

COMMERCIAL PAYMENTS BILL

Supplementary Memorandum (No 2) from the Department for Business, Innovation, Science and Trade for the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This supplementary memorandum has been prepared by the Department for Business, Innovation, Science and Trade (“BIST”) for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Commercial Payment Bill (“the Bill”).
2. It supplements the previous memorandums published on 18 May 2026¹ and 21 July 2026².

B. PURPOSE AND EFFECT

3. The Government has tabled amendments to the Bill for Lords Reports Stage which introduce a new delegated power to shorten payment terms. In addition, Lord Fox has tabled a series of amendments to the Bill for Lords Report Stage which modify two delegated powers for the Secretary of State to make provision by regulations for the SBC to impose financial penalties, which the Government intends to support.
4. This supplementary memorandum explains why these new and modified delegated powers are considered appropriate and the reasons for the procedure selected.

C. DELEGATED POWERS SUMMARY

5. A summary of the delegated powers is set out below.

Powers to shorten payment terms

¹ [DPM published on 18 May 2026](#) before the introduction of the Bill on 19 May 2026.

² [Supplementary DPM published on 21 July 2026](#) for the Committee Stage of the Bill on 21 July 2026.

6. The Government is tabling an amendment to create a new delegated power which would permit the Secretary of State to change the number of days set out in the maximum payment terms provided for in sections 2B(2), 2B(5) and 2D(3) of the Commercial Payments and Interest on Late Payments Act 1998 (CPILPA) , as well as the number of days specified in section 2C(3) CPILPA, which implies the number of days required to complete an acceptance or verification procedure into the contract.

Financial Penalties imposed by the Small Business Commissioner

7. The Government is supporting a series of amendments tabled by Lord Fox to clause 24 of the Bill. Clause 24 inserts new section 3A into the Small Business, Enterprise and Employment Act 2015 (“SBEEA 2015”), which concerns regulations which enable the Small Business Commissioner (“SBC”) to impose a financial penalty on a company that has failed to comply with a payment reporting requirement.
8. The Government is also supporting Lord Fox’s amendments to Schedule 3 of the Bill. Schedule 3 inserts new Schedule 1A into the Enterprise Act 2016 (“EA 2016”) by clause 19 which concerns financial penalties the SBC may impose on a larger business engaging in persistent poor payment practices.
9. These effect of these amendments mean that penalties imposed by the SBC, which are calculated by reference to turnover, are not restricted to turnover in the UK (the definition of turnover will be subject to further consultation, as discussed below).

C. ANALYSIS OF DELEGATED POWERS BY CLAUSE

Clause 4 - Powers to shorten payment terms

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative procedure

Purpose and context

10. New sections 2B(2)(a) and (b) (for relevant payments) and sections 2D(3)(a) and (b) (for construction payments) of CPILPA as inserted by this Bill provide that the maximum length of the payment period is 30 days where the purchaser is a public authority and 60 days where the purchaser is not a public authority. Where no payment period is given by the contract, section 2B(5) implies a payment period of 30 days. New section 2C(3) provides that, where a contract contains an acceptance or verification procedure, it is an implied term of the contract that the procedure is deemed to be completed at the end of a 30-day period beginning with the day on which the supplier performs their obligations under the contract.
11. Clause 4 inserts new section 2F into the CPILPA and sections 2F(1), (3), (5) provide a delegated power for the Secretary of State to substitute the number of days in sections 2B(2)(a), 2B(2)(b), 2C(3), 2D(3)(a) and 2D(3)(b) for a number that is less than 30 (where the purchaser is a public authority) or 60 (where the purchaser is not a public authority).

Justification for delegation

12. During consultation on the appropriate period for payment, the Government received views from smaller businesses who argued that 60 days remains too long, while some larger businesses expressed concerns about the impact of maximum payment terms on working capital and established commercial arrangements. The 60-day period represents a carefully considered balance between competing concerns of small and large businesses. However, following debate in the House of Lords, the Government has accepted that there is a conceivable future where changes in business practices and technology means that it becomes practicable for payment procedures to be completed more quickly and for a shorter maximum payment term to therefore become appropriate. In light of this, the new Henry VIII powers under Clause 4 allows the maximum payment terms provided by the Bill to be substituted, if necessary, in a targeted, proportionate and timely way. Without these powers, there is a risk that the effectiveness of maximum payment terms would be weakened over time and changes to the payment periods would require further primary legislation. The power is subject to a number of procedural safeguards.

