

2018 No. 117

CONTRACTS, ENGLAND AND WALES

CONTRACTS, NORTHERN IRELAND

**The Late Payment of Commercial Debts (Amendment)
Regulations 2018**

<i>Made</i> - - - -	<i>23rd January 2018</i>
<i>Laid before Parliament</i>	<i>5th February 2018</i>
<i>Coming into force</i> - -	<i>26th February 2018</i>

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to matters relating to the combating of late payment in commercial transactions, makes the following Regulations in exercise of the powers conferred by that section of that Act and section 14A of the Interpretation Act 1978(c).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Late Payment of Commercial Debts (Amendment) Regulations 2018 and come into force on 26th February 2018.

(2) These Regulations extend to England and Wales and Northern Ireland.

Amendments to the Late Payment of Commercial Debts Regulations 2002

2. The Late Payment of Commercial Debts Regulations 2002(d) are amended as follows.

3. For regulation 3 (proceedings restraining use of grossly unfair terms), substitute—

“Proceedings restraining grossly unfair terms or practices

3.—(1) In this regulation, “representative body” means an organisation established to represent the collective interests of any enterprise, 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(e) applies.

(a) S.I. 2002/248.

(b) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51).

(c) 1978 c.30. Section 14A was inserted by section 59(2) of the Enterprise and Regulatory Reform Act 2013 (c.24).

(d) S.I. 2002/1674.

(e) 1998 c.20.

(3) On the application of a representative body, the High Court may grant an injunction 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 High Court to be grossly unfair.”.

4. After regulation 5 (saving for existing contracts), insert—

“Review

6.—(1) Before 26th February 2022, and subsequently at intervals not exceeding five years, the Secretary of State must—

- (a) carry out a review of regulation 3;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(1) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Article 7(5) of Directive 2011/7/EU of the European Parliament and of the Council of 16th February 2011 on combating late payment in commercial transactions^(a) is implemented in other member States.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by regulation 3;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.”.

Saving for existing contracts

5. These Regulations do not affect contracts made before the date these Regulations come into force.

Andrew Griffiths
Parliamentary Under Secretary of State
Minister for Small Business, Consumers and Corporate Responsibility
Department for Business, Energy and Industrial Strategy

23rd January 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement requirements of Directive 2011/7/EU of the European Parliament and of the Council of 16th February 2011 on combating late payment in commercial transactions (OJ No L 48, 23.2.2011, p.1).

These Regulations substitute a new Regulation 3 of the Late Payment of Commercial Debts Regulations 2002. The new provision clarifies that certain bodies are able to challenge the use of certain grossly unfair terms or practices in or in relation to contracts to which the Late Payment of Commercial Debts (Interest) Act 1998 applies.

(a) OJ No L 48, 23.2.2011, p.1.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Business, Energy and Industrial Strategy at 1 Victoria Street, London SW1H 0ET and is published with an Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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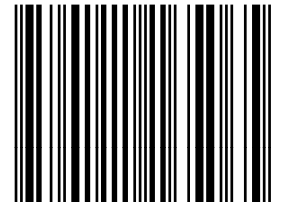
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