



# Late Payment of Commercial Debts (Interest) Act 1998

## 1998 CHAPTER 20

### PART III

#### GENERAL AND SUPPLEMENTARY

#### **11 Treatment of advance payments of the contract price**

- (1) A qualifying debt created by virtue of an obligation to make an advance payment shall be treated for the purposes of this Act as if it was created on the day mentioned in subsection (3), (4) or (5) (as the case may be).
- (2) In this section “advance payment” means a payment falling due before the obligation of the supplier to which the whole contract price relates (“the supplier’s obligation”) is performed, other than a payment of a part of the contract price that is due in respect of any part performance of that obligation and payable on or after the day on which that part performance is completed.
- (3) Where the advance payment is the whole contract price, the debt shall be treated as created on the day on which the supplier’s obligation is performed.
- (4) Where the advance payment is a part of the contract price, but the sum is not due in respect of any part performance of the supplier’s obligation, the debt shall be treated as created on the day on which the supplier’s obligation is performed.
- (5) Where the advance payment is a part of the contract price due in respect of any part performance of the supplier’s obligation, but is payable before that part performance is completed, the debt shall be treated as created on the day on which the relevant part performance is completed.
- (6) Where the debt is created by virtue of an obligation to pay a sum due in respect of a period of hire of goods, this section has effect as if—
  - (a) references to the day on which the supplier’s obligation is performed were references to the last day of that period; and

- (b) references to part performance of that obligation were references to part of that period.
- (7) For the purposes of this section an obligation to pay the whole outstanding balance of the contract price shall be regarded as an obligation to pay the whole contract price and not as an obligation to pay a part of the contract price.

## **12 Conflict of laws**

- (1) This Act does not have effect in relation to a contract governed by the law of a part of the United Kingdom by choice of the parties if—
- (a) there is no significant connection between the contract and that part of the United Kingdom; and
  - (b) but for that choice, the applicable law would be a foreign law.
- (2) This Act has effect in relation to a contract governed by a foreign law by choice of the parties if—
- (a) but for that choice, the applicable law would be the law of a part of the United Kingdom; and
  - (b) there is no significant connection between the contract and any country other than that part of the United Kingdom.
- (3) In this section—
- “contract” means a contract falling within section 2(1); and
  - “foreign law” means the law of a country outside the United Kingdom.

## **13 Assignments, etc**

- (1) The operation of this Act in relation to a qualifying debt is not affected by—
- (a) any change in the identity of the parties to the contract creating the debt; or
  - (b) the passing of the right to be paid the debt, or the duty to pay it (in whole or in part) to a person other than the person who is the original creditor or the original debtor when the debt is created.
- (2) Any reference in this Act to the supplier or the purchaser is a reference to the person who is for the time being the supplier or the purchaser or, in relation to a time after the debt in question has been created, the person who is for the time being the creditor or the debtor, as the case may be.
- (3) Where the right to be paid part of a debt passes to a person other than the person who is the original creditor when the debt is created, any reference in this Act to a debt shall be construed as (or, if the context so requires, as including) a reference to part of a debt.
- (4) A reference in this section to the identity of the parties to a contract changing, or to a right or duty passing, is a reference to it changing or passing by assignment or assignation, by operation of law or otherwise.

## **14 Contract terms relating to the date for payment of the contract price**

- (1) This section applies to any contract term which purports to have the effect of postponing the time at which a qualifying debt would otherwise be created by a contract to which this Act applies.

- (2) Sections 3(2)(b) and 17(1)(b) of the Unfair Contract Terms Act 1977 (no reliance to be placed on certain contract terms) shall apply in cases where such a contract term is not contained in written standard terms of the purchaser as well as in cases where the term is contained in such standard terms.
- (3) In this section “contract term” has the same meaning as in section 10(1).

## **15 Orders and regulations**

- (1) Any power to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) Any statutory instrument containing an order or regulations under this Act, other than an order under section 17(2), shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **16 Interpretation**

- (1) In this Act—
  - “contract for the supply of goods or services” has the meaning given in section 2(2);
  - “contract price” means the price in a contract of sale of goods or the money consideration referred to in section 2(2)(b) in any other contract for the supply of goods or services;
  - “purchaser” means (subject to section 13(2)) the buyer in a contract of sale or the person who contracts with the supplier in any other contract for the supply of goods or services;
  - “qualifying debt” means a debt falling within section 3(1);
  - “statutory interest” means interest carried by virtue of the term implied by section 1(1); and
  - “supplier” means (subject to section 13(2)) the seller in a contract of sale of goods or the person who does one or more of the things mentioned in section 2(3) in any other contract for the supply of goods or services.
- (2) In this Act any reference (however worded) to an agreement or to contract terms includes a reference to both express and implied terms (including terms established by a course of dealing or by such usage as binds the parties).

## **17 Short title, commencement and extent**

- (1) This Act may be cited as the Late Payment of Commercial Debts (Interest) Act 1998.
- (2) This Act (apart from this section) shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different descriptions of contract or for other different purposes.

An order under this subsection may specify a description of contract by reference to any feature of the contract (including the parties).
- (3) The Secretary of State may by regulations make such transitional, supplemental or incidental provision (including provision modifying any provision of this Act) as the Secretary of State may consider necessary or expedient in connection with the operation of this Act while it is not fully in force.

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*Status: This is the original version (as it was originally enacted).*

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- (4) This Act does not affect contracts of any description made before this Act comes into force for contracts of that description.
- (5) This Act extends to Northern Ireland.