EXPLANATORY MEMORANDUM TO

THE LATE PAYMENT OF COMMERCIAL DEBTS (AMENDMENT) REGULATIONS 2015

2015 No. 1336

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the Late Payment of Commercial Debts (Amendment) Regulations 2015 is to clarify the effect of Section 4 of the Late Payment of Commercial Debts (Interest) Act 1998. These Regulations amend Section 4 of the 1998 Act to clarify the limits set for payment periods for commercial debts at a maximum of 60 days in most cases and 30 days for those incurred by public authorities.

2.2 By virtue of amending Section 4 of the 1998 Act, these regulations implement European Directive 2011/7/EU on combating late payment in commercial transactions.

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The United Kingdom introduced late payment legislation in 1998. The Late Payment of Commercial Debts (Interest) Act 1998 introduced a statutory right to interest on debts owed to a supplier under a contract where payment was made late. Late payment within this context is any payment made after the statutory period for payment set out in the 1998 Act has expired.

4.2 The Late Payment of Commercial Debts Regulations 2002 (SI 2002 No. 1674) implemented European Directive 2000/35/EC. This Directive was recast in 2011. The Late Payment of Commercial Debts Regulations 2013 (SI 2013 No. 395) amended the Late Payment of Commercial Debts (Interest) Act 1998 to implement European Directive 2011/7/EU (recast) on combating late payment in commercial transactions.

4.3 The aim of the recast Directive was to make pursuing payment a simpler process across the European Union, reducing the culture of paying late and making paying on time the norm. This came into force on 16 March 2013. In the two years since the 2013 Regulations came into effect, the Department for Business, Innovation and Skills has become aware that Section 4 of the 1998 Act has caused some confusion to stakeholders.

4.4 The European Commission has raised similar concerns about the clarity of Section 4 of the 1998 Act. These Regulations also respond to concerns raised by the European Commission about the clarity of our existing implementing measures as regards maximum payment periods.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 The Secretary of State for Business, Innovation and Skills has made the following statement regarding Human Rights:

In my view the provisions of The Late Payments of Commercial Debts (Amendment) Regulations 2015 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The recast Directive is designed to strengthen current legislation and to combat the culture of late payments in commercial transactions within the European Union, by laying down common minimum requirements, essentially extending the protections already enjoyed by UK businesses across the Union.

7.2 Government supports the recast Directive as it seeks to create a level playing field for UK suppliers trading across the Single Market and is aimed at creating an environment where paying on time is the norm and late payment is seen to be unacceptable across the business community. The recast Directive contains measures which require debtors to pay interest and reimburse the reasonable recovery costs of the creditor, if they do not pay for goods and services on time (in most cases 60 days for business and 30 days for public authorities).

7.3 The amending regulations clarify the maximum 30 and 60 days payment terms to be honoured by purchasers under the Act as noted above.

8. Consultation outcome

8.1 These Regulations do not change the law, they clarify existing law. Therefore, there is no impact on business. As a result of these Regulations, no consultation has been carried out.

9. Guidance

9.1 Guidance in relation to the 1998 Act (as amended) is available through the Department for Business, Innovation and Skills website at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360834/bis-14-1116-a-users-guide-to-the-recast-late-payment-directive.pdf

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as no cost to the business or voluntary sectors is foreseen.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 The 1998 Act will be reviewed by March 2018. A review of these Regulations will form part of this.

13. Contact

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