

PROMPT PAYMENT OF ACCOUNTS ACT, 1997

Number 31 of 1997

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SCHEDULE

Purchasers

Acts referred to

Arbitration Acts, 1954 and 1980
Companies Act, 1963 (1963, No. 33)
Finance Act, 1987 (1987, No. 10)
Finance Act, 1995 (1995, No. 8)
Harbours Act, 1946 (1946, No. 9)
Harbours Act, 1996 (1996, No. 11)
Local Government Act, 1941 (1941, No. 43)

Number 31 of 1997

PROMPT PAYMENT OF ACCOUNTS ACT, 1997

AN ACT TO PROVIDE FOR THE PROMPT PAYMENT OF BUSINESS ACCOUNTS BY CERTAIN PUBLIC SECTOR AND OTHER PURCHASERS OF GOODS AND SERVICES, AND FOR RELATED PURPOSES.

[21st May, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1997 33 1

- Interpretation.** 1.—(1) In this Act, unless the context otherwise requires—
- "invoice" means a written document or electronic transmission provided by a supplier requesting payment for goods or services provided to or on the directions of a purchaser;
- "the Minister" means the Minister for Enterprise and Employment;
- "prescribed payment date", in relation to the provision of goods or services, means—
- (a) the date on which payment is due under the terms of any written contract for the provision of the goods or services, or
 - (b) where there is no written contract or the written contract does not provide for the date of payment, 45 days after—
 - (i) receipt by the purchaser of an invoice for the payment due, where the invoice is received after the completed delivery of the goods or services, or
 - (ii) the delivery of the goods or services, where the delivery is made at the time of or after receipt by the purchaser of an invoice therefor,
- or such lesser number of days as the Minister may, by order under *section 10(2)*, prescribe;
- "purchaser" means—
- (a) a person or body specified in the *Schedule*,
 - (b) a subsidiary (within the meaning of the Companies Act, 1963) of a person or body referred to in *paragraph (a)*, where the subsidiary is not already specified in the *Schedule*, or
 - (c) a person ("the main contractor")—
 - (i) who obtains goods or services from another person to supply to, or

(ii) contracts with another person for that other person to provide goods or services on the main contractor's behalf to,

a person or body, or subsidiary, referred to in *paragraph (a) or (b)* of this definition;

"supplier" means a person who provides goods or services to or on the directions of a purchaser under a contract between that person and the purchaser.

(2) For the avoidance of doubt, a purchaser referred to in *paragraph (a) or (b)* of the definition of "purchaser" in *subsection (1)* may for the purposes of this Act be a supplier in relation to the supply of particular goods or services.

(3) For the purposes of this Act, an invoice sent by post or an electronic transmission comprising an invoice shall be taken to have been received in the normal course of the post or that transmission service, unless the contrary is proved.

(4) In this Act—

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the section in which the reference occurs, unless it is indicated that a reference to some other provision is intended,

(c) a reference to the Schedule is a reference to the Schedule to this Act, and

(d) a reference to any other enactment shall be construed as a reference to that enactment as amended, extended or adapted by or under any enactment made subsequent to that enactment.

1997 33 2

Application. 2.—This Act shall apply only to and in relation to goods and services supplied on or after the commencement of this Act.

1997 33 3

Amendment of list of purchasers. 3.—(1) The Minister may, by order, amend the *Schedule* by adding to, deleting from, or substituting the name of a person or body for that of a person or body in, a list therein.

(2) If the Minister amends the *Schedule* by deleting the name of a person or body, the Minister shall specify in the order the reason for the deletion.

1997 33 4

Prompt payment 4.—(1) A purchaser who obtains goods or services from a

of accounts.

supplier shall pay for them by the prescribed payment date.

(2) A purchaser who does not pay for goods or services by the prescribed payment date shall, subject to *sections 5, 7 and 14*, pay an interest penalty to the supplier in accordance with this section on the amount from time to time outstanding under the contract for the supply of the goods or services.

(3) An interest penalty under this Act shall be paid to the supplier for the period beginning on the day after the prescribed payment date and ending on the date on which the payment of the amount due is made.

(4) For the purposes of *subsection (3)*, payment shall be taken to have been made when the appropriate amount of cash is received by the supplier, the appropriate amount is credited by, on behalf of, or at the direction of, the purchaser to an account nominated by the supplier, or the supplier is put in a position by the purchaser to be able, by the supplier's own actions, to credit the appropriate amount (for example, by the depositing of a cheque which is subsequently honoured) to such an account.

