
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 77

CONTRACTS

**The Late Payment of Commercial
Debts (Scotland) Regulations 2013**

Made - - - - 27th February 2013
*Laid before the Scottish
Parliament* - - - - 28th February 2013
Coming into force - - 29th March 2013

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1) and all other powers enabling them to do so.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Late Payment of Commercial Debts (Scotland) Regulations 2013 and come into force on 29th March 2013.

(2) These Regulations extend to Scotland only.

(3) These Regulations do not affect contracts made before 29th March 2013.

Amendments of the Late Payment of Commercial Debts (Interest) Act 1998

2.—(1) Section 4 of the Late Payment of Commercial Debts (Interest) Act 1998(2) (period for which statutory interest runs) is amended as follows.

(2) After subsection (3) insert—

“(3A) If, in a case where the purchaser is a public authority, the relevant day under subsection (3) would (but for this subsection) be later than the day which would be the relevant day if subsection (5) applied, it is to be treated for the purposes of subsection (3) as being the day which would be the relevant day if subsection (5) applied.

(3B) If, in a case where the purchaser is not a public authority, the relevant day under subsection (3) would (but for this subsection) be more than 30 days after the day which

(1) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51)). Section 2(2) was also amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred on the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(2) 1998 c.20.

would be the relevant day if subsection (5) applied, it is to be treated for the purposes of subsection (3) as being the day which is 30 days after the day which would be the relevant day if subsection (5) applied.

(3C) Subsection (3B) does not apply if—

- (a) the supplier and the purchaser expressly agree in the contract a date for payment of the debt that is later than the day which would otherwise be the relevant day by virtue of that subsection, and
- (b) that later date is not grossly unfair to the supplier (see subsection (7A)).”.

(3) In subsection (5)—

- (a) omit the “or” following paragraph (a); and
- (b) at the end of paragraph (b), insert;
“; or
- (c) where subsection (5A) applies, the day determined under subsection (5B)”.

(4) After subsection (5) insert—

“(5A) This subsection applies where—

- (a) there is a procedure of acceptance or verification (whether provided for by an enactment or by the contract), under which the conforming of goods or services with the contract is to be ascertained; and
- (b) the purchaser has notice of the amount of the debt on or before the day on which the procedure is completed.

(5B) For the purposes of subsection (5)(c), the day in question is the day which is 30 days after the day on which the procedure is completed.

(5C) Where, in a case where subsection (5A) applies, the procedure in question is completed after the end of the period of 30 days beginning with the day on which the obligation of the supplier to which the debt relates is performed, the procedure is to be treated for the purposes of subsection (5B) as being completed immediately after the end of that period.

(5D) Subsection (5C) does not apply if—

- (a) the supplier and the purchaser expressly agree in the contract a period for completing the procedure in question that is longer than the period mentioned in that subsection; and
- (b) that longer period is not grossly unfair to the supplier (see subsection (7A)).”.

(5) After subsection (7) insert—

“(7A) In determining for the purposes of subsection (3C) or (5D) whether something is grossly unfair, all circumstances of the case shall be considered; and for that purpose, the circumstances of the case include in particular—

- (a) anything that is a gross deviation from good commercial practice and contrary to good faith and fair dealing;
- (b) the nature of the goods or services in question; and
- (c) whether the purchaser has any objective reason to deviate from the result which is provided for by subsection (3B) or (5C).”.

(6) For subsection (8) substitute—

“(8) In this section—

“advance payment” has the same meaning as in section 11;

“enactment” has the same meaning as in section 126(1) of the Scotland Act 1998⁽³⁾;
“public authority” means a contracting authority (within the meaning of regulation 3
of the Public Contracts (Scotland) Regulations 2012⁽⁴⁾).

3.—(1) Section 5A of the Late Payment of Commercial Debts (Interest) Act 1998 (compensation arising out of late payment) is amended as follows.

(2) After subsection (2) insert—

“(2A) If the reasonable costs of the supplier in recovering the debt are not met by the fixed sum, the supplier shall also be entitled to a sum equivalent to the difference between the fixed sum and those costs.”.

(3) In subsection (3), for “an additional fixed sum” substitute “a sum”.

(4) After subsection (3) insert—

“(4) Section 17(1)(b) of the Unfair Contract Terms Act 1977⁽⁵⁾ (no reliance to be placed on certain contract terms) shall apply in cases where a contract term is not contained in written standard terms of the purchaser as well as in cases where the term is contained in such standard terms.

(5) In this section “contract term” means a term of the contract relating to a sum due to the supplier under this section.”.

St Andrew’s House, Edinburgh
27th February 2013

FERGUS EWING
Authorised to sign by the Scottish Ministers

(3) 1998 c.46.
(4) S.S.I. 2012/88.
(5) 1977 c.50.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2011/7/EU of the European Parliament and of the Council of 16th February 2011 on combating late payment in commercial transactions.

These Regulations amend the Late Payment of Commercial Debts (Interest) Act 1998 (c.20) by—

- (a) introducing, in section 4(3A) to (3C) a maximum payment period of up to 30 days where the purchaser is a public authority, and in other cases a payment period of up to 60 days or longer as otherwise agreed. Where the payment period is longer than 60 days, the period must not be grossly unfair to the supplier (regulation 2);
- (b) introducing, in section 4(5A) to (5D) a period of either up to 30 days or longer as otherwise agreed and provided it is not grossly unfair to the supplier, for a purchaser to confirm that the goods or services they have received from the supplier conform with the contract before the payment period commences (regulation 2);
- (c) introducing, in section 5A(2A), a right to compensation for the reasonable costs to the supplier of recovering a debt incurred if that amount exceeds the fixed sums in section 5A(2) (regulation 3).

The references to “grossly unfair” in regulation 2 and to section 3(2)(b) of the Unfair Contract Terms Act 1977 in regulation 3 require a consideration of all the circumstances of the case.

These Regulations (by virtue of regulation 1(3)) do not apply to contracts made before 29th March 2013.

A regulatory impact assessment of the effect of this instrument on the costs of business is available from the Enterprise and Cities Division, Business Directorate, Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU.