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Prompt Payment of Invoices and New EU Directive

This briefing paper provides an overview of how the new EU *Directive 2011/7/EU (2011 Directive)* combating late payments on commercial transactions may impact existing UK legislation, which extends to Northern Ireland. The paper highlights:

- aspects of the joint consultation launched in September 2012 by the Whitehall Department of Business, Industry and Skills (BIS) and the Scottish Government (joint consultation) on the *2011 Directive*, including its context and provisions;
- the UK legislative context, including an outline of existing legislation and its application in Northern Ireland and;
- some potential issues for consideration in light of performance figures provided by Account NI, the body responsible for the processing and payment of invoices on behalf of government departments.

1. Introduction

This briefing paper is prepared for Members of the Committee for Finance and Personnel (CFP) to facilitate their consideration of the new European Union (EU) “*Directive 2011/7/EU on combating late payment in commercial transactions*” (2011 Directive), which addresses prompt invoice payment by government departments and other public authorities. The issue was raised most recently in January 2012 when the CFP sought evidence from Department of Finance and Personnel (DFP) and Account NI officials. This was in relation to the latter’s performance in achieving the 10 day policy set out by the Minister of Finance and Personnel in November 2008, and the 30 day policy set out by United Kingdom legislation. This paper highlights the potential impact of the *2011 Directive* on the existing UK legislation in this area (which applies to Northern Ireland). It draws on the joint consultation launched in September 2012 by the Whitehall Department of Business, Industry and Skills (BIS) and the Scottish Government (joint consultation).¹

The paper begins by explaining the *2011 Directive* within the context of the joint consultation and discusses its European context. This is followed by an outline of the existing UK legislation, including legislation that transposes existing EU Directives in this area, which the *2011 Directive* will amend: such legislation is applicable in Northern Ireland. The paper concludes highlighting potential issues arising from the *2011 Directive*, including, for example, performance figures provided by DFP and Account NI.

2.0 Joint Consultation on the 2011 Directive

The joint Whitehall BIS and Scottish Government consultation (joint consultation) was issued on 20 September 2012 and closed on 19 October 2012. It sought views on a number of the issues arising from the *2011 Directive*. It considered the potential impact the *2011 Directive* may have on existing legislation combating late payment of invoices in commercial transactions, including all debts incurred in commercial transactions; applying to businesses and public authorities.²

According to the joint consultation, the provisions of the *2011 Directive* are viewed as strengthening the current UK legislative provisions combating late payment of invoices and are welcomed in this regard. The joint consultation is on the *2011 Directive*, which will extend existing laws and practices currently enjoyed by British businesses across

¹ Joint Consultation, <http://www.bis.gov.uk/Consultations/combating-late-payment-in-commercial-transactions> , accessed Oct 16th 2012

² Joint Consultation, p. 6

the EU, creating a level playing field for UK businesses trading with other businesses and public authorities in all Member States.³ When implemented, the transposing UK legislation will extend to Northern Ireland. Annex 4 of this note outlines the main consultation questions.

2.1 EU Context

The perceived need for legislative action to combat adverse business conditions exacerbated by late payment arose from recommendations adopted by the European Commission in 1995. The negative impacts of late payments were seen to be a threat to the functioning of the internal market.

In this area, the first definitive *EU Directive 2000/35/EC (2000 Directive)*, which arose from the 1995 recommendations, notes that:

*Heavy administrative and financial burdens are placed on businesses, particularly small and medium-sized ones, as a result of excessive payment periods and late payment... The differences between payment rules and practices constitute and obstacle to the proper functioning of the internal market.*⁴

The EU Commission Impact Assessment (IA) document on the *2011 Directive* notes that late payments in commercial transactions have important effects, including:

*Late payments represents a significant cost to creditor enterprises. In general, late payments strains cash flow, adds financial costs, squeezes investment opportunities and fuels uncertainty for many creditors businesses and in particular, SMEs, especially in times of limited and expensive access to finance. The result is that their competitiveness and solvency are often compromised.*⁵

In relation to public authorities, the IA notes that:

*For public authorities, late payments to creditors are also an easy, but unjustified, way to overcome budgetary constraints... Very long payment periods in public procurement contracts and late payments by public authorities also discourage operators to participate in public procurement procedures.*⁶