(5) An interest penalty in accordance with this section is not capable of being waived by the supplier, and shall be included with the amount payable for the goods or services without demand for its payment being made by the supplier.

1997 33 5

Return of invoice for correction.

5.—(1) If, within 10 working days after receiving an invoice for goods or services supplied, a purchaser returns the invoice to the supplier because it is not adequate or sufficiently accurate on which to make payment, and at the same time gives to the supplier a written statement identifying the defects that prevent the payment being made, interest penalty in relation to the goods or services shall not accrue until the expiration of 10 working days after the receipt by the purchaser of a proper corrected or replacement invoice, or until the prescribed payment date, whichever is the later.

(2) If a purchaser returns an invoice to a supplier in circumstances referred to in *subsection (1)* but later than 10 working days after receiving it, interest penalty in relation to the goods or services shall not accrue until the expiration of 10 working days after the receipt by the purchaser of a proper corrected or replacement invoice reduced by a number of working days equal to the number of working days the purchaser was late in returning the invoice, or until the prescribed payment date, whichever is the later.

(3) In this section "working day" means a day which is not a Saturday, Sunday or public holiday.

1997 33 6

Information to accompany payment.

6.—Each payment in which an interest penalty is required by this Act to be included shall be accompanied by a notice stating the amount of the interest penalty included and the rate by which, and the period for which, the interest penalty was computed, and such other information, if any, as the Minister may prescribe.

1997 33 7

Amounts payable in case of dispute.

7.—(1) Where there is a dispute between a purchaser and supplier as to the amount due and payable under a contract for the supply of goods or services, the purchaser shall not be liable to pay an interest penalty in respect of any of those goods or services which—

- (a) the purchaser and supplier agree, or
- (b) a court or arbitrator before which or whom the dispute is brought for determination or settlement decides,

are genuinely in dispute and the purchaser has, before the prescribed payment date, paid for the goods or services, if any, agreed or determined not to be in dispute.

(2) For the purposes of *subsection (1)*, goods or services which are complementary and designed to be used together with goods or services which are in dispute shall also be taken to be in dispute.

1997 33 8

Supplier may submit dispute to arbitration.

8.—(1) Subject to any written Contract, where there is a dispute between a supplier and a purchaser on any matter relating to or affecting the payment of, or the purchaser's obligation to pay, an interest penalty under this Act, the supplier may submit the dispute to arbitration by an arbitrator appointed by agreement between the parties or, in the absence of such agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, appointed by the President of the Law Society of Ireland or such other person as the Minister may prescribe.

(2) The Minister may make regulations—

- (a) prescribing a person to appoint an arbitrator for the purposes of *subsection (1)*,
- (b) modifying the provisions of the Arbitration Acts, 1954 and 1980, in their application to arbitration under this Act, or
- (c) prescribing additional or other provisions in relation to such arbitration.

(3) Subject to any regulations made under *subsection (2)*, the Arbitration Acts, 1954 and 1980, shall apply to and in

relation to an arbitration under *subsection (1)*.

1997 33 9

Prompt payment to subcontractors. **9.**—Where there is a contract ("the first contract") between a purchaser and a supplier for the supply of goods or services and the supplier is also a purchaser under a contract ("the second contract") for the acquisition or supply of the goods or services to be provided under the first contract—

(a) where the first contract is in writing and provides for a date by which the payment of the agreed price for the supply of the goods or services shall be made, the period used in calculating the prescribed payment date for the second contract shall be the same number of days as the period between the supply of the goods or services and the payment for the goods or services provided for in the first contract or, if the second contract is in writing, any lesser period specified in the second contract, or

(b) where the first contract is not in writing or is in writing but does not provide for the date of payment, the prescribed payment date for the second contract shall be 45 days—

(i) after receipt by the purchaser of an invoice for the payment due, where the invoice is received after the completed delivery of the goods or services, or

(ii) after the delivery of the goods or services, where the delivery is made at the time of or after receipt by the purchaser of an invoice therefor, or the least of such lesser number of days—

(iii) as may be specified in the second contract (if the second contract is in writing), or

(iv) as the Minister may, by order under *section 10(2)*, prescribe.

