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STATUTORY INSTRUMENTS

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**1998 No. 2479 (C. 56)**

**CONTRACTS**

**The Late Payment of Commercial Debts (Interest)  
Act 1998 (Commencement No. 1) Order 1998**

*Made - - - - 4th October 1998*

The Secretary of State, in exercise of the power conferred on him by section 17(2) of the Late Payment of Commercial Debts (Interest) Act 1998<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Order:—

**Citation**

1. This Order may be cited as the Late Payment of Commercial Debts (Interest) Act 1998 (Commencement No. 1) Order 1998.

**Interpretation**

2.—(1) In this Order—

- (a) “large business purchaser” means a purchaser, not being a United Kingdom public authority, whose business is a large business;
- (b) “United Kingdom public authority” means an authority falling within Schedule 1; and
- (c) “small business supplier” means a supplier, not being a United Kingdom public authority, whose business is a small business.

(2) For the purposes of this Order, a business is—

- (a) a small business, if the number of full-time employees employed in the business is 50 or fewer; or
- (b) a large business, if the number of full-time employees employed in the business is more than 50,

when calculated in accordance with Schedule 2.

**Contracts in relation to which the Late Payment of Commercial Debts (Interest) Act 1998 comes into force on 1st November 1998**

3.—(1) The Late Payment of Commercial Debts (Interest) Act 1998 shall come into force on 1st November 1998 in relation to contracts for the supply of goods or services made on or after that date of either of the following descriptions, that is to say—

- (a) contracts made between a small business supplier and a purchaser who is a United Kingdom public authority; or
- (b) contracts made between a small business supplier and a large business purchaser.

(2) The question whether a contract falls within either of those descriptions is to be determined by reference to the circumstances when the contract is made and, accordingly, is not affected by any subsequent change in those circumstances.

4th October 1998

*Barbara Roche*  
Parliamentary Under Secretary of State for Small  
Firms, Trade and Industry,  
Department of Trade and Industry

## SCHEDULE 1

Article 2(1)(b)

### MEANING OF “UNITED KINGDOM PUBLIC AUTHORITY”

1. For the purposes of this Order, each of the following is a United Kingdom public authority—
  - (a) a Minister of the Crown;
  - (b) a department of Her Majesty’s Government in the United Kingdom or a Northern Ireland department;
  - (c) the House of Commons;
  - (d) the House of Lords;
  - (e) the New Northern Ireland Assembly;
  - (f) a local authority;
  - (g) a fire authority constituted by a combination scheme under the Fire Services Act 1947(2);
  - (h) the Fire Authority for Northern Ireland;
  - (i) a police authority established under section 3 of the Police Act 1996(3);
  - (j) the Receiver for the Metropolitan Police District(4);
  - (k) the Police Authority for Northern Ireland;
  - (l) an authority established under section 10 of the Local Government Act 1985(5);
  - (m) a joint authority established under Part IV of that Act;
  - (n) any body established pursuant to an order under section 67 of that Act;
  - (o) the Broads Authority;
  - (p) any joint board the constituent members of which consist of any of the bodies specified in paragraphs (f), (g), (i), (j), (l), (m), (n) and (o) above;
  - (q) a joint or special planning board constituted for a National Park;
  - (r) a corporation established, or a group of individuals appointed to act together, being established or appointed as the case may be by or under any enactment or under the law of the United Kingdom or any part thereof, for the specific purposes of meeting needs in the general interest, not having an industrial or commercial character, and—
    - (i) financed wholly or mainly by another United Kingdom public authority; or
    - (ii) subject to management supervision by another United Kingdom public authority; or
    - (iii) more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, are appointed by another United Kingdom public authority; and
  - (s) an association of or formed by one or more of the above.
2. In this Schedule—
  - (a) in relation to England and Wales as meaning—

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(2) 1947 c. 41. Fire authorities other than those constituted by combination are included within the categories of local authorities (section 4 (as amended) of 1947 c. 41, for England and Wales; and section 4 as substituted by section 36(15) of that Act for Scotland), and joint authorities as referred to in sub-paragraph (m) above for England and Wales, and joint boards within the meaning of section 36(2) of that Act for Scotland. Section 36 has been amended.