³ Joint Consultation, cover note, [http://www.bis.gov.uk/Consultations/combating-late-payment-in-commercial-
transactions?cat=closedawaitingresponse](http://www.bis.gov.uk/Consultations/combating-late-payment-in-commercial-transactions?cat=closedawaitingresponse) , accessed Oct 29 2012

⁴ EU Directive 2000/35/EC , <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:200:0035:0038:en:PDF>

⁵ Impact Assessment Document, [http://www.fecma.eu/documents/Late%20Payment%20in%20B2B%20Directive%20Impact%20Assessment%20-
%20Executive%20Summary%20April%202009.pdf](http://www.fecma.eu/documents/Late%20Payment%20in%20B2B%20Directive%20Impact%20Assessment%20-%20Executive%20Summary%20April%202009.pdf) accessed Oct 29 2012, p. 4/4

⁶ IA, p. 3/4

The *2011 Directive* highlights the need to strengthen and further clarify the provisions of the *2000 Directive*. It explains that:

It is desirable for reasons of clarity and rationalisation, that the provisions [of the 2000 Directive] in question be recast.⁷

2.1.1 Provisions of 2011 Directive

The *2011 Directive* makes the following key changes to the *2000 Directive*.⁸

- **Public authorities** will be required to pay suppliers within 30 calendar days of receipt of an undisputed invoice, with the option to extend this period for certain sectors such as healthcare to 60 days – this matches the Government's current best practice for the public sector (Article 4)⁹
- for **business to business** payments, the period of payment fixed in the contract should not exceed 60 days (Article 3), unless otherwise expressly agreed and provided such terms are not grossly unfair (Article 7)
- it retains current UK practice of a **default payment period of 30 days** [either following receipt of the invoice or following the date of receipt of the goods or services where the date of receipt of the invoice is uncertain] where terms have not been agreed (Article 3(3))
- there is provision for a fixed **compensation** of at least 40Euro (approx. £31) – current UK legislation sets three levels of compensation payment according to the value of the payment. Suppliers are not prevented from seeking to claim additional recovery costs as now. (Article 6) – entitled to also seek reasonable compensation over and above the fixed amount.

The *2011 Directive* applies to all types of payment made as remuneration for commercial transactions between public authorities and between undertakings. It may exclude¹⁰:

- debts that are subject to insolvency proceedings against a debtor;
- proceedings aimed at debt restructuring;
- transactions with consumers;
- interest relating to other payments (for examples payments made under the laws on cheques and bills of exchange, or payments made as compensation for damages including payments from insurance companies).

⁷ Directive 2011/7/EU, , http://www.djei.ie/enterprise/smes/text_of_directive_2011-17_16_Feb_2011.pdf.

⁸ BIS Consultation, see note 1, p. 5

⁹ In the consultation document, the UK government notes that such an extension to certain sectors would be a retrograde step in terms of the impact of the legislation maintaining the 30 day period should be maintained across all sectors.

¹⁰ http://europa.eu/legislation_summaries/enterprise/business_environment/mi0074_en.htm , accessed Oct 29 2012

3.0 UK Legislative Context

The United Kingdom (UK) was one of the first countries in the EU to implement late payment legislation to help promote a culture of prompt payment, and has been considered exemplary across EU Member States.¹¹ A User Guide to late payment legislation developed by Business Link (a BIS government body) notes that:

*There has been statutory right to interest for late payment for small firms owed money by large firms or the public sector since 1 November 1998... This allows small businesses to charge each other statutory interest, as well as large businesses and the public sector, for the late payment of commercial debt.*¹²

This section sets out how UK legislation has sought to transpose the existing EU Directives in this area. It discusses the development of the legislation amidst the prevailing applicable EU Directives; highlights legislative provisions in their current form; and, discusses the application of existing legislation in Northern Ireland.

