

2018 No. 1254

CONTRACTS

**The Business Contract Terms (Assignment of Receivables)
Regulations 2018**

Made - - - - *23rd November 2018*

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 1 and 161(2) of the Small Business, Enterprise and Employment Act 2015(a), makes the following Regulations:

In accordance with section 161(4) of the Small Business, Enterprise and Employment Act 2015, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Business Contract Terms (Assignment of Receivables) Regulations 2018 and shall come into force on the day after the day on which they are made.

(2) These Regulations apply to any term in a contract entered into on or after 31 December 2018.

(3) In these Regulations—

“firm” has the same meaning as in the Companies Act 2006(b);

“intangible assets” includes electricity and data which are produced and supplied in digital form;

“licensee”, in relation to a petroleum licence, means the person to whom a petroleum licence is granted, their personal representatives and any person to whom the rights conferred by that licence may lawfully be assigned;

“large group” means a group that is not a small group or a medium-sized group (within the meanings given by the Companies Act 2006(c) or by that Act as applied with modifications by the Limited Liability Partnerships (Accounts and Audit) (Application of the Companies Act 2006) Regulations 2008(d));

“LLP” means a limited liability partnership formed under the Limited Liability Partnerships Act 2000(e);

(a) 2015 c. 26.
(b) 2006 c. 46. See section 1173(1).
(c) See sections 383 and 466 of that Act.
(d) S.I. 2008/1911, as amended by S.I. 2016/575. See regulations 5 and 26.
(e) 2000 c. 12.

“petroleum licence” means a licence granted under section 2 of the Petroleum (Production) Act 1934(a) or under section 3 of the Petroleum Act 1998(b);

“prescribed financial services” means a regulated agreement within the meaning of the Consumer Credit Act 1974(c) or any financial service within the meaning of section 2 of the Small Business, Enterprise and Employment Act 2015; and

“receivable” is a right (whether or not earned by performance) to be paid any amount under a contract (other than a contract mentioned in regulation 4) for the supply of goods, services or intangible assets (and in relation to a receivable, “supplier” means the supplier of those goods, services or intangible assets to whom that amount is payable and “debtor” means the person liable to pay that amount).

(4) These Regulations have effect notwithstanding any contract term which applies or purports to apply the law of Scotland or some country outside the United Kingdom, where the term appears to the court or arbitrator or arbiter to have been imposed wholly or mainly for the purpose of enabling the party imposing it to evade the operation of these Regulations.

Effect of a non-assignment of receivables term

2.—(1) Subject to regulations 3 and 4, a term in a contract has no effect to the extent that it prohibits or imposes a condition, or other restriction, on the assignment of a receivable arising under that contract or any other contract between the same parties.

(2) A term in a contract which imposes a condition or other restriction on the assignment of a receivable includes a term which prevents a person to whom a receivable is assigned from determining the validity or value of the receivable or their ability to enforce the receivable.

(3) For the purposes of paragraph (2), a term prevents a person to whom a receivable is assigned from determining the validity or value of the receivable or their ability to enforce the receivable if the condition or other restriction prevents that person from obtaining—

- (a) the names and addresses of the parties to the contract;
- (b) the name and address of the person who on behalf of the debtor can confirm the validity and amount of the receivable;
- (c) the VAT registration number of the debtor and of the supplier;
- (d) the date on which the goods, services or intangible assets that give rise to the receivable are supplied;
- (e) a description sufficient to identify the goods, services or intangible assets that give rise to the receivable (including the quantity of goods or intangible assets, or the extent of services, the unit price, the rate of VAT and the amount payable, excluding VAT);
- (f) the date and number of the invoice for the goods, services or intangible assets that give rise to the receivable and any credit note related to the invoice (and the reason for issuing the credit note);
- (g) the amount, basis or rate of any applicable discount;
- (h) the total amount of VAT chargeable;
- (i) the reason for any VAT zero-rating or VAT exemption;
- (j) details of any term in the contract to which regulation 2(1) applies;
- (k) the credit period for paying the receivable;
- (l) evidence of the performance of that part of the contract (or other contract between the parties) which gives rise to the receivable; or
- (m) particulars and evidence of any potential defence or set-off by a party to the contract.

(a) 1934 c. 36.

(b) 1998 c. 17.

(c) 1974 c. 39. “Regulated agreement” is defined in section 189(1).

Exception for suppliers who are large enterprises or special purpose vehicles

3.—(1) Regulation 2 does not apply and accordingly a term mentioned in that regulation does not have effect in relation to the assignment of a receivable if at the time of the assignment the supplier is a large enterprise or a special purpose vehicle.

