Title: Reporting on Payment Practices and Performance Regulations: Consultation Impact Assessment **IA No: BEIS073(C)-22-BG** **RPC Reference No:** n/a **Lead department or agency:** Department for Business, Energy and Industrial Strategy **Other departments or agencies:** n/a	**Impact Assessment (IA)** **Date:** 21/11/2022 **Stage:** Consultation **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** responsiblepaymentculture@beis.gov.uk

Summary: Intervention and Options

RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option (in 2022 prices)			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
£-116.2m	£-116.2m	£13.5m	Qualifying provision

What is the problem under consideration? Why is government action or intervention necessary?

UK companies often supply goods and services on trade credit, deferring payment for a period after delivery rather than requiring immediate payment. When customers do not pay on time this causes problems for suppliers, affecting their cash flow, diverting resources towards chasing payment and potentially incurring costs of covering cash flow shortages by raising external finance. When suppliers agree contracts with customers, they may lack information on customers' reliability in terms of paying on time. Government intervention can address this absence of information and imbalance in market power that disproportionately harms small businesses, many of which generally lack real negotiating power when agreeing contracts, by requiring large businesses to report information on their payment practices and performance.

What are the policy objectives of the action or intervention and the intended effects?

To bring about greater transparency of payment practices and performance, overcoming the asymmetry of information between large businesses and their suppliers. This will mean suppliers are in a better position to make an informed judgement on whether to agree a contract, to negotiate fair terms and to make better-informed challenges against large businesses' late payments, where they occur. The key intended effect is an increase in the incentives for business to improve payment practices and performance, reducing the overall level of late payment in the economy.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

1: Do nothing: this would allow the current regulations to expire and leave the problem of late payment unaddressed.
2: Extending the requirement of large businesses to report on payment practices and Performance but leaving the policy unchanged
3: Extending the requirement of large businesses to report on payment practices and Performance but with additions to required reporting metrics

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** TBC

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	**Micro** No	**Small** No	**Medium** No	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** **n/a**	**Non-traded:** **n/a**	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible: [signature] Date: 16/01/2023

Summary: Analysis & Evidence

Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2024	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -120.1	High: -98.2	Best Estimate: -109.1

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0		11.4	**98.2**
High	0		13.9	**120.1**
Best Estimate	0		12.7	**109.1**

Description and scale of key monetised costs by 'main affected groups'

Maintaining systems: includes updating of and training on procedures, responding to changes to purchasing/accounts systems, purchase of software licenses or external support, etc.
Preparing biannual reports: includes collection of payment data, establishment and codification of standard policy on regular payments, disputes, retention, etc. Likely to vary depending on the extent to which companies can automate.
Collation, approval and submission of reports: includes the amalgamation of various data sources/formats, management time for sign off, quality assurance, etc.

Other key non-monetised costs by 'main affected groups'

Not applicable.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not quantified		Not quantified	**Not quantified**
High	Not quantified	n/a	Not quantified	**Not quantified**
Best Estimate	Not quantified		Not quantified	**Not quantified**

Description and scale of key monetised benefits by 'main affected groups'

Not quantified.

Other key non-monetised benefits by 'main affected groups'

Continuations of those benefits provided by the original regulations, namely:
Greater transparency within the trade credit market, allowing for stronger competition;
Improvement to the asymmetry of information on late payments, allowing fairer contract negotiation;
Increased availability of information to businesses, both large and small, in order that those with better practices may be chosen;
Incentivisation for businesses to improve their payment practices, leading to a better payment culture;
Ability to place commercial and reputational pressure on businesses to pay promptly.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

There is an assumption that suppliers will be aware of these reported metrics and use them, and a risk that a lack of awareness results in less impact on the overall market than intended. Furthermore, it is possible that even once the asymmetry of information has been addressed, the power imbalance between large and small businesses precludes the effective use of information in this manner.
There is a risk that businesses may use tactics to hide payment information, e.g., splitting large payments into multiple small payments made quickly to skew percentages, unfairly disputing payments, etc.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 12.7	**Benefits:** not quantified	**Net:** -12.7	63.4

Summary: Analysis & Evidence

Policy Option 3

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2024	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -127.8	**High:** -104.6	**Best Estimate:** -116.2

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	4.2	1	11.7	**104.6**
High	5.1		14.3	**127.8**
Best Estimate	4.7		13.0	**116.2**

Description and scale of key monetised costs by 'main affected groups'

In addition to those ongoing costs set out for option 2 above (which will be slightly higher for this option), for option 3 there will be transition costs, consisting of:
Familiarisation costs: Businesses are likely to face a one-off cost of familiarisation, including time taken to understand statutory requirements and ensure reporting processes satisfy them.
Adapting IT Systems: IT Systems must be adapted to produce new methods by which the right data may be collected and collated.
Gathering information: Managers need to understand what systems and locations are affected, what data are already held and what metrics have already been produced.
Changing Processes: New or adapted internal management processes will be established to comply with additional reporting requirements under option 3.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not quantified		Not quantified	**Not quantified**
High	Not quantified		Not quantified	**Not quantified**
Best Estimate	Not quantified		Not quantified	**Not quantified**

Description and scale of key monetised benefits by 'main affected groups'

Not quantified.

Other key non-monetised benefits by 'main affected groups'

In addition to those benefits laid out under option 2, the additional reporting metrics (informed by the statutory review) mitigate some of the risks of the policy as it stands: Value reporting removes the possibility of covering late large payments with large numbers of rapid, small payments; specific reporting of disputed invoices alleviates the risk of unfair disputes and a requirement to refer to payment reports in annual reports increases general awareness of the data. The proposed addition of a selection of metrics related to retention payments will highlight and target a sector with historically high levels of late payment by focusing on an area which causes unique sectoral issues.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

There is some possibility that as more information on the wider market becomes available, some large businesses may use their better payment records to negotiate more favourable terms with suppliers. However, as this would then mean the businesses with better records will have lower costs, it may go some way towards achieving the stated objectives. The risk also remains that general power imbalances between large and small businesses will hinder suppliers' capacities for the negotiation of fairer terms.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 13.5	**Benefits:** 0	**Net:** -13.5	67.5

This Impact Assessment sets out an analysis of the costs and benefits of the regulations based on available evidence. We would welcome any views on the evidence base put forward, as part of the response to this consultation. The Department for Business, Energy and Industrial Strategy will be considering what may be done to further develop the evidence base (including monitoring activity).

Background

Legislative context

1. Previous UK governments and the European Union have legislated to address late payment. The Late Payment of Commercial Debts (Interest) Act 1998 created a statutory framework in the UK for tackling late payment. This was amended in 2002, when the 2000 EU Late Payment Directive was transposed into UK law; and again in 2013, when the recast 2011 EU Late Payment Directive was transposed into UK law.

2. Regulations made under sections 3 and 161 of the Small Business, Enterprise and Employment Act 2015 (and for limited liability partnerships (LLPs), made under section 15 and 17 of the Limited Liability Partnerships Act 2000), introduce a duty on the UK's large companies and LLPs to report on a half-yearly basis on their payment practices, policies and performance for financial years beginning on or after 6 April 2017.

3. The legislation governing the reporting requirements for companies are the Reporting on Payment Practices and Performance Regulations 2017 and for LLPs, the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 ("the Regulations").

4. When the Regulations came into force in 2017, in line with a practice that when a new policy imposes burdens on business, and does not implement European regulations, a sunset provision is included. The normal length of time for a sunset provision is 7 years, which is why the Regulations are currently due to no longer be in force after 6 April 2024.

