Commercial Payments Bill [HL]

[AS AMENDED IN COMMITTEE]

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[AS AMENDED IN COMMITTEE]

A

BILL

TO

Make provision about payment terms in commercial contracts; to make provision about interest on late payment of commercial debts; to ban retention clauses in the construction sector; to expand the powers of the Small Business Commissioner in relation to payment disputes and poor payment practices; to amend the Enterprise Act 2016 in connection with other functions of the Small Business Commissioner; and for connected purposes.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

COMMERCIAL PAYMENTS

CHAPTER 1

COMMERCIAL PAYMENTS

1 Payment terms

Before section 3 of the CPILPA 1998 insert—

"PART 1A

PAYMENT TERMS

2B Payment terms

(1) A contract to which this subsection applies must make provision for a relevant payment under the contract to become due before the end of a specified period beginning with one of the following days—

(a) the day on which the obligation of the supplier to which the payment relates is performed;

(b) in the case of a payment that relates to a period of hire of goods, the last day of that period of hire;

(c) the day on which the purchaser has notice of the amount of the payment or (where that amount is unascertained) the sum which the supplier claims is the amount of the payment;

(d) the day after the day on which an acceptance or verification procedure is completed (see section 2C).

(2) The maximum length of the period that may be specified in the contract is—

(a) where the purchaser is a public authority, 30 days;

(b) where the purchaser is not a public authority, 60 days.

(3) A term of the contract is void so far as it purports to provide for payment terms for a relevant payment that differ (in all cases or in specified circumstances) from those stipulated by subsections (1) and (2).

(4) Subsection (5) applies in relation to the contract where—

(a) the contract does not provide for payment terms for a relevant payment, or

(b) the contract includes a term relating to a relevant payment that is void as a result of subsection (3).

(5) It is an implied term of the contract that a relevant payment becomes due at the end of the period of 30 days beginning with the latest of the days specified in subsection (1).

(6) But nothing in subsection (5) prohibits the parties from agreeing payment terms for a relevant payment under the contract that are consistent with subsections (1) and (2) (and any such agreed terms override the implied term described in subsection (5)).

(7) Subsection (8) applies to any other contract binding the parties (or either of them) which—

(a) relates to a contract to which subsection (1) applies ("the main contract"), and

(b) is not a contract of a description specified in regulations made by the Secretary of State.

(8) A term of a contract to which this subsection applies, including a contract settling a dispute arising under the main contract or a contract by which the supplier under the main contract waives their right to be paid in accordance with the terms of that contract, is void so far as it purports to vary or override a term of the main contract that provides for when a relevant payment under that contract becomes due, in a way that is not consistent with subsections (1) and (2).

(9) Subsection (1) applies to a contract to which this Act applies, other than—

(a) a contract to which section 2E applies, or

(b) a contract to which section 68 or 88 of the Procurement Act 2023 applies.

(10) In this Act "relevant payment" means a payment of the whole or any part of the contract price that is not—

(a) an advance payment, or

(b) a construction payment (see section 2D for payment terms for relevant construction payments).

2C Acceptance or verification procedure

(1) This section applies in relation to a contract specifying payment terms for a relevant payment by reference to the completion of an acceptance or verification procedure (see section 2B(1)(d)).

(2) In section 2B and this section, "acceptance or verification procedure" means a procedure of acceptance or verification (whether provided for by an enactment or by a contract) under which the conforming of goods or services with the contract is to be ascertained.

(3) It is an implied term of the contract that the acceptance or verification procedure, if not completed before the end of the period of 30 days beginning with the day on which the obligation of the supplier to which the payment in question relates is performed, is to be treated as being completed immediately after the end of that period, unless the contract creating the obligation to make the relevant payment contains a long acceptance or verification term (but see subsection (5)).

(4) A "long acceptance or verification term" means a term of a contract providing for a period for completion of an acceptance or verification procedure that is longer than the period specified in subsection (3).

(5) A long acceptance or verification term is void unless the term is a fair and reasonable one to be included in the contract having regard, in particular, to the matters specified in Schedule 2 to the Unfair Contract Terms Act 1977 (having regard only to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made).

(6) It is for the purchaser to show that a long acceptance or verification term satisfies the test in subsection (5).

(7) A term of the contract specifying the payment terms, or a term of any other contract term binding the parties (or either of them), is void so far as it purports to vary or override the implied term described in subsection (3)."

2 Payment terms: construction contracts

(1) After section 2C of the CPILPA 1998 (inserted by section 1), insert—

"2D Payment terms: construction contracts

(1) The final date for payment of a relevant construction payment must be a date that falls within the permitted period.

(2) In this section references to the final date for payment are to the final date for payment that is required to be provided for in the relevant construction contract by—

(a) section 110(1)(b) of the HGCRA 1996, or

(b) Article 9(1)(b) of the Northern Ireland Order 1997.

(3) In this section references to the permitted period are to—

(a) where the purchaser is a public authority, the period of 30 days beginning with the day after the payment due date;

(b) where the purchaser is not a public authority, the period of 60 days beginning with the day after the payment due date.

(4) In subsection (3) the reference to the payment due date is to (as the case may be)—

(a) the date provided for by the contract as the date on which the payment is due (as required by section 110(1)(a) of the HGCRA 1996 or Article 9(1)(a) of the Northern Ireland Order 1997), or

(b) the date that has effect as the date on which payment is due as a result of an implied term of the contract (see, in particular, section 114(4) of the HGCRA 1996 and Article 13(3) of the Northern Ireland Order 1997).

(5) A term of the contract creating the obligation to make the relevant construction payment is void so far as it purports to provide for a final date for payment that does not fall within the permitted period.

(6) Where a contract term is void as a result of subsection (5)—

(a) the relevant Construction Scheme provision applies in relation to the contract creating the obligation to make the payment (see section 15A), and

(b) such provision has effect as an implied term of that contract.

(7) Subsection (8) applies to any other contract binding the parties (or either of them) which—

(a) relates to a contract creating the obligation to make a relevant construction payment ("the main contract"), and

(b) is not a contract of a description specified in regulations made by the Secretary of State.

(8) A term of a contract to which this subsection applies, including a contract settling a dispute arising under the main contract or a contract by which the supplier under the main contract waives their right to

be paid in accordance with the terms of that contract, is void so far as it purports to vary or override a term of the main contract that provides for a final date for payment for a relevant construction payment in such a way that the final date for payment does not fall within the permitted period.

(9) A "relevant construction payment" is a construction payment (see section 15A) that is not—

(a) an advance payment,

(b) a payment under a contract to which section 2E applies,

(c) a transitional retained sum as defined by section 113B of the HGCRA 1996, or

(d) a payment under a contract to which section 68A or 88A of the Procurement Act 2023 applies."

(2) The HGCRA 1996 is amended in accordance with subsections (3) and (4).

(3) In section 110 (dates for payment), in subsection (1), for the words from "The parties" to the end substitute "See section 2D of the Commercial Payments and Interest on Late Payment Act 1998 for provision constraining the choice of final date for payment, and see section 2E of that Act for contracts exempted from those constraints; and see sections 68A and 88A of the Procurement Act 2023 regarding the final date for payment in certain contracts to which that Act applies".

(4) In section 110B (payment notices: payee's notice in default of payer's notice), after subsection (3) insert—

"(3A) Subsection (3B) applies if—

(a) section 2D of the Commercial Payments and Interest on Late Payment Act 1998 applies in relation to the payment, and in the case of the contract in question the permitted period referred to in subsection (1) of that section is the period of 30 days beginning with the day after the payment due date, or

(b) section 68A or 88A of the Procurement Act 2023 applies to the contract.

(3B) If the operation of subsection (3) of this section would (absent this subsection) result in the final date for payment being postponed to a day after the last day of the period of 30 days beginning with the day after the payment due date, subsection (3) operates so as to postpone the final date for payment to the last day of that 30-day period.

(3C) In subsection (3A)(b), the reference to a contract to which section 68A or 88A of the Procurement Act 2023 applies includes a public construction sub-contract within the meaning of section 73 of that Act and a regulated below-threshold construction sub-contract within the meaning of section 88C of that Act.

(3D) If—

(a) section 2D of the Commercial Payments and Interest on Late Payment Act 1998 applies in relation to the payment, and in the case of the contract in question the permitted period referred to in subsection (1) of that section is the period of 60 days beginning with the day after the payment due date, and

(b) the operation of subsection (3) of this section would (absent this subsection) result in the final date for payment being postponed to a day after the last day of that 60-day period,

subsection (3) operates so as to postpone the final date for payment to the last day of that 60-day period."

(5) The Northern Ireland Construction Order 1997 is amended in accordance with subsections (6) and (7).

(6) In Article 9 (dates for payment), in paragraph (1), for the words from "The parties" to the end substitute "See section 2D of the Commercial Payments and Interest on Late Payment Act 1998 for provision constraining the choice of final date for payment, and see section 2E of that Act for contracts exempted from those constraints; and see sections 68A and 88A of the Procurement Act 2023 regarding the final date for payment in certain contracts to which that Act applies".

(7) In Article 9B (payment notices: payee's notice in default of payer's notice), after paragraph (3) insert—

"(3A) Paragraph (3B) applies if—

(a) section 2D of the Commercial Payments and Interest on Late Payment Act 1998 applies in relation to the payment, and in the case of the contract in question the permitted period referred to in subsection (1) of that section is the period of 30 days beginning with the day after the payment due date, or

(b) section 68A or 88A of the Procurement Act 2023 applies to the contract.

(3B) If the operation of paragraph (3) would (absent this paragraph) result in the final date for payment being postponed to a day after the last day of the period of 30 days beginning with the day after the payment due date, paragraph (3) operates so as to postpone the final date for payment to the last day of that 30-day period.

(3C) In paragraph (3A)(b), the reference to a contract to which section 68A or 88A of the Procurement Act 2023 applies includes a public construction sub-contract within the meaning of section 73 of that Act and a regulated below-threshold construction sub-contract within the meaning of section 88C of that Act.

(3D) If—

(a) section 2D of the Commercial Payments and Interest on Late Payment Act 1998 applies in relation to the payment, and in the case of the contract in question the permitted period referred to in subsection (1) of that section is the period of 60 days beginning with the day after the payment due date, and

(b) the operation of paragraph (3) would (absent this paragraph) result in the final date for payment being postponed to a day after the last day of that 60-day period,

paragraph (3) operates so as to postpone the final date for payment to the last day of that 60-day period."

3 Exempted contracts: no restriction on payment terms

After section 2D of the CPILPA 1998 (inserted by section 2), insert—

"2E Contracts exempted from the restrictions on payment terms in section 2B or 2D

(1) This section applies to a contract if—

(a) the condition in subsection (2), (3) or (4) is met in relation to the contract, and

(b) the conditions in subsection (5) are met in relation to the contract.

(2) The condition in this subsection is that—

(a) regulations under subsection (7)(a) are in force, and

(b) on the date of the contract, the purchaser and supplier under the contract are as described in any one of the following sub-paragraphs—

(i) the purchaser is a sole trader and the supplier is not a sole trader;

(ii) the purchaser is a micro undertaking and the supplier is a small undertaking, a medium-sized undertaking or a large undertaking;

(iii) the purchaser is a small undertaking and the supplier is a medium-sized undertaking or a large undertaking;

(iv) the purchaser is a medium-sized undertaking and the supplier is a large undertaking.

(3) The condition in this subsection is that—

(a) regulations under subsection (7)(b) are in force, and

(b) on the date of the contract—

(i) the purchaser is a large undertaking, and

(ii) the supplier is a large undertaking.

(4) The condition in this subsection is that the contract is of a description specified in regulations made by the Secretary of State.

(5) The conditions in this subsection are that—

(a) neither the purchaser nor the supplier under the contract is a public authority;

(b) the contract is in writing; and

(c) the contract specifies (as the case may be)—
  (i) the sub-paragraph of subsection (2)(b) that applies in relation to the contract,
  (ii) that subsection (3) applies in relation to the contract, or
  (iii) the provision of regulations made under subsection (4) that describes the contract.

(6) In relation to an undertaking that is not a legal person under the law under which it is formed—
  (a) in subsection (2)(b), sub-paragraphs (ii) to (iv) are to apply as if, after the words "purchaser is" or "supplier is" (as the case may be), there were inserted the words "an officer, partner or other member of";
  (b) in subsection (3)(b), sub-paragraphs (i) and (ii) are to apply as if, after the words "purchaser is" or "supplier is" (as the case may be), there were inserted "an officer, partner or other member of".

(7) The Secretary of State may make regulations—
  (a) setting out what is meant by references in subsection (2) to a micro undertaking, a small undertaking, a medium-sized undertaking and a large undertaking for the purposes of the condition in that subsection;
  (b) setting out what is meant by references in subsection (3) to a large undertaking for the purposes of the condition in that subsection.