(2) A supplier is a large enterprise unless it satisfies one of the conditions in paragraph (3) and in paragraph (3) “relevant financial year” means the last financial year (before the date on which the receivable is assigned) in respect of which the supplier has filed accounts.

(3) The conditions in this paragraph are—

- (a) the supplier is an individual, a partnership (other than an LLP or a limited partnership) or an unincorporated association;
- (b) the supplier is a company to which the small companies regime (within the meaning given by sections 381 to 384 of the Companies Act 2006) applied in the relevant financial year and which was not a member of a large group in the relevant financial year;
- (c) the supplier is a company which qualified as medium-sized (within the meaning given by sections 465 to 467 of the Companies Act 2006) in respect of the relevant financial year and which was not a member of a large group in the relevant financial year;
- (d) the supplier is a company (other than an unlimited company exempt under section 448 of the Companies Act 2006 from the obligation to file accounts) that has not filed accounts since its incorporation and whose accounts are not overdue and which is not a member of a large group;
- (e) the supplier is an unlimited company exempt under section 448 of the Companies Act 2006 from the obligation to file accounts, that has not filed accounts since its incorporation and whose accounts would not be overdue if the exemption under that section did not apply and which is not a member of a large group;
- (f) the supplier is an LLP to which the small LLPs regime (within the meaning given by the Companies Act 2006, as applied with modifications by regulation 5 of the Limited Liability Partnerships (Accounts and Audit) (Application of the Companies Act 2006) Regulations 2008), applied in the relevant financial year and which was not a member of a large group in the relevant financial year;
- (g) the supplier is an LLP which qualified as medium-sized (within the meaning given by the Companies Act 2006, as applied with modifications by regulation 26 of the Limited Liability Partnerships (Accounts and Audit) (Application of the Companies Act 2006) Regulations 2008) in respect of the relevant financial year and which was not a member of a large group in the relevant financial year;
- (h) the supplier is an LLP that has not filed accounts since its incorporation and whose accounts are not overdue and which is not a member of a large group;
- (i) the supplier is a body corporate incorporated outside the United Kingdom which, if it were a company formed and registered under the Companies Act 2006, would have been a company to which the small companies regime (within the meaning given by that Act) would have applied in the relevant financial year and which would not have been a member of a large group in the relevant financial year;
- (j) the supplier is a body corporate incorporated outside the United Kingdom which, if it were a company formed and registered under the Companies Act 2006, would have qualified as medium-sized (within the meaning given by that Act) in respect of the relevant financial year and which would not have been a member of a large group in the relevant financial year; and
- (k) the supplier is a body corporate incorporated outside the United Kingdom that has not filed accounts since its incorporation and whose accounts would not be overdue, and which would not be a member of a large group if it were a company formed and registered under the Companies Act 2006.

(4) A special purpose vehicle is a firm, wherever it is incorporated or established, that carries out a primary purpose in relation to—

- (a) the holding of assets (other than trading stock within the meaning of the Income Tax (Trading and Other Income) Act 2005^(a)); or
 - (b) the financing of commercial transactions,
- which in either case involves it incurring a liability under an agreement of £10 million or more.

(5) For the purposes of paragraph (4)—

- (a) where a liability is a contingent liability under or by virtue of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided;
- (b) where the amount of a liability is reduced or recourse in respect of it is limited by reference to the value of the special purpose vehicle's assets at the time the liability is due, the amount of that liability is the full amount of the liability, ignoring that reduction or limit;
- (c) the reference to a liability includes—
 - (i) a present or future liability whether, in either case, it is certain or contingent,
 - (ii) a reference to a liability to be paid wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the liability was incurred).

Other exceptions

4. Regulation 2 does not apply to a term in a contract which is—

- (a) a contract for, or entered into in connection with, prescribed financial services;
- (b) a contract which concerns any interest in land;
- (c) a contract where one or more of the parties to the contract is acting for purposes which are outside a trade, business or profession;
- (d) a contract where none of the parties to the contract has entered into it in the course of carrying on a business in the United Kingdom;
- (e) a contract which concerns national security interests (and a certificate provided by the Secretary of State to the effect that a contract concerns national security interests shall be conclusive evidence of that fact);
- (f) a contract where one or more parties to the contract is a person designated as a counterparty for a contract for difference under section 7 of the Energy Act 2013^(b) and who has entered into the contract by virtue of that Act;
- (g) a petroleum licence;
- (h) a contract where one or more parties to the contract is the licensee in respect of a petroleum licence whose terms would prohibit or restrict the assignment of receivables under that contract;
- (i) a contract which is entered into for the purposes of, or in connection with, the acquisition, disposal or transfer of an ownership interest in a firm, wherever it is incorporated or established, or of a business or undertaking or part of a business or undertaking, and which includes a statement to that effect;
- (j) an option, future, swap, forward, contract for differences or other derivatives contract, not falling within paragraph (a), which may be settled physically or in cash, relating to commodities, energy, emission allowances, climactic variables, freight rates or inflation rates or other official economic statistics that is either—

(a) 2005 c. 5. "Trading stock" is defined in section 174.