Statutory review of regulations

5. Government recently carried out a statutory review of the Regulations to assess the extent to which the Regulations have achieved their objectives, whether those objectives remain appropriate, whether the Regulations remain the appropriate vehicle to deliver the policy, and if there have been any unintended effects of the Regulations.

6. The review concluded that the Regulations have brought greater transparency to the payment practices and performance of large businesses. The policy remains appropriate because there is an ongoing need to ensure greater compliance in terms of prompt payment and to increase awareness of the performance of large businesses in this area. In addition, having considered alternatives that may impose less regulation, the review concluded that the Regulations were the appropriate mechanism to address the policy objectives.

7. The recent statutory review asked whether the Regulations should remain in effect. Most respondents agreed they should. It was suggested that this was vital to ensure that

advances made in improving payment practices and performance continue; this is even more important as the economy continues to recover from the pandemic.

Purpose of consultation

8. The Regulations have served to assist qualifying businesses in forging and maintaining good relations with their small business suppliers. To be able to continue to assess the effectiveness of Regulations and ensure they remain appropriate, our provisional view would be to extend the Regulations for a further seven years with the view to review again after five. This consultation therefore asks whether the Regulations should be extended beyond their current expiry date of 6 April 2024. It also provides an opportunity for Government to consult on other potential amendments and improvements to the Regulations resulting from the views expressed by those who responded to the recent review.

9. This consultation impact assessment assesses the costs and benefits of the policy proposals which look to extend the 2017 legislation. It largely uses the evidence base collected for the 2016 final impact assessment, for which an independent survey for estimates of these costs was commissioned by BEIS which consisted of semi-structured interviews with a representative sample of 36 businesses.

Problem under consideration

10. UK companies often supply goods and services on credit, agreeing to defer payment for a period after delivery rather than requiring immediate payment. This form of payment, known as 'trade credit,' is a common part of business practice in the UK, with almost 4 in 10 SMEs using trade credit in 2022.[1]

11. Late payment occurs when a business has been supplied goods or services on credit but fails to pay within the agreed term. Legally, if no explicit payment terms have been agreed, payment is assumed to be due after 30 days for the purposes of charging statutory interest.[2]

12. Late payment causes problems for businesses that are not paid on time as it adversely affects their liquidity. This can constrain the ability of a business to invest for future growth, and in the worst cases it can force businesses to exit the market. Small businesses are especially exposed to liquidity problems when they do not receive payment on time.

Scale of the problem

13. Evidence on the scale of the problem comes from business surveys that ask questions about the use of trade credit, the extent to which businesses experience late payment and what form of detriment it causes:

    - According to the Small Business Survey[3], 48% of SMEs with at least one employee give their customers trade credit. Larger SMEs were more likely to give customers trade credit: 65% of medium-sized businesses gave trade credit, compared with 55% of small businesses, and 46% of micro firms.

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[1] BVA BDRC SME Finance Monitor Q2 2022

[2] Section 4(2A) of the Late Payment of Commercial Debts (Interest) Act 1998

[3] Large-scale telephone survey of over 9,325 owners and managers of which 7,535 were SME employers, commissioned by the Department for Business, Energy & Industrial Strategy. Details of the methodology are given in the LSBS 2022 Methodology report.

- Late payment was considered a problem by 56% of those that gave trade credit (or 26% of all SME employers). There was very little difference by size of business, with 57% of medium sized employers considering late payment a problem, compared to 60% of small firms and 55% of micro businesses (as proportions of those that gave trade credit).[4]

- The Federation of Small Businesses carried out a survey[5] on the impact of the pandemic on late payments to businesses, receiving 5,471 responses of which 4,228 responses were businesses where late payments were relevant.[6] They found that 62% of respondents have experienced either an increase in late payments and/or had payments frozen completely as a result of COVID-19 and 10% had experienced an increase in payment times due to COVID-19.

- According to BACS 2021 survey research, 32 per cent of SMEs experienced delays in payments from their customers.[7] According to the business current account provider Tide, late payments have amounted to more than GBP 50 billion – with the average SME chasing five outstanding invoices at any one time.[8]

- According to the SME Finance Monitor[9], in 2021 Q4, 13 per cent of SMEs expected “cash flow/issues with late payment” to be a major obstacle in the next 12 months, with 21 per cent expecting these issues to be a moderate obstacle[10].

Length of payment delay

14. According to the European Payment Report 2022[11], UK businesses allow their business-to-business customers average payment terms of 38 days, a decrease of 2 days compared to that reported in 2021. The average time taken to pay was 51 (a decrease of 1 day compared to 2021).

15. Payment times for UK businesses appear to compare well to those of the rest of Europe, though these may be subject to differing legal and cultural norms. The table below shows the average of agreed contractual payment terms in days and the average number of days that it takes for final payment to be made across various countries in Europe:

Table 1: Average business-to-business payment times across European countries

Country	Average business-to business contractual payment terms (days)	Average time business-to business customers actually take to pay (days)
Belgium	37	48
Germany	37	49

[4] Small Business Survey (LSBS 2022)

[5] https://www.fsb.org.uk/resources-page/late-again--how-the-coronavirus-pandemic-is-impacting-payment-terms-for-small-firms--.html

[6] The data analysed was mostly gathered after the lockdown was announced (23 March 2020), and the survey questions asked in such a way as to capture its impact. The survey was in the field between 22 April and the 30 April, receiving 5,471 responses.

[7] Survey https://newseventsinsights.wearepay.uk/media/kyqphw55/smes-and-payments-challenges-and-opportunities.pdf

[8] New research: UK SMEs chasing £50bn in late payments | Tide Business

[9] BVA BDRC SME Finance Monitor Q4 2021

[10] Surveys over 4,000 SMEs (turnover less than £25m) every quarter about past borrowing events and future borrowing intentions, information on sample structure available in technical appendix: https://www.bva-bdrc.com/wp-content/uploads/2022/03/BVA-BDRC_SME_FM_Q4_2021_Report_Final.pdf

[11] Survey conducted simultaneously in 29 European countries between January and April 2022, using an online survey tool, printouts and telephone interviews. Full breakdown of sample structure on p84-85 of report, available at https://www.intrum.com/publications/european-payment-report/european-payment-report-2022/

Austria	36	50
Croatia	36	50
Greece	37	50
Slovakia	38	50
Denmark	39	50
Finland	40	50
Bosnia Herzegovina	37	51
Slovenia	38	51
United Kingdom	**38**	**51**
Serbia	39	51
Sweden	39	51
The Netherlands	39	52
Switzerland	40	52
Czech Republic	42	52
Bulgaria	39	53
Romania	41	53
Hungary	42	53
Italy	37	54
Spain	38	54
Ireland	40	54
Lithuania	42	54
France	39	55
Latvia	39	55
Estonia	43	56
Norway	44	57
Portugal	44	57
Poland	44	61

Source: European Payment Report 2022

16. Analysis of the Payment Practices Reporting Data[12] shows that yearly average figures for average time to pay invoices has remained stable over the period 2018 to 2021, at 37 days.

Table 2: Average of businesses' average time to pay by calendar year

	Average time to pay
2018	37.2
2019	37.0
2020	36.9
2021	37.2

Source: Analysis of payment practices data submitted and published on the gov.uk website.

Costs to businesses

17. Suppliers suffering late payment face costs associated with providing the necessary liquidity to cover their own obligations. Internal costs include the administrative costs associated with chasing and recovering payment and the use of management time diverted to contingency planning to maintain liquidity.

