

# Public Contracts Regulations 2015

## Statutory guidance for contracting authorities and Suppliers on paying undisputed invoices in 30 days down the supply chain

### 1. Introduction

This guidance is issued under r113 of the Public Contracts Regulations 2015 (the “Regulations”). Contracting authorities must have regard to this guidance in relation to the payment of valid and undisputed invoices within

30 days.

This guidance has been prepared to provide general guidance only. This guidance does not constitute legal advice. The interpretation of the law is ultimately a matter for the courts and users of this guidance should seek their own legal advice where appropriate.

This guidance has effect from 1 September 2016 and replaces the previous version of 26 February 2015.

### 2. Background

Government is committed to creating a supportive environment in which ambitious businesses can flourish. It recognises that the public

sector should set a strong example by paying promptly. Over time central Government has been improving its payment times to assist the cash flow of businesses. The policy and legislation framework is;

- Following a Government policy commitment in 2010, central government pays 80% of undisputed invoices within 5 days. □
- Late payment legislation<sup>1</sup> enables suppliers to claim statutory interest for payments made more than 30 days after receipt of the invoice. □
- Additionally many Local Authorities have commitments to pay within 10 days. □

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<sup>1</sup> The term Late Payment legislation refers to the Late Payments of Commercial Debts (Interest) Act 1998, the Late Payment of Commercial Debts Regulations 2002 and the Late Payment of Commercial Debts Regulations 2013. See BIS guidance at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/360834/bis-14-1116-a-users-guide-to-the-recast-late-payment-directive.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360834/bis-14-1116-a-users-guide-to-the-recast-late-payment-directive.pdf)

### 3. Scope of this reform

Regulation 113 of the Public Contracts Regulations 2015 requires contracting authorities to ensure that every public contract they award contains suitable provisions requiring:

- a. The contracting authority to pay invoices submitted by the contractor under the contract no later than the end of a period of 30 days from the date on which the invoice is regarded as valid and undisputed; □
- b. The contracting authority to consider and verify any invoices for payment submitted by the contractor in a timely fashion; □
- c. That any undue delay in considering and verifying an invoice is not sufficient justification for failing to regard it as valid and undisputed; □
- d. That any subcontract awarded by the contractor contains

suitable provisions to impose, as between the parties to the subcontract: [ii](#). Requirements to the same effect as those set out above; and [iii](#). A requirement for the subcontractor to include in any subcontract which it in turn awards suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect. [iv](#)

Regulation 113(7) requires contracting authorities to publish on the internet each year how they have performed on sub paragraphs a. to c. above, including the proportion of invoices paid on time to their first tier suppliers /prime contractors.

Where a contract contains terms or provisions requiring payment more quickly than 30 days (for example because of statutory requirements, or because the parties choose a shorter payment period) then these shorter payment periods will apply to that contract.

Central government will continue to follow the policy of paying 80% of all invoices in 5 days. (This is not a legal obligation).

A model term can be found in Annex 1 that is recommended for use. Alternative versions can be used if the same outcome is achieved. In accordance with regulation 113(6), if no suitable provision is included in a relevant public contract, the terms set out in regulation 113(6) will be implied into that public contract.

These requirements will apply to all public contracts except the following:

- Contracts for the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition (No. 2) Regulations 2013; and [iv](#)
- Contracts awarded by a contracting authority which is a maintained school, an Academy or a Sixth Form College Corporation.

#### [iv](#). Publication of performance [iv](#)

Contracting authorities will be required to publish performance data on the Internet starting with their performance over financial year 2015/16<sup>2</sup> which will be published after March 2016 and then at the end of each financial year. The data will demonstrate their performance on paying in 30 days to first tier suppliers /prime contractors over the previous 12 months. The data should be freely available via the Internet and maintained until replaced by a more recent set of statistics. Good practice would be to leave all past years' data up for comparison purposes. □

The statistics will be; □

i) Percentage of invoices paid within 30 days □

ii) The amount of interest paid to suppliers due to late payment.

□ Additionally, it will be a requirement to publish the total amount of interest that the contracting authority was liable to pay, i.e. whether or not paid, whether statutory or otherwise, due to a breach of the Regulations. This figure must be published annually in relation to the previous 12-month period at the end of March 2017. This includes a 12-month grace period which is to allow contracting authorities the time to change their internal systems to account for liabilities. A model template for publication can be found in Annex 1. □

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<sup>2</sup> Regulation 113(7) states that the information must be published in accordance with the contracting authority's financial year. This guidance assumes a financial year ending in March, which is common amongst contracting authorities.

## Annex 1

### Model term

This model term is set out pursuant to regulation 113(6) of the Public

Contracts Regulations 2015. It is recommended for use by contracting authorities, but its use is not mandatory.

It refers to the contracting authority as the Authority, and to the contractor as the Contractor. These terms should be amended to reflect the defined terms used in the relevant agreement.

Drafting in square brackets should be used where appropriate, and removed where inappropriate.

