



Department  
for Business  
Innovation & Skills

**Small Business, Enterprise and  
Employment Bill**

**Duty to Report on Payment  
Practices and Policies**

27 NOVEMBER 2014

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## Foreword from Matthew Hancock



I am delighted to publish this consultation document on a Duty to Report on Payment Practices and Policies. This is a very important measure amongst a number of measures the Government is taking forward through the Small Business, Enterprise and Employment Bill. Getting this new legislation right is an economic growth issue and builds upon our work to build a responsible payment culture for business.

This action on transparency is part of a broad range of action we are taking to tackle late payment: statutory, through public procurement, and through culture change. As someone with a small business background myself, I know first-hand just how big an issue late payment is. As of July 2014, the overall level of late payment owed to small and medium sized businesses is reported as standing at £39.4 billion, with the average amount owed to a small business at £38,200<sup>1</sup>. It is a complex issue and fraught with challenges. It covers both late payment against given contract terms, and unreasonably long terms themselves. In all areas I want the changes we make through the Small Business, Enterprise and Employment Bill to make a real difference. I want them to tackle problems at the right level and to stand the test of time. This is why I want to consult on the issue of reporting on payment practices and to hear your views on what we can do collectively to tackle the problem.

This consultation document offers some solutions, asks some questions of a technical nature and encourages a frank and open discussion on the issues.

### **Matthew Hancock MP**

Minister of State for Business, Enterprise and Energy

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<sup>1</sup> Source: BACS July 2014

## 2. Executive Summary

- 2.1 Late payment remains a significant problem for UK businesses. As of July 2014, the overall level of late payment owed to small and medium sized businesses is reported as standing at £39.4 billion, with the average amount owed to a small business at £38,200.2. In December 2013, our discussion paper *Building a Responsible Payment Culture* explored options for taking further action on late and extended payment. This included creating increased fines, third parties reclaiming debt and other radical options. Respondents were clear that, whilst they wanted to see a reduction in late payment, they did not want government to constrain their freedom of contract. Instead, they transmitted a clear desire for greater transparency around payment practices.
- 2.2 As part of the Government's response to this discussion paper, we committed to introducing greater transparency through a new reporting requirement on prompt payment practices. We are now seeking to achieve this by taking a delegated power in the Small Business, Enterprise and Employment Bill to allow Government to subsequently introduce a prompt payment reporting requirement through secondary legislation. The Bill is currently before Parliament.
- 2.3 This consultation paper sets out our initial views on what should be in the secondary legislation on the duty for firms to publish information about their payment practices and performance. We do not propose to dictate payment practices, but instead to remove the opacity to payment information. This will allow market participants to more readily identify which customers are good payers and which offer suppliers the terms that fit best with their business model. We aim to do this in a way that is both useful but also light-touch, and as least burdensome to businesses as possible.
- 2.4 Concretely, we propose that companies report on a series of proposed reporting metrics to give an indication of their payment performance: the proportion of invoices paid beyond terms; the proportion of invoices paid over 30, 60 and 120 days; and the average time taken to pay invoices. This will allow appropriate benchmarking of payment performance and allow suppliers to compare different customers against a standardised time frame of payment. For reporting firms, the reporting requirement will be easy to understand and straightforward to complete, while providing clear and robust data for suppliers to use.
- 2.5 We are also seeking views on whether firms should be required to provide additional information, in narrative form, to assist suppliers in understanding a firm's payment practices and performance. This could include: a description of standard payment terms, (including changes that occurred over the reporting period and unilateral retrospective changes); a company's invoice dispute resolution process; e-invoicing; supply chain finance; and membership of voluntary payment codes.
- 2.6 We believe that this reporting requirement will be of most use to suppliers if information is provided in a standardised way that facilitates easy comparison between firms. For that reason, we propose that reporting should be done on a standardised and mandatory basis rather than on a comply or explain basis; and that information be published on the company's website, where this exists. We also propose that the requirement should apply to large companies, large Limited Liability Partnerships (LLPs), and all listed companies; and that businesses report on an individual rather than on a group consolidated basis.

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<sup>2</sup> Source: BACS July 2014

- 2.7 We have recently become aware of concerns about the use of requiring payments to be on supplier lists. We are therefore seeking your views on whether payments to be on a supplier list cause concerns, and if so, what the role of Government might be.
- 2.8 The reporting requirement will only be of use if information it contains is up-to-date, and accurate. We therefore propose that the reporting frequency be quarterly; and to make directors of the company responsible for ensuring the accuracy of the published reports. And, in line with similar Companies Act reporting requirements, we propose that breach of this requirement be punishable by a criminal sanction.
- 2.9 Late payment is an issue that must be tackled if the UK's businesses are to flourish and grow. This Government has consistently demonstrated its support for a healthy payment culture. This consultation, along with other measures such as strengthening the Prompt Payment Code, is a further step toward encouraging and supporting responsible prompt payment in the UK.

## 3. Timing and response

- 3.1 Government appreciates that action on late payment is a complex issue and requires careful balance. We have therefore deliberately phrased the questions as openly as possible and are keen to hear views from right across the whole business community.
- 3.2 Responses to this discussion paper are welcomed for the 9 weeks from 27 November 2014 to 2 February 2015.

### Process

- 3.3 Submissions of evidence should be emailed to [latepayment@bis.gsi.gov.uk](mailto:latepayment@bis.gsi.gov.uk) clearly marked as a response to the 'Duty to Report consultation'. This mail box will be monitored on a daily basis. If further information or clarification is required, we will make contact as appropriate.
- 3.4 When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
- 3.5 The consultation response form is available electronically on the consultation page: <https://www.gov.uk/government/consultations/business-payment-practices-and-policies-duty-to-report> (until the consultation closes).
- 3.6 A list of those organisations and individuals consulted is in Annex C. We would welcome suggestions of others who may wish to be involved in this consultation process.