[12] https://check-payment-practices.service.gov.uk/export

18. Tide surveyed 1,000 CEOs, founders, directors and senior management staff at SMEs in December 2021 to analyse the use of their time during the working day[13]. The study found that the average UK SME is chasing five outstanding invoices at any one time, amounting to an average of £8,500 owed and 1.5 hours per day – or almost 900,000 hours in total across all SMEs.

Avoid customers with poor payment records

19. Effective markets are generally characterised by high levels of information available to both sides of the market, i.e., the buyers and sellers. This provides the right incentives to reward good quality performance. In the product market, when customers have full information about the quality of products available from different suppliers, the suppliers providing the highest quality products are likely to be rewarded with more sales. In credit markets, when lenders have full information on the reliability of a borrower to repay debt, the more reliable borrowers are likely to be rewarded with greater availability of credit and/or on better terms (e.g., lower rates of interest).

20. The use of trade credit between businesses is a form of credit market. The market works best when both sides of a contract have full information on the reliability of the others' payment times. When businesses are aware of the likelihood of others paying on time, they are more likely to enter contracts with prompt paying businesses and avoid taking on contracts with those that have poor payment records. This creates incentives that reward prompt payment and helps tackle a culture of late payment.

21. Without the Payment Reporting Requirement introduced in 2017 it would be difficult to obtain information on the payment practices and performance of other businesses. Whilst signatories to the Prompt Payment Code have a way to signal their own quality as prompt payers, there would be no equivalent signal of bad quality for the late payers, especially as legal claims tend not to be pursued. 46% of respondents to the statutory review agreed that the Regulations have helped to overcome this asymmetry of information.

Establishing 'norms' of payment times

22. Without the Payment Reporting Requirements, the lack of transparency would make it difficult for businesses to assess whether the performance of their customer or the terms they are offered are comparable to the norm. This situation tips the balance of power between supplier and customer and allows for a more robust negotiation from the customer; suppliers are likely to be reluctant to take the risk of leaving a contract when unsure whether alternative options would involve quicker payment. There is a commercial disincentive for suppliers to leave lucrative contracts, even if the cost of late transactions is eating away at profit. In industries where there are few large contractors, there is a concern that a further contract will be lost or even that there will be some sort of 'blacklisting'.

23. Where there is evidence that a customer is requesting terms that are outside of an industry norm and potentially unfair, it is possible for third parties to bring pressure for a

[13] https://www.tide.co/blog/tide-update/new-research-uk-smes-chasing-50bn-in-late-payments/

return to fairer and more normal terms – for example through business representative organisations who 'name and shame' certain businesses as unfair to suppliers.

Signal of effective corporate governance

24. Supplier relationships are an important marker of a company's business model and financial structure. When the Board and senior management of companies can understand how they are interacting with their supply chain in practice rather than just in principle, they are in a better position to drive change and improve their business relationships. Information such as the extent to which a business is a reliable payer of its suppliers or whether it has a reputation for repeat late payment may not be apparent from the financial sections of annual accounts but may have some value as a signal to Board and senior management about the quality of management and processes at the company.

Macroeconomic risk

25. Late payment can worsen a shortage of liquidity in the economy when there is a credit crunch or recession. The knock-on effect of one customer paying a supplier late leading to that supplier paying its own supplier(s) late can quickly spread the impact of late payment to multiple firms, increasing the demand for credit at a time when access to credit may be difficult. As the risk of firms paying late increases during an economic downturn or recession, the problem of late payment both is exacerbated by difficult credit conditions and worsens them.

26. The policy measures assessed in this impact assessment are not specifically designed to improve the problem of late payment during abnormal economic conditions but rather should be seen as a measure aimed at improving the general culture of prompt payment during normal economic conditions. If effective, this would reduce the macroeconomic risk by lowering the level of outstanding debt from late payment that businesses carry into a future downturn or recession.

Policy objective

27. The rationale for intervention and objective of the policy is to promote greater transparency and public scrutiny of large businesses' payment practices and performance, in order to overcome the asymmetry of information between large businesses and their suppliers with regard to payment processes.

28. Making this information easily accessible allows suppliers to have a better understanding of what to expect from their customers, and therefore be in a better position to:

    - make an informed judgement on whether to enter a commercial relationship (e.g., whether terms are fair and whether they are likely to be observed, thereby avoiding the cost of chasing late payments)
    - negotiate fairer terms
    - collect intelligence which makes it easier to challenge late payment

29. The recent statutory review concluded that the Regulations are meeting the stated expectations of their objectives: they have brought greater transparency and symmetry of information to the payment practices and performance of large businesses and continue to highlight businesses that have poor payment practices.

30. The review also concluded that objectives of the policy remain appropriate because there is a continued requirement to ensure compliance and increase awareness of the payment practices and performance of large businesses. The reporting function should continue to ensure that qualifying businesses are required to report their payment data. Furthermore, Government will continue to be proactive in stamping out the worst kinds of poor payment practices and encouraging a culture change in the payment practice landscape.

Policy proposal

31. The policy options proposed are largely the same as the current Payment Reporting Requirements introduced in 2017, except for some proposed changes to what and how variables are reported which are described in paragraphs 49 to 52. This includes the addition of specific regulations relating to retention payments, an area of serious concern in the construction sector, where we find some of the most egregiously offending late-payers.

The Payment Reporting Requirement Regulations

32. Large companies and large limited liability partnerships (LLPs) are required under the Regulations to publish information about their payment practices and performance twice per financial year. The information must be published through a web-based service, available to the public, provided for the purposes of the Regulations by or on behalf of the Secretary of State.

Businesses which need to report

33. The reporting requirement applies to companies and LLPs (regardless of whether they are private, public or quoted) which exceed certain size criteria, as outlined below. The companies and LLPs in scope of the requirement are referred to in the Regulations as “qualifying companies” and “qualifying LLPs”.

Size criteria for the reporting requirement

34. Businesses are in scope of the requirement for a financial year if, on their last two balance sheet dates (or, if only in their second financial year, on their last balance sheet date before that financial year), they exceeded at least two of the thresholds for qualifying as a medium-sized company under the Companies Act 2006 (section 465(3)); in the case of LLPs, as applied and modified by regulation 26 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008). The thresholds relate to turnover, balance sheet total and average number of employees.

35. At the time of publication, these general thresholds are:

- £36 million annual turnover

- £18 million balance sheet total
- 250 employees

36. A parent company or parent LLP is only required to report if, on its last two balance sheet dates (or, if only in their second financial year, on their last balance sheet date before that financial year), that business: (i) exceeds two or all three of the general thresholds; and (ii) the group it heads exceeds two or all three of the group thresholds for qualifying as a medium-sized group in (section 466(4) of the Companies Act 2006; in the case of LLPs, as applied and modified by regulation 55 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008).

Number businesses in scope

37. The 2016 Impact Assessment for the Regulations used the FAME database to generate an estimate for the number of businesses in scope. FAME is used in analyses such as these as it has combined data on companies' employee numbers, assets, turnover, SICs etc. However, based both on the number of companies that have thus far reported and the discrepancy between, for example, BEIS Business Population and FAME estimates for the number of UK businesses with more than 250 employees (7,700 and 12,343, respectively), we consider FAME to be an overestimate of the number of businesses in scope[14].