(8) A description of contract may be specified in regulations under subsection (4) only if the Secretary of State—
  (a) has considered the impact of specifying that description of contract on all sizes of undertakings, particularly ones that are small, and
  (b) considers that specifying that description of contract strikes a fair balance between the interests of purchasers and suppliers under contracts of that description.

(9) Regulations under subsection (7) may, in particular—
  (a) specify criteria some or all of which must be met in order for an undertaking to count as a micro undertaking, a small undertaking, a medium-sized undertaking or a large undertaking for the purposes of the exemption in subsection (2) or (3) (which may include criteria as to headcount of staff, turnover or balance sheet total);
  (b) make provision as to the meaning of any reference in the regulations to headcount of staff, turnover or balance sheet total;
  (c) specify the date or period by reference to which it is to be determined whether specified criteria are met.

(10) In this section “undertaking” means a person who is acting in the course of a business.”

4 Statutory interest

After section 2E of the CPILPA 1998 (inserted by section 3), insert—

“PART 1B

STATUTORY INTEREST

2F Statutory interest

(1) It is an implied term of a contract to which this Act applies that any qualifying debt created by the contract carries simple interest subject to and in accordance with this Part.

(2) Interest carried under that implied term (in this Act referred to as “statutory interest”) is to be treated, for the purposes of any rule of law or enactment (other than this Act) relating to interest on debts, in the same way as interest carried under an express contract term.”

5 Period for which statutory interest runs

In the CPILPA 1998, for both versions of section 4 (as it extends to England and Wales and Northern Ireland, and as it extends to Scotland) substitute—

“4 Period for which statutory interest runs

(1) Statutory interest runs in relation to a qualifying debt in accordance with this section (unless section 5 applies).

(2) Statutory interest starts to run on the day after the relevant day for the debt, at the rate prevailing under section 6 at the end of the relevant day.

(3) Except where subsection (5) applies, the relevant day for a debt, other than a construction debt, is the payment day.

(4) Except where subsection (5) applies, the relevant day for a construction debt (see section 15A) is the final date for payment.

(5) Where the debt relates to an obligation to make an advance payment, the relevant day is the day on which the debt is treated by section 11 as having been created.

(6) Except in the case within subsection (7), the reference in subsection (3) to the payment day, in relation to a debt other than a construction debt, is to—

(a) in the case of a debt arising under a contract to which section 2B(1) applies, the day on which payment is due in accordance with—

(i) provision consistent with section 2B(1) and (2) that is agreed by the parties to the contract,

(ii) a term implied into the contract by section 2B(5), or

(iii) provision agreed by the parties to a contract of a description specified in regulations under section 2B(7)(b);

(b) in the case of a debt arising under a contract to which section 2E applies, the day that is agreed by the parties to the contract to be the day on which payment is due (and see subsection (10)).

(7) In the case of a debt arising under a contract to which section 68 or 88 of the Procurement Act 2023 applies, other than a construction debt, the reference in subsection (3) to the payment day is to—

(a) the day that has effect under provision agreed by the parties to the contract as the last day for payment to be made, or

(b) the day that has effect, in accordance with the implied term described in (as the case may be) section 68(2) or 88(2) of the Procurement Act 2023, as the last day for payment to be made.

(8) Except in the case within subsection (9), the reference in subsection (4) to the final date for payment, in relation to a construction debt, is to—

(a) the date that has effect under provision agreed by the parties to the relevant construction contract as the final date for payment, or

(b) the date that has effect as the final date for payment in accordance with the implied term described in (as the case may be)—

(i) the relevant Construction Scheme provision (see sections 2D(6) and 15A);

(ii) section 68A(3) of the Procurement Act 2023;

(iii) section 88A(3) of the Procurement Act 2023.

(9) In the case of a construction debt that is created by virtue of an obligation to pay a transitional retained sum within the meaning of section 113B of the HGCRA 1996 (treatment of certain retention deductions), the reference in subsection (4) to the final date for payment is to the final date for payment of such a sum that is given by that section for the purposes of that section.

(10) In identifying the payment day in relation to a debt for the purposes of subsection (6)(b), any postponement of the day on which payment is due that is agreed (for any reason) by the parties to the contract after the supply of goods or services under the contract is to be disregarded.

(11) For the purposes of subsection (7)(b)—

(a) the term described in subsection (3) of sections 68 and 88 of the Procurement Act 2023 (disapplication of payment terms in case of dispute etc) is to be treated as not being an implied term of the contract, and

(b) any term included in the contract that has the same or a similar effect as subsection (3) of section 68 or 88 of that Act is to be disregarded.

(12) In identifying for the purposes of subsection (8)(a) the final date for payment in relation to a construction debt arising under a contract to which section 2E applies, any postponement of the final date for payment that is agreed (for any reason) by the parties to the relevant construction contract after the supply of goods or services under the contract is to be disregarded.

(13) Where section 110B(3) of the HGCRA 1996 or Article 9B(3) of the Northern Ireland Order 1997 operates to postpone the final date for payment in relation to a construction debt, the references in paragraphs (a) and (b) of subsection (8) and in subsection (9) to the final date for payment are to the final date for payment as so postponed.

(14) Statutory interest ceases to run when the interest would cease to run if it were carried under an express contract term."

6 Statutory interest: void contract terms

(1) After section 6 of the CPILPA 1998 (in Part 1B) insert—

"6A Statutory interest: void contract terms

(1) A contract term is void so far as it purports to exclude or vary the right to statutory interest that would otherwise apply in relation to a qualifying debt.

(2) For the purposes of subsection (1), a contract term varies the right to statutory interest if—

(a) it makes provision restricting the right to statutory interest (for example, by imposing conditions on the right to interest), or

(b) it makes provision about interest that is not consistent with section 4 (for example, by providing that interest starts to run from a day later than the day given by section 4, including in the event of a contractual dispute, or specifying a rate of interest different from that given by section 4).

(3) Subject to subsection (1), the parties are free to agree contract terms which deal with the consequences of late payment of the debt.

(4) In this section "contract term" means a term of the contract under which the debt is created or any other contract term binding the parties (or either of them)."

(2) Omit Part 2 of the CPILPA 1998 (contract terms relating to late payment of qualifying debts).

7 Late raising of disputes

After section 11 of the CPILPA 1998 insert—

"11A Fixed sum for late raising of disputes

(1) It is an implied term of a contract to which this Act applies, other than a construction contract, that (unless subsection (7) applies) the supplier is entitled to recover from the purchaser a fixed sum of the amount specified in subsection (5) if the purchaser—

(a) notifies the supplier of a relevant dispute after the last dispute day, or

(b) notifies the supplier of a relevant dispute on or before the last dispute day, but does not, by the end of that day, provide the supplier with sufficient information for the supplier to understand what the dispute is about.

(2) A "relevant dispute" is a dispute which a purchaser relies on to decline to pay, or postpone payment of, any amount of the contract price, except where the disputed amount is an advance payment.

(3) The "last dispute day" is the first day of a period of 8 days ending with the relevant day for the debt (see section 4), unless subsection (4) applies.

(4) Where the relevant day for the debt is a day falling before the end of the period of 14 days beginning with the day on which the obligation of the supplier to which the debt relates is performed, the "last dispute day" is the relevant day for the debt.

(5) The amount of the fixed sum is the higher of—

(a) £40;

(b) the sum that is 1% of the contract price or, where only part of the contract price is disputed, 1% of the disputed amount.

(6) A contract term is void so far as it purports to exclude or vary the implied term described in subsection (1).

(7) If the interests of justice require it, the fixed sum under this section may be remitted in whole or part (for example, where the supplier is found to be in breach of contract).

(8) For the purposes of subsection (1) a dispute may be notified to a supplier orally or in writing.

(9) In this section—

"construction contract" has the same meaning as in Part 2 of the HGCRA 1996 (see sections 104 and 105 of that Act) or the

Northern Ireland Order 1997 (see Articles 3 and 4 of that Order);

"contract term" means a term of the contract under which the dispute arises or any other contract term binding the parties (or either of them)."

8 Meaning of construction payment etc

After section 15 of the CPILPA 1998 insert—

"15A Meaning of terms relating to construction contracts

(1) This section has effect for the purposes of this Act.

(2) The "HGCRA 1996" means the Housing Grants, Construction and Regeneration Act 1996.

(3) The "Northern Ireland Order 1997" means the Construction Contracts (Northern Ireland) Order 1997 (S.I. 1997/274 (N.I. 1)).

(4) "Relevant construction contract" means—

(a) a construction contract, within the meaning of Part 2 of the HGCRA 1996, to which that Part (or any provision of that Part) applies, or

(b) a construction contract, within the meaning of the Northern Ireland Order 1997, to which that Order (or any provision of that Order) applies.

(5) "Construction payment" means a payment of the whole or any part of the contract price under a relevant construction contract, provided that—

(a) the payment relates to construction operations;

(b) the payment does not relate to construction operations, but—

(i) the effect of provision made by the contract is that Part 2 of the HGCRA 1996 or the Northern Ireland Order 1997, or any provision of that Part of that Act or of that Order, applies in relation to payments under the contract that do not relate to construction operations, or

(ii) the contract makes provision, in relation to payments under the contract that do not relate to construction operations, that corresponds to provision in Part 2 of the HGCRA 1996 or in the Northern Ireland Order 1997; or

(c) the payment comprises a sum relating to construction operations and a sum not relating to construction operations, where—

(i) the effect of provision made by the contract is that Part 2 of the HGCRA 1996 or the Northern Ireland Order

1997, or any provision of that Part of that Act or of that Order, applies in relation to such composite sums, or

(ii) the contract makes provision, in relation to such composite sums, that corresponds to provision in Part 2 of the HGCRA 1996 or in the Northern Ireland Order 1997.

(6) "Construction debt" means a debt created by virtue of an obligation to make a construction payment.

(7) "Construction operations" has the same meaning in this section as in Part 2 of the HGCRA 1996 or the Northern Ireland Order 1997.

(8) "Relevant Construction Scheme provision" means (as the case may be)—

(a) the provision of the Scheme for Construction Contracts or the Scheme for Construction Contracts (Scotland) that provides for a final date for payment (for a sum payable under a construction contract) in the circumstances mentioned in section 110(4) of the HGCRA 1996, or

(b) the provision of the Scheme for Construction Contracts in Northern Ireland that provides for a final date for payment (for a sum payable under a construction contract) in the circumstances mentioned in Article 9(4) of the Northern Ireland Order 1997."

9 Further amendments in connection with Chapter 1 of Part 1

(1) On and after the passing of this Act, the Late Payment of Commercial Debts (Interest) Act 1998 may be cited as the Commercial Payments and Interest on Late Payment Act 1998.

(2) Accordingly, for the words "Late Payment of Commercial Debts (Interest) Act 1998" wherever they occur in any enactment (other than this section) substitute "Commercial Payments and Interest on Late Payment Act 1998".

(3) In Schedule 1—

(a) Part 1 makes further amendments of the CPILPA 1998 in connection with provision made by this Chapter;

(b) Part 2 amends other enactments in consequence of the amendments of the CPILPA 1998 made by this Chapter;

(c) Part 3 amends the Procurement Act 2023 in connection with provision made by this Chapter.

10 No application of sections 1 to 8 and Schedule 1 to pre-existing contracts

An amendment made to the CPILPA 1998, the HGCRA 1996 or the Northern Ireland Construction Order 1997 by any provision of sections 1 to 8 or Schedule 1 does not affect contracts entered into before the date on which the provision making the amendment comes into force.

CHAPTER 2

PAYMENTS UNDER CONSTRUCTION CONTRACTS

11 Construction contracts: retentions

In the HGCRA 1996, in Part 2 (construction contracts), after section 113 insert—

"Retentions

113A Retention practices

(1) Sections 113B to 113E concern the practice by which one party to a construction contract ("A") deducts or retains sums of money equating to a percentage of—

(a) the amount payable to another party to the construction contract ("B") for any goods, services or works supplied by B, in accordance with the terms of the construction contract between A and B,

(b) an interim payment payable to B in accordance with the terms of the construction contract between A and B, or

(c) the contract total of the construction contract,

until any condition for release or partial release of the sums to B (whether included in the construction contract or in an agreement relating to sums payable under that contract) is met.

(2) In subsection (1)—

"condition" includes a condition that some or all of the sums are not to be released until one or more of the following occur—

(a) B has met all of its obligations under the construction contract;

(b) B has met specified conditions under the construction contract;

(c) a period set aside for making good any defects has expired;

"contract total" means the total of—

(a) the amount payable to B for any goods, services or works supplied by B, in accordance with the terms of the construction contract, and

(b) any additional sums of money payable to B in accordance with the terms of the construction contract."

12 Ineffective retention clauses

In the HGCRA 1996, after section 113A (inserted by section 11), insert—

“113B Ineffective retention clauses

(1) In this section “retention clause” means a term of a construction contract or related agreement (whether or not in writing) that permits one party to the construction contract to deduct or retain sums of money as described in section 113A(1).

