SCOTTISH STATUTORY INSTRUMENTS

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[F1] and of all other powers enabling them in that behalf hereby make the following Regulations:

F1 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 [F2] 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2(5)(c) and (6) (the Scottish Ministers' power to specify by order categories of contracts as excepted contracts) are repealed.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–

" **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3(4) and (5) (debts not to carry statutory interest if specified in an order made by the Scottish Ministers) are repealed.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–

" **Compensation arising out of late payment**

5A.—(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.".

F2 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

[F3 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.**]**

F3 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.