Hogan Lovells

How do the late payment rules apply in the UK?

This note supplements our Client Note on the EU rules controlling payment terms (the "EU Note"). This note summarises implementation of those rules in the UK.

A. Have the rules been implemented in the UK?

Yes, the new rules were implemented in the UK by amending the existing Late Payments of Commercial Debts (Interest) Act 1998 and came into force in the UK on **16 March 2013**.

B. Are the new rules retroactive?

No, they only apply to contracts concluded on or after 16 March 2013. Where relevant, the previous rules under the original Late Payments of Commercial Debts (Interest) Act 1998 will continue to apply. As described in the EU note, even where retroactive the new rules can impact on existing relationships (e.g. new orders under old Framework Agreements).

C. What contracts are covered?

B2B and B2P Contracts for the supply of goods and/or services, including hire agreements and intra-group contracts, are covered by the rules.

D. Must debts be paid within a maximum period?

The statutory maximum periods within which debts must be paid mirror the directive: 60 days for B2B Contracts; 30 days for B2P Contracts.

The UK rules do not specifically force buyers to pay in the maximum payment period. Instead, the supplier has an automatic right to compensation on late payments from the trigger date.

E. Can I contract out of the maximum period?

The payment period can *<u>never</u>* be extended beyond the statutory maximum in UK B2P Contracts.

The B2B payment period can be extended if that is expressly agreed <u>and</u> not grossly unfair:

- the UK grossly unfair test is the same as that in the directive (see the EU Note).
- like the directive, the UK rules are not clear on what qualifies as expressly agreed. Terms in fully negotiated contracts are likely to be expressly agreed whereas standard terms of purchase are more problematic.

Best practice, if you want to extend payment terms beyond the statutory maximum, is to reach express written agreement with your supplier to that effect.

F. What is my supplier entitled to if I pay late?

A supplier is automatically entitled to:

- statutory interest of 8% above the Bank of England base rate per annum (simple interest); <u>and</u>
- fixed charge - £40, £70 or £100 depending on debt size (<£1k, £1k-£10k £10k+) - plus any additional reasonable costs.

G. Can I contract out of statutory interest?

B2B Contracts: the parties can agree that the supplier will have an alternative remedy (e.g., contractual interest at a lower rate than the statutory rate) but the contractual remedy must be a "substantial remedy". This rule has not changed.

B2P Contracts: The directive prohibits the parties agreeing a lower interest rate but this prohibition is not expressly reflected in the revised UK rules.

H. From when does statutory interest run?

The trigger dates for statutory interest reflect the directive (see the EU Rules).

I. What if my payment terms breach the rules?

Except where a B2B supplier is given a substantial remedy in place of statutory interest, the offending payment term will not be enforceable and the supplier will be entitled to statutory interest.

Although the directive provides alternative remedies for a term which is grossly unfair to the supplier (unenforceability or a supplier right to damages) the UK rules do not expressly state which remedy applies. We expect the UK courts to treat payment periods which exceed the maximum as unenforceable and to apply the maximum periods.

J. Can I check what my supplier gives me before I have to pay?

Yes. As in the directive, the UK rules allow the buyer time to verify that the goods/services are in conformity. The UK rules give buyers a maximum of 30 days to verify conformity after which the payment period begins but that period can be extended by express agreement provided the extension is not grossly unfair to the supplier.

K. Are international contracts covered?

Yes, the rules specifically address the following situations and:

- _do_ apply to a contract governed by a foreign law if, but for that choice of foreign law, the law of part of the UK would apply *and* there is no significant connection between the contract and any country other than that part of the UK.
- _do not_ apply to a contract governed by the law of a part of the UK if there is no significant connection between the contract and that part of the UK *and*, but for that choice of UK law, the applicable law would be a foreign law.

In other situations applying the rules will be more complex and, if late payment rules of more than one EU Member State might apply, conflict of law rules will determine which Member State's rules apply.

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