



An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation

Consultation Document

**Proposal to incorporate into national legislation the
government decision for all public bodies
(excluding commercial semi-State bodies)
to pay suppliers within 15 days of receipt of a valid invoice**

**DEPARTMENT OF JOBS, ENTERPRISE AND
INNOVATION**

4 September 2015

E-mail: latepayconsultation@djei.ie

Website: www.djei.ie

1. Introduction

The Department of Jobs, Enterprise and Innovation (DJEI) is responsible for monitoring legislation enacted to ensure prompt payment and promote improved payment practices in Ireland.

It has long been recognised that late payment of commercial debt generally has an adverse effect on a firm's cash-flow and can cause small firms to have to extend their overdraft facilities and/or including borrowing. Time and resources that could be concentrated on areas such as the development of a business are diverted instead to monitoring and collection of late payments. Small and Medium-sized Enterprises (SMEs), because of their size, are particularly vulnerable to the adverse effects of late payments.

According to a new report published by Intrum Justitia, a Credit Management Services company providing a range of services including debt collection, over half of Irish companies surveyed stated that late payments threaten their survival. Data from the European Payment Report 2015 clearly demonstrates that not getting paid on time poses a significant threat to the survival of businesses and their opportunity to expand and create jobs.

Key findings include:

- 51 per cent of Irish companies say that a consequence of late payments could be a threat to survival;
- 7 per cent of Irish companies' yearly revenue has been written off as opposed to a European average of 3.1 percent; and
- 69 per cent of Irish companies surveyed state that the reason for late payment is due to debtors being in financial difficulty.

2. Context of the proposal being made

2.1 Background

Government is committed to combating late payment. Its overall objective is to improve the cash flow of businesses which for many can mean the difference between solvency and bankruptcy. That is why, in addition to the range of prompt payment initiatives already in place, Government continues to seek new ways in which to address this problem. One such initiative, as contained in the Action Plan for Jobs 2015, is to examine the feasibility of incorporating into national legislation the government decision for all public bodies (excluding commercial semi-State bodies) to pay suppliers within 15 days. At present, as set out in Statutory Instrument No. 580 of 2012, the statutory payment terms for all public bodies are 30 days.

2.2 15 Day Prompt Payment Government Decision

The 15 day Prompt Payment Government Decision was first introduced back in 2009 in an effort to assist the cash flow of businesses. It only applies to commercial transactions between public authorities and business. It does not apply to business-to-business commercial transactions.

Since its introduction in 2009, Central Government Departments have been improving their respective payment times and are obliged to pay their suppliers within 15 days of receipt of a valid invoice. Following this, and in line with commitments set out in the EU/IMF Programme for Ireland, the 15 day prompt payment rule was extended beyond central Government Departments and rolled out to the Health Service Executive, the Local Authorities, State Agencies, and all other Public Sector Bodies, (excluding commercial semi-State bodies), in respect of valid invoices received, on or after, 1 July 2011.

The Government Decision was introduced on an administrative basis only. Therefore it does not affect the statutory requirement for late payment interest which only comes into effect 30 days after receipt of a valid invoice.

2.3 What is being proposed?

We are proposing to reduce the statutory payment terms for all public bodies (excluding commercial-semi State bodies) from 30 days to 15 days. However, given the likely impact that reducing payment terms for public bodies could have, it is important that any potential policy intervention in this area is fully scrutinised.

Therefore, bearing in mind paragraphs 3 and 4 below, which set out both the current legal position in relation to prompt payments in Ireland and the other prompt payment initiatives that are already in place, DJEI is seeking views on the proposal to reduce the statutory payment terms for public bodies (excluding commercial semi-State bodies) from 30 days to 15 days.

3. Current legal position in Ireland in relation to Late Payments:

In order to protect European businesses, and in particular SMEs, against late payment, the European Commission adopted a new Directive (2011/7/EU) on Late Payment in Commercial Transactions on 16 February, 2011. Member States were required to transpose this Directive into national law by 16th March, 2013.

Statutory Instrument No 580 of 2012 transposed this Directive into Irish Law. It came into effect on 16 March 2013. This Statutory Instrument revokes the previous Regulation, Statutory Instrument No. 388 of 2002.

Under the 2012 Regulations, it is an implied term of every commercial transaction that where a purchaser does not pay for goods or services by the relevant payment date, the supplier shall be entitled to interest (“late payment interest”) and compensation for recovery costs on the amount outstanding.

The main provisions of the 2012 Regulations include:

- *Harmonisation of the payment period for Public Authorities:* Public Authorities must pay for the goods and services they procure within 30 days;

- *Contractual freedom in business to business commercial transactions*: Business have to pay for the goods or services they procure within 60 days, unless they expressly agree otherwise and if it is not grossly unfair to the creditor;
- Where no contract exists, payment must be made within 30 days for both public authorities and business transactions.

A copy of these Regulations can be found on the Department's website at:

<https://www.djei.ie/en/What-We-Do/Supports-for-SMEs/Late-Payments/Late-Payment-in-Commercial-Transactions/>

4. Initiatives introduced by Government to improve payment performance

4.1 15 day Prompt Payment by Government Departments and public sector bodies (excluding Commercial Semi-State Bodies)

Since the introduction in 2009 of the 15 day Prompt Payment Government Decision, Central Government Departments have been improving their respective payment times and are obliged to pay their suppliers within 15 days of receipt of a valid invoice. This 15 day prompt payment rule, which is more onerous than Directive 2000/35/EC and the recast Directive 2011/7/EC, was introduced by Government on an administrative basis.