3.1 Existing UK Late Payments Legislation

UK late payment legislation, **which extends to Northern Ireland**, refers to a number of pieces of legislation that transpose previous EU Directives in this area. This legislation is outlined below:¹³

- **Late Payment of Commercial Debts (Interest) Act 1998** (1998 Act) – this is the first piece of definitive legislation implemented across the United Kingdom (including NI) to combat late payments. It provides for statutory interest to be claimed in cases of late payment and entitlement to “reasonable” compensation.¹⁴
- **Late Payment of Commercial Debts Regulations 2002** – The *2002 Regulations* transposed the *2000 Directive* providing for a fixed rate of compensation. The *2000 Directive* was initiated in response to the 1995 EU Commission recommendations and subsequent 1997 report. It required transposing UK legislation to implement its provisions.

¹¹ BusinessLink (2002) *A User's Guide to late payment legislation: The Late Payment of Commercial Debts (Interest) Act 1998, as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002*, <http://www.bis.gov.uk/files/file37581.pdf>, accessed Oct 16th 2012

¹² BusinessLink (2002) – see note 11.

¹³ Copies of the legislation can be found at the following links: <http://www.legislation.gov.uk/ukpga/1998/20/contents>, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:200:0035:0038:en:PDF>, <http://www.legislation.gov.uk/uksi/2002/1674/contents/made>, http://www.djei.ie/enterprise/smes/text_of_directive_2011-17_16_Feb_2011.pdf accessed Oct 16th 2012

¹⁴ This legislation followed the EU Commission's Recommendation 1995 and Subsequent EU Commission report in 1997. Despite the on-going project of trying to combat late payments within the EU Commission, a process which ultimately started with recommendations made in May 1995 and a report produced in 1997, the UK was one of first Member States to implement legislation to deal with the issue of its own accord.

In summary, the *1998 Act*, as amended by the *2002 Regulations* (which transposes the *2000 Directive*), addresses the problem of late payments by providing obligations on debtors to pay interest and compensation on late payments. It includes the following key provisions:¹⁵

- Article 1(1) states that any qualifying debt carries simple interest, known as “statutory interest”, which equals the base rate set by the Bank of England + 8%.
- Article 2 defines specific types of contracts to which the Act applies (See Annex 1 for the full text of this provision).
- Article 4 states the period for which statutory interest runs. Unless a date for payment is agreed, statutory interest applies after 30 days in accordance with Article 4(5).
- Article 5 provides for a remission of statutory interest for reasons of misconduct on behalf of the supplier.
- Article 5A(1)(2) provides for a three tiered approach to compensation arising out of late payment. (See Annex 1 for the full text of this provision).

3.1.1 Northern Ireland

To date, the UK Late Payments legislation has applied to NI, and thus, any changes made to the existing UK legislation as a result of *2011 Directive* will apply to NI. In NI, these changes are relevant to the best practice measures that were introduced in November 2008 by the Minister for Finance and Personnel. At that time, he announced that NI departments would set a target of ensuring the payment of undisputed invoices within 10 days of receipt, in order to help local businesses through difficult economic times. **This “best practice” measure went above and beyond the requirements of the relevant EU Directives in this area, and the UK transposing legislation.**

In addition, a “Dear Accounting Officer” (DAO) letter was issued in the same month reiterating that:

The NICS... is subject to the Late Payment of Commercial Debt Regulations 2002. Payment is regarded as late if it is made outside the agreed terms, or 30 days after receipt of a valid invoice where no terms are agreed.

and,

This commitment to a prompt payment within 10 days is one that the NICS should seek to support and therefore Accounting Officers’ are asked to

¹⁵ 2000 Directive, see note 4

*ensure that all appropriate steps are taken within their Department and Agencies to support it.*¹⁶

It also stated that:

*This DAO is applicable to all NICS departments, their Agencies and Non-Departmental Public Bodies.*¹⁷

Account NI

In Northern Ireland, Account NI is the body responsible for the processing and payment of invoices on behalf of government departments. Account NI now provides a shared financial service to all twelve Northern Ireland Civil Service (NICS) departments and most of their agencies, together with three NDPBs (the Probation Board for Northern Ireland, the Criminal Justice Inspectorate and some financial services to the Health and Safety Executive Northern Ireland).