## 4. Confidentiality & Data Protection

- 4.1 Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 4.2 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## 5. Help with queries

5.1 Questions about the policy issues raised in the document can be addressed to:

Lisa Pearce  
Prompt Payment Policy, Corporate Law Reform  
Department of Business, Innovation and Skills  
1 Victoria Street, London SW1H 0ET  
Tel: 0207 215 8675  
Email: [latepayment@bis.gsi.gov.uk](mailto:latepayment@bis.gsi.gov.uk)

5.2 The consultation principles are in Annex A.

# 6. Prompt Payment Reporting Requirement

## The objective of this policy change

- 6.1 In December 2013, the BIS discussion paper *Building a Responsible Payment Culture* set out options for further action on late and extended payment. This included creating further fines, third parties reclaiming debt and other radical options. Respondents were clear that, whilst they wanted to see a reduction in late payment, they did not want government to constrain their freedom of contract. The picture that emerged from this discussion paper was a clear desire for greater transparency around payment practices.
- 6.2 Late payment is fundamentally a question of business culture. To incentivise businesses to alter their practices, the discussion paper suggested increasing transparency around payment performance and policies. A clear majority of respondents (73%) supported this, and underlined a very clear desire to see greater transparency of payment practices. They argued that greater openness and transparency of information supports and promotes mutually beneficial trade. Openness on payment performance allows for greater competition through more efficient pricing. An improved understanding of customer performance would allow suppliers to price or bid for contracts accordingly, and mitigate against the risk of late payment.
- 6.3 Asymmetry of information, a lack of information on one or both sides, was one of the biggest concerns reported by suppliers. It was for this reason that leading business representative organisations, including the Federation of Small Businesses, Forum for Private Business and the ACCA called for a mandatory disclosure of payment practices.
- 6.4 In response to the proposals put forward to address extended payment terms, the majority of respondents were opposed to the suggestion of a 60 day maximum payment term. Respondents did not want government to constrain their freedom on contract, and there was concern that any maximum term may result in 60 days becoming the default payment term in all sectors.
- 6.5 In our May 2014 Government response to the discussion paper *Building a Responsible Payment Culture*, we committed to work with businesses and business organisations to develop a new, robust reporting framework that has useful content and is structured in a way that is genuinely helpful to suppliers and customers. The Small Business, Enterprise and Employment Bill, currently before Parliament, gives power to impose a reporting requirement on some companies to publish at intervals prescribed information about the company's payment practices and policies.
- 6.6 This consultation sets out our initial views on how to implement the reporting requirement. It explores options for a duty for firms to publish their payment practices and performance. The objective is to overcome the asymmetry of information regarding payment processes between large and listed firms and their suppliers. The main aim is to bring greater transparency on payment practices.



## 7. The consultation questions

**Question 1: Do you agree that the reporting requirement set out in this document is clear and easy to understand?**

### **Scope – which contracts should this requirement cover?**

- 7.1 We propose that the reporting requirement should only cover those invoices paid in relation to contracts for goods, services or intangible assets (including intellectual property); and which are connected to the carrying on of a business. We therefore do not propose to cover invoices paid in relation to other kinds of contracts, notably business to consumer contracts.
- 7.2 We also propose to limit the contract type by exempting contracts for financial services. The previous reporting requirement *Policy and Practice of Payment Creditors 2008*, which the Government removed, did not set out any exemptions for financial services. The intention with this policy is to exclude, for instance, repayments of loans to banks; or other financial services contracts. We would welcome views on this suggestion; and also which financial services to exclude, and how to define them.

**Question 2: Do you agree that the reporting requirement should effectively only cover effectively payments related to business to business contracts?**

**Question 3: Do you agree that we should be excluding financial services contracts? If yes, which financial services should we exclude; and how should we define them?**

### **Scope - which firms should this requirement cover?**

- 7.3 Due to the effect that large firms have on supply chains, and because of the evidence that suggests a culture of late payment is more prevalent in large rather than small or medium companies, we propose that this requirement should primarily cover large entities: UK large incorporated companies, and large UK Limited Liability Partnerships (LLPs).

We propose to rely on the Companies Act definitions in our draft Regulations. A company or LLP currently qualifies as small or medium under the Companies Act definition in a year in which it satisfies two or more qualifying conditions. The medium qualifying conditions will set the threshold for reporting, these are:

- Turnover – not more than £25.9m
- Balance Sheet Total – not more than 12.9m
- Number of employees – not more than 250

- 7.4 Because we expect public companies to maintain the highest standards, we also propose that all quoted companies are required to produce a prompt payment report, irrespective of size.

**Question 4: Do you agree that the reporting requirement should extend to (a) large UK companies, (b) large LLPs and (c) all quoted companies?**

**Question 5: Do you agree that the Companies Act provides an appropriate threshold of whether a private company or LLP qualifies for an exemption from reporting?**

7.5 We propose that all businesses within scope should be required to report at an individual company level. The current narrative reporting framework requires groups to report on a consolidated basis rather than take a business by business approach. We are aware that group level reporting reduces cost and provides a clear indication of how they are operating as a consolidation. This allows shareholders, investors and other users to identify the health and strategic direction of the entire group. However, this report's audience is mostly for suppliers who will require this information to better understand the current payment practices of their customer. We believe the few instances where a supplier may be offered a guarantee by a customer's parent if operating in a group is outweighed by the need to know the health of the *individual* customer that is key factor in negotiations or deciding to trade with someone. In answering this question we would like to hear your views on any business types that might require a group or consolidated report.

