

## **POLICY NOTE**

### **THE LATE PAYMENT OF COMMERCIAL DEBTS (SCOTLAND) REGULATIONS 2013**

**SSI 2013/77**

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative procedure. Negative procedure was chosen since applying affirmative procedure would have resulted in the instrument coming into force further beyond the relevant EU implementation date (16 March 2013) than is the case under negative procedure.

#### **Policy Objectives**

The purpose of this instrument is to transpose European Directive 2011/7/EU on combatting late payment in commercial transactions. The Directive introduces rights and remedies for businesses suffering late payment by their customers. The instrument amends the Late Payment of Commercial Debts (Interest) Act 1998 which already legislates for the right to claim interest in cases of late payment and for fixed recovery costs. In order to benefit business by having as much uniformity between Scots law and English law in this area as possible, the instrument is very similar to the one which will transpose the Directive for England (as well as for Wales and Northern Ireland).

#### *Payment periods*

The Directive introduces a maximum payment period of up to 30 days where the purchaser is a public authority, and in other cases a payment period of up to 60 days or longer as otherwise agreed. Where the payment period is longer than 60 days, the period must not be grossly unfair to the supplier. The Directive offers the option of permitting public sector payment terms involving healthcare or where the public authority carries out economic activities of an industrial or commercial nature by offering goods or services to the market to be extended beyond 30 days to up to 60 days. The consultation process showed a consensus in rejecting this extension. It was decided not to extend the period to 60 days in relation to these specific examples as this would lengthen payment times by the public sector.

#### *Verification procedure*

The Directive introduces a period of either up to 30 days or longer as otherwise agreed and provided it is not grossly unfair to the supplier, for a purchaser to confirm that the goods or services they have received from the supplier conform with the contract before the payment period commences.

#### *Recovery costs*

The Directive introduces a right to compensation for the reasonable costs to the supplier of recovering a debt incurred if that amount exceeds the fixed sums already available under the Late Payment of Commercial Debts (Interest) Act 1998. The fixed sums are £40, £70 or £100 depending on the size of the debt (under £1,000, under £10,000, and higher).

## **Consultation**

A joint consultation with the Department for Business, Innovation and Skills was published on 20 September 2012 and closed on 19 October 2012. Eighty responses were received, of which 10 were from Scotland. The responses came from businesses, local authorities and representative bodies.

## **Impact Assessments**

An equality impact assessment has not been completed because the Regulations will not impact on people.

## **Financial Effects**

A Business and Regulatory Impact Assessment has been completed and is attached. The Regulations have the potential to reduce the incidence of late payment in commercial transactions, thus resulting in fewer firms going out of business and a reduction in costs associated with chasing late payment.

Scottish Government Business Directorate  
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