Email correspondence from the DFP Departmental Liaison Officer (DALO) confirmed that the migration of departmental finances to Account NI took place on a rolling basis between December 2007 and July 2009; apart from the Department of Justice, which, together with two of its NDPBs and four of its agencies, migrated to Account NI in July 2012 (NI Courts and Tribunals Service (Agency), Forensic Science Northern Ireland (Agency), Compensation Agency (Agency), Youth Justice Agency (Agency), Probation Board for Northern Ireland (NDPB), Criminal Justice Inspectorate (NDPB). The Public Prosecution Service, a non-ministerial government department, also joined Account NI in July 2012.¹⁸

A key element of the work of Account NI is the processing of invoices. Figures provided by Account NI (shown in Annex 2) show an improvement in the number of invoices paid within the statutory 30 day period and the best practice 10 day target period between 2009/10 and 2011/2012.¹⁹ Figures for the last quarter can be found in Annex 3.²⁰

Assembly Interest

Over this mandate and the previous, the Assembly and CFP have been interested in the prompt payment of invoices by government departments and their related

¹⁶ DFP AFMD (2008) *Dear Accounting Office (DAO) 12/08* http://www.dfpni.gov.uk/index/finance/afmd/afmd-finance/afmd-financial_management/daodfp1208.pdf accessed Oct 16 2012

¹⁷ *Ibid*

¹⁸ Email correspondence from DFP DALO

¹⁹ Figures were included in a paper provided by Account NI.

²⁰ Monthly performance figures can be found at <http://www.accountni.dfpni.gov.uk/index/working-with-suppliers/faqs-3.htm>, accessed 22 Oct 2012.

agencies. This interest has been raised on a number of occasions, including the following:²¹

- In March 2010, a question was asked to the Minister on the floor of the Chamber about the performance of NI Departments in relation to the 10 day policy introduced in November 2008.
- In January 2012, the Minister made a statement introducing measures to address concerns about unreciprocated good practice to subcontractors by main contractors in public procurement contracts.
- In January 2012, CFP took evidence from DFP and Account NI Officials in relation to performance in meeting prompt payment targets.

3.1.2 Potential Issues for Consideration

This sub-section raises potential issues for consideration about NI's implementation and monitoring of UK prompt payment legislation, given Assembly and CFP interest in this area. Their concerns, although related, can be separated into issues about: reporting; consistency in implementation; implications for missed targets; and, awareness raising.

Issues with Reporting

In March 2010, and again in January 2012, Members and CFP expressed concerns to the Minister and Officials about **Issues with Reporting**. Specifically, that performance figures, relating to prompt invoice payment, for Non-Departmental Public Bodies (NDPBs) and Arm's Length Bodies (ALBs) are not accounted for within the overall figures provided by Account NI; and they may not be meeting prompt payment targets.²²

During a CFP evidence session in January 2012 with Account NI, the CFP Chairperson highlighted:

The gap that most people have identified is that a lot of the non-departmental public bodies (NDPBs) and arm's-length bodies (ALBs) are not under Account NI's remit. Although we do not know the situation, I suppose the concern is that the quite commendable figures that you present could be masking poor performance figures from these NDPBs and arm's-length bodies that spend a substantial amount of public sector funds.

²¹ Oral Question to the Minister in March 2010 (AQO 949/10), and later in an evidence session between the Committee for Finance and Personnel and Account NI officials on January 18th 2012 http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/2011-2012/120118_AccountNIPromptPaymentofInvoices.pdf accessed Oct 22 2012

²² See note 20

In response, a DFP Official stated:

In considering what we do and do not cover, at this point in time, we cover only the Departments plus their agencies, not NDPBs or non-ministerial bodies... It is up to those organisations plus their sponsoring Departments to decide what their policy is going to be. There is no practical reason why they could not or should not use it (Account NI), but we do not pay anything for those people or do any accounting for them.