**Question 6: Do you agree that businesses should be required to provide individual and non-consolidated reports on their payment practices?**

### **The content of the reporting requirement**

7.6 We propose that the content of the report should be aimed at giving suppliers the information they need to make informed decisions about the payment practices of customers they are entering into business with. An example of what the report might look like can be found below. The possible contents are explained in the following sections.

## Report on payment practices and performance

Company name:  
Reporting period:

**Payment terms** including any standard contractual length of time for payment of invoices and the maximum contractual payment period and changes to standard term.

*Narrative text*

**Proportion of invoices paid beyond terms**  
(by number)

X%

**Average time (by number) taken to pay**  
**Invoices from the date of issue**

X days

**Proportion of invoices paid within the following periods, where day 1 is the date of invoice** (by number)

1 - 30	X%	61 - 120	X%
31 - 60	X%	> 121	X%

**Process for dispute resolution for overdue invoices:**

*Narrative text*

**Do you offer e-invoicing – and is it mandatory?**

*Narrative text*

**Do you offer supply chain finance? Does it affect other payment terms?**

*Narrative text*

**Have you signed up to a payment code – if so, which one?**

*Narrative text*

- 7.7 To shift the current imbalance of power, it is important for suppliers to understand what to expect when negotiating contracts with large businesses. This requires them to understand: when to expect payment from a firm; and secondly, whether the customer is likely to extend payment terms in the near future. For this reason, we propose that the reporting requirement should include a description of the firm's **standard payment terms**. This should allow suppliers to judge whether they are being offered terms less favourable than other suppliers, and how this compares against an industry average.
- 7.8 A standard term should not be dictated by government, but rather be an assessment made by the reporting business. The standard term should be one that is used in the most contracts. If there is no standard on this basis then we propose that this should be the average of all payment term lengths.

- 7.9 Knowing the **maximum payment terms** employed will aid suppliers in understanding why they are offered such terms. Where these terms differ significantly from standard terms offered, or industry norm, a supplier will be in a more informed position to negotiate more suitable terms.
- 7.10 In recent years there have been a rising number of complaints about large companies altering their payment terms at short notice, including retrospectively and without consultation with their suppliers. Sometimes these changes are said to have been made unilaterally and retrospectively. Requiring companies to state **whether standard payment terms have been extended** or significantly changed in the reporting period will bring transparency to this issue and identify those engaging in such practices. We would also be interested in views on whether the report should require information on whether suppliers had been notified or consulted on this change in advance of it taking place.

**Question 7: Do you agree that businesses should report on (a) their standard (b) their maximum payment terms, and (c) any changes to these over the last reporting period? Should the report require information on whether suppliers had been notified or consulted on this change in advance<sup>3</sup>?**

- 7.11 We propose a mandatory requirement to report. Having considered the issues fully, we do not believe that a voluntary approach to this reporting requirement would work. We believe that poor performing companies will not wish to report, and that probably only a limited number of highly performing companies will choose to report.
- 7.12 We consequently believe that the only way to ensure that the worst performing businesses provide information on their payment performance and are discouraged from competitive advantage against peers who voluntarily report, will be to make it mandatory for all businesses in scope to report on their payment performance.
- 7.13 Some respondents did propose that this requirement might be on a “comply or explain” basis, following the precedent of compliance with the requirements in the UK’s Corporate Governance Code. There is some merit to this approach, as it would allow companies to comply or alternatively chose to comply in different ways where this better suits their circumstances. However, we believe that suppliers will gain the most benefit from this reporting requirement if firms’ payment information is presented in a standardised, harmonised way.
- 7.14 For this reason we propose that a report will be mandatory for all businesses in scope; and there will not be an option for reporting on a ‘comply or explain’ basis, which might provide an opportunity for a business to disguise inefficiencies in their payment performance.

**Question 8: Do you agree that this report should be a mandatory requirement for all companies in scope?**

- 7.15 A key aim of this reporting requirement is also to help identify the ability or willingness of a business to meet its payment commitments in commercial transactions. No single metric can adequately capture this. We therefore propose that the reporting requirement include

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<sup>3</sup> Not yet included in the suggested reporting template

three different metrics that apply over the reporting period, in order to provide a better picture of the firm's payment practices.

