EXPLANATORY MEMORANDUM TO

THE LATE PAYMENT OF COMMERCIAL DEBTS REGULATIONS 2013

2013 No. 395

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 These Regulations amend the provisions governing the late payment of commercial debts. They set limits on payment periods for commercial debts to a maximum of 60 days in most cases and 30 days for those incurred by public authorities, limit the amount of time for purchasers to verify the conformity of goods or services with the contract to 30 days in most cases and permit suppliers to recover their reasonable costs in recovering debts.

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

3.1 None.

4. Legislative Context

4.1 Purchasers of goods and services who are acting in the course of a business have limits placed upon their freedom to contract by the Late Payment of Commercial Debts (Interest) Act 1998. In other words, the parties to a contract are limited by the Act to what they can agree. The limits apply to the payment periods for commercial debts and the consequences of failing to pay those debts. The purpose of those limits is to encourage the prompt payment of debts.

4.2 These Regulations implement Directive 2011/7/EU of 16 February 2011 on combating late payment in commercial transactions ("**the recast Directive**"), which is an updated version of Directive 2000/35/EC.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

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 Regulations 2013 are compatible with the Convention rights

7. Policy background

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 revision of the Directive as it seeks to introduce a number of improvements to the original, providing clarity, saving business money and creating a level playing field for UK suppliers trading across the Single Market.

7.3 The recast Directive covers all debts incurred in commercial transactions. It applies to businesses and public authorities. It recognises current UK legislation and practice as an exemplar and essentially mirrors existing UK provisions.

7.4 In considering the impact of legislation in this area, it is important to note that regulation is not the remedy for late payment.

7.5 Most supplier relationships are long-standing and resorting to legal action is therefore not a practical option except as a final alternative. Legislation is intended to create an environment for driving payment on time and best practice dictates that suppliers reference the costs of missing the due payment date in all written contracts and invoices, setting a clear expectation from the outset.

8. Consultation outcome

8.1 The Department for Business, Innovation and Skills (BIS) ran a public consultation during the period 20 September 2012 to 19 October 2012. Launched by the Minister of State for Business and Enterprise through a press notice, interested parties and their representatives likely to be directly affected by the Regulations were invited to comment on the proposals. These included businesses, individuals and a range of representative bodies and local authorities.

8.2 The consultation sought views on transposition. It should be noted that not all respondents provided comments to all the questions and others provided comments that fell outside of the remit of this consultation. At the launch, 1,254 emails were distributed to stakeholders. The launch was picked up and rebroadcast on numerous websites and micro-blogging sites both in the UK and overseas. At the end of the consultation period, BIS had received 80 responses, from individuals, businesses and their representatives, trade bodies, local authorities and utility companies.

9. Guidance

9.1 Guidance on the new Regulations will be placed on the BIS website by the end of February 2013. The Regulations come into force on 16 March 2013 so there will be a period of time for those affected to familiarise themselves with the Regulations.

10. Impact

10.1 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring and Review

12.1 We will review the legislation by March 2018.

13. Contact

Andy Harrison at the Department for Business, Innovation and Skills Tel: 0207 215 3891 or email: andy.harrison@bis.gsi.gov.uk can answer any queries regarding the instrument.

Transposition table for the Late Payment of Commercial Debts Regulations 2013

Article	Purpose	Implementation
1	Subject matter and scope	No action required.
2	Definitions	Substantively the same as definitions in Directive 2000/35/EC. No action required.
3	Transactions between undertakings	Articles 3 and 4 of Directive 2011/7/EU ("**the Directive**") are to be implemented by Regulation 2: Regulation 2(2) implements Article 4(3)(a) (except 4(3)(a)(iv)) by inserting s.4(3A) into the Late Payment of Commercial Debts (interest) Act 1998 ("**the Act**"). This provides that where the purchaser is a public authority and a date for payment has been agreed (the latter by reference to s.4(3) of the Act), the payment period cannot exceed 30 days (Article 4(3)(a)). The payment period is limited to 30 days by reference to s.4(5). Regulation 2(2) also implements Articles 3(3)(a) and 3(5) by inserting ss.4(3B) and (3C) into the Act. This provides that where the purchaser is not a public authority and a date for payment has been agreed (the latter by reference to s.4(3) of the Act), the payment period cannot exceed 60 days unless agreed and not grossly unfair to the creditor. Regulations 2(3) and 2(4) implement Article 3(4) and 4(4) by inserting new ss.4(5)(c) and 4(5A) to (5D) into the Act. Regulation 2(5) defines "grossly unfair": the wording is largely imported from the Directive and is limited to the defined subsections. Regulation 2(6) defines "public authority" by referring to the definition found in the Public Contracts Regulations 2006/5 that implemented Directive 2004/18/EC. The Utilities Contracts Regulations 2006/6 which implemented Directive 2004/17/EC refer to the same definition in the Public Contract Regulations. Both sets of Regulations are those which implement the Directives which the present Directive refers to for its definition of public authority. This approach has more recently been taken in The Defence and Security Public Contracts Regulations 2011/1848. No further action required for the remaining provisions.
4	Transactions between undertakings and public authorities	
5	Payment schedules	Section 3 of the Act makes the same provision. No further action required.
6	Compensation for recovery costs	With the exception of Article 6(3), section 5A of the Act makes the same provision. Regulation 3 implements Article 6(3) by inserting s.5A(2A) and allows creditors to recover their reasonable costs in excess of the fixed sum to which they are entitled.
7	Unfair contractual terms and practices	Article 7(3) is implemented by inserting ss.5A(4) and (5). Other than that specified above, sections 8 and 14 of the Act and the common law are to the same effect. No further action required.
8	Transparency and awareness raising	No action required.

9	Retention of title	Substantively the same as Article 4 of Directive 2000/35/EC, no action required.
10	Recovery procedures for unchallenged claims	Substantively the same as Article 5 of Directive 2000/35/EC, no action required.
11	Report	No action required.
12	Transposition	Deadline to be met. No further action required.
13	Repeal	No action required.
14	Entry into force	No action required.
15	Addressees	No action required.

21 February 2013