayed on agreed terms) or where parties have agreed upon debt recovery terms as part of bona fide debt restructuring. Whilst the Government is keen to ensure that the main payment protections are not diluted, a balance has to be struck to ensure that the interests of justice are served and legitimate dispute resolutions processes are not undermined. For example, the payment protections should not inadvertently prevent genuine and fair attempts to resolve disputes or manage financial difficulties experienced in complex payment arrangements.

11. Any exemptions under the delegated power will be narrowly defined and only exercised if there is evidence of unintended consequences arising from the provisions in the Bill, for example, on types of settlement agreements. Having the detailed provision of the exemption set out in Regulations, rather than on the face of the Bill, ensures the exemption can be tightly drawn, and adapted over time as business practices evolve or removed if no longer required, or adapted to address avoidant behaviours.

12. We are mindful of the need to ensure appropriate Parliamentary scrutiny and have provided that the power will be subject to safeguards– including consultation and the affirmative procedure. The Government considers that the power in section 2B(7)(b) and section 2D(7)(b) strikes the right balance between maintaining a robust statutory payment regime and allowing sufficient flexibility to provide for exceptional and legitimate circumstances that may change over time.

D GOVERNMENT AMENDMENTS TABLED ON 14TH JULY

Amendment of Procurement Act 2023

Power conferred on: An appropriate authority (which means a Minister of the Crown, Welsh Ministers or a Northern Ireland Department, depending upon the contracting authority in respect of which the power is exercised -see section 123 Procurement Act 2023)

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: negative

13. The Government have tabled amendments which amend relevant provisions of the Procurement Act 2023 (PA23) through the insertion of new Part 3, Schedule 1 of the Bill. The purpose of the amendments is to bring the payment terms implied into contracts by the PA23 into closer alignment with the payment terms set out in Part 1 of the Bill, by removing provisions in the PA 2023 which could have allowed parties to agree a payment date later than 30 days from the receipt of invoice.

14. The amendments also provide new sections which give clarity on how the PA23 implied payment terms apply to construction contracts (as defined under Housing Grants, Construction and Regeneration Act 1996), in line with the Bill and existing construction contract payment legislation. The amendments insert new sections 68A and 88A which specifically deal with construction contracts in scope of PA23.

15. As a result of these amendments, the Government has revoked the existing delegated powers contained in sections 68(10) and 88(12)). New sections 68B and 88B are inserted which replace and replicate the scope and effect of the original powers. The powers in section 68B and 88B apply to contracts in scope of the PA23 by reference to sections 68(2) and 88(2) respectively, as well as the newly inserted sections 68A(8)(a) and 88A(8)(a). The powers in sections 68B and 88B allow an appropriate authority to change the number of days but provide that they cannot exceed a maximum of 30 days for payment.

16. The new powers contained in sections 68B and 88B replicate the effect, scope and parliamentary procedure of the powers contained in sections 68(10) and 88(12) of the PA23.

Amendment of Clause 28

Power conferred on: Secretary of State or the Chancellor of the Duchy of Lancaster

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative procedure where primary legislation is amended, negative procedure in all other cases.

17. Clause 28(1) of the Bill provides the Secretary of State power to make regulations containing provision consequential on any provision made under the Bill. Under clause 28(2), regulations made under clause 28 may amend, repeal or revoke primary legislation passed before or in the same session of Parliament as the Bill.

18. This power is amended to allow the Chancellor of the Duchy of Lancaster (CDL) to also exercise this power to make any necessary consequential amendments as a result of the amendments made to the PA23, reflecting the CDL's responsibility for procurement policy.

Department for Business and Trade

21 July 2026