(2) This section applies in relation to—

(a) a retention clause which the parties to a construction contract agree during the transition period (including where the construction contract or related agreement was entered into before the beginning of that period);

(b) a retention clause—

(i) that was entered into by the parties to a construction contract before the beginning of the transition period, and

(ii) to which the parties agree a variation during that period.

(3) On and after the day after the last retention day—

(a) a retention clause in relation to which this section applies is ineffective, and

(b) a term of a construction contract or related agreement is ineffective so far as it provides for the treatment of sums deducted or retained under a retention clause that is ineffective as a result of paragraph (a) (including, but not limited to, a term providing for a mechanism or process for release of such sums, the timing of any such release or conditions to be met before any such release).

(4) Subsections (5) to (9) provide for the treatment, after the last retention day, of any sum which—

(a) was deducted or retained during the period beginning with the first day of the transition period and ending with the last retention day in reliance on a retention clause in relation to which this section applies, and

(b) has not been paid to the payee by the end of the last retention day.

In subsections (5) to (9) such a sum is referred to as a “transitional retained sum”.

(5) The following apply after the last retention day in relation to a transitional retained sum as they apply in relation to any payment provided for by the relevant construction contract—

(a) provision included in that construction contract in compliance with section 110A(1), or (if or to the extent that the contract does not comply with section 110A(1)) the relevant provisions of the Scheme for Construction Contracts (see section 110A(5)),

(b) section 110B, and

(c) section 111.

(6) For the purposes of subsection (5)—

(a) the payment due date for a transitional retained sum is the date given by subsection (7);

(b) the final date for payment for a transitional retained sum is the date given by subsection (8) or (9).

(7) The payment due date for a transitional retained sum is—

(a) the date that is the last day of the period of 30 days beginning with the day after the last retention day, or

(b) such earlier date (after the last retention day) as is agreed by the parties in writing to be the payment due date for the sum.

(8) Where the payer is a public authority, the final date for payment for a transitional retained sum is—

(a) the date that is the last day of the period of 30 days beginning with the day after the payment due date for the sum, or

(b) such earlier date (after the payment due date) as is agreed by the parties in writing to be the final date for payment for the sum.

(9) Where the payer is not a public authority, the final date for payment for a transitional retained sum is—

(a) the date that is the last day of the period of 60 days beginning with the day after the payment due date for the sum, or

(b) such earlier date (after the payment due date) as is agreed by the parties in writing to be the final date for payment for the sum.

(10) In this section—

"the last retention day" means the last day of the period of three years beginning with the day on which this section comes into force;

"public authority" has the same meaning as in the Commercial Payments and Interest on Late Payment Act 1998 (see section 16 of that Act);

"related agreement", in relation to a construction contract, means an agreement relating to sums payable under that contract;

"the relevant construction contract", in relation to a transitional retained sum, means (as the case may be)—

(a) the construction contract containing the retention clause in reliance on which the sum was deducted or retained, or

(b) the construction contract to which the agreement containing that retention clause relates;

"the transition period" means the period of two years beginning with the day on which this section comes into force."

13 Ban on retention clauses

In the HGCRA 1996, after section 113B (inserted by section 12), insert—

"113C Ban on retention clauses

(1) In this section "retention clause" means a term of a construction contract or related agreement (whether or not in writing) that purports to permit one party to the construction contract to deduct or retain sums of money as described in section 113A(1).

(2) This section applies in relation to a retention clause which the parties to a construction contract agree after the end of the transition period (including where the construction contract or related agreement was entered into before that period began or during that period).

(3) A retention clause in relation to which this section applies is void.

(4) A term of a construction contract or related agreement is void so far as it purports to provide for the treatment of sums deducted or retained under a retention clause that is void as a result of subsection (3) (including, but not limited to, a term providing for a mechanism or process for release of such sums, the timing of any such release or conditions to be met before any such release).

(5) In this section—

"related agreement", in relation to a construction contract, means an agreement relating to sums payable under that contract;

"the transition period" means the period of two years beginning with the day on which section 113B comes into force."

14 Ban on variations of pre-existing retention clauses

In the HGCRA 1996, after section 113C (inserted by section 13), insert—

"113D Ban on variations of pre-existing retention clauses

(1) The parties to a construction contract may not, after the end of the transition period, agree a variation of a retention clause or related term that was entered into by the parties before that period began or during that period.

(2) Any such purported variation is void.

(3) But subsections (1) and (2) do not apply in relation to a variation that has the effect of making the retention clause or related term more favourable to the payee than it was before the variation.

(4) In this section—

"related term" means a term of a construction contract or related agreement that provides for the treatment of sums deducted or retained under a retention clause (including, but not limited to, a term providing for a mechanism or process for release of such sums, the timing of any such release or conditions to be met before any such release);

"retention clause" has the meaning given by section 113B(1);

"the transition period" means the period of two years beginning with the day on which section 113B comes into force."

15 Unauthorised retentions: sum payable

In the HGCRA 1996, after section 113D (inserted by section 14), insert—

"113E Unauthorised retentions: sum payable

(1) For the purposes of this section a "retention debt" arises if or to the extent that—

(a) the requirement in section 111(1) applies in relation to a sum but is not complied with, and

(b) the sum is deducted or retained as described in section 113A(1) (retentions).

(2) It is an implied term of a construction contract that, if a retention debt arises after the end of the transition period, the party to whom the debt is due is entitled to recover from the party by whom payment ought to have been made a fixed sum of the amount specified in subsection (3) in relation to the debt.

(3) The amount of the fixed sum is the higher of—

(a) £40;

(b) the sum that is 50% of the retention debt.

(4) A contract term is void so far as it purports to exclude or vary the implied term described in subsection (2).

(5) If the interests of justice require it, the fixed sum under this section may be remitted in whole or part.

(6) A party's entitlement to a fixed sum in accordance with this section is in addition to any entitlement the party has to the following in relation to the retention debt—

(a) statutory interest within the meaning of the Commercial Payments and Interest on Late Payment Act 1998;

(b) any sum mentioned in section 5A of that Act (compensation arising out of late payment).

(7) The implied term described in subsection (2) applies in relation to construction contracts entered into before the transition period began

or during that period (as well as construction contracts entered into after the end of that period).

(8) In this section—

"contract term" means a term of the construction contract or any other contract term binding the parties (or either of them);

"the transition period" means the period of two years beginning with the day on which section 113B comes into force."

16 Regulations in connection with retentions

(1) In the HGCRA 1996, after section 113E (inserted by section 15), insert—

"113F Regulations in connection with retentions

(1) The Secretary of State may by regulations amend any provision of—

(a) section 113A;

(b) section 113B(1);

(c) 113C(1).

(2) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(3) Before making regulations under this section, the Secretary of State—

(a) must obtain the consent of the Scottish Ministers in relation to any provision which—

(i) if it were contained in an Act of the Scottish Parliament, would be within the legislative competence of the Scottish Parliament, and

(ii) is not merely incidental to, or consequential on, provision which would be outside that legislative competence;

(b) must obtain the consent of the Welsh Ministers in relation to any provision which—

(i) if it were contained in an Act of Senedd Cymru, would be within the legislative competence of Senedd Cymru (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006), and

(ii) is not merely incidental to, or consequential on, provision which would be outside that legislative competence.

(4) In subsection (3) "Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975.

(5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

(2) In section 146 (orders, regulations and directions), in subsection (3)(a), after "106A" insert ", 113F(5)".

17 Further amendments in connection with payments under construction contracts

In Schedule 2—

(a) Part 1 makes further amendments of Part 2 of the HGCRA 1996 in connection with payments under construction contracts;

(b) Part 2 makes further amendments of the Northern Ireland Construction Order 1997 in connection with payments under construction contracts.

PART 2

SMALL BUSINESS COMMISSIONER

CHAPTER 1

ADJUDICATION SCHEME

18 Adjudication scheme

After section 2 of the Enterprise Act 2016 insert—

"Adjudication scheme

2A SBC adjudication scheme

(1) The Commissioner must, in accordance with regulations under section 2G, establish, maintain and administer a scheme (in this Part referred to as the "SBC adjudication scheme") under which the Commissioner, or another person appointed by the Commissioner, adjudicates relevant payment disputes.

(2) A small business (but no other type of person) may refer a relevant payment dispute to adjudication under the scheme at any time (subject to any provision of regulations under section 2G of the kind mentioned in subsection (2)(a) of that section (steps required before referral)).

(3) "Relevant payment dispute" means a dispute (including any difference) which is—

(a) about amounts owing to a small business by a larger business under an express or implied term of a contract to which this section applies, and

(b) not excluded from the SBC adjudication scheme (see section 2E).

(4) This section applies to a contract, entered into on or after the commencement date, to which the Commercial Payments and Interest on Late Payment Act 1998 applies (see sections 2 and 12 of that Act).

(5) Any term of such a contract, or any other agreement between parties to such a contract, is void so far as it purports to—
   (a) exclude or restrict the right of a small business to refer a relevant payment dispute to adjudication under the SBC adjudication scheme;
   (b) disapply any provision of this section, section 2B or 2C, or regulations under section 2G, or vary the effect of any such provision.

(6) Subsections (7) and (8) set out the effect of a decision determining a relevant payment dispute under the SBC adjudication scheme.

(7) If, at any time, the parties agree in writing to accept the decision as finally determining the dispute, it has that effect.

(8) In the absence of such agreement, the decision is binding on the parties unless and until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) or by the parties reaching a different agreement in writing.

(9) In subsection (4), the "commencement date" means the date on which this section comes into force.

(10) In subsections (7) and (8), references to the parties are to the parties to the contract to which the relevant payment dispute relates.

2B The adjudication and decision

(1) In adjudicating a relevant payment dispute, the adjudicator must act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting their case and dealing with that of the other party.

(2) The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the dispute.

(3) The adjudicator must decide the amounts that the larger business owes to the small business in accordance with the law which applies in relation to the contract to which the dispute relates.

(4) If the adjudicator decides that an amount is owed, the decision must set out how and by when, or over what period, payment must be made.

(5) The adjudicator must give written reasons for the decision.

(6) Paragraph 17 of Schedule 1 (exemption from liability in damages) applies in relation to a person appointed by the Commissioner to adjudicate a relevant payment dispute in relation to the exercise, or purported exercise, of their functions in adjudicating the dispute as it

applies to the persons mentioned in that paragraph in relation to the exercise or purported exercise of their functions.

2C Enforcement of adjudicator's decision

(1) An amount payable to a small business in accordance with an adjudicator's decision is recoverable—

(a) in England and Wales, as if it were payable under an order of the county court;

(b) in Scotland, in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland;

(c) in Northern Ireland, as if it were payable under an order of a county court.

(2) Subsection (3) applies where a small business brings legal proceedings to recover an amount payable by a larger business in accordance with an adjudicator's decision and the larger business seeks to challenge the decision in those proceedings.

(3) The decision may be challenged on the following grounds only—

(a) the decision was in excess of the adjudicator's jurisdiction;

(b) the decision was reached in such a procedurally defective way as amounts to a fundamental breach of natural justice;

(c) to enforce the decision would assist in the perpetration of a fraud.

2D Power to decline to adjudicate dispute

(1) The Commissioner may decline to adjudicate a relevant payment dispute if the Commissioner considers that any of the grounds in subsection (2) apply in relation to the dispute.

(2) The grounds are—

(a) that the referral is frivolous or vexatious;

(b) that the dispute—

(i) has previously been referred to adjudication under the SBC adjudication scheme;

(ii) is part of a wider dispute and cannot be resolved separately;

(iii) involves a point of law that would be better determined by a court or tribunal;

(iv) is the subject of ongoing legal proceedings;

(c) that the small business that referred the dispute—

(i) has not suffered, and is not likely to suffer, any loss as a result of the matter under dispute;

(ii) is seeking a decision which the Commissioner does not have power to make;

(d) any other ground specified in regulations under section 2G.

(3) The Commissioner may decline to adjudicate a relevant payment dispute at any time before a decision is given determining the dispute.

(4) In this section, references to the Commissioner include a person appointed by the Commissioner to adjudicate a relevant payment dispute.

2E Excluded disputes

(1) A dispute is excluded from the SBC adjudication scheme if the dispute—

(a) has been finally determined by a court or tribunal or by arbitration;

(b) falls within the jurisdiction of an ombudsman, regulator or public authority (other than the Commissioner, a court or tribunal);

(c) is a dispute which the small business that could refer the dispute to the scheme has a statutory right to refer to another person for adjudication or arbitration (other than a court or tribunal);

(d) is about the appropriateness of the contract price (absent any dispute about a breach of contract);

(e) is of a description specified in regulations under section 2G.

(2) In subsection (1)(a), the reference to a dispute having been finally determined by a court or tribunal is to it having been finally determined ignoring any possibility of an appeal.

(3) In subsection (1)(d), "contract price" has the same meaning as in the Commercial Payments and Interest on Late Payment Act 1998 (see section 16 of that Act).