38. As of November 2022, more than 64,000 reports on payment practices had been submitted and published on the gov.uk website[15] by 9,401 businesses, of which an estimated 624 were in the construction sector[16]. This is likely to be a slight underestimate of the total businesses in scope of the newly proposed requirements (in that it is likely more businesses will pass the threshold in the coming years, businesses may not have reported, etc.) and so, for the purposes of this impact assessment (and in the interest of caution), the estimates used will be 10% uplifted from these, namely 10,341 total businesses of which 687 are believed to be in construction.

Reporting obligations

39. Businesses in scope of the reporting requirement must prepare and publish information about their payment practices and performance in relation to qualifying contracts[17], for every reporting period in the financial year. The information for each period must reflect the policies and practices which have applied during said period, and overall business performance.

40. The report must be published on the web-based service provided by Government within 30 days, beginning with the day after the last day of the period a report covers.

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[14] The current FAME estimate for the number of businesses in scope is 14,254, as of the 17th of November, 2022

[15] https://check-payment-practices.service.gov.uk/export

[16] Based on FAME estimates of the proportion of businesses subject to reporting requirements which were in the construction sector (we consider FAME's distributions likely to be accurate, if not its overall numbers).

[17] Page 9, Guidance to reporting on payment practices and performance: https://www.gov.uk/government/publications/business-payment-practices-and-performance-reporting-requirements; and see regulation 6 of the Reporting on Payment Practices and Performance Regulations 2017 and regulation 3 of the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017, read with section 3(2) of the Small Business, Enterprise and Employment Act 2015.

41. The report must contain the information required by the Regulations and must be approved by a director (where the reporting business is a company) or a designated member (where the reporting business is an LLP), before it is published. The name of that director or designated member should be included in the report.

Contracts in scope

42. Businesses will not be required to report on contracts for financial services or contracts which do not relate to the United Kingdom.

Information currently required in relation to qualifying contracts

43. Statistics on:

- the average number of days taken to make payments in the reporting period, measured from the day after the receipt of invoice or other notice to the date the cash is received in full by the supplier
- the percentage of payments made within the reporting period which were paid in 30 days or fewer, between 31 and 60 days, and in 61 days or longer (note: for the purposes of timekeeping, day 1 is the day after the date on which the invoice or other notice is received by the qualifying business)
- the percentage of payments due within the reporting period which were not paid within the agreed payment period (the period in which a company is contractually required to pay a sum)

44. Narrative descriptions of the business' standard payment terms in qualifying contracts, which must include:

- the standard contractual length of time for payment of invoices
- any changes to the standard payment terms in the reporting period
- how suppliers have been notified of or consulted on these changes
- the maximum payment period specified in a qualifying contract taken on during the reporting period
- the business' process for resolving disputes related to payment under a qualifying contract

45. Tick box statements about:

- whether suppliers are offered e-invoicing
- whether supply chain finance is available to suppliers
- whether the business' practices and policies cover deducting sums from payments as a charge for remaining on a supplier's list, and whether they have done this in the reporting period

- whether the business is a signatory of a payment code, and the name of the code

The sanctions if a business does not comply

46. It is a criminal offence by the business, and every director of the company or designated member of an LLP, if the business fails to publish a report containing the necessary information within the specified filing period of 30 days. There is a defence available to the director or designated member who can prove he or she took all reasonable steps to secure publication within the statutory timeframe.

47. Anyone who knowingly or recklessly publishes or causes to be published for the purposes of the Regulations a report or any information or makes, for any such purpose, a statement which is misleading, false, or deceptive commits a criminal offence if they knew, or were reckless, about it being false or misleading at the time it was made. This applies to businesses and individuals.

48. These offences are punishable on summary conviction by a fine.

Changes proposed to the Information required in relation to qualifying contracts

49. We are proposing to include an additional value reporting metric to provide greater transparency and allow for comparison between the total value of invoices paid within terms to those paid outside agreed terms. Dependent on stakeholder views, we envisage this metric to capture statistics on the total value of payments due within the reporting period which were not paid within the agreed payment period, as well as those paid in 30 days or fewer, between 31 and 60 days and in 61 days or longer.

50. We are proposing to make it a requirement for a reporting business to include their payment practices and performance information in their directors' report. We envisage that this could have a self-governing effect on reporting businesses by reaffirming awareness of the importance of reporting at Board level and in the audience of a company's directors' report, including its shareholders.

51. We are also seeking views on whether making it a requirement for reporting businesses to explicitly report on the volume and value of disputed invoices would increase accountability of their payment practices.

52. We also seek views on a requirement that payment practice and performance reports should include information on the standard retention payment terms in qualifying construction contracts. A further requirement is also proposed for reporting businesses to report statistical information on retention payments where applicable. This could capture:

    - the average number of days taken to make retention payments in the reporting period, after practical completion and end of contractual defects liability period
    - the percentage of retention payments made within the reporting period which were paid in 30 days or fewer, between 31 and 60 days, and in 61 days or longer
    - the percentage of retention payments due within the reporting period which were not paid within the agreed payment period
    - the average value of retention held per construction contract (% of contract value).

53. We envisage these requirements providing greater transparency and public scrutiny of large businesses' retentions payment practices and performance, as well as improved information to suppliers in the construction supply chain.

Description of options considered

54. This impact assessment primarily assesses the impact of the options that continue the current Payment Reporting Requirement with some additions to the existing policy (which is ending in 2024 due to the sunset clause).

Option 1: Do nothing

55. This would mean ending the current Payment Reporting Requirements on large businesses, which would result in the market failure associated with asymmetric information between suppliers and customers in terms of payment practices and performance no longer being constrained by regulatory action.

Option 2: Continue existing policy of duty to report on payment practices and performance as is

56. This would continue the policy implementation as it has been since its introduction in 2017, which is described in the above section under the "Policy Proposal" section.

Option 3: Continue existing policy of duty to report on payment practices and performance with some amendments to what and how some variables are reported

57. This would continue the policy implementation as it has been since its introduction in 2017, with various additions to the variables reported, which are described in the above paragraphs 49 to 52.

Cost-benefit analysis

Appraisal challenges and proportionality of approach

58. A key challenge to cost-benefit appraisal of the policy is that the costs of the policy fall on a specific population of businesses (those in scope of the reporting requirements) while the benefits of the policy could accrue to many parties, largely but not exclusively the suppliers of the businesses in scope of the reporting requirements. The costs of the policy apply directly to the affected businesses: these businesses will incur various costs directly because of the continuation of reporting requirements. The benefits, however, accrue indirectly; they depend on some other economic decision taking place between the implementation of the policy and the benefit's occurrence (e.g., behavioural change on behalf of suppliers to contract with faster payers in preference to slower payers and/or behavioural change on behalf of slower payers to improve their payment performance).

59. With the appropriate survey research with businesses (that would be in scope of the requirements) we could identify more and more estimates of the likely direct costs, but it is much more difficult to quantify estimates for the potential benefits. Survey evidence from Tide suggests that the costs associated with late payment currently incurred by

business are still considerable, however, and so there would be potential for significant savings to business if the policy worked as intended.

60. There is a risk that by not quantifying the benefits, the overall cost-benefit analysis may overemphasise the costs without reflecting the potential for offsetting benefits. While the benefits cannot be robustly quantified due to the uncertainty of the exact behavioural responses of businesses to the extra information provided by the policy and the scale of impact these will have on payment performance, using the evidence gathered for the statutory review we can give a qualitative overview of how well the original policy met its objectives, and provide a description of how the proposed additions would further aid in these goals.

61. For the 2016 impact assessment BEIS commissioned a third party (Touchstone Renard) to obtain independent estimates of the costs faced by in scope businesses, based on a representative sample of 36 businesses.