1997 33 10

Minister shall fix rates of interest penalty and may fix prescribed payment date. **10.**—(1) The Minister shall, by order, after consultation with the Minister for Finance, fix the rate of interest penalty payable pursuant to *section 4(2)* and may, in the same manner, amend such an order.

(2) The Minister may, by order, after consultation with the Minister for Finance, prescribe a payment date that is earlier than the 45 days referred to in the definition of "prescribed payment date" in *section 1(1)* or in *section 9(b)*, and may, by order—

(a) amend such an order, or

(b) revoke the order and make another order in its place.

1997 33 11

Restrictions on power to extend payment periods.

11.—(1) Where the Minister is of the opinion that the practices of a purchaser specified in the *Schedule* in contracting for payments for the supply of goods or services have the effect of allowing the purchaser credit terms that are unreasonable in the circumstances, the Minister may, after—

(a) advising the purchaser of, and the grounds for coming to, that opinion,

(b) giving the purchaser an opportunity to make representations to the Minister, and

(c) consulting with the Minister for Finance,

by order, direct that the purchaser shall not be capable of agreeing a time of payment for the supply of goods or services that is later than the 45 days referred to in *paragraph (b)* of the definition of "prescribed payment date" in *section 1(1)* or such earlier date as is from time to time fixed under *section 10*.

(2) An order under *subsection (1)* may be expressed to apply generally or in relation to a particular supplier or goods or services and may be subject to such conditions, if any, as the Minister thinks fit.

(3) The Minister may by order, amend or revoke an order made under this section.

(4) While an order made under this section remains in force, any contract entered into by the purchaser to whom it relates shall be construed accordingly.

1997 33 12

Disclosure of payment practices of purchasers.

12.—(1) Where a purchaser specified in the *Schedule* is required by statute to publish an annual report, the report shall include details of the purchaser's payment practice in the period covered by the report.

(2) A purchaser specified in the *Schedule* who is not required by statute to publish an annual report shall, within the prescribed time, if any, lodge with the Minister an annual review of its payment practice in the period covered by the review and the Minister shall, as soon as practicable after receiving the report, cause a copy to be laid before each House of the Oireachtas.

(3) The details to be included for the purposes of this section in an annual report or annual review of payment practices shall include such, if any, as the Minister may prescribe.

1997 33 13

Duty of auditors. 13.—An auditor auditing the affairs of a purchaser specified in the *Schedule* shall report on whether, in all material respects, the purchaser has complied with the provisions of this Act.

1997 33 14

Tax clearance certificates and withholding tax. 14.—(1) Nothing in this Act shall be construed as requiring the payment of an amount due to a supplier who has refused or failed to comply with a request from the purchaser to show a tax clearance certificate in accordance with the scheme referred to in section 177 of the Finance Act, 1995.

(2) If a supplier does not, within seven days after being so requested by a purchaser, show a tax certificate as required, the time for calculating the prescribed payment date shall cease to run from the expiration of that seven day period until the tax clearance certificate is shown or, where the prescribed payment date is a date specified in a written contract, the date for payment shall be deemed to be deferred for an equivalent period.

(3) Nothing in this Act shall be construed as affecting the powers and duties of an accountable person as defined in section 14 of the Finance Act, 1987, to deduct from any payment to a supplier the appropriate tax within the meaning and in accordance with section 15 of that Act.

1997 33 15

Regulations and laying of orders and regulations before Oireachtas. 15.—(1) The Minister may make regulations prescribing matters—

- (a) required or permitted by this Act to be prescribed (unless the context requires the matters to be prescribed in some other way), or
- (b) the Minister considers necessary or expedient to be prescribed for carrying out or giving effect to the provisions of this Act,

and in particular prescribing—

(i) the form of, and information to be included in, invoices for the purposes of this Act, and

(ii) rules to apply to disputes about the accuracy or adequacy of invoices, the fact of supply, and such other matters as the Minister considers relevant to the determination of disputes, including the returning of invoices for correction or replacement and the extension of times for payment or the taking of any action in the circumstances of particular cases.

(2) Every order (other than an order under *section 16(2)*) or

regulation made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the order or regulation is laid before it, that order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

1997 33 16

Short title and commencement. **16.**—(1) This Act may be cited as the Prompt Payment of Accounts Act, 1997.

(2) This Act shall come into operation on such day as the Minister may by order appoint.

Sections 1 and 3.