2F Use of information

(1) Information given to the Commissioner for the purposes of, or in connection with, the adjudication of a relevant payment dispute (including information given to the Commissioner following a request under subsection (2)), may be used by the Commissioner for the purposes of, or in connection with, the exercise of any of the Commissioner's functions under this Part or any other enactment (and see section 8 of this Act and Part 9 of the Enterprise Act 2002 for provision about the disclosure of such information).

(2) The Commissioner may request that a person appointed by the Commissioner to adjudicate a relevant payment dispute gives the Commissioner specified information in relation to that dispute.

(3) In subsection (2) "specified" means—
(a) specified, or described, in the Commissioner's request, or
(b) falling within a category that is specified, or described, in the request.

2G Regulations about the SBC adjudication scheme

(1) The Secretary of State may by regulations make further provision about the SBC adjudication scheme.

(2) The regulations may, among other things—
(a) require a small business to take steps in relation to a relevant payment dispute before the business may refer the dispute to adjudication;
(b) specify grounds for the purposes of section 2D (grounds for declining to adjudicate dispute);
(c) specify descriptions of dispute for the purposes of section 2E (excluded disputes);
(d) restrict the onward disclosure of information and documents provided in connection with an adjudication;
(e) impose time limits in relation to the referral of a dispute and at each stage of an adjudication;
(f) permit such time limits to be extended in specified circumstances;
(g) permit an adjudicator to—
(i) direct parties to provide evidence or submissions;
(ii) meet and question parties;
(iii) hold hearings;
(iv) appoint experts, assessors or legal advisers;
(v) proceed with an adjudication in the absence of a party or in the absence of evidence or submissions from a party;
(vi) draw such inferences as the adjudicator considers appropriate from any failure by a party to comply with a direction given by the adjudicator;
(vii) give any other direction or take any other step that the adjudicator considers appropriate to enable the fair adjudication of the dispute;
(h) permit the adjudication of related disputes together;
(i) permit the Commissioner to recover costs incurred in connection with an adjudication.

(3) Regulations under subsection (1) may not permit the Commissioner to recover costs as mentioned in subsection (2)(i) from the small business that referred the dispute to adjudication unless the Commissioner considers that the referral was frivolous or vexatious.

(4) Before making regulations under subsection (1), the Secretary of State must consult the Commissioner and such other persons as the Secretary of State considers appropriate."

CHAPTER 2

INVESTIGATIONS INTO PAYMENT PRACTICES

19 Investigations into payment practices

(1) After section 2G of the Enterprise Act 2016 (inserted by section 18), insert—

"Investigations into payment practices

2H Investigations into payment practices

(1) The Commissioner may investigate the payment practices of a larger business in accordance with this section, sections 2I to 2O and regulations under section 2P.

(2) The Commissioner may carry out an investigation if the Commissioner has reasonable grounds to suspect that the larger business has persistently engaged in poor payment practices.

(3) A larger business engages in poor payment practices if it does any of the following—

(a) fails to pay the whole or any part of a contract price on time;

(b) fails to pay a sum which it owes by virtue of the Commercial Payments and Interest on Late Payment Act 1998;

(c) enters into a contract that includes terms which are void as a result of any of sections 2B to 2D or 6A of that Act;

(d) engages in payment practices which seek to circumvent the payment terms required by any of sections 2B to 2D or which seek to circumvent any other requirement of that Act;

(e) fails to publish information that it is required to publish by regulations under section 3 of the Small Business, Enterprise and Employment Act 2015 (companies: duty to publish report on payment practices and performance).

(4) A larger business "persistently" engages in poor payment practices if the larger business engages in them on a sufficient number of occasions for it to represent a pattern of behaviour.

(5) In deciding whether to carry out an investigation, the Commissioner must consider—

(a) the extent and impact of the suspected poor payment practices,

(b) the resources that would be needed to carry out the investigation, and

(c) in all the circumstances, whether it would be proportionate to carry out the investigation.

(6) In subsection (3)(a)—

(a) "contract price" has the same meaning as in the Commercial Payments and Interest on Late Payment Act 1998 (see section 16 of that Act), and

(b) the reference to failing to pay on time is to failing to pay by a time required by the terms of a contract (including terms implied into the contract by section 2B or 2D of that Act).

(7) An investigation may be carried out only in relation to behaviour occurring after this section comes into force (but the Commissioner may investigate such behaviour even if it relates to a contract entered into before this section comes into force).

2I Announcement of investigation

(1) If the Commissioner decides to carry out an investigation, the Commissioner may publish a notice which (among other things) may—

(a) state the Commissioner's decision to carry out the investigation,

(b) identify the larger business which is the subject of the investigation, and

(c) indicate a timetable for the investigation.

(2) Before publishing a notice under subsection (1) which identifies the larger business, the Commissioner must—

(a) notify the larger business that it is the subject of an investigation and will be identified in the notice, and

(b) give the larger business an opportunity to make representations about the intended publication of the notice.

(3) If the Commissioner decides to close an investigation after publishing a notice under subsection (1) identifying a larger business, the Commissioner must publish a notice confirming that the investigation is to be closed.

2J Recommendations, directions and financial penalties

(1) Subsections (3) to (6) set out the steps which the Commissioner may take following an investigation into the payment practices of a larger business.

(2) The Commissioner may take one or more of the steps or none of them.

(3) The Commissioner may make recommendations to the larger business about its payment practices.

(4) Where the Commissioner is satisfied that the larger business has persistently engaged in poor payment practices, the Commissioner may give a publication direction (see section 2K).

(5) Where the Commissioner is satisfied that the larger business has persistently engaged in poor payment practices, the Commissioner may give an enforcement direction (see section 2L).

(6) Where the Commissioner is satisfied beyond reasonable doubt that the larger business has persistently engaged in poor payment practices mentioned in any of paragraphs (a) to (d) of section 2H(3), the Commissioner may impose a financial penalty on the business.

(7) Schedule 1A makes further provision about financial penalties under subsection (6).

(8) In deciding which steps (if any) to take, the Commissioner must consider—
  (a) the extent and impact of the poor payment practices which the larger business has engaged in,
  (b) whether the steps are likely to—
    (i) result in the larger business ceasing to engage in poor payment practices, or
    (ii) deter other larger businesses from engaging in poor payment practices, and
  (c) in all the circumstances, which steps (if any) it would be proportionate to take.

(9) Before giving a publication direction or an enforcement direction to a larger business the Commissioner must give the business an opportunity to make representations about the proposed direction.

2K Publication directions

(1) A "publication direction" is a direction to a larger business to publish information about its payment practices (including poor payment practices), payment performance, or the investigation following which the direction is given.

(2) A publication direction must—
  (a) be in writing,
  (b) set out the reasons why it has been given,
  (c) specify the period for compliance, and
  (d) give information about the consequences of non-compliance.

(3) The Commissioner must monitor compliance with a publication direction.

(4) The Commissioner may vary or revoke a publication direction.

(5) The Commissioner may enforce a publication direction by bringing civil proceedings to obtain—
  (a) in England and Wales or Northern Ireland, an injunction or any other appropriate remedy or relief; or

(b) in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988 or any other appropriate remedy or relief.

2L Enforcement directions and financial penalties for non-compliance

(1) An "enforcement direction" is a direction to a larger business to do, or stop doing, something in connection with its poor payment practices.

(2) An enforcement direction may, for example, require a larger business to—

(a) amend its standard terms for future contracts;

(b) stop entering into contracts on particular terms;

(c) retract misleading information that it has published about its payment practices or payment performance;

(d) give information about the investigation and any findings the Commissioner has made to persons that the larger business has entered into contracts with;

(e) ensure that its staff receive training about legal requirements relating to payment practices;

(f) arrange for another person to review and make recommendations about its payment practices.

(3) An enforcement direction may not require a larger business to—

(a) publish information,

(b) make a payment, or

(c) comply with a decision given in legal proceedings or adjudication or arbitration proceedings.

(4) An enforcement direction must—

(a) be in writing,

(b) set out the reasons why it has been given,

(c) specify the period for compliance, and

(d) give information about the consequences of non-compliance.

(5) The Commissioner must monitor compliance with an enforcement direction.

(6) The Commissioner may vary or revoke an enforcement direction.

(7) The Commissioner may impose a financial penalty on a larger business where the Commissioner is satisfied beyond reasonable doubt that the business has failed, without reasonable excuse, to comply with an enforcement direction before the end of the period specified in the direction.

(8) Schedule 1A makes further provision about financial penalties under subsection (7).

2M Investigation report

(1) The Commissioner must publish a report on the outcome of an investigation.

(2) The report must, in particular, set out—
   (a) any findings that the Commissioner has made,
   (b) any steps that the Commissioner has taken under section 2J, and
   (c) the reasons for the findings and any steps taken.

(3) It is not necessary for the report to identify the larger business which was the subject of the investigation.

(4) If the larger business is to be identified in the report, the larger business must be given an opportunity to comment on a draft of the report before it is published.

2N Powers to require information

(1) The Commissioner may, for any of the purposes mentioned in subsection (2), require a person to provide specified information in the person's possession or control.

(2) The purposes referred to in subsection (1) are—
   (a) deciding whether to carry out an investigation;
   (b) carrying out an investigation;
   (c) monitoring compliance with a publication direction;
   (d) monitoring compliance with an enforcement direction.

(3) A requirement under subsection (1) is imposed by giving a written notice (an "information notice") setting out—
   (a) how, where and when, or the time by which, the specified information is to be provided;
   (b) the consequences of failing to comply with the notice.

(4) A requirement imposed on a person under subsection (1) may include a requirement for the person—
   (a) to provide information orally;
   (b) to take copies of, or extracts from, information;
   (c) to collect or retain information that the person would not otherwise collect or retain.

(5) If an information notice requires a person to attend at a particular place the Commissioner must offer to pay necessary travelling expenses.

(6) It is an offence for a person to fail to comply with an information notice.

(7) It is a defence for a person charged with an offence under subsection (6) to show that there was a reasonable excuse for the failure to comply.

(8) For the purposes of subsection (7), if evidence is adduced which is sufficient to raise an issue with respect to the defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(9) It is an offence for a person knowingly to provide false information in response to an information notice.

(10) A person who commits an offence under this section is liable—
  (a) on summary conviction in England and Wales, to a fine;
  (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
  (c) on conviction on indictment, to a fine.

(11) A person may not be required under subsection (1) to do anything that the person could not be compelled to do in civil proceedings before—
  (a) the High Court in England and Wales or Northern Ireland, or
  (b) the Court of Session in Scotland.

(12) In this section—
  "information" includes documents;
  "specified" means—
    (a) specified, or described, in an information notice, or
    (b) falling within a category that is specified, or described, in an information notice.

2O Extension of liability for offences under section 2N

(1) Subsection (2) applies where an offence under section 2N is committed by a person who is not an individual ("the body") with the consent or connivance of—
  (a) a relevant individual in relation to the body, or
  (b) an individual purporting to act in the capacity of a relevant individual in relation to the body.

(2) That individual as well as the body commits the offence and is liable to be proceeded against and punished accordingly.

(3) In this section, "relevant individual" means—
  (a) in relation to a body corporate other than one whose affairs are managed by its members, a director, manager, secretary or other similar officer of the body;

(b) in relation to a limited liability partnership or other body corporate whose affairs are managed by its members, a member who exercises functions of management with respect to it;

(c) in relation to a limited partnership, a general partner (within the meaning given by section 3 of the Limited Partnerships Act 1907);

(d) in relation to any other partnership, a partner;

(e) in relation to an unincorporated association, a person who exercises functions of management with respect to it.

2P Regulations about investigations

(1) The Secretary of State may by regulations make further provision about—

(a) investigations (including the decision whether or not to carry out an investigation);

(b) recommendations under section 2J(3);

(c) publication directions and enforcement directions;

(d) reports under section 2M;

(e) the power to require information under section 2N.

(2) Regulations under subsection (1) may permit the Commissioner to recover the costs of an investigation from a larger business where the Commissioner is satisfied, following the investigation, that the larger business has persistently engaged in poor payment practices.

(3) In subsection (2), the reference to the costs of an investigation includes the costs of—

(a) any steps taken following the investigation under section 2J,

(b) monitoring a direction given under that section,

(c) imposing a financial penalty for breach of an enforcement direction, and

(d) publishing a report on the outcome of the investigation under section 2M,

and includes administration costs and the costs of obtaining legal advice in connection with the investigation (including in connection with any of the matters mentioned in paragraphs (a) to (d)).

(4) Before making regulations under subsection (1), the Secretary of State must consult the Commissioner and such other persons as the Secretary of State considers appropriate.”

(2) Schedule 3 to this Act inserts Schedule 1A (financial penalties) into the Enterprise Act 2016.

CHAPTER 3

OTHER AMENDMENTS RELATING TO THE COMMISSIONER

20 General advice and information

For section 3 of the Enterprise Act 2016 substitute—

“3 General advice and information

(1) The Commissioner may publish, or give to businesses, general advice or information about matters relating to—

(a) transactions between businesses;

(b) transactions between businesses and public authorities.