### Prompt Payment

1. Where the Contractor submits an invoice to the Authority [in accordance with paragraph [.]], the Authority will consider and verify that invoice in a timely fashion.
2. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
3. Where the Authority fails to comply with paragraph 1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of paragraph (2) after a reasonable time has passed.
4. Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
  - a) Provisions having the same effect as clauses 1-3 of this Agreement; and
  - b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 1-4 of this Agreement.
  - c) In clause 4, “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

## Model template for performance data

Financial year 2015/2016	Proportion of valid & undisputed invoices paid within 30 days in accordance with regulation 113	The amount of interest paid to suppliers due to a breach of the requirement in regulation 113
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### Annex 2 General guidance

#### 1. Verification & acceptance of invoices

- All contracting authorities and suppliers must agree payment procedures before the contract (s) are in place. □
- Where a contracting authority has verification and acceptance procedures for handling invoices, the duration of these must be clearly expressed in the tender and contract documentation. □
- The supplier should take care to ensure the details of their invoice are correct, reflects works carried out and/or products and services supplied and includes the relevant information specified by the contracting authority. □
- The contracting authority must verify the invoice in a timely manner e.g. check that what was ordered and received matches what was invoiced and /or that the charges are correct. As a guide contracting authorities should verify invoices within 7 calendar days of receipt. □
- Any disputes should be clearly and promptly communicated to the supplier and should be resolved promptly.
- Undue delay in verifying the invoice will not be justification for failing to treat it as valid and undisputed. This will be monitored by Crown Commercial's Mystery Shopper service. □

Contracts where the payment mechanism does not include a formal invoice

- Regulation 113(2) requires suitable provisions to be in place to ensure that any payment due is made no later than 30 days after a relevant invoice is regarded as valid and undisputed.
- There are some situations where the payment mechanism in a public sector contract does not involve a supplier sending the contracting authority an invoice. These include contracts where a contracting authority triggers the payment process by notifying a supplier of its intention to make a payment under a contract. There are also examples of contracts where payment is triggered by the receipt of a time sheet setting out work carried out under an on-going contract for services.
- In these circumstances, the contract should include provisions for payment to be made no later than 30 days after the contracting authority has confirmed the amount for payment.
- Contracts where the contracting authority starts the payment process are common in the construction industry where payment notices may be issued by the paying party under the Housing Grants, Construction and Regeneration Act 1996 (“the 1996 Act”). In those circumstances the contract should ensure that payment is made no later than 30 days after the notice is issued.
- Where, under the 1996 Act, the contracting authority has failed to issue the payment notice and the default procedure applies (the supplier may issue a payment notice that becomes the amount due subject to a “pay less notice”), the contract should ensure that payment is made no later than 30 days after the later of either the date when the contracting authority should have issued a payment notice or the date when the supplier issued its notice.
- In some construction contracts the supplier will issue a payment notice. The contracting authority should include in the contract a period for verification of the work carried out prior to the supplier issuing the payment notice. The contract should ensure that

the contracting authority makes a payment no later than 30 days after the notice is issued.

- The contracting authority may decide to pay less than the amount specified by the payment notice and issue a “pay less notice” under the 1996 Act. This is a statement of the amount the contracting authority considers to be due, and the contract should ensure that payment of this amount is made no later than 30 days after the initial payment notice was issued (or due to be issued, as applicable).

### Contracts where the approval of time sheets are required

- Contracts for temporary staff or consultants often require the production of a time sheet by a contractor. These may include information showing the value and number of hours worked in a specified period. Typically invoices are not generated until relevant time sheets are approved by the contracting authority.
- To ensure prompt payment contracting authorities should ensure that arrangements for the validation of time sheets are clearly communicated to all relevant contractors.
- The contracting authority should decide in a timely manner if the time sheet is valid and undisputed. In line with the guidance on verification and acceptance of invoices in paragraph 1 of this Annex, the decision should be made within 7 calendar days from receipt of the time sheet at the designated address to which it should be sent.
- Any disputes should be clearly and promptly communicated to the contractor who submitted the timesheet. Disputes should be resolved promptly.
- Contracting authorities should require contractors to include these principles about verification and acceptance of time sheets in relevant sub-contracts.



## 2. The 30 days period □

- For the purposes of the Regulations, the 30 calendar days period starts on the date the contracting authority deems the invoice to be valid and undisputed. □
- Contracting authorities should verify, accept and pay within the 30-day period unless otherwise expressly agreed. □
- Where the late payment legislation requires the invoice to be paid within a shorter period of time, the late payment legislation will prevail over the Regulations and the invoice must be paid within that shorter timescale. □
- Project Bank Accounts (PBAs) are recognised as an effective mechanism for facilitating fair payment to the supply chain. PBAs can provide clients with improved visibility over payment timescales in the supply chain. Central government departments have committed to using PBAs on their construction projects unless there are compelling reasons not to do so. □ [www.gov.uk/government/publications/project-bank-accounts](http://www.gov.uk/government/publications/project-bank-accounts)
- In Construction Contracts use of industry standard forms will ensure that contracts include an adequate payment mechanism, but ensure that 30 days (or less) payment terms are included.

## □3. When a supplier is paid late

- □The late payment legislation allows a supplier to charge statutory interest if the contracting authority pays after the required date. This guidance does not deal with the effects of the late payment legislation.
- □For further guidance see the Users Guide on the recast Late Payment Directive:  
[www.gov.uk/government/publications/late-payment-directive-user-guide-to-the-recast-directive](http://www.gov.uk/government/publications/late-payment-directive-user-guide-to-the-recast-directive) □

#### 4. Monitoring compliance with the 30 days payment terms requirement □

- The Cabinet Office runs a “Mystery Shopper” service □that investigates issues of poor procurement practices, both from public bodies and in public procurement supply chains. Suppliers can use this service anonymously to escalate issues about problems in Government supply chains. Such problems may include the question of prompt payment. Mystery Shopper will name and shame any suppliers that are proved to be poor payers. □
- The Small Business Enterprise & Employment Act 2015 includes statutory powers for Mystery Shopper in terms of investigating complaints about procurements and requiring cooperation by contracting authorities. □

[For further information](#) □Please contact the Crown Commercial Service Help Desk on □

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