The CFP Chairperson concluded that:

That, then, requires an Executive approach to try to bring NDPBs, arm's-length bodies and all the variety of organisations that may lie there under your system. That way, we can measure their prompt payments and any other issues that the Executive wish to raise.²³

In summary, Assembly Members (specifically those on CFP), expressed concerns that the performance of NDPBs and ALBs **are not accounted for within the figures presented by Account NI**. The Members noted that spending by these bodies accounted for significant amounts of the overall spending in certain departments. Thus, there are concerns that the figures presented by Account NI are not an accurate reflection of the performance of departments, as NDPBs and may account for significant amounts of expenditure that are not account for within the stated performance figures. When the DFP Official suggested that there was no significant reason why these bodies could not come under the remit of Account NI, the Chairperson stated that **an Executive approach** should be pursued in order to address this. **CFP may wish to ask DFP if it has considered taking action in this regard; if it has, what decision was taken.**

Issues about Consistency of Implementation

Assembly Members, and those specifically in CFP, raised concerns about disparities in the **consistency of implementation**. Prompt payment by government to main contractors does not appear, on all occasions, to be reciprocated through the supply chain to subcontractors.²⁴

In this context another concern raised by Assembly Members and CFP was reflected in the Minister's statement on the 16th January 2012, when he stated:

...unfortunately it appears that prompt payment by government to main contractors in the construction industry is not always percolating through the supply chain to subcontractors.

²³ DFP Evidence Session, see note 20.

²⁴ This issue was raised by the Minister in a statement to the House on the 16th of January 2012, <http://www.niassembly.gov.uk/Documents/Official-Reports/Plenary/2012/20120116.pdf>

To address these concerns, the Minister announced a number of DFP measures to address the issue, in the above referenced statement, including:

- Centres of Procurement Expertise (CoPEs) – It applies measures that include the need for the main contractor to report on payments made to subcontractors at each project meeting and periodic checks made on payments to subcontractors by the client’s project manager.
- Central Procurement Directorate (CPD) - It includes requirements for the main contractor to submit each subcontract to the client’s project manager for acceptance. This gives the project manager the opportunity to object to any less favourable payment terms than are included in the main contract.
- CPD and the other COPEs work together to develop guidance on subcontracting.²⁵

It is noteworthy that once transposed in the UK (including NI), some *2011 Directive* provisions should help in improve the payment conditions for subcontractors. For example, Article 3 of the *2011 Directive* concerning “business to business” payments should legally bind contractors to pay invoices within the 30 day period, unless a fixed term is agreed (of which should be no longer than 60 days.)

Moreover, the *2011 Directive* allows for extension in payment periods in some sectors, for example, healthcare, for up to 60 days. The joint consultation document questions (as seen in Annex 4) indicate that that the UK is considering whether to maintain their own three-tiered approach to compensation, which goes beyond the *2011 Directive*, and may not extend the 30 day period to certain sectors, for example healthcare, viewing this as a retrograde step.

Even if the UK Government decides to extend the period to certain sectors, CFP may wish to consider what is appropriate for NI in this context, for example, whether NI should maintain the 30 day period for ALL sectors, as a best practice target. CFP may wish to ask DFP for its views on this.

Issues about implications for missed targets

In reference to the figures outlined in Annexes 2 and 3, CFP may wish to consider whether interest and compensation were paid by government departments in cases where the 30 day period was missed. It appears that, from as early as 1998, under the applicable UK legislation, public authorities were compelled to pay interest on late payments, and from 2002, to pay a fixed rate of compensation. **CFP may wish to ask DFP for an update on whether compensation and interest was paid in cases**

²⁵ Guidance notes were issued on 11th July 2012 and can be found at http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/content - cpd - policy - procurement_guidance_notes/pgn-06-12/pgn_06_12-11072012.pdf accessed Oct 22 2012

where payments failed to meet the 30 day limit over this period of time. Similarly, a further issue may be to inquire about what the total interest and compensation amounted to over this period of time.

Issues about awareness raising

The degree to which subcontractors and other relevant parties are aware of the EU and UK legislative provisions to combat late payment of invoices may limit their effectiveness. Article 8 of the 2011 Directive “Transparency and Awareness Raising” requires Member States to raise awareness of its wider provisions.

Article 8(4) suggests that Member States should:

*Encourage the establishment of prompt payment codes... and contribute to developing a culture of prompt payment which supports the objective of this Directive.*²⁶

The joint consultation notes that:

*The Government is already working alongside industry bodies in the UK to encourage more businesses to sign up to the Prompt Payment Code which encourages good practice. Over 1,100 businesses have already signed up to the Code.*²⁷

Companies in NI can also apply to sign the Prompt Payment Code (PPC), which was introduced by the UK Government to encourage businesses to adhere to a set of best practice measures. All UK companies are urged to become a signatory.²⁸

CFP may wish to ask DFP how many NI PPC signatories there are to date, and what efforts have been made to increase the number of NI business signing up.

