

2002 No. 335

CONTRACTS

**The Late Payment of Commercial Debts (Scotland)
Regulations 2002**

<i>Made</i>	<i>2nd July 2002</i>
<i>Laid before the Scottish Parliament</i>	<i>4th July 2002</i>
<i>Coming into force</i>	<i>7th August 2002</i>

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf hereby make the following Regulations:

Citation, commencement and extent

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

(2) These Regulations extend to Scotland only.

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

2.—(1) The Late Payment of Commercial Debts (Interest) Act 1998(b) shall be amended as follows:—

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2(5)(c) and (6) (the Scottish Ministers' power to specify by order categories of contracts as excepted contracts) are repealed.

(3) After section 2, there shall be inserted—

“Application of the Act to Advocates

2A. The provisions of this Act apply to a transaction in respect of which fees are paid for professional services to a member of the Faculty of Advocates as they apply to a contract for the supply of services for the purpose of this Act.”.

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3(4) and (5) (debts not to carry statutory interest if specified in an order made by the Scottish Ministers) are repealed.

(5) After section 5, there shall be inserted—

“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).

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) 1998 c.20; the functions of the Secretary of State transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

- (2) That sum shall be—
- (a) for a debt less than £1000, the sum of £40;
 - (b) for a debt of £1000 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^(a);
- (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 or she 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 Court of Session 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 interdict against that person prohibiting that person 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 Court of Session under this regulation.

Saving for existing contracts

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

LEWIS MACDONALD

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
2nd July 2002

(a) O.J. No. L 10 31.1.2001, p.33.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations partially 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 Scottish Ministers’ 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;
- (2) introducing, at section 2A, provision that the Act shall apply to Advocates’ fees;
- (3) repealing section 3(4) and (5) which provide that debts do not carry interest if they are specified in an order made by the Scottish Ministers; and
- (4) 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 Court of Session on behalf of small and medium-sized enterprises (SMEs) where standard terms put forward by a purchaser in 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 interdict prohibiting 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 (by virtue of regulation 4) do not apply to contracts made before 7th August 2002.

A Regulatory Impact Assessment of the costs and benefits which will result from these Regulations has been prepared by the Scottish Executive Enterprise and Lifelong Learning Department and is available from: Enterprise and Industry Division, Scottish Executive Enterprise and Lifelong Learning Department, Meridian Court, 5 Cadogan Street, Glasgow G2 6AT. Tel 0141 242 5547. Copies have been placed in the Scottish Parliament Information Centre.

These Regulations should be read in conjunction with the Late Payment of Commercial Debts (Interest) Act 1998 (Commencement No. 6) (Scotland) Order 2002 and the Late Payment of Commercial Debts (Rate of Interest) (No. 3) (Scotland) Order 2002.

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£1.75

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
200 07/02 19593