Previous BEIS research

Between August and September 2016, Touchstone Renard contacted 300 businesses with a high-level specification of the proposed reporting requirements and an initial questionnaire. Respondents were subsequently followed up with a semi-structured telephone interview, to probe and understand the company's background, systems, costs of meeting the new requirements and any other issues relevant to compliance that were raised by the respondents.

The underlying population of businesses was defined as large companies as defined by the Companies Act. A sample of 300 businesses was drawn from data supplied by the FAME database, and was representative of all the main business sectors, included substantial numbers of both the largest and smallest companies within range in the overall population, as well as a random sample of all companies.

The research took place during the summer months and was done to a tight timescale, and so due to lack of availability of Finance Directors or other suitably informed respondents, the actual sample interviewed was relatively small (36).

Eight of the respondents were parent companies that provided estimates of the costings across their whole group. These cost estimates were divided by the number of subsidiary companies in the group to obtain an estimate per individual company. This enables the per business estimates to be scaled up to obtain whole economy costs by multiplying by the estimated number of businesses in scope of the reporting requirements.

Only one estimate has been recorded per observation. Where a parent company has reported group level costs on behalf of their subsidiaries, a single individual level estimate has been recorded. This is because the population estimate affected by the regulations is defined in company, rather than company group terms.

There is a considerable amount of variation in the cost estimates reported across the sample. In some cost categories we consider that high outlier figures would act to skew the mean cost upwards in a potentially non-representative manner. To seek to control for both high and low outlier responses, the central estimates in this impact assessment are based on the research's median estimates[18]; and given the clustering around the medians that the research findings show we employ lower and upper bound estimates modelled as increases or decreases of 10 per cent from the central estimate.

[18] Or the first cost value to exceed zero should zero be the reported median.

Option 2 and 3 - Structure of costs

62. The costs quantified in this impact assessment are the direct costs as incurred by businesses in satisfying the reporting requirements. In option 2, these are a continuation of the requirements for companies to report on their payment practices and performance. In option 3 there is some small additional ongoing cost as well as a reasonably sizeable transition cost, occurring in year one. The cost burden imposed by this policy is the total of the costs incurred by the firms in scope of the requirements.

63. To account for the timing over which costs incur and discount future values appropriately, the costs have been separated into one-off "transition" costs – which would be expected to be incurred in the first year of the reporting requirements – and ongoing costs:

    a) Transition costs

        i. Familiarisation with the new requirements.

        ii. Adapting IT systems.

        iii. Gathering information needed to update processes.

        iv. Changing processes.

    b) Ongoing costs

        i. Maintaining systems and processes.

        ii. Preparing reports biannually.

        iii. Collating, approving and submitting reports biannually.

64. As option 2 is just a continuation of the current policy there are no transition costs, only ongoing. Option 3 has some of the same ongoing costs as option 2 but also has added transition costs and some small total increase to the ongoing due to the additional reporting requirements (chiefly relating to retention payments).

65. The costs of transition are assumed to occur once only, in advance of the preparation of the first report. For the purposes of NPV calculation, these are scored in Year 1.

66. Costs of collecting and providing information, sign-off, systems maintenance and quality assurance recur in every year of the appraisal period. This impact assessment has regarded the ongoing costs as being constant, although in practice, the costs may reduce over time as businesses become more familiar with the need to report payment performance and streamline their processes.

67. Costs included are the cost of purchasing external equipment, hiring external contractors and the opportunity cost of in-house staff being diverted to activities associated with complying with the reporting requirements instead of working on other profitable activities.

Option 3 – Transition costs

Familiarisation costs

68. Businesses are likely to face a one-off cost of familiarisation with the new additions to the reporting requirements introduced in option 3, including time taken to understand statutory requirements and ensure reporting processes comply with them. For costing purposes, we assume that the person responsible for familiarisation will be a middle manager and will typically need to be given responsibility for delivery of the requirements and clarifications which may be sought from BEIS such as timing of reports and reporting methods.

69. As the changes to the policy are relatively minor, we expect the cost of familiarisation to be only a proportion of the 2017 surveyed estimate. In the 2017 survey, estimates of familiarisation costs ranged from zero to costs of several thousand, with one estimate of £17,775. The median familiarisation cost estimate was £528. Adjusted for inflation this is a median cost of £640.

70. Given that there are 4 additions/changes to the original reporting requirements for all businesses and a proposed 9 for construction businesses compared to the original 12, we expect the cost to businesses to be no more than one third of the previous estimated costs for other businesses and three-quarters for those in construction. This gives an estimate of £213 per other business, and £480 per construction business.

Adapting IT systems

71. For the proposed changes to the reporting requirements under option 3, we expect that the additional fields will not require a large time investment or drastic change to existing IT systems. As the process is already in place for uploading the data to the government system and the additional data is of a similar nature to existing requirements, we would expect adapting the IT systems to cost only a fraction of what was quoted by businesses for the original 2017 policy. The reporting on retention payments, however, will require more comprehensive IT change and costs for construction businesses will reflect this (though will still be significantly smaller than in 2017).

72. In the 2017 survey, estimated IT costs ranged from zero to several thousands, with an outlier estimate of £65,000. The median IT cost estimate was £1,000. Adjusted for inflation this is a median cost of £1211.

73. Given that there is only 1 addition/change for most businesses to the original reporting requirements compared to the original 12 that would require adapting IT systems, we expect the cost to businesses to be no more than one twelfth of the previous estimated costs. This gives an estimate of approximately £101 per business. For construction businesses there are 4 additions, so we expect the cost to be no more than one third of the previous estimate. This gives an estimate of approximately £404 per construction business.

Gathering information needed to update processes

74. Managers need to understand what systems and locations are affected, what data are already held and what metrics have already been produced. They need assurances about the reliability of the data and may require an audit to be carried out to properly

understand how to gather all the components of information that are needed to satisfy the requirements.

75. Estimated costs of gathering information for the original 2017 policy were mostly zero or relatively small (up to a thousand), although a small number of respondents gave estimates of several thousand pounds. The median cost estimate was £185. Adjusted for inflation this is a median cost of £224.

76. Given that there are 3[19] additions/changes to the original reporting requirements out of the original 12, we expect the costs faced by businesses to be no more than a quarter of what was costed for the original policy. This gives an estimate of approximately £56 per business. For construction businesses there are 8 additions, so we expect the cost to be no more than two thirds of the 2017 estimate. This gives an estimate of approximately £149 per construction business.

Changing processes

77. Either new or adapted internal management processes will need to be established to comply with the additional reporting requirements under option 3. To generate reports with new additions, extra procedures need to be set up to specify, for instance, what data will be extracted, from where, by whom, at what time, the processes by which it will be quality assured and signed off, etc.

78. In the survey conducted for the 2017 policy introduction, around two thirds of respondents estimated the cost of changing processes to be zero (although some respondents gave estimates of several thousand pounds). The first cost value to exceed the zero median cost estimate was £85. Adjusted for inflation this is £103.

79. Given that there are 4 additions/changes to the original reporting requirements out of the original 12 and that some of the processes of quality assurance etc. have been established, we expect the cost to businesses to be no more than a third of the 2017 estimated costs. This gives an estimate of around £34 per business. For construction businesses there are 9 additions, so we expect the cost to be no more than three-quarters of the 2017 estimate. This gives an estimate of approximately £77 per construction business.

80. The tables below indicate estimated transition costs per firm (construction and not construction), modelled on the median estimates given in the original interviews with firms, adjusted for inflation and the extra reporting standards. Low and high estimates are simply 10 per cent below or above the central estimate.