Also relevant in this area is other information and guidance made available by DFP and Account NI for subcontractors about procurement conditions, including payment provisions.²⁹

²⁶ Article 4, 2011/7/EU Directive, see note 13

²⁷ Joint Consultation, cover note, see note 4

²⁸ Prompt Payment Code, <http://www.promptpaymentcode.org.uk/> accessed Oct 29 2012

²⁹ <http://www.accountni.dfpni.gov.uk/index/working-with-suppliers.htm> , accessed Oct 23 2012 and Guidance notes were issued on 11th July 2012 and can be found at http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/content-cpd-policy-procurement-guidance-notes/pgn-06-12/pgn_06_12-11072012.pdf , accessed Oct 22 2012

CFP may wish to ask DFP what efforts have been made to publicise this information to main contractors and subcontractors.

4.0 Conclusion

Transposing the *2011 Directive* provisions is largely viewed as strengthening the existing UK legislation in this area. It is to be completed by March 2013. The UK may continue with its best practice measures, choosing to go beyond the *2011 Directive*. They include: maintaining the existing provisions for a three-tiered approach to compensation for late payment; and, not permitting an extension to 60 days for certain sectors. In this context, NI would be able to continue with its best practice measure in the form the 10-day target.

Between 2009 and 2012, the performance of Account NI in achieving the 30 day target set out by UK legislation and the 10 day target set out by the Minister of Finance and Personnel has improved significantly. However, questions arise as to whether interest and compensation were paid by departments in all cases where the 30 day target was unmet. In addition, some issues about the monitoring and reporting of performance targets relating to bodies that exist outside of the remit of Account NI remain. Furthermore, there is a continued concern that good performance by Government, in relation to prompt payment of main contractors, is not reflected further down the supply chain to subcontractors.

Annex 1 – Article 2 and 5A of the 1998 Act

2 Contracts to which Act applies..

(1) This Act applies to a contract for the supply of goods or services where the purchaser and the supplier are each acting in the course of a business, other than an excepted contract. .

(2) In this Act “contract for the supply of goods or services” means— .

(a) a contract of sale of goods; or .

(b) a contract (other than a contract of sale of goods) by which a person does any, or any combination, of the things mentioned in subsection (3) for a consideration that is (or includes) a money consideration. .

(3) Those things are— .

(a) transferring or agreeing to transfer to another the property in goods; .

(b) bailing or agreeing to bail goods to another by way of hire or, in Scotland, hiring or agreeing to hire goods to another; and .

(c) agreeing to carry out a service. .

(4) For the avoidance of doubt a contract of service or apprenticeship is not a contract for the supply of goods or services. .

(5) The following are excepted contracts— .

(a) a consumer credit agreement; .

(b) a contract intended to operate by way of mortgage, pledge, charge or other security; and .

(7) In this section— .

“business” includes a profession and the activities of any government department or local or public authority;

“consumer credit agreement” has the same meaning as in the M1 Consumer Credit Act 1974;

“contract of sale of goods” and “goods” have the same meaning as in the M2 Sale of Goods Act 1979;

“property in goods” means the general property in them and not merely a special property.

5A Compensation arising out of late payment.

(1) Once statutory interest begins to run in relation to a qualifying debt, the supplier shall be entitled to a fixed sum (in addition to the statutory interest on the debt). .

(2) That sum shall be— .

(a) for a debt less than £1000, the sum of £40; .

(b) for a debt of £1000 or more, but less than £10,000, the sum of £70; .

(c) for a debt of £10,000 or more, the sum of £100. .

(3) The obligation to pay an additional fixed sum under this section in respect of a qualifying debt shall be treated as part of the term implied by section 1(1) in the contract creating the debt.]

Annex 2- Performance Figures provide by Account NI³⁰

Year	Average % Paid in 30 Calendar Days	Average % Paid in 10 Working Days
2009/10	84	57
2010/11	93	79
2011/12 (to date)	96	88

³⁰ The figure is taken from a paper provided by Account NI officials to CFP.