1997 33

PURCHASERS

ACC Bank plc
Aer Lingus
Aer Rianta
APSO (Agency for Personal Service Overseas)
Area Development Management Limited
Area Partnership Boards
Arramara Teoranta
Arts Council
Blood Transfusion Service Board
Board for Employment of the Blind
An Bord Altranais
An Bord Bia
Bord Fáilte Éireann
Bord Gáis Éireann
An Bord Glas
Bord na Gaeilge
Bord na gCon
Bord Iascaigh Mhara
Bord na Leabhair Gaeilge
Bord na Móna
An Bord Pleanála
Bord na Radharcmhastóirí
Bord Scannán na hÉireann
Bord Telecom Éireann
An Bord Tráchtála
An Bord Uchtála
Border Regional Authority
Broadcasting Complaints Commission
Central Bank of Ireland
Central Fisheries Board
Central Statistics Office
C.E.R.T. Limited
Chester Beatty Library
Chief State Solicitor's Office

An Chomhairle Leabharlanna
Church of Ireland College of Education, Rathmines
Civil Service Commission
Coillte Teoranta
Coiste an Asgard
Combat Poverty Agency
Companies Registration Office
Competition Authority
Córas Iompair Éireann
County Enterprise Boards
Crafts Council of Ireland
Defence Forces Canteen Board
Dental Council

A Minister of the Government having charge of a Department of State, in respect of the functions for the carrying out of which that Department is responsible to the Minister (including any office or body, not otherwise specified in this Schedule, of such Department, in relation to which functions are vested in the Minister) and whether or not referred to as the Minister, the Department or that office or body

Devolution Commission for Local Government Reform
Director of Public Prosecutions
Drug Treatment Centre Board
Dublin Docklands Development Authority Dublin City
University
Dublin Institute for Advanced Studies Dublin Institute of
Technology
Dublin Regional Authority
Dublin Transportation Office
Dún Laoghaire College of Art and Design
Economic and Social Research Institute
Electricity Supply Board
Employment Equality Agency
Environmental Protection Agency
FÁS
FÁS International Consulting Limited
Fire Services Council
Food Safety Advisory Board
Forbairt
Forfás
Foyle Fisheries Commission
General Medical Services Payment Board
Harbour Authorities within the meaning of the Harbours Act,
1946
Harbour Companies referred to in section 7 of the Harbours
Act, 1996
Health Boards
Health Research Board
Heritage Council
Hospital Bodies Administrative Bureau
Hospitals Trust Board
Housing Finance Agency plc

I.C.C. Bank plc
I.D.A. Ireland
Independent Radio and Television Commission
International Development Ireland Limited
Institute of Public Administration
Istitiúid Teangeolaíochta Éireann
Irish Aid Advisory Committee
Irish Aviation Authority
Irish Fertiliser Industries Limited
Irish Horseracing Authority
Irish Manuscripts Commission
Irish Medicines Board
Irish Museum of Modern Art
Irish National Petroleum Corporation Limited
Irish National Stud Company Limited
Irish Red Cross Society
Irish Telecommunications Investments plc
Labour Relations Commission
Land Registry
Law Reform Commission
Legal Aid Board
Local Authorities for the purposes of the Local Government
Act, 1941
Local Government Computer Services Board
Local Government Staff Negotiations Board
Marine Institute
Medical Bureau of Road Safety
Medical Council
Mid-East Regional Authority
Midland Regional Authority
Mid-West Regional Authority
National Authority for Occupational Safety & Health
National Building Agency Limited
National Cancer Registry Board
National College of Art and Design
National Committee for Development Education
National Concert Hall
National Council for Curriculum and Assessment
National Council for Educational Awards
National Council on Ageing and Older People
National Economic and Social Council
National Economic and Social Forum
National Gallery of Ireland
National Milk Agency
National Rehabilitation Board
National Roads Authority
National Safety Council
National Social Services Board
National Standards Authority of Ireland
National Theatre Society Limited
National Treasury Management Agency
Nitrigin Éireann Teoranta