Option 3

Transition Costs For Non-Construction Businesses	Low	Central	High
Familiarisation	£192	£ 213.25	£235
Adapting IT systems	£91	£ 100.97	£111
Gathering information needed	£50	£ 56.04	£62

[19] We do not expect the requirement for a reporting business to reproduce their payment performance in their directors'report to have any information gathering cost.

Changing Processes	£31	£ 34.33	£38
Total	£364	£405	£445

Transition Costs For Construction Businesses	Low	Central	High
Familiarisation	£432	£ 479.82	£528
Adapting IT systems	£364	£ 403.89	£444
Gathering information needed	£134	£ 149.44	£164
Changing Processes	£70	£ 77.24	£85
Total	£999	£1,110	£1,221

Ongoing costs

Maintaining systems and processes

81. Internal procedures must be kept under review, communicated to the personnel who carry them out and updated where necessary. Any changes to the purchasing and accounts payable system could have a knock-on effect on the reporting requirements that would necessitate modification. IT systems could require software licenses and system support purchased from external suppliers on an annual basis or provided by an in-house team (incurring an opportunity cost).

82. Over 50% of respondents felt there would be no cost associated with maintaining systems and processes once the initial systems and processes had been set up. The first cost value to exceed the zero median cost estimate was £100 and the upper estimate was £29,625. Adjusted for inflation the estimated cost on average for businesses is £121. This is unlikely to be affected by changes to reporting on retention payments, so remains at £121 for all businesses.

Preparing reports biannually

83. The key reporting requirements in the policy are the requirements to report on the metrics of payment performance, including metrics on average time of payment and proportions and values of invoices paid beyond agreed terms, and paid within 30 days; between 31 and 60 days and paid beyond 60 days. The reports will need to also reflect any changes in dispute resolution policy or payment terms. For construction businesses, the proposed further reporting of various details relating to retention payments is also likely to increase costs.

84. Estimates of costs associated with preparing reports depend on the amount of manual work involved versus the extent to which the company could automate the report using its IT systems. Tasks range from simply running an automated report, to extracting data to Excel and preparing the report from there, and/or generating varying amounts of manual data for transactions and suppliers that for whatever reason are not covered by the routine systems.

85. A number of respondents claimed there would be no ongoing costs associated with preparing the reports once systems had been established, with others estimating costs of

a few hundred or a few thousand pounds. The median cost estimate was £593. Adjusted for inflation the estimated cost on average for non-construction businesses is £719. Based on the addition of further reporting metrics for retention payments, each requiring specific reference in reports, we expect an increase of around one third to the cost of preparing reports, giving an estimated average cost to construction businesses of £958.

Collating, approving and submitting reports biannually

86. Costs of collating the information required into a suitable format depend on the number of separate systems involved: for one integrated system there may be no collation, whereas organisations with multiple, unintegrated systems incur larger costs.

87. A director in the reporting company or a designated member in an LLP will be responsible for approving the data every time it is to be published. The costs of approving reports depend on the complexity of the underlying data and the confidence managers have in their internal systems.

88. Businesses will be required to provide their data to a central location, to ensure data is presented in a standard format and that it is easily accessible. They will also be required to upload the reports to a portal provided by the Department for Business, Energy and Industrial Strategy. Non-statutory guidance will be made available to help businesses to provide the information.

89. Estimated costs of collating, approving and submitting reports ranged between zero, a few hundred and a few thousand pounds. The median cost estimate was £319. Adjusted for inflation the estimated cost on average for non-construction businesses is £387. Based on the addition of five further reporting metrics for retention payments, each requiring specific reference in reports, we expect an increase of around five twelfths to the cost of preparing reports, giving an estimated average cost to construction businesses of £548.

Option 2 – Estimated ongoing costs

90. The table below indicates estimated costs per firm; the central estimates are based on the median estimates given in the original interviews, adjusted for inflation. Low and high estimates are 10 per cent below or above the central estimate.

Option 2 Ongoing Costs	Low	Central	High
Maintain systems and processes	£109	£ 121.17	£133
Prepare reports twice yearly	£647	£ 718.52	£790
Collate, approve and submit reports twice yearly	£348	£ 386.52	£425
Total	£1,104	£1,226	£1,349

91. To estimate the overall cost burden across all businesses in scope of the regulations, the estimates above have been multiplied by the estimated number of businesses estimated to be in scope, as set out in paragraphs 37 and 38.

Option 2			
Ongoing Costs	Low	Central	High
Maintain systems and processes	£1,127,691	£ 1,252,989.61	£1,378,289
Prepare reports twice yearly	£6,687,206	£ 7,430,228.41	£8,173,251
Collate, approve and submit reports twice yearly	£3,597,333	£ 3,997,036.87	£4,396,741
Total	£11,412,229	£12,680,255	£13,948,280

Option 3 – Estimated ongoing costs

92. The table below indicates estimated costs per firm; the central estimates are based on the median estimates given in the original interviews with firms, adjusted for inflation and then with a proportion added for Construction Businesses. Low and high estimates are 10 per cent below or above the central estimate. It may be noted that the ongoing costs for Non-construction Businesses are equal to those in option 2.

Ongoing Costs for Non-construction Businesses	Low	Central	High
Maintain systems and processes	£109	£ 121.17	£133
Prepare reports twice yearly	£647	£ 718.52	£790
Collate, approve and submit reports twice yearly	£348	£ 386.52	£425
Total	£1,104	£1,226	£1,349

Ongoing Costs for Construction Businesses	Low	Central	High
Maintain systems and processes	£109	£ 121.17	£133
Prepare reports twice yearly	£862	£ 958.03	£1,054
Collate, approve and submit reports twice yearly	£493	£ 547.57	£602
Total	£1,464	£1,627	£1,789

Option 3 – costs across all businesses in scope

93. To estimate the overall cost burden across all businesses in scope of the regulations, the estimates above have been multiplied by the estimated number of businesses in scope, as detailed in paragraphs 37 and 38.

Option 3			
Transition Costs For Non-Construction Businesses	Low	Central	High
Familiarisation	£1,852,880	£ 2,058,756.08	£2,264,632
Adapting IT systems	£877,311	£ 974,789.81	£1,072,269
Gathering information needed	£486,908	£ 541,008.35	£595,109
Changing Processes	£298,286	£ 331,428.54	£364,571
Total	£3,515,384	£3,905,983	£4,296,581

Transition Costs For Construction Businesses	Low	Central	High
Familiarisation	£296,674	£ 329,637.69	£362,601
Adapting IT systems	£249,726	£ 277,472.80	£305,220
Gathering information needed	£92,398	£ 102,664.94	£112,931
Changing Processes	£47,760	£ 53,066.67	£58,373
Total	£686,558	£762,842	£839,126

Ongoing Costs for Non-Construction Businesses	Low	Central	High
Maintain systems and processes	£1,052,773	£ 1,169,747.77	£1,286,723
Prepare reports twice yearly	£6,242,944	£ 6,936,604.30	£7,630,265
Collate, approve and submit reports twice yearly	£3,358,346	£ 3,731,495.40	£4,104,645
Total	£10,654,063	£11,837,847	£13,021,632

Ongoing Costs for Construction Businesses	Low	Central	High
Maintain systems and processes	£74,918	£ 83,241.84	£91,566
Prepare reports twice yearly	£592,349	£ 658,165.48	£723,982
Collate, approve and submit reports twice yearly	£338,565	£ 376,183.75	£413,802
Total	£1,005,832	£1,117,591	£1,229,350

Summary of costs

94. The overall Transitional Costs and Ongoing Costs given for option 3 below are sums of the central estimates for the Construction and Non-construction businesses given above.