Annex 3 – Performance Figures July-September 2012³¹

July

Department	No of Invoices Paid	% Paid Within 10 Working Days	% Paid Within 30 Calendar Days
Department of Finance and Personnel	2,731	92%	99%
Office of the First and deputy First Minister	672	65%	76%
Department of Employment and Learning	503	85%	96%
Department of Enterprise, Trade and Investment	251	92%	97%
Department of Health, Social Services & Public Safety	322	80%	93%
Department for Social Development	1,083	93%	98%
Department of Agriculture and Rural Development	2,140	88%	98%
Department of Culture, Arts and Leisure	342	95%	99%
Department of Education	192	92%	99%
Department of the Environment	1,741	92%	97%
Department for Regional Development	2,404	93%	99%
Department of Justice	1,787	84%	98%
Public Prosecution Service	670	95%	99%
SUMMARY	14,989	91%	97%

August

Department	No of Invoices Paid	% Paid Within 10 Working Days	% Paid Within 30 Calendar Days
Department of Finance and Personnel	3,221	93%	97%
Office of the First and deputy First Minister	537	76%	93%
Department of Employment and Learning	621	86%	96%
Department of Enterprise, Trade and Investment	264	92%	97%
Department of Health, Social Services & Public Safety	304	79%	90%
Department for Social Development	1,121	92%	99%
Department of Agriculture and Rural Development	2,251	85%	95%
Department of Culture, Arts and Leisure	291	92%	99%
Department of Education	185	97%	99%
Department of the Environment	2,407	95%	99%
Department for Regional Development	2,800	93%	98%
Department of Justice	2,579	83%	95%
Public Prosecution Service	676	72%	91%
SUMMARY	17,257	89%	97%

September

Department	No of Invoices Paid	% Paid Within 10 Working Days	% Paid Within 30 Calendar Days
Department of Finance and Personnel	2,338	95%	98%
Office of the First and deputy First Minister	429	82%	93%
Department of Employment and Learning	541	88%	96%
Department of Enterprise, Trade and Investment	274	90%	96%
Department of Health, Social Services & Public Safety	287	86%	95%
Department for Social Development	905	92%	97%
Department of Agriculture and Rural Development	1,964	92%	98%
Department of Culture, Arts and Leisure	278	96%	100%
Department of Education	191	97%	99%
Department of the Environment	2,022	95%	99%
Department for Regional Development	2,286	95%	99%
Department of Justice	2,258	87%	96%
Public Prosecution Service	750	84%	92%
SUMMARY	14,523	92%	97%

³¹ Monthly performance figures can be found at <http://www.accountni.dfpni.gov.uk/index/working-with-suppliers/faqs-3.htm> , accessed 22 Oct 2012

Annex 4 – Consultation Questions³²

Question 1

1. (Article 4 para b) Should UK public sector payment terms involving healthcare or where the public authority carries out economic activities of an industrial or commercial nature by offering goods or services on the market, be extended beyond 30 calendar days to up to 60 days?

Government feels that adopting this measure would be a retrograde step, and would significantly weaken current UK practice of paying within 30 days

2. To transpose (implement) the Directive should we should repeal the existing Late Payment of Commercial Debts (Interest) Act 1998 and replace it with secondary legislation (statutory instruments) or amend the Late Payment of Commercial Debts (Interest) Act 1998?

3. Compensation for recovery costs (Article 6): The current Late Payment of Commercial Debts (Interest) Act 1998, suggests a fixed charge of £40, £70 or £100 depending on the size of the debt (under £1,000, under £10,000, and higher) as compensation for recovering costs. The revised directive propose a creditor is entitled to obtain from the debtor, as a minimum, a fixed sum of €40, as compensation for recovery costs, plus additional costs incurred.

Should the three tiered approach be retained or changed to a minimum compensation?

4. (Article 12 para 4) If the Directive is transposed (implemented) on 16 March 2013, our proposal is to exclude contracts concluded before 16 March 2013 from being subject to the Directive, given the changes introduced are not sufficiently substantive to warrant retrospective application and that retrospective application will incur a costly process of contract review – is this the correct choice?

³² BIS Consultation, see note 5