- 7.16 The required metrics relate to the payment of commitments in commercial transactions. A key factor in defining when a payment is due is deciding when the clock starts on the payment period. Without a standardised definition of when the clock starts there is a risk to the standardisation and comparability of the prompt payment reporting data. We understand that practice of when the net payment term clock starts varies among firms. From stakeholder consultations we believe the most common practice is to “start the clock” by date of invoice, with the most common alternative being the invoice received date. We welcome views on whether it is possible to set a standardised definition of when the clock starts. For the purpose of illustration, the draft secondary legislation sets the date of invoice as the start the clock point.
- 7.17 By introducing a requirement to report on the **proportion of invoices paid beyond terms** suppliers will have an indication of a company's record in paying on time. Where a company is failing to meet its commitments regularly, a supplier can then plan for the additional costs that will be incurred, plan to use late payment legislation or opt out of a transaction. We propose that the requirement should be against the proportion of invoices paid beyond terms during the reporting period, rather than the value of invoices. This is to ensure that a business does not prioritise large transactions to manipulate whether they are successfully meeting their payment commitments.
- 7.18 A second area of concern is the length of time taken to pay an invoice. It is not enough for a supplier to understand that a customer will pay late; it is also important to understand the average time taken to pay. This takes account of the fact that for some firms, late payment is less of a concern than prompt payment (e.g. a supplier may prefer to contract with a firm with a 10 day average payment term that pays on the 11<sup>th</sup> day, rather than a competitor who proposes to pay in 45 days and actually does so). An **average time taken to pay invoices** metric will be complimentary to the proportion of invoices paid to terms. This should be measured by days.
- 7.19 Thirdly, we also propose that the report should include a metric of **invoices paid to fixed terms**. For many suppliers there is a concern that rising payment length is starting to cause cashflow problems. Therefore it is essential to identify where businesses are extending their payment terms to benefit from the additional cashflow at the expense of their suppliers. We are therefore seeking views on the merits of including a metric of **invoices paid to fixed terms** of 30, 60, 120 and over 120 days. 60 days is a normal maximum for payment, set out in the EU Late Payment Directive<sup>4</sup>, and offers an opportunity for appropriate benchmarking of payment performance. We propose that these metrics should again be recorded as a percentage (rather than by value) of all invoices paid in the reporting period that were paid later than 30, 60 and 120 days. Taken together, these metrics will allow suppliers to compare different customers against a standardised framework. They will also allow interested third parties the opportunity to compile industry benchmarks based on a standardised format. While the uncertainty of late payment is still the biggest issue for suppliers, we intend that these metrics will show those companies aiming to pay promptly, both on time and to shorter terms.

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<sup>4</sup> Late Payment Directive 2011/7/EU

7.20 We would particularly welcome views on whether you agree that the metrics on the proportion of invoices paid beyond terms and on the proportion of invoices paid over 30, 60 and 120 days should indeed just be by percentage, and not by the value of invoices. This is intended to guard against the data being skewed by small value invoices. Conversely, however, we have heard concerns that this could lead to the results being skewed by small, insubstantial “low-ticket” invoices whilst large invoices are held up. An alternative would therefore be to report by value; or to report by both percentage and value.

**Question 9: Do you agree that the reporting requirement should specify when the clock starts on the payment period? Do you agree that date of invoice is a suitable point to start the clock on payment?**

**Question 10: Do you agree that a metric of invoices paid beyond terms should be included in this report? If yes, should this be for (a) proportion of invoices (b) value of invoices (c) both the proportion of invoices and the value of invoices?**

**Question 11: Should a business have to report on the average time taken to pay invoices? Does this add a valuable counter balance to the proportion of invoices paid to terms?**

**Question 12: Would metrics demonstrating how many invoices are paid in (i) 30 (ii) 60 and (iii) 120 (iv) over 120 days be valuable to suppliers? If yes, should this be for (a) proportion of invoices (b) value of invoices (c) both the proportion of invoices and the value of invoices?**

### **Additional Information**

7.21 We believe that it would be useful for suppliers to have additional information, to assist suppliers in understanding a firm’s payment practices and performance. Through consultation with stakeholders, we have developed proposals, as set out below. We welcome views on the usefulness of this information to suppliers. In addition we seek views on other additional information it may be useful for suppliers to have.

**Question 13: Do you agree it that it would be useful for the report to include additional information, in narrative form, to give suppliers an understanding of a firm’s wider payment?**

### **Disputed invoices**

7.22 Disputes are a standard practice among companies, especially where there are large quantities of transactions. Disputes can range from easily resolved reconciliations of invoice against supplied goods or services, to more complex and irreconcilable differences.

7.23 How to overcome or understand a dispute is not always clear cut. A simple dispute can turn to a late payment by something as simple as a procurement manager going on holiday. Therefore it is of the utmost importance that it is clear for a supplier to understand the process that their dispute will go through or even who will help if a dispute is on-going for a significant period of time. As such, we propose that firms should be required to outline

their **disputes resolution processes**. This will either be a formal process, or a method of escalation and contact details. We understand that this is something that most companies already have. Publicising it in the report is a method of increasing awareness amongst their suppliers.

7.24 Some stakeholders also recently raised concerns that some firms are using disputes as a method of delaying payment. The Late Payment of Commercial Debts (Interest) Act 1998 already sets an effective maximum standard quibble time for the “*acceptance and verification*” of goods and services of 30 days, after which a business can claim late payment interest. We would be interested in stakeholders’ experience on this issue. We would also be interested in your views on what you feel the Government could or should do, if anything, on this issue.

**Question 14: Do you agree that it would be beneficial for a business to report on their existing dispute processes?**

**Question 15: Would it be helpful for the Government to provide a definition of a disputed invoice in the report?**

**Question 16: Have you experienced companies disputing invoices as a way of delaying payments? Do you see a role for Government intervention on this issue, and if so, what is it?**

7.25 The rise of electronic invoicing offers increasing transparency and expediency for payment. Previously, a supplier posted an invoice and would not hear from a customer until payment was received or a dispute was raised. Now payment and progress can be tracked. Disputes can be raised and resolved in a faster period of time than ever before. However, it is not always clear when e-invoicing is available or the benefits of using it. In some cases a business will offer its suppliers a basic form of their e-invoicing or a way to benefit from it. For this reason, we believe it would be useful to promote the **use of e-invoicing systems** through the reporting requirement. We envisage this being a requirement on companies to say whether they have e-invoicing systems, and whether their use is mandatory for contracting parties.

