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SCOTTISH STATUTORY INSTRUMENTS

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**2002 No. 335**

**CONTRACTS**

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

*Made* - - - - - *2nd July 2002*  
*Laid before the Scottish*  
*Parliament* - - - - - *4th July 2002*  
*Coming into force* - - - - - *7th August 2002*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>M1</sup> and of all other powers enabling them in that behalf hereby make the following Regulations:

**Marginal Citations**

**M1** 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.

**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<sup>M2</sup> 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2(5)(c) and (6) (the Scottish Ministers' power to specify by order categories of contracts as excepted contracts) are repealed.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—

## “2A 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3(4) and (5) (debts not to carry statutory interest if specified in an order made by the Scottish Ministers) are repealed.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—

## “5A Compensation arising out of late payment

(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 £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.”.

### Marginal Citations

**M2** [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.

## Proceedings restraining use of grossly unfair terms

[<sup>F1</sup>3.—(1) In this regulation, “representative body” means an organisation established to represent the collective interests of any undertaking, either in general or in a particular sector or area.

(2) Paragraph (3) applies where a person acting in the course of a business enters (or intends to enter) as purchaser into a contract to which the Late Payment of Commercial Debts (Interest) Act 1998 applies.

(3) On the application of a representative body, the Court of Session may grant an interdict on such terms as it thinks fit restraining the person from relying on a term in the contract, or engaging in a practice in relation to the contract, where that term or practice relates to—

- (a) the date or period for payment of a debt;
- (b) the right to interest for late payment of a debt; or
- (c) compensation arising out of late payment of a debt,

and in all the circumstances of the case that term or practice appears to the Court of Session to be grossly unfair.]

**F1** [Reg. 3](#) substituted (29.6.2018) by [The Late Payment of Commercial Debts \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/160\)](#), regs. 1, **2(2)** (with [reg. 3](#))

## Saving for existing contracts

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

St Andrew's House, Edinburgh

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

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## 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.

**Changes to legislation:**

There are currently no known outstanding effects for the The Late Payment of Commercial Debts (Scotland) Regulations 2002.