(2) General advice or information published or given under subsection (1) may include general advice or information about—

(a) principles of the law of contract;

(b) other sources of rights and obligations;

(c) compliance with legal obligations;

(d) voluntary schemes offered by the Commissioner;

(e) available training (see section 3A);

(f) the resolution of disputes;

(g) other persons who may be able to provide advice, information or assistance to businesses.

(3) The powers conferred on the Commissioner by this section to publish or give general advice or information may be exercised by making arrangements with any other person in accordance with which that person publishes or provides that advice or information.

(4) The Commissioner may make recommendations to the Secretary of State about the publication, or provision to businesses, by the Secretary of State of advice or information of a kind which the Commissioner is authorised to publish or give under this section.

(5) Where a recommendation is made under subsection (4), the Secretary of State must inform the Commissioner whether anything is to be done in response to the recommendation and, if it is, give details of the action to be taken.”

21 Training

After section 3 of the Enterprise Act 2016 insert—

“Training

3A Training

(1) At the request of a business, the Commissioner may—

(a) prepare and deliver training about the matters mentioned in section 3(1);

(b) arrange for another person to prepare and deliver training about such matters.

(2) The Commissioner may charge a fee for preparing and delivering training."

22 Transfer of functions

After section 12 of the Enterprise Act 2016 insert—

"Transfer of functions

12A Transfer of functions

(1) The Secretary of State may by regulations transfer some or all of the Commissioner's functions to—

(a) the Secretary of State, or

(b) a body exercising public functions (prior to any transfer of functions under this section).

(2) If regulations under subsection (1) transfer all of the Commissioner's functions, the regulations may also abolish the office of Small Business Commissioner.

(3) Before making regulations under subsection (1), the Secretary of State must consult—

(a) the Commissioner, and

(b) such other persons as the Secretary of State considers appropriate.

(4) Regulations under subsection (1) may amend or repeal this Part or any provision made by or under any other enactment, whether passed or made before or after this Act, for the purpose of—

(a) giving effect to a transfer of functions;

(b) giving effect to the abolition of the office of Small Business Commissioner.

(5) In this section, "public function" means a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

12B Transfer schemes

(1) The Secretary of State may, in connection with regulations under section 11 (abolition of the office of Small Business Commissioner following review), make one or more schemes for the transfer of property, rights and liabilities (a "transfer scheme") between the Commissioner and the Secretary of State.

(2) The Secretary of State may, in connection with regulations under section 12A(1) (transfer of Commissioner's functions), make one or more schemes for the transfer of property, rights and liabilities (a "transfer scheme") between the Commissioner and—

(a) a person to whom some or all of the Commissioner's functions are being transferred;

(b) the Secretary of State.

(3) The things that may be transferred under a transfer scheme include—

(a) property, rights and liabilities that could not otherwise be transferred;

(b) property acquired, and rights and liabilities arising, after the making of the scheme.

(4) A transfer scheme may, in particular—

(a) create rights, or impose liabilities, in relation to property or rights transferred;

(b) make provision about the continuing effect of things done by, on behalf of, or in relation to, the Commissioner in respect of anything transferred;

(c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of, or in relation to, the Commissioner in respect of anything transferred;

(d) make provision for references to the Commissioner in an instrument or other document in respect of anything transferred to be treated as references to the transferee;

(e) make provision for the shared ownership or use of property;

(f) make provision which is the same as or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246);

(g) make supplementary, incidental, transitional or consequential provision.

(5) A transfer scheme may provide—

(a) for modifications by agreement;

(b) for modifications to have effect from the date when the original scheme came into effect.

(6) For the purposes of subsections (3) and (4)—

(a) references to rights and liabilities include rights and liabilities relating to a contract of employment;

(b) references to the transfer of property include the grant of a lease.

(7) For the purposes of subsection (6)—

(a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and

(b) the terms of the individual's employment in the civil service are to be treated as constituting the terms of the contract of employment."

23 Part 1 of Enterprise Act 2016: Crown application

After section 12B of the Enterprise Act 2016 (inserted by section 22), insert—

"Duchy of Lancaster and Duchy of Cornwall

12C Duchy of Lancaster and Duchy of Cornwall

(1) Subject to subsection (3), any reference in this Part to a business includes a reference to a Duchy business.

(2) A "Duchy business" means—

(a) a business in which His Majesty has an interest in right of the Duchy of Lancaster;

(b) a business in which the Duke of Cornwall (or the possessor for the time being of the Duchy of Cornwall) has an interest in right of the Duchy of Cornwall.

(3) References to a larger business in sections 2H to 2P do not include references to a Duchy business."

CHAPTER 4

ENFORCEMENT OF DUTY TO PUBLISH REPORT ON PAYMENT PRACTICES AND PERFORMANCE

24 Enforcement of duty to publish report on payment practices and performance

(1) The Small Business, Enterprise and Employment Act 2015 is amended as follows.

(2) In section 3 (companies: duty to publish report on payment practices and performance)—

(a) after subsection (7) insert—

"(7A) See section 3A for further provision that may be made by regulations under this section.";

(b) after subsection (8) insert—

"(8A) Before making regulations under this section that make provision described in section 3A, the Secretary of State must consult the Small Business Commissioner (see section 1 of the Enterprise Act 2016).

(8B) Before making regulations under this section that make provision described in section 3A, the Secretary of State must obtain the consent of the Department for the Economy in Northern Ireland in relation to any provision which—

(a) deals with a transferred matter, and

(b) is not ancillary to other provisions dealing with excepted or reserved matters.

(8C) In subsection (8B)—

"ancillary" has the meaning given by section 6(3) of the Northern Ireland Act 1998;

"deals with" is to be read in accordance with section 98(2) and (3) of that Act;

"excepted matter", "reserved matter" and "transferred matter" have the meanings given by section 4(1) of that Act."

(3) After section 3 (under the italic heading "Business payment practices") insert—

"3A Regulations under section 3: supplementary

(1) Regulations under section 3 may make provision—

(a) enabling the Small Business Commissioner ("the Commissioner") to impose a financial penalty on a company (in the form of a single penalty or daily penalties, or a combination of the two) where the Commissioner is satisfied beyond reasonable doubt of a prescribed breach of a prescribed section 3 requirement;

(b) enabling the Commissioner to enforce a prescribed section 3 requirement by bringing civil proceedings against a company to obtain—

(i) in England and Wales or Northern Ireland, an injunction or any other appropriate remedy or relief;

(ii) in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988 or any other appropriate remedy or relief.

(2) Regulations which make provision described in subsection (1)(a)—

(a) must specify the criteria which the Commissioner must consider in determining—

(i) whether to impose a financial penalty under the regulations, and

(ii) the amount of any such penalty;

(b) must prohibit the imposition of a financial penalty of an amount exceeding—

(i) in the case of a single penalty, an amount equal to 1% of the company's annual turnover in the United Kingdom;

(ii) in the case of daily penalties, a daily amount equal to 1% of the company's daily turnover in the United Kingdom;

(c) must make further provision for determining a company's turnover in the United Kingdom for the purposes of paragraph (b);

(d) must secure the results in subsection (3) (procedure for notices);

(e) must confer on a company required to pay a financial penalty the right to appeal against the decision to impose it or its amount to the High Court or (in Scotland) the Court of Session, by way of a re-hearing of the Commissioner's decision;

(f) must require financial penalties received by the Commissioner to be paid into the Consolidated Fund;

(g) may include provision for the enforcement of a financial penalty, including by providing for a penalty to be recoverable as if payable under a court order;

(h) may include provision for the Commissioner, by notice, to require a company to pay the costs incurred by the Commissioner in relation to the imposition of the financial penalty on the company, up to the time of its imposition (which may include administration and investigation costs and the costs of obtaining legal advice).

(3) The results mentioned in subsection (2)(d) are that—

(a) a financial penalty is imposed on a company by giving the company a notice (a "penalty notice");

(b) the amount of a financial penalty may not exceed the amount specified in the enforcement notice given in respect of the breach (see paragraph (d));

(c) a penalty notice is to specify—

(i) the breach in respect of which the penalty is imposed,

(ii) how payment may be made,

(iii) the period within which payment may be made, and

(iv) the right to appeal against the penalty;

(d) a financial penalty may be imposed on a company only if—

(i) the company has been given a notice (an "enforcement notice") stating that the Commissioner has decided to impose a specified financial penalty on the company in respect of a specified breach of a section 3 requirement if the breach is not remedied within a specified period (which must be at least 7 days), and

(ii) the period has elapsed without the breach being remedied;

(e) the Commissioner may cancel an enforcement notice after it has been given;

(f) an enforcement notice may be given to a company only if—

(i) the company has been given a notice (a "warning notice") stating that the Commissioner suspects that a specified breach of a section 3 requirement has occurred and is considering imposing a financial penalty in respect of the breach,

(ii) the company has been given the opportunity to make representations about the suspected breach and possible financial penalty within a specified period (which must be at least 14 days), and

(iii) the Commissioner has considered any representations made.

(4) Regulations which make provision described in section 3(7) (offences) and subsection (1)(a) of this section must secure the following results—

(a) where a financial penalty has been imposed on a company under the regulations in respect of an act or omission constituting an offence under the regulations, no proceedings may be brought against the company for the offence;

(b) a financial penalty may not be imposed on a company under the regulations in respect of an act or omission constituting an offence under the regulations if—

(i) the company has been convicted of the offence,

(ii) proceedings have been instituted against the company for the offence but have not concluded, or

(iii) proceedings against the company for the offence have concluded and the company has not been convicted of the offence.

(5) In this section—

"company" has the same meaning as in section 3;

"prescribed" means prescribed by regulations under section 3;

"section 3 requirement" means a requirement imposed by regulations under section 3."

CHAPTER 5

PART 2: CONSEQUENTIAL ETC AMENDMENTS

25 Consequential etc amendments in connection with Part 2

In Schedule 4—

(a) Part 1 makes consequential and further amendments of Part 1 of the Enterprise Act 2016 (the Small Business Commissioner) in connection with provision made by this Part;

(b) Part 2 amends other enactments in connection with provision made by this Part.

PART 3

GENERAL PROVISION

26 Amendment of Government of Wales Act 2006

In Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru), in paragraph 9(8)(b) (exceptions to restrictions relating to reserved authorities), insert the following in the appropriate place (in other words, so that the Acts specified in paragraph 9(8)(b) are in chronological order)—

> "Part 2 of the Housing Grants, Construction and Regeneration Act 1996;";
>
> "the Commercial Payments and Interest on Late Payment Act 1998;";
>
> "Part 1 of the Enterprise Act 2016;".

27 Crown application

The amendments made by Parts 1 and 2 bind the Crown to the extent that the provisions amended bind the Crown.

28 Power to make consequential provision

(1) The Secretary of State or the Chancellor of the Duchy of Lancaster may by regulations make provision that is consequential on any provision made by this Act.

(2) Regulations under this section—
- (a) may make different provision for different purposes;
- (b) may include transitional, transitory or saving provision;
- (c) may amend, repeal or revoke any provision made by primary legislation that is passed or made before the end of the Session in which this Act is passed.

(3) Regulations under this section are to be made by statutory instrument.

(4) A statutory instrument containing (whether alone or with other provision) regulations under this section that amend, repeal or revoke primary legislation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(5) A statutory instrument containing regulations under this section that do not amend, repeal or revoke primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this section "primary legislation" means—
- (a) an Act of Parliament;
- (b) an Act of the Scottish Parliament;
- (c) a Measure or Act of Senedd Cymru;

(d) Northern Ireland legislation.

29 Interpretation

In this Act—

"the CPILPA 1998" means the Commercial Payments and Interest on Late Payment Act 1998 (see section 9(1) for the re-naming of the Late Payment of Commercial Debts (Interest) Act 1998);

"the HGCRA 1996" means the Housing Grants, Construction and Regeneration Act 1996;

"the Northern Ireland Construction Order 1997" means the Construction Contracts (Northern Ireland) Order 1997 (S.I. 1997/274 (N.I. 1)).

30 Extent

(1) This Act extends to England and Wales, Scotland and Northern Ireland, subject as follows.

(2) The following provisions extend to England and Wales and Scotland only—

(a) section 2(2) to (4);

(b) sections 11 to 16;

(c) Part 1 of Schedule 2.

(3) The following provisions extend to Northern Ireland only—

(a) section 2(5) to (7);

(b) Part 2 of Schedule 2.

(4) An amendment or revocation made by Part 2 of Schedule 1 has the same extent as the enactment amended or revoked.

31 Commencement and transitional and saving provision

(1) Except as provided by subsections (2) and (3), this Act comes into force on such day as the Secretary of State may by regulations appoint.