7.26 The rise in e-invoicing has also opened up the possibility for new methods of finance. Supply chain finance is now offered by a number of businesses. This allows for a supplier to receive finance from a third party finance provider (often a bank) at a much lower rate than they would be able to receive themselves. There is a real need for better publication of this offer and, by having a business report on their supply chain offer, a supplier can compare it to others offered by customers or even finance offered by a finance provider. We therefore propose to require companies to report on whether they offer **supply chain finance to their suppliers**. We are also seeking views on whether this requires disclosure of the payment terms and average costs.

**Question 17: Do you agree that a business should report on whether they offer e-invoicing? Should this disclosure include any further information or simply be a ‘tick box’ disclosure?**

**Question 18: Should businesses report on whether they offer supply chain finance? Should this disclosure also include the payment terms and average cost of this finance, or simply be a ‘tick-box’ disclosure?**

7.27 For some time now, Government and industry have been seeking to **improve payment culture through voluntary codes**. This has led to many businesses setting themselves stretching goals, understanding the benefits that can be gained by treating their supply chain fairly and the financial stability this brings. Knowing whether a company is signed up to a code will allow a supplier to judge if a customer is committed to paying fairly, and also provide an avenue to challenge unfair actions. We consequently propose that businesses should be required to state whether they are a signatory of a specific fair payment code; and if so, state which one.

**Question 19: Do you agree that a business should disclose whether it is a signatory of a Code and which code they belong to, if any?**

7.28 Some stakeholders have recently also expressed their concerns about the practice of a supplier having to pay to be put on or kept on a 'preferred supplier' list. They argue that this practice leads to unfairness or also has potential implications on competition with larger firms having the greater potential to pay the upfront costs than smaller businesses. We would like to hear your views on the practice, especially if you think this is an area where you see Government having a role to play.

**Question 20: Do you have concerns about the practice of some suppliers having to pay to be included on supplier lists? If yes, why?**

**Question 21: Do you think that Government should take any action with respect to supplier lists, through this reporting requirement or otherwise? If so, what?**

### **Frequency of reporting**

7.29 The ability to pay trade creditors is an essential part of a firm's liquidity and healthy accounts. However, it can change very quickly. This can be evidenced from the financial crisis, where some firms defaulted on payments leading to a reduction of goods they could receive on credit. Suppliers must be mindful of this situation and stay informed of changing situations which can hint at potential trouble or cashflow issues. An increase in payment terms may suggest cashflow problems: late payment may well point to an inability to pay or major procurement issue. Early discussions with large businesses have suggested that internal payment reports are done to a monthly or quarterly cycle. We therefore propose that the reporting requirement will build on these existing internal reporting timetables, to create a more proportionate requirement than changing existing internal reporting timetables.

7.30 It is for this reason that we propose to make the proposed report publishable at four points in the year. Rather than prescribing a fixed date when all companies need to report, we propose instead that companies' publication dates be aligned with their financial year. Specifically, we propose that the firms are required to publish their prompt payment reports 30 days after the end of the quarter. This means that if a firm's reporting quarter ends on 30 April, then a report must be published by 30 May. We believe that quarterly reporting will provide a clear indication to suppliers about the practices and performance of a customer in close to real time.



7.31 We have also considered a yearly reporting requirement. Initial consultation with suppliers has suggested that this information would be too out of date to be beneficial. We also considered monthly reporting but felt that this would be too onerous on business. Therefore we propose that reports should be published one month after the end of the quarter:

**Question 22: Do you agree that companies should report every three months covering at least the whole three month period?**

**Question 23: Is a 30 day period enough time after the end of a quarter to provide a report of this nature?**

**Question 24: Do you agree that companies reporting dates should be aligned with their financial reporting cycle?**

### **Format and location of prompt payment reports**

7.32 When considering how companies report we must take into consideration who the audience of the report is, how they can access this information and whether the information will make sense to the reader. There are existing precedents for requiring companies to report, for example to HMRC or in annual returns to Companies House. There is also a trend towards open data and clear information that does not need a third party to hold data but, for example, allows a company to publish information on their website.

7.33 A business's annual report is often a consolidated overview, designed in the main part for shareholders and potential investors. The report for large businesses and groups comes in many parts and is often complex to understand, with shareholders often relying on the effective overview created by the strategic review. For a supplier, especially a small supplier, with little experience of these types of reports, this could create a barrier to finding information. As such having a company provide their payment data in this report would be useful, but not targeted to the required audience and adding a level complexity to accessing the information.

7.34 We consequently believe that a business should be required to provide their report on their companies' website, where they have these. By providing a requirement for a website, and specifying that the report will need to be published in a prominent place, we will ensure that suppliers are able to quickly identify where to find the required information. We assume that most companies have a website. Where companies do not have website, we suggest that they should publish their report on an official public records website, such as The Gazette. We would be interested to hear your views about whether The Gazette is an appropriate online resource, or if there is a more suitable alternative.

**Question 25: Do you agree that this reporting requirement should not be included in a company's annual accounts but instead have to publish it on their website? If yes, do you think it would be useful for the information to also be released alongside the publication of a company's annual accounts?**

**Question 26: Is The Gazette an appropriate online resource for companies without a website to use for reporting? If no, are there more suitable alternatives?**

7.35 There is a rising demand for information to be reported in open data format. This means that data is made available to the widest range of users for the widest range of purposes at no cost. Good open data is available in a standard, structured format, so that it can be easily processed, has guaranteed availability and consistency over time so that others can rely on it and is traceable, through any processing, right back to where it originates, so others can work out whether to trust it. Data made available in this way could help a supplier make an informed decision on the payment practices of a business against an industry norm, rather than having to create their own benchmarks for prompt payment comparison purposes.

