
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 77

**The Late Payment of Commercial
Debts (Scotland) Regulations 2013**

Amendments of the Late Payment of Commercial Debts (Interest) Act 1998

2.—(1) Section 4 of the Late Payment of Commercial Debts (Interest) Act 1998⁽¹⁾ (period for which statutory interest runs) is amended as follows.

(2) After subsection (3) insert—

“(3A) If, in a case where the purchaser is a public authority, the relevant day under subsection (3) would (but for this subsection) be later than the day which would be the relevant day if subsection (5) applied, it is to be treated for the purposes of subsection (3) as being the day which would be the relevant day if subsection (5) applied.

(3B) If, in a case where the purchaser is not a public authority, the relevant day under subsection (3) would (but for this subsection) be more than 30 days after the day which would be the relevant day if subsection (5) applied, it is to be treated for the purposes of subsection (3) as being the day which is 30 days after the day which would be the relevant day if subsection (5) applied.

(3C) Subsection (3B) does not apply if—

- (a) the supplier and the purchaser expressly agree in the contract a date for payment of the debt that is later than the day which would otherwise be the relevant day by virtue of that subsection, and
- (b) that later date is not grossly unfair to the supplier (see subsection (7A)).”

(3) In subsection (5)—

- (a) omit the “or” following paragraph (a); and
- (b) at the end of paragraph (b), insert;

“; or

(c) where subsection (5A) applies, the day determined under subsection (5B)”.

(4) After subsection (5) insert—

“(5A) This subsection applies where—

- (a) there is a procedure of acceptance or verification (whether provided for by an enactment or by the contract), under which the conforming of goods or services with the contract is to be ascertained; and
- (b) the purchaser has notice of the amount of the debt on or before the day on which the procedure is completed.

(5B) For the purposes of subsection (5)(c), the day in question is the day which is 30 days after the day on which the procedure is completed.

(5C) Where, in a case where subsection (5A) applies, the procedure in question is completed after the end of the period of 30 days beginning with the day on which the obligation of the supplier to which the debt relates is performed, the procedure is to be treated for the purposes of subsection (5B) as being completed immediately after the end of that period.

(5D) Subsection (5C) does not apply if—

- (a) the supplier and the purchaser expressly agree in the contract a period for completing the procedure in question that is longer than the period mentioned in that subsection; and
- (b) that longer period is not grossly unfair to the supplier (see subsection (7A)).”

(5) After subsection (7) insert—

“(7A) In determining for the purposes of subsection (3C) or (5D) whether something is grossly unfair, all circumstances of the case shall be considered; and for that purpose, the circumstances of the case include in particular—

- (a) anything that is a gross deviation from good commercial practice and contrary to good faith and fair dealing;
- (b) the nature of the goods or services in question; and
- (c) whether the purchaser has any objective reason to deviate from the result which is provided for by subsection (3B) or (5C).”

(6) For subsection (8) substitute—

“(8) In this section—

“advance payment” has the same meaning as in section 11;

“enactment” has the same meaning as in section 126(1) of the Scotland Act 1998⁽²⁾;

“public authority” means a contracting authority (within the meaning of regulation 3 of the Public Contracts (Scotland) Regulations 2012⁽³⁾).”

(2) 1998 c.46.
(3) S.S.I. 2012/88.