

EXPLANATORY MEMORANDUM TO
THE LATE PAYMENT OF COMMERCIAL DEBTS (NO.2) REGULATIONS 2013

2013 No. 908

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. Where a procedure for acceptance or verification is provided for on receipt of goods or services, these Regulations remove an additional 30 period after the completion of that procedure and commence the payment period on completion of that procedure which may last for up to 30 days unless otherwise agreed and provided that the longer period is not grossly unfair.

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 further 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 Minister of State for Business and Enterprise, Rt Hon Michael Fallon MP, has made the following statement regarding Human Rights:

In my view the provisions of the Late Payments of Commercial Debts (No.2) 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 has been in place on the BIS website since March 2013. These Regulations come into force on 14th May 2013 so there has been a period of time for those affected to familiarise themselves with the effect of the Regulations. This instrument does not necessitate a change to the guidance.

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 6032 or email: andy.harrison@bis.gsi.gov.uk can answer any queries regarding the instrument.

Transposition table for the Late Payment of Commercial Debts (No.2) Regulations 2013

Article	Purpose	Implementation
1	<u>Subject matter and scope</u>	No action required.
2	<u>Definitions</u>	No action required.
3	<u>Transactions between undertakings</u>	Regulation 2 implements Articles 3(3)(b)(iv), 3(4), 4(3)(a)(iv) and 4(5) of Directive 2011/7/EU by removing an additional 30 day period after the completion of the acceptance or verification procedure and commencing the payment period either after the completion of procedure or, if longer, after 30 days or as otherwise agreed and provided it is not grossly unfair to the supplier.
4	<u>Transactions between undertakings and public authorities</u>	No further action required for the remaining provisions.
5	<u>Payment schedules</u>	No action required.
6	<u>Compensation for recovery costs</u>	No action required.
7	<u>Unfair contractual terms and practices</u>	No action required.
8	<u>Transparency and awareness raising</u>	No action required.
9	<u>Retention of title</u>	No action required.
10	<u>Recovery procedures for unchallenged claims</u>	No action required.
11	<u>Report</u>	No action required.
12	<u>Transposition</u>	No further action required.
13	<u>Repeal</u>	No action required.
14	<u>Entry into force</u>	No action required.
15	<u>Addressees</u>	No action required.