**Question 27: Do you agree companies should be asked to report consistent with open data principles, if so what should these be?**

**Question 28: How could we make this data as accessible and useful as possible?**

7.36 Any reporting requirement creates an opportunity for a business to advertise their health and operational priorities. This is a responsibility that most businesses take seriously and is a key task of the senior executives and board of a business. Due to the importance that stakeholders put on the accuracy of a report, being a key source of information for future decision making, existing company law reporting requirements often require a single executive within an organisation to take responsibility for ensuring that a report is published but also includes factual information. We consequently propose that, to ensure the accuracy and validity of the report, a company director within the reporting firm to sign off each report.

**Question 29: Do you agree that a company director should be responsible for signing off each report?**

#### **Enforcement of the new reporting requirement**

7.37 It will be important to ensure that there is an adequate deterrent from preventing any business seeking advantage from not publishing a report, or publishing a false report. In practice, we envisage that peer pressure will be a significant compliance factor. We anticipate that third parties will start to publicise and compare the behaviour of reporting firms. We also hope that good payment behaviour by responsible companies will then begin to lead the way to changing other firms' behaviours.

7.38 Nonetheless, to ensure that this report is robustly enforced in cases where peer pressure proves insufficient, we consider that breach of the requirement should be punishable by a criminal offence. This would consist of a summary conviction limited to a fine. This follows the precedents for similar reporting requirements enshrined in the Companies Act 2006.

**Question 30: Do you agree that breach of this requirement should be sanctionable by a criminal offence?**

7.39 Government is considering issuing guidance to accompany this requirement and if so, a template for reporting could be included. We would be interested in your views on whether this would be useful; and if so, whether this should be produced by Government or instead by interested stakeholder organisations.

**Question 31: Would you find guidance in complying with this reporting requirement helpful? If yes, who should produce this guidance?**

### **Draft Regulations**

7.40 We also drafted Regulations on our proposed approach to implementing the duty to report on payment practices and policies. You can find our draft Regulations at **Annex F**.

**Question 32: What comments do you have on our draft Regulations?**

## **8. Devolution**

8.1 The draft regulations make provisions in the devolved area of criminal sanctions. We will work with the Scottish Government to make sure the right sanctions in place in Scotland.

## Annex A: Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

### Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess  
BIS Consultation Co-ordinator  
1 Victoria Street  
London  
SW1H 0ET  
Tel: 0207 215 1661  
Email: [angela.rabess@bis.gsi.gov.uk](mailto:angela.rabess@bis.gsi.gov.uk)

However if you wish to comment on the specific policy proposals you should contact the policy lead (see section 5).

## Annex B: Further Reading on Late Payment

### The Scale and Impact of Late Payment in the UK

The problem of late payment has worsened since the financial crisis. Between 2008 and 2012, the overall level of late payments owed to these businesses almost doubled from £18.6 billion to £35.3 billion.<sup>5</sup>

Research undertaken by Bacs in 2014<sup>6</sup> suggests that 60% of businesses have experienced late payment and the late payment debt burden borne by UK business has increased to £46.1 billion. It also suggests that the late payment debt burden borne by UK SMEs is significantly larger than for corporates: £39.4bn compared to corporates who are owed £6.7bn at any one time. A survey undertaken by the Federation of Small Businesses on its members confirms the level of late payment, with 5 in 10 SMEs felt they were paid late by a large company.<sup>7</sup>

The time companies are kept waiting for payment can be substantial. Intrum Justitia estimated in 2003 the UK had an average contractual payment term of 34 days, but with actual payment being made 18 days beyond terms. This represents an average actual payment of 52 days. In 2014, for business to business transactions the average contractual payment term reduced to 25 days, with actual payment down to 17 days beyond term. This represents a reduction of average actual payment to 42 days, which has brought the UK closer to the payment terms expected in other Northern European countries.

The data produced by Experian differed from the Intrum Justitia study significantly, pointing to an average of 24.66 days beyond terms for all UK businesses in Q4 2012. Current data suggests the average payment time in June 2014 was 23.52 days beyond terms, with the average for businesses with over 500 employees being 32.05 days beyond terms.

The Bacs survey differs again, stating that 76% of businesses surveyed said settlement was being delayed by a minimum of a month beyond agreed payment terms.<sup>8</sup> For SMEs the proportion of late payment against turnover, and the number of days outstanding, has a greater effect.

### How does late payment affect business?

Late payment places additional costs on business due to resulting overdraft fees and administrative costs etc. It was estimated in the Bacs study that the additional cost borne by UK business was £9.16bn a year due to late payment. As a consequence of money owed to them, 30% of business said they spent £500 a month; however this can be as high as £10,000 a month. The research also showed that 25% of businesses spent over 10 hours a week chasing payments.<sup>9</sup>

<sup>5</sup> <http://www.bmmagazine.co.uk/in-business/369/late-payments-having-a-ripple-effect/>  
<http://www.is4profit.com/small-business-news/20120711-late-payment-to-smes-exceeds-35-billion.html>

<sup>6</sup> <http://www.bacs.co.uk/Bacs/newscentre/pressreleases/Pages/Index.aspx>

<sup>7</sup> <http://www.fsb.org.uk/News.aspx?loc=pressroom&rec=8511>

<sup>8</sup> [http://www.bacs.co.uk/Bacs/DocumentLibrary/UK\\_companies\\_face\\_a\\_late\\_payment\\_burden\\_of\\_£46.1\\_billion.pdf](http://www.bacs.co.uk/Bacs/DocumentLibrary/UK_companies_face_a_late_payment_burden_of_£46.1_billion.pdf)

<sup>9</sup> This is a representative sample of businesses surveyed by Bacs for this research.