(2) The following provisions come into force on the day on which this Act is passed—

(a) sections 1 to 3 so far as those sections insert provisions of the CPILPA 1998 which confer power to make regulations;

(b) section 9(1) and (2);

(c) paragraph 10 of Schedule 1;

(d) section 10;

(e) paragraphs 6 and 11 of Schedule 2;

(f) sections 18 and 19 so far as those sections insert provisions of the Enterprise Act 2016 which confer power to make regulations;

(g) Schedule 3 so far as it inserts paragraph 8 of Schedule 1A to the Enterprise Act 2016;

(h) section 24;

(i) paragraphs 8, 11 and 12 of Schedule 4;
(j) this Part.

(3) Sections 13, 14 and 15 come into force on the day after the last day of the period of two years beginning with the day on which sections 11 and 12 come into force.

(4) The power to make regulations under subsection (1) includes power to appoint different days for different purposes.

(5) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.

(6) The power to make regulations under subsection (5) includes power to make different provision for different purposes.

(7) Regulations under this section are to be made by statutory instrument.

32 Short title

This Act may be cited as the Commercial Payments Act 2026.

SCHEDULES

SCHEDULE 1

Section 9(3)

CHAPTER 1 OF PART 1: FURTHER AMENDMENTS

PART 1

COMMERCIAL PAYMENTS AND INTEREST ON LATE PAYMENT ACT 1998

1 The CPILPA 1998 is amended in accordance with this Part of this Schedule.

2 For the heading of Part 1, substitute "SCOPE OF THIS ACT".

3 Omit section 1 (statutory interest).

4 In section 2 (contracts to which Act applies)—

(a) after subsection (5) insert—

"(5A) This Act applies to—

(a) a contract entered into by or on behalf of His Majesty in right of the Crown or of the Duchy of Lancaster;

(b) a contract entered into on behalf of the Duchy of Cornwall.";

(b) in subsection (7)—

(i) omit the definition of "business";

(ii) omit the definition of "government department".

5 In section 3 (qualifying debts), in subsection (2), for "section 1" substitute "section 2F".

6 (1) Section 5A (compensation arising out of late payment) is amended as follows.

(2) In subsection (3), for "section 1(1)" substitute "section 2F(1)".

(3) After subsection (3) insert—

"(3A) A contract term is void so far as it purports to exclude or vary the terms described in subsections (1) to (2A).

(3B) In subsection (3A) "contract term" means a term of the contract creating the debt or any other contract term binding the parties (or either of them)."

(4) Omit both versions of subsections (4) and (5) (as those subsections extend to England and Wales and Northern Ireland, and as they extend to Scotland).

7 In section 11 (advance payments), in subsection (2), for "section" substitute "Act".

8 (1) Section 13 (assignments etc) is amended as follows.

(2) Before subsection (1) insert—

"(A1) The operation of this Act in relation to a payment of the whole or any part of the contract price under a contract to which this Act applies is not affected by any change in the identity of the parties to the contract."

(3) In subsection (2), after "to the supplier or the purchaser" insert ", except in section 2E,".

9 Omit section 14 (contract terms relating to the date for payment of the contract price).

10 For section 15 (orders and regulations) substitute—

"15 Orders and regulations

(1) A power to make regulations under this Act includes power to make supplementary, incidental, transitional, transitory or saving provision.

(2) Regulations under this Act may make different provision for different purposes.

(3) Before making regulations under—

(a) section 2B(7)(b),

(b) section 2D(7)(b),

(c) section 2E(4), or

(d) section 2E(7),

the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(4) A power to make an order or regulations under this Act is exercisable by statutory instrument.

(5) A statutory instrument containing—

(a) an order under section 6, or

(b) regulations under section 17(3),

is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) A statutory instrument containing regulations under a provision specified in subsection (3) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(7) Before making regulations under a provision specified in subsection (3), the Secretary of State—

(a) must obtain the consent of the Scottish Ministers in relation to any provision which—

(i) if it were contained in an Act of the Scottish Parliament, would be within the legislative competence of the Scottish Parliament, and

(ii) is not merely incidental to, or consequential on, provision which would be outside that legislative competence;

(b) must obtain the consent of the Welsh Ministers in relation to any provision which—

(i) if it were contained in an Act of Senedd Cymru, would be within the legislative competence of Senedd Cymru (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006), and

(ii) is not merely incidental to, or consequential on, provision which would be outside that legislative competence;

(c) must obtain the consent of the Department for the Economy in Northern Ireland in relation to any provision which—

(i) deals with a transferred matter, and

(ii) is not ancillary to other provisions dealing with excepted or reserved matters.

(8) In subsection (7)—

"ancillary" has the meaning given by section 6(3) of the Northern Ireland Act 1998;

"deals with" is to be read in accordance with section 98(2) and (3) of that Act;

"excepted matter", "reserved matter" and "transferred matter" have the meanings given by section 4(1) of that Act;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975."

11 (1) Section 16 (interpretation) is amended as follows.

(2) In subsection (1)—

(a) before the definition of "contract for the supply of goods or services" insert—

""advance payment" has the meaning given by section 11(2);";

(b) after the definition inserted by paragraph (a), insert—

""business" includes a profession and the activities of any public authority;";

(c) after the definition of "contract price" insert—

""enactment" includes—

(a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

(c) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru, and

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;";

(d) after the definition of "qualifying debt" insert—

""relevant payment" has the meaning given by section 2B(10);";

(e) in the definition of "statutory interest", for "section 1(1)" substitute "section 2F(1)".

(3) After subsection (1) insert—

"(1A) In this Act, "public authority" has the same meaning as in the Procurement Act 2023 (see, in particular, section 2(2) to (4) of that Act), subject to the following—

(a) the Advanced Research and Invention Agency, and any person that is subject to public authority oversight by reference to that Agency, is not a public authority for the purposes of this Act;

(b) the Common Council of the City of London is a public authority for the purposes of this Act only in relation to that body's functions as a local authority, police authority or port health authority."

(4) After subsection (1A) (inserted by sub-paragraph (3)), insert—

"(1B) In this Act—

(a) a reference to a contract to which section 68 or 88 of the Procurement Act 2023 applies includes a contract into which the terms in section 68(2) to (5) or section 88(2) to (5) of that Act are (to any extent) implied as a result of section 68A, 73, 88A or 88C of that Act (sub-contracts etc);

(b) a reference to a term in subsection (2) or (3) of section 68 or 88 of that Act includes a reference to the term—

(i) as implied into a contract by any of the sections mentioned in paragraph (a);

(ii) as modified by section 73 or 88C of that Act;

(c) a reference to a contract to which section 68A or 88A of that Act applies includes a public construction sub-contract within the meaning of section 73 of that Act and a regulated below-threshold construction sub-contract within the meaning of section 88C of that Act;

(d) a reference to the term in section 68A(3) or 88A(3) of that Act includes a reference to the term as implied into a contract by section 73 or 88C of that Act."

(5) In subsection (2), after "Act" insert ", unless the context otherwise requires,".

PART 2

CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

Enactments amending section 2 of the CPILPA 1998

12 Omit paragraph 132 of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).

Enactments amending section 4 of the CPILPA 1998

13 The following are revoked—

(a) regulation 2 of the Late Payment of Commercial Debts (Scotland) Regulations 2013 (S.S.I. 2013/77);

(b) the Late Payment of Commercial Debts (Scotland) (No. 2) Regulations 2013 (S.S.I. 2013/131);

(c) regulation 2 of the Late Payment of Commercial Debts Regulations 2013 (S.I. 2013/395);

(d) the Late Payment of Commercial Debts (No. 2) Regulations 2013 (S.I. 2013/908);

(e) the Late Payment of Commercial Debts (Scotland) Regulations 2015 (S.S.I. 2015/226);

(f) paragraph 1 of Schedule 6 to the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446);

(g) the Late Payment of Commercial Debts (Amendment) Regulations 2015 (S.I. 2015/1336);

(h) regulation 4 of the Procurement Act 2023 (Consequential and Other Amendments) Regulations 2025 (S.I. 2025/163).

Enactments amending section 5A of the CPILPA 1998

14 Omit the following—

(a) regulation 3(4) of the Late Payment of Commercial Debts (Scotland) Regulations 2013 (S.S.I. 2013/77);

(b) regulation 3(4) of the Late Payment of Commercial Debts Regulations 2013 (S.I. 2013/395).

Other enactments

15 In the Income Tax Act 2007, in section 888 (statutory interest), for "section 1(1)" substitute "section 2F(1)".

PART 3

PROCUREMENT ACT 2023

16 The Procurement Act 2023 is amended in accordance with this Part of this Schedule.

17 (1) Section 68 (implied payment terms in public contracts) is amended as follows.

(2) In subsection (1)—

(a) omit the "or" at the end of paragraph (b);

(b) at the end of paragraph (c) insert ", or

(d) a relevant construction contract within the meaning of section 68A (but this paragraph is subject to subsection (7)(b) of that section, which provides for this section to apply if and to the extent that any sums due under a relevant construction contract are not construction payments)."

(3) For subsection (2) substitute—

"(2) Any sum due to be paid under the public contract by the contracting authority must be paid before the end of the period of 30 days beginning with the day on which an invoice is received by the contracting authority in respect of the sum."

(4) Omit subsection (10).

18 After section 68 insert—

"68A Implied payment terms in public construction contracts

(1) This section applies to a public contract that is a relevant construction contract and is entered into by a contracting authority, except a public contract that is—

(a) a concession contract,

(b) a utilities contract awarded by a private utility, or

(c) a contract awarded by a school.

(2) The term in subsection (3) is implied into a contract to which this section applies if—

(a) the contract does not provide for a final date for payment in relation to a sum that is due under the contract (in breach of the requirement imposed by section 110(1)(b) of the HGCRA 1996 or Article 9(1)(b) of the Northern Ireland Order 1997), or

(b) the contract provides for a final date for payment in relation to a sum that is due under the contract but that date does not fall within the permitted period.

(3) The final date for payment in relation to a sum that is due under the contract is the last day of the permitted period.

(4) Any term of a contract to which this section applies purporting to provide for a final date for payment that does not fall within the permitted period is without effect.

(5) It is an implied term of every contract to which this section applies that a contracting authority may not arrange for a third party to pay a sum to the payee which, under the contract, is due to be paid by the contracting authority to the payee, unless the payee has consented to the arrangement.

(6) Any term purporting to restrict or override the term implied by subsection (5) is without effect.

(7) But if any sum due under a contract to which this section applies is not a construction payment, then, in relation to such a sum—

(a) the terms in subsections (3) and (5) are not implied into the contract (and subsections (4) and (6) do not apply);

(b) instead, the terms in subsections (2) to (5) of section 68 are implied into the contract (and the rest of that section applies).

(8) In this section—

(a) references to the permitted period are to the period of 30 days beginning with the day after the payment due date;

(b) the reference to the payment due date is to (as the case may be)—

(i) the date provided for by the contract as the date on which the payment is due (as required by section 110(1)(a) of the HGCRA 1996 or Article 9(1)(a) of the Northern Ireland Order 1997), or

(ii) the date that has effect as the date on which payment is due as a result of an implied term of the contract (see, in particular, section 114(4) of the HGCRA 1996 and Article 13(3) of the Northern Ireland Order 1997).

(9) In this section "relevant construction contract" means—

(a) a construction contract, within the meaning of Part 2 of the HGCRA 1996, to which that Part (or any provision of that Part) applies, or

(b) a construction contract, within the meaning of the Northern Ireland Order 1997, to which that Order (or any provision of that Order) applies.

(10) In this section—

"construction payment" has the same meaning as in the Commercial Payments and Interest on Late Payment Act 1998 (see section 15A of that Act);

"final date for payment" has the same meaning as in Part 2 of the HGCRA 1996 or the Northern Ireland Order 1997;

"the HGCRA 1996" means the Housing Grants, Construction and Regeneration Act 1996;

"the Northern Ireland Order 1997" means the Construction Contracts (Northern Ireland) Order 1997 (S.I. 1997/274 (N.I. 1)).

68B Power to shorten implied payment terms

(1) An appropriate authority may by regulations substitute the number of days for the time being specified in sections 68(2) and 68A(8)(a).

(2) Any such regulations—

(a) may not specify a number of days higher than 30;

(b) must specify the same number of days in sections 68(2) and 68A(8)(a).”

19 In section 69 (payments compliance notices), in subsection (2)(a), for “compliance with the term set out in section 68(2) (payment within 30 days)” substitute “payment performance”.

20 (1) Section 73 (implied payment terms in sub-contracts) is amended as follows.

(2) After subsection (1) insert—

“(1A) But those terms are not implied into a public construction sub-contract, except as provided for by subsection (4E)(b) (sums due under a public construction sub-contract that are not construction payments).”

(3) Omit subsection (2).

(4) In subsection (3), for “this section” substitute “subsection (1)”.

(5) In subsection (4)—

(a) for “this section” substitute “subsections (1) and (3)”;

(b) after “public sub-contract” insert “into which the term in section 68(2) is implied”;

(c) for “the term in section 68(2)” substitute “that term”.

