

Interest (Scotland) Bill

March 2008

Introduction

The Federation of Small Businesses is Scotland's largest direct-member business organisation, representing over 19,000 members. The FSB campaigns for an economic and social environment which allows small businesses to prosper.

We appreciate that one of the key purposes of the Interest (Scotland) Bill is to reduce the impact of late payments on small businesses and, in general, we support this aim. However, we do have concerns that elements of the Bill as it is currently drafted may cause difficulty in other ways and these concerns are outlined below

Issues

1. Agreement between the creditor and the debtor

We welcome the fact that parties will be free to make their own arrangements regarding whether interest will be charged or not, as many small businesses choose not to levy interest, as this could affect relationships with customers.

2. Starting date for interest

We have concerns with the proposal that, where no contractual provision is made for the supply of goods and services, statutory interest starts to run 30 days after the goods have been delivered or the service performed and the creditor has informed the debtor of the amount of money owed. As the survey quoted in the consultation paper points out, many businesses do not have standard terms and conditions of payment and could therefore invoke this clause. However, there are many cases where a small business may have received goods or services for supply to a third party and will have to await payment from the third party before settling with the original supplier of the goods. This could lead to the small business incurring interest charges from the original supplier without prior knowledge that this might be the case and without being able to claim interest charges from the third party for a range of reasons.

To avoid the risk of small businesses being penalised in this way, we would suggest that interest should only be charged where it has been stated in advance by the supplier that this would be the case after a certain period of time. This would allow the purchaser to negotiate these terms in advance, if the purchaser is aware that problems may arise in meeting them, or to decline the contract. If this clause is to be retained in some format, we would

recommend that it is amended from 30 days to 90 days, which is a more realistic timescale for the recovery of costs from a third party to allow settlement with the original supplier.

3. Power of court to waive or reduce interest

We would support the inclusion of provisions for complete judicial discretion, for the reasons outlined in the discussion paper and as it would be difficult to draw up a conclusive list of when limited judicial discretion should apply.

4. Financial impacts on businesses

It is difficult to predict how much of a positive impact the Bill may have on small businesses as many of those which are able to charge interest under the existing UK legislation may already do so, whereas for reasons outlined above, others will prefer to 'contract out' rather than risk damaging a relationship with an important client. The Bill may, generally, make it slightly easier for interest to be charged on persistent late payment.

As stated in section 2 of this response, however, the Bill may have the unforeseen consequence of a negative financial impact on small businesses, if measures are not put in place to forewarn purchasers of any terms and conditions which may result in interest being charged on late payments.

For further information on any of the points raised in this submission, please contact Eileen Calveley, Policy Manager, on eileen.calveley@fsb.org.uk or 0141 221 0775.