[http://www.bacs.co.uk/Bacs/DocumentLibrary/UK\\_companies\\_face\\_a\\_late\\_payment\\_burden\\_of\\_£46.1\\_billion.pdf](http://www.bacs.co.uk/Bacs/DocumentLibrary/UK_companies_face_a_late_payment_burden_of_£46.1_billion.pdf)

Late payment can have a significant detrimental impact on a firm's cash flow. This may mean firms have to find cash by other means such as loans and overdrafts and incur charges. The process of obtaining this finance to bridge the gap between incurred costs and payments will also have an administrative burden on firms. The Atradius payment practices barometer in 2010 showed that 34% of companies have sought external finance to cover gaps in cash flow caused by late payment<sup>10</sup>. The 2014 Bacs research stated that 21% of businesses say they are forced to rely on bank overdrafts due to late payment.<sup>11</sup>

The FSB estimated that late payment has led to £180 million in debt interest charges – money that affected firms could otherwise have used for their investment and growth.<sup>12</sup>

All businesses are highly dependent on cash flow. The Bacs Research estimated that 60% of UK SMEs are now experiencing late payments and that the average SME was waiting for £38,186 in overdue payments.

Late payments can have serious consequences, potentially leading to a firm declaring bankruptcy. One in four SMEs reported that if the amount owed to them rose to £50,000 it would be sufficient to put them at risk of bankruptcy. Research on Payment Culture in 2012 indicated that as a result of late payment 124,100 SME employers were almost put out of business.<sup>13</sup> As many as 4,000 businesses could be forced into administration because of late payment<sup>14</sup>. Even when a company remains financially viable, late payment can drain resources, due to the need to chase late payments, manage the consequences of cashflow shortages (e.g. arranging an overdraft), and add uncertainty when taking decisions on their ability to invest and grow.

Good cashflow is vital in enabling businesses to continue to raise finance and invest when required and late payment may have a negative impact on businesses ability to access finance. According to Professor Russel Griggs, who conducts independent external review of the major banks' appeals process; in 2012/2013 48% of declined finance applications over £25,000 were rejected on 'affordability' grounds – the ability of an SME to service the debt from its existing cashflow.<sup>15</sup> Late payment is one reason that cashflow is constrained, therefore preventing a business accessing finance. Late payment may also be the reason for the finance request in the first place. Reducing late payment may prevent requests for finance or the number of rejected applications.

Late payment can create a domino effect in the supply chain as if a firm is paid late it may struggle to pay its own suppliers on time. The Bacs research estimated that due to late payment 25% of companies are being forced to pay their own suppliers late.

Research on Payment Culture in 2012 stated that over 244,000 companies say that they have paid suppliers late as a result of late payment by their customers.<sup>16</sup>

In the survey undertaken by the FSB 32% of SMEs had paid their suppliers late because of outstanding payment.<sup>17</sup>

10 <http://www.atradius.co.uk/creditmanagementknowledge/publications/paymentpracticesbarometersummer2010.html>

11 [http://www.bacs.co.uk/Bacs/DocumentLibrary/UK\\_companies\\_face\\_a\\_late\\_payment\\_burden\\_of\\_£46.1\\_billion.pdf](http://www.bacs.co.uk/Bacs/DocumentLibrary/UK_companies_face_a_late_payment_burden_of_£46.1_billion.pdf)

12 <http://www.fsb.org.uk/policy/rpu/london/assets/late%20payment%20july%202011.pdf>

13 [www.building.co.uk/Journals/2012/04/24/oxp/LatePayments.doc](http://www.building.co.uk/Journals/2012/04/24/oxp/LatePayments.doc)

14 <http://www.fsb.org.uk/News.aspx?loc=pressroom&rec=5584>

15 [http://www.betterbusinessfinance.co.uk/images/uploads/Annual\\_Report\\_Master\\_2013.pdf](http://www.betterbusinessfinance.co.uk/images/uploads/Annual_Report_Master_2013.pdf)

16 [http://www.fpb.org/images/PDFs/FPB\\_Graydon\\_research\\_report.pdf](http://www.fpb.org/images/PDFs/FPB_Graydon_research_report.pdf)

## Statutory Remedies for Late Payment

Preventing a widespread culture of late payment has been the aim of successive governments, as well as the European Union, who have produced legislation in order to protect businesses.

The Late Payment of Commercial Debts (Interest) Act 1998 created a statutory framework in the UK for tackling late payment. This was amended in August 2002 (when the 2000 EU Late Payment Directive was transposed into UK law) and again in March 2013 (when the 2011 EU Late Payment Directive was transposed into UK law).

The legislation's key provisions are:

- Businesses are entitled to charge interest of 8% above the Bank of England Base Rate for any late payment;
- Administration costs for chasing late payment can be claimed by business, on a sliding scale depending on the size of the debt;
- Payment contracts must not infringe on a business's right to claim interest and administration costs for late payment;
- Mandatory 30 day payment terms for transactions with public authorities;
- Maximum 60 day payment terms between businesses, unless they agree longer terms and this is not grossly unfair to the supplier.

