

POLICY NOTE

THE LATE PAYMENT OF COMMERCIAL DEBTS (SCOTLAND) AMENDMENT REGULATIONS 2018

SSI 2018/160

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative procedure.

Policy Objectives

The instrument is required to clarify transposition of article 7(5) of EU Directive 2011/7/EU (the “recast Directive”) on combating late payment in commercial transactions. It will substitute a new Regulation 3 of the Late Payment of Commercial Debts (Scotland) Regulations 2002 No. 335 which allows representative bodies to challenge certain “grossly unfair” contractual terms or practices on behalf of small and medium sized enterprises (SMEs). Currently the power conferred on representative bodies is narrower than that envisaged by the recast Directive. The new provision clarifies that certain representative bodies are able to decide whether to take action to bring proceedings to challenge the use of certain grossly unfair terms or practices, on behalf of any size business undertaking (not just SMEs) in or in relation to contracts to which the Late Payment of Commercial Debts (Interest) Act 1998 applies. The regulations will maintain the UK level playing field¹, with any court action expected to continue to be a “last resort”.

Consultation

The response to a UK wide consultation (jointly with Scottish Government) was published in February 2018². The recast Directive’s requirements are substantively already in place in domestic law and the instrument is simply a matter of technical clarification. Therefore, there is no additional regulatory burden on business, or representative organisations, anticipated. These Regulations will not apply retrospectively.

Impact Assessments

No impact assessments have been completed. There are no Equality, Privacy, Children's Welfare or Strategic Environmental impact issues arising from this instrument.

Financial Effects

The Minister for Business, Innovation and Energy confirms that no Business and Regulatory Impact Assessment is necessary as this instrument has no financial effects on the Scottish Government, Local Government or on business.

**Scottish Government
Economic Development Directorate
May 2018**

¹ The Late Payment of Commercial Debt (Amendment) Regulations 2018, SI 2018 No. 117 - came into force on 26 February 2018 for England, Wales and Northern Ireland.

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/681754/late-payment-grossly-unfair-terms-practices-consultation-responses.pdf