(3) 1996 c. 16, which applies to England and Wales. In Scotland, the local authority is the police authority (section 2 (as amended) of the Police (Scotland) Act 1967 (c. 77)).

(4) the Receiver for the Metropolitan Police District was created by section 1 of the Metropolitan Police (Receiver) Act 1861 (c. 124).

(5) 1985 c. 51; there is an amendment to section 10 not relevant to this Order.

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- (i) a county council, a county borough council, a district council, a London borough council, a parish council, a community council or the Council of the Isles of Scilly;
- (ii) the Common Council of the City of London in its capacity as local authority or police authority;
- (b) in relation to Scotland, as having the same meaning as in section 235(1) of the Local Government (Scotland) Act 1973<sup>(6)</sup> and also as including a joint board or a joint committee within the meaning of section 235(1);
- (c) in relation to Northern Ireland, as meaning a district council within the meaning of the Local Government Act (Northern Ireland) 1972<sup>(7)</sup>;

“Minister of the Crown” means the holder of an office in Her Majesty’s Government in the United Kingdom, and includes the Treasury; and

“Northern Ireland department” includes the head of such department.

3. Where an authority specified in paragraph (1) above does not have the capacity to enter into a contract, the person whose function it is to enter into contracts for that authority shall be regarded as a United Kingdom public authority for the purposes of the operation of this Order.

## SCHEDULE 2

Article 2(2)

### CALCULATION OF THE NUMBER OF EMPLOYEES FOR THE PURPOSE OF DETERMINING WHETHER A BUSINESS IS A SMALL BUSINESS OR A LARGE BUSINESS

1.—(1) For the purposes of this Order, the number of full-time employees employed in a business of a party to a contract for the supply of goods or services on any day is subject to sub-paragraph (2) below, the average number of full-time employees over the relevant period in relation to that day, calculated in accordance with the following provisions of this Schedule.

(2) Where the contract is made on the first day on which the business is carried on, the number of full-time employees employed in the business shall be the number of full-time employees at the time at which the contract is made, calculated in accordance with those provisions.

#### *Meaning of “employee” and “employer”*

2. For the purposes of this Schedule, “employee” means—

- (a) an individual who is employed in the business—
  - (i) under a contract of service or apprenticeship;
  - (ii) under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;
- (b) a partner; and
- (c) in relation to a business carried on by one individual, that individual,

(6) 1973 c. 65; the definition of “local authority” in section 235(1) was substituted by section 180(1) of, and paragraph 92(66) of Schedule 13 to, the Local Government etc. (Scotland) Act 1994 (c. 39). The substituted definition refers to councils constituted under section 2 of 1994 c. 39.

(7) 1972 c. 9 (N.I.).

and “employer” means the person for whom such employee so works (for the avoidance of doubt it is hereby declared that in the case of sub-paragraph (b) above, the employer is the partnership, and in the case of sub-paragraph (c) above, the employer and the employee are the same person).

#### *Full-time and part-time employees*

3.—(1) For the purposes of counting the number of full-time employees—

- (a) an employee shall be regarded as full-time if that employee works for 35 hours or more per week; and
- (b) an employee shall be regarded as part-time if that employee works for less than 35 hours per week.

(2) A part-time employee shall be counted as a fraction of a full-time employee, the fraction being calculated as

$$\frac{\text{thenumberofhourswhichthepart – timeemployee works}}{\text{thenumberoffull – timehours}}$$

where the number of full-time hours is—

- a the number of hours which a full-time employee of the same description as the part-time employee works in the business concerned; or
- b where there are no full-time employees of that description, 35 hours per week.

(3) In this paragraph, a reference to the number of hours which an employee works is a reference to the number of hours which that employee is contractually required to work, or ordinarily works, if greater or where the contract does not provide for the number of hours, in each case excluding any meal break or rest period exceeding 15 minutes.

