



# Late Payment of Commercial Debts (Interest) Act 1998

## 1998 CHAPTER 20

### PART II

#### CONTRACT TERMS RELATING TO LATE PAYMENT OF QUALIFYING DEBTS

#### **7 Purpose of Part II**

- (1) This Part deals with the extent to which the parties to a contract to which this Act applies may by reference to contract terms oust or vary the right to statutory interest that would otherwise apply when a qualifying debt created by the contract (in this Part referred to as “the debt”) is not paid.
- (2) This Part applies to contract terms agreed before the debt is created; after that time the parties are free to agree terms dealing with the debt.
- (3) This Part has effect without prejudice to any other ground which may affect the validity of a contract term.

#### **8 Circumstances where statutory interest may be ousted or varied**

- (1) Any contract terms are void to the extent that they purport to exclude the right to statutory interest in relation to the debt, unless there is a substantial contractual remedy for late payment of the debt.
- (2) Where the parties agree a contractual remedy for late payment of the debt that is a substantial remedy, statutory interest is not carried by the debt (unless they agree otherwise).
- (3) The parties may not agree to vary the right to statutory interest in relation to the debt unless either the right to statutory interest as varied or the overall remedy for late payment of the debt is a substantial remedy.
- (4) Any contract terms are void to the extent that they purport to—

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*Status: This is the original version (as it was originally enacted).*

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- (a) confer a contractual right to interest that is not a substantial remedy for late payment of the debt, or
  - (b) vary the right to statutory interest so as to provide for a right to statutory interest that is not a substantial remedy for late payment of the debt,
- unless the overall remedy for late payment of the debt is a substantial remedy.

(5) Subject to this section, the parties are free to agree contract terms which deal with the consequences of late payment of the debt.

## 9 Meaning of “substantial remedy”

- (1) A remedy for the late payment of the debt shall be regarded as a substantial remedy unless—
- (a) the remedy is insufficient either for the purpose of compensating the supplier for late payment or for deterring late payment; and
  - (b) it would not be fair or reasonable to allow the remedy to be relied on to oust or (as the case may be) to vary the right to statutory interest that would otherwise apply in relation to the debt.
- (2) In determining whether a remedy is not a substantial remedy, regard shall be had to all the relevant circumstances at the time the terms in question are agreed.
- (3) In determining whether subsection (1)(b) applies, regard shall be had (without prejudice to the generality of subsection (2)) to the following matters—
- (a) the benefits of commercial certainty;
  - (b) the strength of the bargaining positions of the parties relative to each other;
  - (c) whether the term was imposed by one party to the detriment of the other (whether by the use of standard terms or otherwise); and
  - (d) whether the supplier received an inducement to agree to the term.

## 10 Interpretation of Part II

- (1) In this Part—
- “contract term” means a term of the contract creating the debt or any other contract term binding the parties (or either of them);
  - “contractual remedy” means a contractual right to interest or any contractual remedy other than interest;
  - “contractual right to interest” includes a reference to a contractual right to charge interest;
  - “overall remedy”, in relation to the late payment of the debt, means any combination of a contractual right to interest, a varied right to statutory interest or a contractual remedy other than interest;
  - “substantial remedy” shall be construed in accordance with section 9.
- (2) In this Part a reference (however worded) to contract terms which vary the right to statutory interest is a reference to terms altering in any way the effect of Part I in relation to the debt (for example by postponing the time at which interest starts to run or by imposing conditions on the right to interest).
- (3) In this Part a reference to late payment of the debt is a reference to late payment of the sum due when the debt is created (excluding any part of that sum which is prevented from carrying statutory interest by section 3).