As part of this Decision, Departments are required to report quarterly to the Department of Jobs, Enterprise and Innovation on their performance in meeting this target. The ongoing publication of these composite returns by the Department provides transparency and accountability in relation to the performance of individual Departments.

The most recent set of composite returns compiled by DJEI, for the 2nd quarter of 2015, show that 93% of payments by value, were made by central Government Departments within 15 days.

In line with commitments set out in the EU/IMF Programme for Ireland, the 15 day prompt payment rule was extended beyond central Government Departments and rolled out to the Health Service Executive, the Local Authorities, State Agencies, and all other Public Sector Bodies, (excluding Commercial Semi-State bodies), in respect of valid invoices received, on or after, 1 July 2011.

As part of this new extended arrangement, parent Departments are required to publish on their respective websites, quarterly composite reports covering those bodies under their aegis. The individual bodies covered by this arrangement are also required to publish their own quarterly reports on their websites.

The Government Decision was introduced on an administrative basis only. This means that no late payment interest will apply in cases where payments are made outside the 15 day administrative period but within the 30 day statutory period.

4.2 National Late Payment Information Campaign

Since late 2013 to date, the Department of Jobs, Enterprise and Innovation has held a series of national seminars aimed at providing businesses with information on the legislation governing late payments together with information on new measures being introduced, both at national and EU level, to support prompt payment. These seminars also provide a forum for the exchange of best practice to help businesses tackle late payment issues. The campaign, which commenced in Dublin in December 2013, continued throughout 2014 and 2015 in various regional locations.

4.3 Prompt Payment Code

The Prompt Payment Code (PPC) is a new initiative which was developed jointly by the Department of Jobs, Enterprise and Innovation, the Irish Institute of Credit Management (IICM) and the main business representative bodies (ISME, Small Firms Association, Chambers Ireland and IBEC) with support from the Banking and Payments Federation Ireland (BPFII).

The three primary objectives of the Code are:

- To encourage and promote best practice between businesses and their suppliers;
- To improve cash flow between businesses;
- To drive a change in payment culture.

The PPC is hosted through an online portal – www.promptpayment.ie - which was formally launched by Mr. Ged Nash, T.D., Minister for Business and Employment on 31 March, 2015.

By signing up to the PPC through the online portal, businesses undertake to:

- Pay suppliers on time within the terms agreed at the outset of the contract, or in accordance with legislation;
- Give clear guidance to suppliers by providing them with clear and easily accessible guidance on payment procedures;
- Encourage good practice by requesting that lead suppliers encourage adoption of the Code through their own supply chains.

The introduction of the PPC will continue the Government's drive to get credit flowing in the Irish economy by encouraging prompt payment for all business transactions.

4.4 Prompt Payment Forum

In order to support the delivery of the Prompt Payment Code (PPC) and examine further initiatives to sustain a responsible payment culture in Ireland, the Department of Jobs, Enterprise and Innovation is currently finalising arrangements for the establishment of a Prompt Payment Forum. The remit of this Forum, which will be chaired by Mr. Ged Nash, T.D., Minister for Business and Employment, will be wider than just the Prompt Payment Code, i.e. it will cover the whole prompt payment agenda which includes prompt payment legislation, EU and national prompt payment initiatives. Membership of the Forum will be finalised shortly.

5. The Consultation Process

5.1 Consultation Period

The consultation period will run from **4 September to 2 October 2015**, a period of 4 weeks. Any submissions received after this date cannot be considered.

5.2 How to Respond

In making your submission, it would be appreciated if you could respond to the following questions, bearing in mind paragraphs 3 and 4 above, which set out both the current legal position in relation to prompt payments in Ireland and the other prompt payment initiatives that are already in place:

- (a) What are your views on maintaining the status quo in relation to the current legislative requirement for public authorities to pay suppliers within 30 days of receipt of a valid invoice?
- (b) Do you consider the proposal to amend the current legislation to require public sector bodies (excluding commercial semi-State bodies), to pay suppliers within 15 days of receipt of a valid invoice, to be proportionate and appropriate?
- (c) What are your views on the proposition to move from current statutory payment terms of 30 days to 15 days in respect of public sector bodies (excluding commercial semi-State bodies)?

Also, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear in your submission who the organisation represents and, where applicable, how the views of members were assembled.

Your submission should be forwarded to the Department of Jobs, Enterprise and Innovation by **2 October 2015**.

E-mail address: latepayconsultation@djei.ie

Postal Address: Orla Kenny
Indigenous Enterprise Division
Department of Jobs, Enterprise and Innovation
23 Kildare Street
Dublin 2

Telephone: 01-6312302

5.3 Freedom of Information

Responses to this consultation are subject to the provision of the Freedom of Information Acts. Parties should also note that responses to the consultation may be published on the website of the Department of Jobs, Enterprise and Innovation.

5.4. Confidentiality of Submissions

Contributors are requested to note that it is the Department's policy to treat all submissions received as being in the public domain unless confidentiality is specifically requested. Respondents are, therefore, requested to clearly identify material they consider to be confidential and to place same in a separate annex to their response, labelled "confidential". Where responses are submitted by email, and those emails include automatically generated notices stating that the content of same should be treated as confidential, contributors should clarify in the body of their emails as to whether their comments are to be treated as confidential.

6. Queries

Any queries regarding this consultation should be emailed to latepayconsultation@djei.ie or phone Orla Kenny at 01-6312302 / Patrick Rochford at 01-6312324.

Indigenous Enterprise Division
Department of Jobs, Enterprise and Innovation
23 Kildare Street
Dublin 2