(b) 2013 c. 32.

- (i) traded on a regulated market, multilateral trading facility or organised trading facility, or
 - (ii) is not traded on a regulated market, multilateral trading facility or organised trading facility, but is entered into under a market agreement providing for close-out netting, and “regulated market”, “multilateral trading facility” and “organised trading facility” have the same meaning as in Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments (recast)(a);
- (k) a contract entered into by the project company of a project which is—
- (i) a public-private partnership project;
 - (ii) a utility project;
 - (iii) a financed project; or
 - (iv) designed wholly or mainly to develop land which at the commencement of the project is wholly or partly in a designated disadvantaged area outside Northern Ireland,
- and expressions used in this sub-paragraph which are also used in Chapter 4 of Part 3 of the Insolvency Act 1986(b) have the meaning given in that Chapter, except that “company” includes a firm, wherever it is incorporated or established;
- (l) a contract entered into by a trust, fund or other entity, or an arrangement entered, created by or on behalf of a site operator (within the meaning in the Energy Act 2008(c)) to hold and accumulate assets under the terms of a funding arrangements plan that is part of a funded decommissioning programme submitted to the Secretary of State for approval under section 45 of that Act; or
 - (m) a contract, not falling within paragraph (a), entered into wholly or mainly for the purpose of granting by one person of a right to possession or control of an object to another person in return for a rental or other payment.

Kelly Tolhurst

Minister for Small Business, Consumer and Corporate Responsibility
Department for Business, Energy and Industrial Strategy

23rd November 2018

(a) OJ No. L173 12.06.2014, p. 349. The Directive was amended by Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 (OJ No. L257, 28.08.2014, p.1) and Directive 2016/1034/EU of the European Parliament and of the Council of 23 June 2016 (OJ No. L175 30.06.2016, p. 8).

(b) 1986 c. 45. Chapter 4 of Part 3 was inserted by the Enterprise Act 2002 (c. 40), section 250.

(c) 2008 c. 32. See section 68.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations deal with terms in contracts to which the law of England and Wales or the law of Northern Ireland applies which prohibit or restrict the assignment of receivables. A receivable is a right to be paid under a contract for the supply of goods, services or intangible assets. Various types of contract are excluded from the scope of the Regulations.

The Regulations, which are made under section 1 of the Small Business, Enterprise and Employment Act 2015 do not cover financial services contracts: see section 1(3) and (4) of that Act. ‘Financial services’ are defined in section 2 of the Act. Some similar contracts that do not fall under this definition, such as operating leases and derivative contracts, are also excluded from the Regulations.

Regulation 2(1) provides that a term has no effect to the extent that it prohibits or imposes a condition, or other restriction, on the assignment of a receivable. Regulation 2(2) specifies a particular category of contractual terms which, by their impact on an assignee, would have the effect of imposing a condition or other restriction on the assignment. Regulation 2(3) sets out the information that the assignee must be able to obtain in order to determine the validity or value of the receivable or their ability to enforce it.

A contractual right of set-off which the debtor could have exercised against the assignor prior to the assignment or but for the assignment is not a term that imposes a condition or other restriction on the assignment of a receivable for the purposes of these Regulations.

The Regulations do not apply if the person to whom the receivable is owed is a large enterprise or a special purpose vehicle. These terms are both defined in regulation 3. For these purposes a large enterprise is an enterprise which is not a sole trader, partnership or unincorporated association or a company or LLP qualifying as small or medium-sized under the relevant legislation (including bodies incorporated overseas which would so qualify if incorporated in the U.K.).

Regulation 4 excludes various types of contract from the scope of the Regulations, such as where none of the parties has entered into the contract in the course of carrying on a business in the United Kingdom. A contract is also excluded if it has been entered into in connection with or for the purpose of the transfer of all or part of a business (including transitional services agreements, which are contracts to provide services in order to facilitate the transition). For the latter exclusion to apply, the contract must include a statement to that effect.

A full regulatory impact assessment of the effect of these Regulations on the costs of business and the voluntary sector is available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET or from www.gov.uk/beis.

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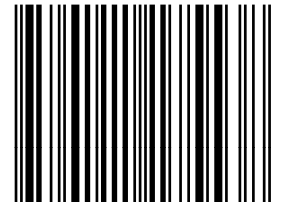
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