the Office of Charitable Donations and Bequests
the Office of Public Works
the Office of the Attorney General
the Office of the Comptroller & Auditor General
the Office of the Director of Consumer Affairs
the Office of the Ombudsman
the Office of the Paymaster General
the Office of the President
the Office of the Registrar of Friendly Societies
the Office of the Revenue Commissioners
the Office of the Tánaiste
the Ordnance Survey Office
Patents Office
Pensions Board
Pharmaceutical Society of Ireland
An Post
Postgraduate Medical and Dental Board
Public Voluntary Hospitals
Raidio na Gaeltachta
Radiological Protection Institute of Ireland
Refugee Agency
Regional Fisheries Boards
Regional Technical College Athlone
Regional Technical College Carlow
Regional Technical College Cork
Regional Technical College Dundalk
Regional Technical College Galway
Regional Technical College Letterkenny
Regional Technical College Limerick
Regional Technical College Sligo
Regional Technical College Tallaght
Regional Technical College Tralee
Regional Technical College Waterford
Registry of Deeds
Royal Irish Academy
Royal Irish Academy of Music
R.T.É.
Salmon Research Agency of Ireland Limited
S.D.S.
Shannon Free Airport Development Company Limited
South-East Regional Authority
South-West Regional Authority
St. Angela's College of Home Economics, Lough Gill, Sligo
State Laboratory
Stationery Office
St. Catherine's College of Home Economics, Sion Hill,
Blackrock
St. Patrick's College of Education, Drumcondra
St. Patrick's College, Maynooth (National University of
Ireland Recognised College)
Teagasc
TEASTAS

Teilifís na Gaeilge
Temple Bar Properties Limited
Temple Bar Renewal Limited
An tÚdarás um Ard-Oideachas
Údarás na Gaeltachta
University College Cork
University College Dublin
University College Galway
University of Dublin, Trinity College
University of Limerick
Valuation Office
Vocational Education Committees
Voluntary Health Insurance Board
West Regional Authority
Western Development Commission

Public Voluntary Hospitals:

- Adelaide Hospital
Peter Street, Dublin 8
- Beaumont Hospital
Beaumont Road, Dublin 9
- Central Remedial Clinic
Vernon Avenue, Dublin 3
- Children's Hospital
Temple Street, Dublin 1
- City of Dublin Skin and Cancer Hospital
Hume Street, Dublin 2
- Coombe Women's Hospital
Dolphin's Barn, Dublin 8
- Cork University Dental School and Hospital
Wilton, Cork
- Dublin Dental Hospital
Lincoln Place, Dublin 2
- Federated Dublin Voluntary Hospitals
James' Street, Dublin 8
- Incorporated Orthopaedic Hospital of Ireland
Castle Avenue, Clontarf, Dublin 3
- International Missionary Training Hospital,
Our Lady of Lourdes, Drogheda, Co. Louth
- Leopardstown Park Hospital
Foxrock, Dublin 18
- Mater Misericordiae Hospital
Eccles Street, Dublin 7
- Meath Hospital
Heytesbury Street, Dublin 8
- Mercy Hospital
Grenville Place, Cork
- National Children's Hospital
Harcourt Street, Dublin 2
- National Maternity Hospital
Holles Street, Dublin 2
- National Rehabilitation Hospital
Rochestown Avenue, Dún Laoghaire, Co. Dublin

- Our Lady's Hospice
Harold's Cross, Dublin 6
- Our Lady's Hospital for Sick Children
Crumlin, Dublin 12
- Peamount Hospital
Newcastle, Co. Dublin
- Portiuncula Hospital
Ballinasloe, Co. Galway
- Rotunda Hospital
Parnell Street, Dublin 1
- Royal Hospital Donnybrook
Morehampton Road, Donnybrook, Dublin 4
- Royal Victoria Eye and Ear Hospital
Adelaide Road, Dublin 2
- South Infirmery — Victoria Hospital Limited
Old Blackrock Road, Cork
- St. James' Hospital
James' Street, Dublin 8
- St. John's Hospital
St. John's Square, Limerick
- St. Luke's and St. Anne's Hospital Radiotherapy and Oncology
Service
Highfield Road, Rathgar, Dublin 6
- St. Mary's Hospital and Residential School for Children with
Disability
Baldoyle, Dublin 13
- St. Mary's Orthopaedic Hospital,
Cappagh, Finglas, Dublin 11
- St. Michael's Hospital
Dún Laoghaire, Co. Dublin
- St. Vincent's Hospital
Elm Park, Dublin 4
- St. Vincent's Hospital
Convent Avenue, Richmond Road, Fairview, Dublin 3
- Tallaght Hospital Board
57c Harcourt Street, Dublin 2

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