#### **The relevant period**

4. The relevant period for the purposes of this Schedule is either—

- (a) the complete period of 1st April to 31st March immediately preceding the date of making the contract; or
- (b) where the business was not being carried on throughout that period—
  - (i) the period of complete months throughout which the business has been carried on ending on that date of 31st March; or
  - (ii) where the business has not been carried on for at least one complete month ending on that date of 31st March, the number of complete months for which the business has been carried on, ending at the end of the month immediately preceding the month in which the contract is made; or
  - (iii) where the business has not been carried on for at least one complete month, the number of days for which the business has been carried on prior to the day on which the contract is made.

#### **Calculating the average**

5. Subject to paragraph 6, the average number of full-time employees shall be—

- (a) the number of full-time employees, calculated by adding the numbers for each month (or, where sub-paragraph (b)(iii) of paragraph 4 above applies, for each day) comprised in the relevant period as they stood at the end of the final day of each such month (or day, as the case may be), and dividing the total by the number of months (or days, as the case may be); or

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- (b) where the relevant period is exactly one complete month or one day, the number at the end of the final day of that month, or the end of that day, as the case may be.

### **Aggregation with number of employees in associated businesses**

6.—(1) A business shall be regarded as a large business where the average number of employees employed in that business when aggregated with the average numbers employed in all other businesses run by the same or any associated employer is more than 50.

(2) For the purpose of the application of this paragraph, the average number for each business run by the same or any associated employer is calculated separately.

(3) For the purposes of sub-paragraph (1) above, two employers shall be treated as associated employers if—

- (a) one is a body of which the other employer (directly or indirectly) has control; or
- (b) both are bodies of which a third person (directly or indirectly) has control.

(4) In sub-paragraph (3) above—

- (a) “body” means a body of persons corporate or unincorporate;
- (b) “control”, “directly”, “indirectly” and “third person” have the same meaning as in section 231 of the Employment Rights Act 1996<sup>(8)</sup>.

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order brings into force the Late Payment of Commercial Debts (Interest) Act 1998 (“the Act”) for the purposes of the first phase, that is, in relation to commercial contracts for the supply of goods or services where the supplier is a small business and the purchaser is a large business or a United Kingdom public authority (article 3). This is the first commencement Order.

Article 2 provides for the definitions of “small business supplier”, “large business purchaser” and “United Kingdom public authority”. Schedule 1 lists categories of authority which are United Kingdom public authorities. By article 2(2), a small business is one which has 50 or fewer full-time employees. Schedule 2 provides for the calculation of the number of full-time employees in a business for the purpose of determining whether it is small or large.

An employee is defined (paragraph 2 of Schedule 2) to include persons who work in the business both under a contract of employment and other than under such a contract, eg partners and a sole owner. Provision is made for the counting of part-time employees as fractions of full-timers (paragraph 3) and employees in associated businesses are counted (paragraph 6). Taking the period of 1st April to 31st March (or a shorter period for new businesses) preceding making the contract (paragraph 4), the average is taken of the numbers of employees over that period (paragraph 5).

On the same day as this Order comes into force, the following will also come into force to give full effect to the Act—

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(8) 1996 c. 18.

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- (a) the [Late Payment of Commercial Debts \(Interest\) \(Legal Aid Exceptions\) Order 1998 \(S.I. No. 2482\)](#), which excepts certain contracts made by the Legal Aid Board for the provision of legal aid where the rates are those provided for under the Legal Aid Act 1988;
- (b) the [Late Payment of Commercial Debts \(Rate of Interest\) Order 1998 \(S.I. No. 2480\)](#), which sets the rate of interest under section 6 of the Act;
- (c) the [Late Payment of Commercial Debts \(Interest\) Act 1998 \(Transitional Provisions\) Regulations 1998 \(S.I. No. 2481\)](#), which provides that, while the Act is not fully in force, it shall be presumed until the contrary is proved that the business of the purchaser is a large business.