(6) After subsection (4) insert—

“(4A) The term in subsection (3) of section 68A (implied final date for payment in public construction contracts) is implied into a public construction sub-contract if—

(a) the contract does not provide for a final date for payment in relation to a sum that is due under the contract (in breach of the requirement imposed by section 110(1)(b) of the HGCRA 1996 or Article 9(1)(b) of the Northern Ireland Order 1997), or

(b) the contract provides for a final date for payment in relation to a sum that is due under the contract but that date does not fall within the permitted period.

(4B) Any term of a public construction sub-contract purporting to provide for a final date for payment that does not fall within the permitted period is without effect.

(4C) The term in subsection (5) of section 68A is implied into every public construction sub-contract.

(4D) Any term purporting to restrict or override the term implied by subsection (4C) is without effect.

(4E) But if any sum due under a public construction sub-contract is not a construction payment, then, in relation to such a sum—

(a) the terms in subsections (3) and (5) of section 68A are not implied into the contract (and subsections (4B) and (4D) of this section do not apply);

(b) instead, the terms in section 68(2) to (5) are implied into the contract (and subsections (3) and (4) of this section apply).

(4F) For the purposes of this section—

(a) references to the contracting authority in any term in section 68 or 68A implied into a public sub-contract by this section are to be read as references to the person to whom goods, services or works are supplied under the contract, and

(b) section 68(8)(a) (electronic invoices) does not apply."

(7) After subsection (5) insert—

"(5A) In this section, "public construction sub-contract" means a contract which is both—

(a) a public sub-contract, and

(b) a relevant construction contract.

(5B) In this section—

"construction payment",
"final date for payment",
"permitted period", and
"relevant construction contract",

have the same meaning as in section 68A."

21 (1) Section 88 (implied payment terms in regulated below-threshold contracts) is amended as follows.

(2) After subsection (1) insert—

"(1A) But those terms are not implied into a regulated below-threshold contract that is a relevant construction contract within the meaning of section 88A, except as provided for by subsection (7)(b) of that section (sums due under a relevant construction contract that are not construction payments)."

(3) For subsection (2) substitute—

"(2) Any sum due to be paid under the contract by the contracting authority must be paid before the end of the period of 30 days beginning with the day on which an invoice is received by the contracting authority in respect of the sum."

(4) Omit subsections (8) and (9).

(5) Omit subsection (12).

22 After section 88 insert—

“88A Implied payment terms in regulated below-threshold construction contracts

(1) This section applies to a regulated below-threshold contract that is a relevant construction contract and is entered into by a contracting authority.

(2) The term in subsection (3) is implied into a contract to which this section applies if—

(a) the contract does not provide for a final date for payment in relation to a sum that is due under the contract (in breach of the requirement imposed by section 110(1)(b) of the HGCRA 1996 or Article 9(1)(b) of the Northern Ireland Order 1997), or

(b) the contract provides for a final date for payment in relation to a sum that is due under the contract but that date does not fall within the permitted period.

(3) The final date for payment in relation to a sum that is due under the contract is the last day of the permitted period.

(4) Any term of a contract to which this section applies purporting to provide for a final date for payment that does not fall within the permitted period is without effect.

(5) It is an implied term of every contract to which this section applies that a contracting authority may not arrange for a third party to pay a sum to the payee which, under the contract, is due to be paid by the contracting authority to the payee, unless the payee has consented to the arrangement.

(6) Any term purporting to restrict or override the term implied by subsection (5) is without effect.

(7) But if any sum due under a contract to which this section applies is not a construction payment, then, in relation to such a sum—

(a) the terms in subsections (3) and (5) are not implied into the contract (and subsections (4) and (6) do not apply);

(b) instead, the terms in subsections (2) to (5) of section 88 are implied into the contract (and the rest of that section applies).

(8) In this section—

(a) references to the permitted period are to the period of 30 days beginning with the day after the payment due date;

(b) the reference to the payment due date is to (as the case may be)—

(i) the date provided for by the contract as the date on which the payment is due (as required by section

110(1)(a) of the HGCRA 1996 or Article 9(1)(a) of the Northern Ireland Order 1997), or

(ii) the date that has effect as the date on which payment is due as a result of an implied term of the contract (see, in particular, section 114(4) of the HGCRA 1996 and Article 13(3) of the Northern Ireland Order 1997).

(9) In this section "relevant construction contract" means—

(a) a construction contract, within the meaning of Part 2 of the HGCRA 1996, to which that Part (or any provision of that Part) applies, or

(b) a construction contract, within the meaning of the Northern Ireland Order 1997, to which that Order (or any provision of that Order) applies.

(10) In this section—

"construction payment" has the same meaning as in the Commercial Payments and Interest on Late Payment Act 1998 (see section 15A of that Act);

"final date for payment" has the same meaning as in Part 2 of the HGCRA 1996 or the Northern Ireland Order 1997;

"the HGCRA 1996" means the Housing Grants, Construction and Regeneration Act 1996;

"the Northern Ireland Order 1997" means the Construction Contracts (Northern Ireland) Order 1997 (S.I. 1997/274 (N.I. 1)).

88B Power to shorten implied payment terms

(1) A Minister of the Crown or the Welsh Ministers may by regulations substitute the number of days for the time being specified in sections 88(2) and 88A(8)(a).

(2) Any such regulations—

(a) may not specify a number of days higher than 30;

(b) must specify the same number of days in sections 88(2) and 88A(8)(a).

88C Implied payment terms in regulated below-threshold sub-contracts

(1) The terms in subsections (2) to (5) of section 88 (implied payment terms in regulated below-threshold contracts) are implied into every regulated below-threshold sub-contract.

(2) But those terms are not implied into a regulated below-threshold construction sub-contract, except as provided for by subsection (9)(b) (sums due under a regulated below-threshold construction sub-contract that are not construction payments).

(3) Any term purporting to restrict or override the terms implied by subsection (1) is without effect.

(4) But nothing in subsections (1) and (3) prohibits the parties to a regulated below-threshold sub-contract into which the term in section 88(2) is implied from agreeing that a sum due under the contract must be paid earlier than would be required by that term.

(5) The term in subsection (3) of section 88A (implied final date for payment in regulated below-threshold construction contracts) is implied into a regulated below-threshold construction sub-contract if—

(a) the contract does not provide for a final date for payment in relation to a sum that is due under the contract (in breach of the requirement imposed by section 110(1)(b) of the HGCRA 1996 or Article 9(1)(b) of the Northern Ireland Order 1997), or

(b) the contract provides for a final date for payment in relation to a sum that is due under the contract but that date does not fall within the permitted period.

(6) Any term of a regulated below-threshold construction sub-contract purporting to provide for a final date for payment that does not fall within the permitted period is without effect.

(7) The term in subsection (5) of section 88A is implied into every regulated below-threshold construction sub-contract.

(8) Any term purporting to restrict or override the term implied by subsection (7) is without effect.

(9) But if any sum due under a regulated below-threshold construction sub-contract is not a construction payment, then, in relation to such a sum—

(a) the terms in subsections (3) and (5) of section 88A are not implied into the contract (and subsections (6) and (8) of this section do not apply);

(b) instead, the terms in section 88(2) to (5) are implied into the contract (and subsections (3) and (4) of this section apply).

(10) For the purposes of this section, references to the contracting authority in any term in section 88 or 88A implied into a regulated below-threshold sub-contract by this section are to be read as references to the person to whom goods, services or works are supplied under the contract.

(11) In this section, "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.

(12) In this section, “regulated below-threshold construction sub-contract” means a contract which is both—

(a) a regulated below-threshold sub-contract, and

(b) a relevant construction contract.

(13) In this section—

“construction payment”,

“final date for payment”,

“permitted period”, and

“relevant construction contract”,

have the same meaning as in section 88A.”

SCHEDULE 2

Section 17

CHAPTER 2 OF PART 1: FURTHER AMENDMENTS

PART 1

HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

1 Part 2 of the HGCRA 1996 (construction contracts) is amended in accordance with this Part of this Schedule.

2 In section 110 (dates for payment)—

(a) in subsection (3), for “subsection (1)” substitute “subsection (1)(a)”;

(b) after subsection (3) insert—

“(4) If or to the extent that a contract does not contain such provision as is mentioned in subsection (1)(b), the relevant provisions of the Scheme for Construction Contracts apply.

(5) But subsection (4) does not apply to a contract into which the term in section 68A(3) or 88A(3) of the Procurement Act 2023 is implied (implied final date for payment).”

3 In section 110B (payment notices: payee’s notice in default of payer’s notice), after subsection (4) insert—

“(5) Subsection (3) does not apply where the payee gives a notification that (by virtue of subsection (4)) is to be regarded as a notice complying with section 110A(3) given pursuant to subsection (2).”

4 In section 111 (requirement to pay notified sum)—

(a) in subsection (5)(a), for “the prescribed period” substitute “seven days”;

(b) in subsection (6), after “Where a” insert “valid”;

(c) after subsection (6) insert—

"(6A) If a notice is given under subsection (3) that is not valid, the notice is to be regarded as not having been given (and accordingly subsection (1) applies in relation to the notified sum).";

(d) omit subsection (7);

(e) in subsection (8), for paragraph (b) substitute—

"(b) a valid notice is given under subsection (3),";

(f) after subsection (9) insert—

"(9A) For the purposes of this section a notice under subsection (3) is valid if it complies with subsections (4) and (5).";

(g) in subsection (10)(b), for "the prescribed period referred to in subsection (5)(a)" substitute "the latest day on which a notice under subsection (3) could be given".

5 In section 116 (reckoning periods of time), in subsection (3), for "Where" substitute "For the purposes of section 108 (adjudication) and any adjudication provisions of the Scheme for Construction Contracts (only), where".

6 An amendment made to the HGCRA 1996 by any provision of this Part of this Schedule does not affect construction contracts (within the meaning of Part 2 of that Act) entered into before the date on which the provision making the amendment comes into force.

PART 2

CONSTRUCTION CONTRACTS (NORTHERN IRELAND) ORDER 1997

7 The Northern Ireland Construction Order is amended in accordance with this Part of this Schedule.

8 In Article 9 (dates for payment)—

(a) in paragraph (3), for "paragraph (1)" substitute "paragraph (1)(a)";

(b) after paragraph (3) insert—

"(4) If or to the extent that a contract does not contain such provision as is mentioned in paragraph (1)(b), the relevant provisions of the Scheme apply.

(5) But paragraph (4) does not apply to a contract into which the term in section 68A(3) or 88A(3) of the Procurement Act 2023 is implied (implied final date for payment)."

9 In Article 9B (payment notices: payee's notice in default of payer's notice), after paragraph (4) insert—

"(5) Paragraph (3) does not apply where the payee gives a notification that (by virtue of paragraph (4)) is to be regarded as a notice complying with Article 9A(3) given pursuant to paragraph (2)."

10 In Article 10 (requirement to pay notified sum)—

(a) in paragraph (5)(a), for "the prescribed period" substitute "seven days";

(b) in paragraph (6), after "Where a" insert "valid";

(c) after paragraph (6) insert—

"(6A) If a notice is given under paragraph (3) that is not valid, the notice is to be regarded as not having been given (and accordingly paragraph (1) applies in relation to the notified sum).";

(d) omit paragraph (7);

(e) in paragraph (8), for sub-paragraph (b) substitute—

"(b) a valid notice is given under paragraph (3),";

(f) after paragraph (9) insert—

"(9A) For the purposes of this Article a notice under paragraph (3) is valid if it complies with paragraphs (4) and (5).";

(g) in paragraph (10)(b), for "the prescribed period referred to in paragraph (5)(a)" substitute "the latest day on which a notice under paragraph (3) could be given".

11 An amendment made to the Northern Ireland Construction Order by any provision of this Part of this Schedule does not affect construction contracts (within the meaning of that Order) entered into before the date on which the provision making the amendment comes into force.

SCHEDULE 3

Section 19(2)

INVESTIGATIONS INTO PAYMENT PRACTICES: FINANCIAL PENALTIES

In the Enterprise Act 2016, after Schedule 1 insert—

"SCHEDULE 1A

Sections 2J(7) and 2L(8)

INVESTIGATIONS INTO PAYMENT PRACTICES: FINANCIAL PENALTIES

Introduction

1 (1) This Schedule makes further provision in connection with the imposition of a financial penalty on a larger business.

(2) In this Schedule "financial penalty" means a financial penalty under—

(a) section 2J(6) (financial penalty for persistent engagement in poor payment practices), or

(b) section 2L(7) (financial penalty for failure to comply with an enforcement direction).

Amount of financial penalty

2 (1) A financial penalty imposed on a larger business may not exceed 1% of its annual turnover in the United Kingdom.

(2) For this purpose, turnover in the United Kingdom is to be calculated in accordance with regulations under paragraph 8.

Notice of proposed financial penalty

3 (1) Before imposing a financial penalty on a larger business the Commissioner must give the business a written notice—

(a) stating that the Commissioner proposes to impose a financial penalty of a specified amount,

(b) stating the reasons why the Commissioner proposes to impose it, and

(c) inviting the larger business to make representations about the proposed penalty, stating how and the period within which representations may be made.