Few companies seek to exercise the rights provided by this legislation, especially against larger companies. Just 10% of businesses have considered using late payment legislation<sup>18</sup> despite 22% of businesses having ended a business relationship with a customer because of continued late payment.<sup>19</sup> A study by the Credit Management Research Centre found that the most prevalent reasons for not using the legislation were fear of losing a customer or damaging the relationship, or because of the administrative aspects of applying the charge.<sup>20</sup>

It is widely accepted that previous attempts to legislate to bring greater openness and transparency to the payment practices of companies, large companies specifically, has on the whole been ineffective. Legislation introduced in 2008 requiring certain companies to report on their outstanding trade debt failed to provide information in a clear and approachable way for suppliers. The requirement did not provide information that added additional value beyond that already contained in company accounts, and included far less information than the proposal currently under consideration. For this reason, the Government repealed this particular reporting provision in 2013.<sup>21</sup>

Sector specific legislation has also been developed to address the issue of late payment:

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<sup>17</sup> <http://www.fsb.org.uk/News.aspx?loc=pressroom&rec=8511>

<sup>18</sup> <http://www.managementtoday.co.uk/news/1076769/>

<sup>19</sup> <http://www.newsroom.barclays.co.uk/Press-releases/SMEs-turn-away-business-to-fight-back-against-late-payments-9c1.aspx>

<sup>20</sup> <http://www.cmrc.co.uk/wp-content/uploads/PaymentTrendsandBehaviour.pdf>

<sup>21</sup> The disclosure requirement asked companies to state if they adhered to any Code or standard of payment practice. If the company did not adhere to a code it was required to state its policy for payment of creditors and if there were any differences in this policy for different suppliers. The company was also required to disclose the amount which were owed to creditors and the amounts invoiced by suppliers.

- The Housing Grants, Construction and Regeneration Act 1996 (the Construction Act)
- The Local Democracy, Economic Development and Construction Act 2009
- The Groceries Code Adjudicator Act 2013.

Part 2 of the Construction Act sets out a number of provisions that seek to address delays in payment.

- A quick 28 day dispute resolution process for each part of a construction contract, via third party adjudication;
- The entitlement to staged payments; and
- “An adequate mechanism” in contracts to ascertain what should be paid.

Part 8 of the Local Democracy, Economic Development and Construction Act 2009 made a number of changes to the payment and adjudication provisions of the Construction Act to deliver these improvements. Whilst this has improved culture around certain aspects of procurement, there is need for further commitments to prevent poor payment practices. This is set out below in relation to voluntary measures in construction.

The Groceries Code Adjudicator Act 2013 was established to ensure supermarkets act fairly towards their suppliers. Powers were provided to allow the investigation of complaints and arbitration in disputes, and to enforce the Groceries Supply Code of Practice (the Groceries Code). The Groceries Code is intended to remedy adverse effects on competition from supply chain practices which transfer excessive risks and unexpected costs to suppliers, and which restrict or distort competition in favour of larger grocery retailers. The Groceries Code covers the 10 biggest supermarkets. Time will need to be given to see the impact of the Groceries Code Adjudicator on payment in this sector.

### **Voluntary Measures to Increase Prompt Payment**

The Prompt Payment Code (the Code) was set up by the Institute of Credit Management (ICM) in 2008 on behalf of Government in order to promote a culture of prompt payment. Signatories to the Code agree to:

- Pay suppliers on time:
  - Within the terms agreed at the outset of the contract;
  - Without attempting to change payment terms retrospectively; and
  - Without changing practice on length of payment for small companies on unreasonable grounds.
- Give clear guidance to suppliers:
  - Providing suppliers with clear and easily accessible guidance on payment procedures;
  - Ensuring there is a system for dealing with complaints and disputes which is communicated to suppliers; and
  - Advising them promptly if there is any reason why an invoice will not be paid to the agreed terms.
- Encourage good practice:
  - By requesting that lead suppliers encourage adoption of the Code throughout their own supply chains.



The Code is voluntary and essentially depends on signatories acting in good faith.

As of October 2014, 1,706 organisations had signed up to the Code, including 74 FTSE 100 companies. There has been a significant increase in membership following a campaign by Government and the ICM to drive up the number of signatories.

The Prompt Payment Code emphasises the benefits to suppliers and customers of good supply chain management. The Code's signatories are those who have made a public commitment to not only pay on time, but to pay fairly. To have a group of companies who publicise the importance of paying in a timely manner is beneficial to improving the culture of payment in their supply chains, and beyond.

In addition, further efforts are being made to increase voluntary commitments to improve payment practices in certain sectors. In May 2014 the Construction Leadership Council announced the agreement of Construction Supply Chain Charter. This Charter seeks to tackle some contractual and payment issues which specifically afflict construction supply chains and build upon the provisions of the Construction Act. Efforts to reduce payment terms to 30 days and the limited use of cash retentions will have a positive impact on the sector.

## **Annex C: List of Individuals / Organisations consulted**

Federations of Small Business

Forum for Private Business

CBI

British Chambers of Commerce

British Application Software Developers Association (BASDA)

Sage

GXS Ltd

Intuit

Streamline/WorldPay

Go Cardless

Experian

Dunn & Bradstreet

Equifax

Satago

RBS

Barclays

HSBC

Lloyds

ACCA

Deloitte

Institute of Credit Management

ICAEW

Open Data Institute

## **Annex D: Duty to Report Response Form**

The Duty to Report Response Form is available electronically on the consultation page:

<https://www.gov.uk/government/consultations/business-payment-practices-and-policies-duty-to-report> (until the consultation closes)

## **Annex E: Impact Assessment**

The Impact Assessment is available electronically on the consultation page:

<https://www.gov.uk/government/consultations/business-payment-practices-and-policies-duty-to-report> (until the consultation closes)

## **Annex F: Draft Secondary Regulations**

The Draft Secondary Regulations are available electronically on the consultation page:

<https://www.gov.uk/government/consultations/business-payment-practices-and-policies-duty-to-report> (until the consultation closes)

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