95. The NPV (Net Present Value) gives an estimate for the total value of the costs across the full appraisal period of 10 years, with values for costs in future years discounted at a rate of 3.5% per year to reflect the greater value society attaches to present rather than future consumption[20].

96. The equivalent annual cost (EADCB) gives an estimate for a constant annual cost that would give the same NPV over the 10-year appraisal period if costs were constant in every year.

97. Option 2:

Summary	
Transitional Costs	£0
Ongoing Costs	£12,680,255
Present Value of Business Costs	£109,147,659

[20] See HM Treasury Green Book, Annex 6

Equivalent Annual Direct Cost to Business (EADCB)	£12,680,255

98. Option 3:

Summary	
Transitional Costs	£4,668,825
Ongoing Costs	£12,955,439
Net Present Value of Business Costs	£116,185,178.45
Equivalent Annual Direct Cost to Business (EADCB)	£13,497,840.37

Monitoring and enforcement

99. The regulations place a duty on all businesses in scope of the reporting requirements to publish their report by electronic means within the filing period. If this duty is not met, the company and every person that was a director of the company (or for LLPs, a designated member) immediately before the end of the filing period will have committed an offence, and be subject, on summary conviction, to a fine. If false information is given, the offenders will also be subject, on summary conviction, to a fine. This follows precedents for similar reporting requirements under the Companies Act 2006.

100. Government will not be incurring costs of proactive monitoring and enforcement (such as random inspections) of whether companies are filing accurate information on payment times. However, the information will be publicly available and visible to suppliers who can raise a suspicion directly with BEIS or take a complaint about poor payment performance to the Small Business Commissioner (SBC). While the SBC is not an enforcement body, it can raise concerns with BEIS about payment performance of a particular business not aligning with its published returns.

101. Under the original 2017 Payment Reporting Requirements policy, 18 cases of compliance action took place following suppliers who raised a suspicion directly with BEIS. Compliance action involved BEIS staff writing to businesses and informing them that they are in breach of law by not reporting. In all cases the businesses then complied, and no further action was taken.

102. As the Government will not be taking proactive monitoring and enforcement measures and given the small number of compliance cases seen under the original policy and the lack of prosecution in those cases, it is expected that the cost to Government for investigating and prosecuting non-compliance will be negligible.

Types of benefit

103. The benefits of the policy are more difficult to quantify than the costs. However, as part of the statutory review of The Reporting on Payment Practices and Performance Regulations 2017, qualitative evidence was gathered on how successful the policy was and what benefits businesses felt they had received due to the policies implementation.

104. The benefits of a continuation of the policy (option 2) relate directly to the benefits looked at under the review, which were as follows:

   a. Greater transparency
   b. Rebalancing of the asymmetry of information
   c. Increased availability of information for businesses
   d. Incentivisation for businesses to improve payment practices

e. Ability to place commercial and reputational pressure on businesses to pay promptly

105. Option 3 aims to learn from the statutory review by adding to reporting metrics to better achieve the desired benefits.

Greater transparency

106. There was largely positive feedback from respondents that the Regulations had brought greater transparency on payment practices and performance, with 92% either agreeing or strongly agreeing.

107. There was a consensus from several respondents that the Regulations have brought greater transparency as, prior to their introduction, there was simply no option to allow businesses to look at the payment performance of their customers. Further, it was noted that the visibility of a businesses' payment practices over time has enabled supply chain partners and competitors to make key decisions about with whom they do business. This in turn has created an incentive for in-scope businesses to review and improve their payment practices in order that they remain attractive to potential suppliers.

108. Several respondents noted that the Regulations, in conjunction with other Government initiatives such as the Small Business Commissioner and the Prompt Payment Code, have improved transparency and hold to account those large businesses with the greatest financial power. They considered this to have provided suppliers with leverage to improve their commercial performance.

109. Respondents from the construction sector were generally positive about the impact of the Regulations, with some calling them an 'essential catalyst for changing the culture around payment in the construction sector' and that they 'underpin the recognition that large businesses are as strong or as fragile as their supply chains'.

110. Some respondents highlighted concerns that the reports only capture the volume of transactions paid within terms, and not the value, and the inability to distinguish between high-value supply chain payments and small low-value payments means that there is only transparency on the volume of payments rather than their true value.

Rebalancing of the asymmetry of information

111. Feedback from respondents on whether the Regulations have helped overcome the asymmetry of information regarding payment practices and performance between large businesses and their suppliers was mixed, with 46% of respondents agreeing, while 33% disagreed, and 17% neither agreed nor disagreed.

112. There was positive feedback from several respondents that having payment performance data publicly available in an easily accessible way on gov.uk has made it easy for suppliers to obtain information on payment performance, helping to overcome the asymmetry of information that previously existed. Others commented that the accessibility of information has provided some support in their decision making when bidding for work and provided some clarity to make comparisons between businesses'

payment practices and performance, providing a ‘temperature test’ as to whether a business will meet their expected standards of payment.

Increased availability of information for businesses

113. The Regulations aim to help businesses better understand what to expect from their customers and therefore be in a better position to:

- make an informed judgement on whether to enter a commercial relationship
- negotiate fair terms
- have information making it easier to challenge late payment

114. Stakeholder views for this objective were mixed, with 37% of respondents either agreeing or strongly agreeing, 25% either disagreeing or strongly disagreeing, and 33% neither agreeing nor disagreeing.

115. Several respondents agreed that the Regulations have provided transparency and a consistent means of comparing performance, which are essential to changing the culture around payment. It was also stated that the explicit visibility of average payment terms and percentage of invoices paid within terms helps businesses to make an informed judgement of whether to enter a commercial relationship, and therefore puts them in a better negotiating position.

Incentivisation for businesses to improve payment practices

116. 62% of respondents either agreed or strongly agreed that the Regulations provide incentives to improve business practices, while 17% either disagreed or strongly disagreed, and 21% neither agreed nor disagreed.

117. Several respondents agreed that having their payment practices and performance data in the public domain encourages businesses to improve. It was suggested that public awareness of how a business treats its smaller suppliers can create a strong reputational incentive to improve performance and conduct.

118. It was also noted that the Regulations have provided a ‘catalyst enabler’ for other initiatives in the payment landscape, for example the Prompt Payment Code, payment league tables and open-source platforms such as those provided by the Good Business Pays campaign and Build UK (discussed in the section on option 3’s additional benefits).

119. It was reported that, while the collection of accurate and timely data (in order to comply with the Regulations) has been a challenge, many businesses have seen it as an opportunity to replace outdated payment systems and intelligently analyse their payment data to ensure they can keep on top of regulatory compliance and improve the efficiency and speed of payments. They noted that there has also been evidence of large businesses providing guidance to their SME suppliers in areas such as how to submit invoices correctly to ensure prompt payment.

Ability to place commercial and reputational pressure on businesses to pay promptly

120. 67% of respondents either agreed or strongly agreed that the regulations have helped with placing pressure on businesses, while 17% either disagreed or strongly disagreed, and 13% neither agreed nor disagreed.

121. Several respondents agreed that the increased transparency provided by the Regulations has made it easier for representative bodies to apply reputational pressure on late paying businesses to improve their practices, thereby putting data in the hands of those who have more substantive power than individual suppliers alone. This has allowed business representative bodies to actively promote contracting opportunities to their members where the customer has demonstrated good payment performance and, likewise, refuse promotion to customers with poor performance.

