SCOTTISH STATUTORY INSTRUMENTS

2018 No. 160

CONTRACTS

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

Made - - - -	*17th May 2018*
Laid before the Scottish Parliament	*21st May 2018*
Coming into force - -	*29th June 2018*

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

Citation and commencement

1. These Regulations may be cited as the Late Payment of Commercial Debts (Scotland) Amendment Regulations 2018 and come into force on 29th June 2018.

Amendment of the Late Payment of Commercial Debts (Scotland) Regulations 2002

2.—(1) The Late Payment of Commercial Debts (Scotland) Regulations 2002(**b**) are amended in accordance with paragraph (2).

(2) 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 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(**c**) 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**) 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), ("the 2006 Act")). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), section 3(3) and schedule 1, Part 1. The functions conferred upon 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.

(**b**) S.S.I. 2002/335.

(**c**) 1998 c.20, relevantly amended by S.S.I. 2002/335, S.S.I. 2013/77, S.S.I. 2013/131, S.S.I. 2015/226 and S.S.I. 2015/446.

(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.".

Saving for existing contracts

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

PAUL WHEELHOUSE
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
17th May 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose 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 (OJ L 48, 23.2.2011, p.1).

These Regulations amend the Late Payment of Commercial Debts (Scotland) Regulations 2002 ("the principal Regulations"). Regulation 2(2) substitutes a new regulation 3 in the principal Regulations which clarifies that representative bodies are able to challenge in the Court of Session (on behalf of undertakings of all sizes, not just small and medium enterprises) 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.

Regulation 3 provides that these Regulations do not affect contracts made before the date these Regulations come into force.

No business and regulatory impact assessment has been prepared as no costs to business are foreseen.

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