



BRIEFING NOTE:

Late Payment of Debt – new provisions to be aware of

Late payment of debt is an issue which has ongoing interest and the implementation of the Late Payment of Commercial Debts (Interest) Act 1998 will only add to the debate. The process began on 1 November 1998. Prior to that the general rule was that a creditor would only recover interest on a debt in two situations;

- ◆ if the contract specified that interest would accrue from the due date of payment or
- ◆ when Court proceedings were raised for recovery of debt, from the date that the proceedings were commenced.

In many cases, creditors' standard terms and conditions of supply either did not properly provide for interest to accrue, or were not validly incorporated into the supply contract. For a creditor, there were also various non judicial methods of recovering the debt before finally resorting to Court proceedings. During that intervening period, no interest would legally accrue.

The Current Situation

The Late Payment of Commercial Debts (Interest) Act 1998 has changed this situation. It states that statutory interest will automatically accrue on the later of the following;

- ◆ On the date that may be specified in the contract between supplier and purchasers
- ◆ Thirty days after the goods or services are supplied or
- ◆ Thirty days after formal notice has been given by the supplier to the purchaser of the amount due

Scope of the Legislation

When the Act first came into force, it only applied to contracts entered into between small businesses (generally businesses with fewer than 250 employees) as supplier and UK Public Authorities and large businesses. Thereafter, the scope of qualifying contracts was extended (but was still restricted to small businesses as suppliers). However, the Act now applies to most types of contracts that have been entered into after 7 August 2002.

Useful Information:

- ◆ The current rate of statutory interest is eight *per cent* over the official dealing rate of the Bank of England. The present total statutory interest is therefore twelve *per cent*.
- ◆ The Act only applies to commercial debts i.e. a contract for the supply of goods or services where the purchaser and the supplier are each acting in the course of a business.

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The Act applies to ...

- A contract of sale for goods
- A contract for the hire of goods and services
- A contract for the supply of services

The Act does not apply to ...

- An employment contract
- An apprenticeship contract
- A consumer credit agreement
- A loan secured over property (mortgage)

Statutory compensation costs.

In respect of contracts entered into after 7 August 2002 the creditor will automatically be entitled to claim the following additional payments;

Debts up to £999	£40
Debt between £1000 and £9999	£70
Debt of £10000 or more	£100

These fixed sums are in addition to interest and the right to recover judicial expenses when Court proceedings are raised.

Summary

Creditors are now in a position to claim a realistic rate of interest in respect of unpaid debt that is due to them. However experience shows that the later that Court proceedings are delayed, the likelihood of failing to make any recovery is increased. We would therefore recommend that formal proceedings are commenced soon after your normal account terms and credit control procedures have expired. Furthermore, in the light of the statutory provisions, all companies should consider revising their standard terms of business.

*Archibald Campbell & Harley has one of Scotland's best rated debt recovery teams, according to the **Legal 500** directory of legal firms. Led by Managing Partner, **Rod Macphail**, the firm handles debt recovery actions on behalf of many of the country's household names and leading financial institutions.*



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If you would prefer to be contacted directly or have any questions on a current situation, please contact: Rod Macphail on: 0131 220 3000 or email him: rod.macphail@achws.co.uk