122. It was noted by respondents that small suppliers generally do not have accounts departments and are currently extremely busy running their day-to-day business, therefore are not able to sufficiently pressure big business customers for faster payment. They reported that the Regulations have therefore been invaluable in helping to identify those businesses with poor payment performance and allowing business representative organisations to open a dialogue with those businesses: to 'name and shame' and widely publicise that those businesses have poor payment performance.

123. This has been demonstrated by the Good Business Pays campaign, which provides payment practices and performance data via an online portal where businesses can search their client's payment record, thus putting reputational pressure on businesses to pay promptly. The campaign, backed by some of the UK's largest business representative groups (the Federation of Small Businesses, the Confederation of British Industry, Make UK, the Institute of Directors, British Chambers of Commerce and the Creative Industries Federation), calls out poor payment practice and awards their Good Business Pays badge to businesses that demonstrate good practice.

124. The Federation of Small Businesses stated in their evidence that they have also enabled member organisations to work directly with large businesses which have historically poor payment performance to establish programmes to turn this around. They state this collaborative approach has been their preferred method of use of the payment reporting data, rather than simply inciting commercial and reputational pressure on any one business at a time.

125. In addition, the Office of the Small Business Commissioner, which administers the Prompt Payment Code on behalf of BEIS, uses reporting data where appropriate to measure the compliance of its signatories against the requirements of the Code.

126. Some respondents noted that the Regulations have enabled Government to monitor the payment performance of its suppliers and challenge performance where it needs to improve. It has also enabled Government buyers to easily assess whether businesses are meeting the minimum payment performance standards expected when bidding for Government contracts above £5 million per annum.

Additional benefits of option 3 compared to option 2

127. Option 3 clearly addresses the problems raised regarding transparency (lack of a value metric), as the new reporting metrics include figures detailing the value of payments made over specific periods, as well as the value of those payments which are made late, as detailed in paragraph 49.

128. The additional metrics relating to the value of payments further address issues relating to the asymmetry of information as raised in the statutory review, as they significantly mitigate the risk that companies could mask issues of high value late payments by rapidly carrying out large numbers of low-value payments, thereby providing statistics that, while accurate, do not fully represent said company's payment practices.

129. With the goal of further addressing the asymmetry of information, respondents to the statutory review suggested that legislation should be amended to make it a legal requirement for businesses in scope to include their payment and performance information their annual report, with the goal of making businesses more aware that this information exists in the public domain. This is included (in a reduced form) in the proposed changes, as detailed in paragraph 50

130. Additionally, it was suggested that with the reputation and responsibility being not only with the business, but also with board members held accountable and individual directors carrying personal legal liability if the reporting is not accurate or complete, there is greater incentivisation for businesses to improve their practices. This will also be significantly aided by the requirement to include payment reports in the company directors' reports.

131. The proposals to report on the volume and value of disputed invoices (given in paragraph 51) also address risks raised in the Impact Assessment for the initial Regulations, namely that there is a risk that businesses falsely dispute invoices to ensure that their 'paid on time' figures are positive. If disputed invoices were reported separately from other payments this issue would be negated.

132. The construction industry has historically suffered from high levels of late payment. Organisations in this sector have used the Duty to Report data to 'provide the transparency needed to empower the supply chain and to apply peer pressure on contractors and clients to make the changes required'. For example, the reporting information has enabled Build UK, a leading representative body in the construction industry, to benchmark its members and the wider industry in a payment table, made available on its website, that enables comparisons of large companies in the construction sector. Issues of late payment remain, however, particularly with regard to retention payments.

133. The Build UK model has been widely praised by wider business representative bodies and Government as a good model for trade organisations across other sectors to adopt. This would not be possible without the Regulations as they stand, but would also be significantly aided by further, targeted reporting metrics aimed at retention payments.

134. Proposals set out in paragraph 52 are intended to directly combat issues with the construction sector's retention payments. They will provide greater transparency and improved information to suppliers on what percentage of retention is deducted on construction contracts, return mechanisms, and timescales. They will also provide information on payment performance for retentions.

135. These proposals will expand the example laid out by the Regulations as they stand and allow suppliers to make informed decisions about with whom they trade, to negotiate fairer terms and to challenge late payment, in a way that is more directly targeted at the construction industry.

Benefits for reporting businesses

136. Beyond the benefits looked at as part of the statutory review, there may be benefits to the reporting businesses themselves.

137. The underlying market failure of asymmetric information has a negative effect on some of the businesses that come into scope of the reporting requirements – namely, those with better payment performance.

138. The absence of clear information to compare with rivals means that they often do not have the means to signal their good payment performance to gain an advantage in the market.

139. Businesses could voluntarily incur the costs of reporting and publishing, but the information provided would be less meaningful when it was not published alongside the performance of other businesses for comparison.

140. Shareholders and investors will be able to use the information to better judge the general cash flow health of a company; while a company's liabilities are visible from annual financial statements, the information on payment performance will allow investors to see how quickly a business fulfils trade debts.

141. This could lead to better internal accountability and corporate governance and provide a positive signal to potential investors of the quality of a company that has a record for good payment performance.

Risks and assumptions

142. Businesses that already have a good record of prompt payment may not realise how their performance compares to others'. Once more of this information is available, they may use this to their advantage in negotiating a better price: suppliers may have to offer a discount premium when dealing with the fastest paying customers. However, as suppliers can compare the payment speeds of different customers before agreeing any contract, the level of discount they offer would reflect the value the supplier places on prompt payment. Over time this could result in the value of prompt payment being reflected in contract prices and thus create a further incentive for prompt payment.

143. There is some risk that, because of the nature of the power imbalance between small and large businesses in any given market (i.e., large businesses hold significantly more market dominance), businesses will fail to negotiate better terms. That is, even when the asymmetry of information is robustly combatted, small and medium businesses still may not be able to improve their situation because they lack market power.

144. The estimated aggregate cost to UK businesses of chasing late payments includes cases where late payers are small and medium-sized businesses. This policy proposal only directly affects large companies, and although the BACS research cited in this impact assessment suggested large companies were the worst offenders, it should be acknowledged that the measure will potentially reduce costs only in relation to large late-paying companies.[1]

145. In the section on the costs to businesses, the estimate of the number of construction businesses affected by the new regulations on retention payments should be considered an upper bound. It is generated as a proportion of large businesses which are in the construction sector, thus assumes that 100% of businesses in construction use retention payments. Although this is an overestimate, it is not egregious as a majority of large construction companies use retention payments in a given year, and so must understand the new regulations.

Wider impacts

Impact on small and micro businesses

[1] There is a theoretical possibility that by encouraging improvements to payment times amongst larger companies, there may be a consequent improvement amongst small and medium-sized businesses due to better general norms of payment culture.

146. Under the Government's Better Regulation Framework guidance, the default option for new regulatory measures is for small and micro businesses to be exempted from new regulatory measures. The requirement to report on payment practices and performance does not apply to small or medium-sized businesses and so there would be no direct costs to small and micro businesses as a direct result of these proposals.

147. Small and micro businesses are particularly vulnerable to the costs associated with late payment, especially with regard to liquidity constraints. They should benefit from the ability to access information on the payment practices and performance of larger businesses that are required to publish their payment information.

Equalities impact

148. The costs and benefits of the policy would not be expected to fall disproportionately on any of the protected groups.

Families Test

149. The costs and benefits of the policy would not be expected to affect families or their formation.