
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;

(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](#)).