

Statutory Instrument 2002 No. 1674

The Late Payment of Commercial Debts Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 1674

CONTRACTS, ENGLAND AND WALES CONTRACTS, NORTHERN IRELAND

The Late Payment of Commercial Debts Regulations 2002

<i>Made</i>	<i>22nd June 2002</i>
<i>Laid before Parliament</i>	<i>28th June 2002</i>
<i>Coming into force</i>	<i>7th August 2002</i>

The Secretary of State, being a Minister designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to measures relating to the combating of late payment in commercial transactions, in exercise of the powers conferred on her by that section hereby makes the following Regulations:

Citation, commencement and extent

1. - (1) These Regulations may be cited as the Late Payment of Commercial Debts Regulations 2002 and shall come into force on 7th August 2002.

(2) These Regulations extend to England and Wales and Northern Ireland^[3].

Amendments of the Late Payment of Commercial Debts (Interest) Act 1998

2. - (1) The Late Payment of Commercial Debts (Interest) Act 1998^[4] shall be amended as follows.

(2) Section 2(5)(c) and (6) (the Secretary of State's power to specify by order categories of contracts as excepted contracts) are repealed.

(3) Section 3(4) and (5) (debts not to carry statutory interest if specified in an order made by the Secretary of State) are repealed.

(4) After section 5, there shall be inserted the following section –

" Compensation arising out of late payment

5A. - (1) Once statutory interest begins to run in relation to a qualifying debt, the supplier shall be entitled to a fixed sum (in addition to the statutory interest on the debt).

(2) That sum shall be -

(a) for a debt less than £1,000, the sum of £40;

(b) for a debt of £1,000 or more, but less than £10,000, the sum of £70;

(c) for a debt of £10,000 or more, the sum of £100.

(3) The obligation to pay an additional fixed sum under this section in respect of a qualifying debt shall be treated as part of the term implied by section 1(1) in the contract creating the debt."

Proceedings restraining use of grossly unfair terms

3. - (1) In this regulation:

(a) "small and medium-sized enterprises" means those enterprises defined in Annex 1 to Commission Regulation (EC) No 70/2001 of 12th January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises^[5];

¹ The European Communities (Designation) Order 2002, S.I. 2002/248

² 1972 c. 68

³ The functions of the Secretary of State under the Late Payment of Commercial Debts (Interest) Act 1998, insofar as they relate to Scotland, have been transferred to Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46)

⁴ 1998 c. 20

⁵ OJ L 10 31.1.2001, p. 33

(b) "representative body" means an organisation established to represent the collective interests of small and medium-sized enterprises in general or in a particular sector or area.

(2) This regulation applies where a person acting in the course of a business has written standard terms on which he enters (or intends to enter) as purchaser into contracts to which the Late Payment of Commercial Debts (Interest) Act 1998 applies which include a term purporting to oust or vary the right to statutory interest in relation to qualifying debts created by those contracts.

(3) If it appears to the High Court that in all or any circumstances the purported use of such a term in a relevant contract would be void under the Late Payment of Commercial Debts (Interest) Act 1998, the court on the application of a representative body may grant an injunction against that person restraining him in those circumstances from using the offending term, on such terms as the court may think fit.

(4) Only a representative body may apply to the High Court under this regulation.

Revocation

4. The Late Payment of Commercial Debts (Interest) (Legal Aid Exceptions) Order 1998⁶ is hereby revoked.

Saving for existing contracts

5. These Regulations do not affect contracts made before 7th August 2002.

Nigel Griffiths

Parliamentary Under Secretary of State for Small Businesses, Department of Trade and Industry

22nd June 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2000/35/EC of the European Parliament and of the Council of 29th June 2000 on combating late payment in commercial transactions.

These Regulations (at Regulation 2) amend the Late Payment of Commercial Debts (Interest) Act 1998 (c. 20) ("the 1998 Act") by:

(1) repealing the Secretary of State's power at section 2(5)(c) and 2(6) to specify by order categories of contracts as excepted contracts, in relation to which late payment interest is not to be payable;

⁶ S.I. 1998/2482

(2) repealing section 3(4) and (5) which provide that debts do not carry interest if they are specified in an order made by the Secretary of State; and

(3) by introducing, at section 5A, a right to a fixed sum by way of compensation for the costs suffered by suppliers arising from late payment, such sum being based on the size of the debt.

These Regulations (at Regulation 3) provide that a representative body may bring proceedings in the High Court on behalf of small and medium-sized enterprises (SMEs) where standard terms put forward by a purchaser into contracts to which the 1998 Act applies include a term purporting to oust or vary the right to statutory interest in relation to debts created by those contracts. The Court may grant an injunction restraining use of the term, where it finds that the term is void under the provisions of sections 8 and 9 of the 1998 Act, on such basis as it sees fit.

"Small and medium-sized enterprises" are defined in Annex 1 to Commission Regulation (EC) No 70/2001 of 12th January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises. In summary, they are enterprises which have fewer than 250 employees and have either an annual turnover not exceeding €40 million, or an annual balance sheet total not exceeding €27 million, and conform to the criterion of independence which in general limits the ownership of such enterprises by other enterprises, falling outside the definition of small and medium-sized enterprises, to 25% of the capital or voting rights.

"Representative body" is defined as an organisation established to represent the collective interests of small and medium-sized enterprises in general or in a particular sector or geographical area.

These Regulations (at Regulation 4) repeal the Late Payment of Commercial Debts (Interest)(Legal Aid Exceptions) Order 1998 (S.I. 1998 No 2482).

These Regulations (by virtue of Regulation 5) do not apply to contracts made before the 7th August 2002.

A Regulatory Impact Assessment of the costs and benefits which will result from these Regulations has been prepared by the Department of Trade and Industry and is available from: Investment Directorate, Small Business Service, St Mary's House, c/o Moorfoot, Sheffield, S1 4PQ. Tel: 0114-259-7847. Copies have been placed in the libraries of both Houses of Parliament.

A Transposition Note is available at www.dti.gov.uk, or from the Small Business Service at the above address, detailing the manner of implementation of the Directive on combating late payment in commercial transactions (2000/35/EC of the European Parliament and Council of 29th June 2000) to which these Regulations relate. These Regulations should be read in conjunction with the Late Payment of Commercial Debts (Interest) Act 1998 (Commencement No. 5) Order 2002 (S.I. 2002/1673 (c. 47)) and the Late Payment of Commercial Debts (Rate of Interest) (No. 3) Order 2002 (S.I. 2002/1675).