The Secretary of State cannot use the powers to increase payment terms beyond those set out on in sections 2B(2)(a), 2B(2)(b), 2C(3), 2D(3)(a) and 2D(3)(b) and the Secretary of State must consult prior to making regulations.

Justification for procedure selected

13. By virtue of section 15, regulations made under new section 2F of CPILPA will be subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate given that the power is a Henry VIII power but is a limited power to substitute the number of days specified in new sections 2B(3)(a) and (b) and 2D(3)(a) and (b) CPILPA and cannot be used to specify a number of days higher than the number in the Bill as currently drafted (that is, respectively, 60 or 30).
14. The power is subject to consultation and, where applicable, the consent of the devolved Governments.

Amended clauses 24 and Schedule 3 - Amendments to the Secretary of State's powers to make provision by regulations for the SBC to impose financial penalties

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative procedure

Purpose and context

15. Clause 24 of the Bill amends section 3 of the SBEEA 2015 and inserts new section 3A into the SBEEA 2015. New section 3A provides the Secretary of State with a power to make provision by regulations for the SBC to impose a financial penalty on a company for breach of a payment reporting requirement under section 3. Inserted section 3A(2) provides that the regulations must make further provision on the amount of any financial penalty imposed which, in the case of a single penalty, must not exceed an amount equal to 1% of the company's annual UK turnover, and in the case of daily penalties, must not exceed a daily amount equal to 1% of the company's daily UK turnover.

16. Clause 19 inserts new sections 2H to 2P into the EA 2016 to provide the SBC with new powers to investigate poor payment practices of larger businesses and take enforcement action where appropriate, which may include imposing financial penalties where the SBC is satisfied beyond reasonable doubt that the larger business has persistently engaged in poor payment practices. New section 2P provides the Secretary of State with a power to make regulations setting out further detail concerning investigations. Schedule 3 inserts Schedule 1A into the EA 2016 to provide a further power at paragraph 8 for the Secretary of State to set out further detail on the imposition of financial penalties in regulations. Any penalty imposed must not exceed 1% of the larger business's UK turnover.
17. Further provision on how turnover will be determined will be consulted on and set out in regulations. This will include detail as to how turnover should be calculated, including whether it should be limited to UK turnover or extend more widely.
18. Lord Fox has tabled amendments to clause 24 of the Bill to amend section 3A of the SBEEA 2015, and amendments to Schedule 3 of the Bill to amend Schedule 1A of the EA 2016, which the Government supports. The effect of these amendments is to remove the limitation on the powers to define a company or larger business's turnover for the purpose of calculating the financial penalties imposed by the SBC, so that regulations no longer have to provide that these must be calculated by reference to *UK* turnover and can instead use another definition, if considered appropriate following consultation. Similar amendments were tabled at the Lords Committee stage and were debated on the floor of the House.

Justification for delegation

19. Whilst the amendments broaden the scope of the powers by enabling regulations to make provision for financial penalties to be calculated by reference to turnover wider than UK turnover, they do not alter the nature of the powers, the person on whom they are conferred, the persons to whom they apply, or the parliamentary procedure applicable to their exercise.
20. Following debate in the House of Lords, the Government accepts that, without these powers, there is the possibility of the effectiveness of the penalties being

undermined by too narrow a definition that could enable companies or larger businesses to avoid effective penalties through avoidance measures.

21. The Government's justification for the delegation of these powers remains unchanged from that set out in paragraphs 84 and 100 of the memorandum published on 18 May 2026.

Justification for procedure selected

22. For the same reasons stated at paragraph 19 above, the Government's justification for the procedure selected for this power remains unchanged from that set out in paragraphs 85 to 87 and paragraphs 101 to 102 of the memorandum published on 18 May 2026.

Department for Business, Innovation, Science and Trade

8 September 2026