(2) The period for representations must be at least 28 days beginning with the day after the day on which the notice is given.

(3) The Commissioner must—

(a) consider any representations received in accordance with the notice, and

(b) in light of those representations—

(i) decide whether to impose the penalty, and

(ii) make any change to the amount of the proposed penalty that the Commissioner considers appropriate.

(4) The Commissioner must notify the larger business of a decision not to impose a financial penalty.

Penalty notices

4 (1) A financial penalty is imposed by giving a larger business a written notice (a "penalty notice") stating—

(a) the amount of the financial penalty,

(b) the reasons for imposing the penalty,

(c) how and the period within which it must be paid, and

(d) the right to appeal against the imposition of the penalty or its amount.

(2) The period for payment must be at least 28 days beginning with the day after the day on which the penalty notice is given.

Appeals

5 (1) A larger business may appeal against the imposition of a financial penalty or its amount—

(a) to the High Court, in England and Wales or Northern Ireland; or

(b) to the Court of Session, in Scotland.

(2) An appeal under this paragraph is to be a re-hearing of the Commissioner's decision that is being appealed.

(3) On an appeal under this paragraph, the High Court or (as the case may be) the Court of Session may confirm, reduce or cancel the financial penalty.

(4) If a larger business appeals under this paragraph, the penalty notice is suspended until the appeal is finally determined, withdrawn or abandoned.

Recovery

6 (1) This paragraph applies if a larger business fails to pay the whole or part of a financial penalty before the end of the period for payment.

(2) The Commissioner may recover the unpaid amount of the penalty—

(a) in England and Wales, as if it were payable under an order of the county court;

(b) in Scotland, in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland;

(c) in Northern Ireland, as if it were payable under an order of a county court.

Use of financial penalties

7 Financial penalties received by the Commissioner must be paid into the Consolidated Fund.

Regulations

8 (1) The Secretary of State may by regulations make further provision in connection with the imposition of financial penalties.

(2) Regulations under sub-paragraph (1) may, among other things, make provision about—

(a) criteria which the Commissioner must consider in deciding whether to impose a financial penalty and of what amount;

(b) the calculation of a larger business's turnover in the United Kingdom for the purposes of paragraph 2;

(c) the form, content and giving of notices under this Schedule;

(d) appeals under paragraph 5, including the period of time within which an appeal may be brought.

(3) Before making regulations under sub-paragraph (1), the Secretary of State must consult the Commissioner and such other persons as the Secretary of State considers appropriate."

SCHEDULE 4

Section 25

FURTHER AMENDMENTS: SMALL BUSINESS COMMISSIONER

PART 1

AMENDMENTS OF PART 1 OF THE ENTERPRISE ACT 2016

1 Part 1 of the Enterprise Act 2016 (the Small Business Commissioner) is amended as follows.

2 In section 1 (Small Business Commissioner), for subsection (2) (principal functions) substitute—

"(2) The Commissioner's principal functions are—

(a) to adjudicate payment disputes between small businesses and larger businesses (see sections 2A to 2G),

(b) to investigate the payment practices of larger businesses and take action in relation to poor payment practices (see sections 2H to 2P),

(c) to provide general advice and information, and training, to businesses (see sections 3 and 3A), and

(d) to enforce requirements of regulations under section 3 of the Small Business, Enterprise and Employment Act 2015 (companies: duty to publish report on payment practices and performance)."

3 In section 2 (small businesses in relation to which the Commissioner has functions), omit subsections (7) to (9).

4 Omit sections 4 to 7 (SBC complaints scheme) and the italic heading before section 4.

5 Before section 8 insert—

"Confidentiality".

6 (1) Section 8 (confidentiality) is amended as follows.

(2) Omit subsection (1).

(3) Before subsection (2) insert—

"(1A) The Commissioner may not make a disclosure of information that the Commissioner considers is likely to cause someone to think that a particular small business or larger business is a party to a relevant payment dispute referred to adjudication under the SBC adjudication scheme, except—

(a) insofar as required for the adjudication of the dispute, or

(b) where subsection (2) applies.

(1B) The Commissioner may not make a disclosure of information that the Commissioner considers is likely to cause someone to think that a particular person provided information for the purposes of an investigation, except where subsection (2) applies."

(4) In subsection (2), omit paragraph (b).

(5) After subsection (2) insert—

"(3) In carrying out an investigation into the payment practices of a larger business, the Commissioner must seek to ensure that no unfairness arises to the larger business as a result of the restriction on disclosure in subsection (1B).

(4) In subsection (3), the reference to an investigation includes the steps which the Commissioner may take under section 2J, the imposition of a financial penalty under section 2L(7) and the publication of a report under section 2M."

7 (1) Section 9 (annual report) is amended as follows.

(2) In subsection (1)—

(a) omit the "and" at the end of paragraph (b);

(b) after paragraph (b) insert—

"(ba) contains a summary of disputes referred to the SBC adjudication scheme during the period,

(bb) contains a summary of investigations which the Commissioner has carried out during the period, and any recommendations made, directions given or financial penalties imposed following any such investigation,

(bc) states whether any such recommendations have been followed, directions complied with or penalties paid, and

(bd) contains a summary of any action the Commissioner has taken during the period to enforce requirements of regulations under section 3 of the Small Business, Enterprise and Employment Act 2015, stating whether any financial penalty imposed under the regulations has been paid.";

(c) omit paragraph (c).

(3) After subsection (1) insert—

"(1A) In publishing the report, the Commissioner must have regard to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (1B) and (1C).

(1B) A matter is confidential under this subsection if—

(a) it relates specifically to the affairs of a particular business, and

(b) publication of that matter would or might, in the Commissioner's opinion, seriously and prejudicially affect the interests of that business.

(1C) A matter is confidential under this subsection if—

(a) it relates to the private affairs of an individual, and

(b) publication of that matter would or might, in the Commissioner's opinion, seriously and prejudicially affect the interests of that individual."

8 (1) Section 10 (review of Commissioner's performance) is amended as follows.

(2) After subsection (2) insert—

"(2A) The first review period is the period—

(a) beginning with the day on which sections 2A (SBC adjudication scheme) and 2H (investigations into payment practices) come into force or, if they come into force on different days, the later of those days, and

(b) ending 3 years after the following 31 March."

(3) Omit subsection (3).

(4) In subsection (5)—

(a) in paragraph (a), for "in commercial transactions;" substitute ", in particular by—

(i) increasing the amount of payments that are made on time, and

(ii) increasing awareness of the requirements and effect of the Commercial Payments and Interest on Late Payment Act 1998;";

(b) in paragraph (b), after "procedures" insert ", in particular the SBC adjudication scheme;";

(c) after that paragraph insert—

"(c) improving compliance with requirements of regulations under section 3 of the Small Business, Enterprise and Employment Act 2015 (companies: duties to publish report on payment practices and performance)."

(5) After subsection (5) insert—

"(5A) In carrying out a review, the Secretary of State must consult—

(a) the Commissioner,

(b) one or more persons appearing to the Secretary of State to represent the interests of small businesses,

(c) one or more persons appearing to the Secretary of State to represent the interests of larger businesses, and

(d) such other persons as the Secretary of State considers appropriate."

9 (1) Section 11 (power to abolish Commissioner) is amended as follows.

(2) In the heading, after "Commissioner" insert "following review".

(3) In subsection (2)—

(a) in paragraph (b), for "in commercial transactions, and" substitute ", in particular by—

(i) increasing the amount of payments that are made on time, and

(ii) increasing awareness of the requirements and effect of the Commercial Payments and Interest on Late Payment Act 1998,";

(b) in paragraph (c), after "procedures" insert ", in particular the SBC adjudication scheme, and";

(c) after that paragraph insert—

"(d) improving compliance with requirements of regulations under section 3 of the Small Business, Enterprise and Employment Act 2015 (companies: duties to publish report on payment practices and performance)."

(4) Omit subsection (4).

10 In section 12 (regulations under section 11: procedure), omit subsection (14).

11 After section 12C (inserted by section 23 of this Act), insert—

"Regulations

12D Regulations under Part 1

(1) A power to make regulations under this Part includes power to make—

(a) supplementary, incidental, transitory, transitional or saving provision;

(b) different provision for different purposes.

(2) Regulations under this Part are to be made by statutory instrument.

(3) Regulations under this Part may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

(4) Subsection (3) does not apply to regulations under section 11 (see section 12 for the procedure that applies).

12E Certain regulations under Part 1: consent

(1) Before making regulations in relation to which this section applies, the Secretary of State—

(a) must obtain the consent of the Scottish Ministers in relation to any provision which—
   (i) if it were contained in an Act of the Scottish Parliament, would be within the legislative competence of the Scottish Parliament, and
   (ii) is not merely incidental to, or consequential on, provision which would be outside that legislative competence;
(b) must obtain the consent of the Welsh Ministers in relation to any provision which—
   (i) if it were contained in an Act of Senedd Cymru, would be within the legislative competence of Senedd Cymru (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006), and
   (ii) is not merely incidental to, or consequential on, provision which would be outside that legislative competence;
(c) must obtain the consent of the Department for the Economy in Northern Ireland in relation to any provision which—
   (i) deals with a transferred matter, and
   (ii) is not ancillary to other provisions dealing with excepted or reserved matters.

(2) In subsection (1)—
"ancillary" has the meaning given by section 6(3) of the Northern Ireland Act 1998;
"deals with" is to be read in accordance with section 98(2) and (3) of that Act;
"excepted matter", "reserved matter" and "transferred matter" have the meanings given by section 4(1) of that Act;
"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975.

(3) This section applies in relation to regulations under—
(a) section 2G(1) (SBC adjudication scheme);
(b) section 2P(1) (investigations);
(c) section 12A(1) (transfer of Commissioner's functions);
(d) paragraph 8(1) of Schedule 1A (investigations: financial penalties)."

12 For section 13 and the italic heading before it substitute—

"Interpretation

13 Interpretation of Part 1

(1) In this Part—

"adjudicator", in relation to a relevant payment dispute, means the Commissioner or the person appointed by the Commissioner to adjudicate the dispute under the SBC adjudication scheme;

"the Commissioner" means the Small Business Commissioner;

"enactment" includes—

(a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

(c) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru, and

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

"enforcement direction" has the meaning given by section 2L(1);

"investigation" means an investigation under section 2H(1);

"larger business" means a person carrying on one or more businesses in the United Kingdom who—

(a) is not a public authority, and

(b) is not a small business;

"legal proceedings" means civil or criminal proceedings in or before a court or tribunal;

"public authority" has the same meaning as in the Procurement Act 2023 (see, in particular, section 2(2) to (4) of that Act), but the Common Council of the City of London is a public authority for the purposes of this Part only in relation to that body's functions as a local authority, police authority or port health authority;

"publication direction" has the meaning given by section 2K(1);

"relevant payment dispute" has the meaning given by section 2A(3);

"SBC adjudication scheme" has the meaning given by section 2A(1);

"small business" has the meaning given by section 2.

(2) In this Part—

(a) references to payment practices are to payment practices in transactions between persons carrying on a business (and "business" here does not include the activities of a public authority);

(b) references to poor payment practices are to be construed in accordance with subsection (3) of section 2H;

(c) references to a larger business persistently engaging in poor payment practices are to be construed in accordance with subsection (4) of that section."

13 In Schedule 1 (the Small Business Commissioner), after paragraph 13 insert—

"SBC adjudication scheme functions exercisable by staff

13A The Commissioner may delegate any of the Commissioner's functions in relation to the SBC adjudication scheme to a member of the Commissioner's staff."

PART 2

AMENDMENTS OF OTHER ENACTMENTS

14 (1) Part 9 of the Enterprise Act 2002 (information) is amended in accordance with this paragraph.

(2) In Schedule 14 (specified functions), at the appropriate places insert—

"Section 3 of the Small Business, Enterprise and Employment Act 2015.";

"Part 1 of the Enterprise Act 2016."

(3) In Schedule 15 (enactments conferring functions), at the appropriate places insert—

"Section 3 of the Small Business, Enterprise and Employment Act 2015.";

"Part 1 of the Enterprise Act 2016."

15 In the Advanced Research and Invention Agency Act 2022, omit paragraph 12 of Schedule 3 (amendment of section 13 of the Enterprise Act 2016) and the italic heading before it.

Commercial Payments Bill [HL]

[AS AMENDED IN COMMITTEE]

A

B I L L

TO

Make provision about payment terms in commercial contracts; to make provision about interest on late payment of commercial debts; to ban retention clauses in the construction sector; to expand the powers of the Small Business Commissioner in relation to payment disputes and poor payment practices; to amend the Enterprise Act 2016 in connection with other functions of the Small Business Commissioner; and for connected purposes.

Lord Leong

Ordered to be Printed, 21st July 2026.

PUBLISHED BY THE AUTHORITY OF THE HOUSE OF LORDS