



Department for
Business, Energy
& Industrial Strategy

Payment and Cashflow Review:

The Reporting on Payment Practices and Performance Regulations 2017 and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017

Government Consultation

Closing date: 28 April 2023

January 2023



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Ministerial foreword



Government recognises the impact of global issues on the cost of living for working families. Rising inflation is creating challenges for households and for firms, following an unprecedented period where the Covid pandemic created huge disruption for businesses and to our day-to-day life. This is why this Government's priority is to help address the rising cost of living, grow the economy, and level up across the whole country.

We want to make the UK the best place in the world to start, scale up and grow a business. We have backed businesses through the challenges of the past few years with a package of support worth around £400 billion. We are continuing to stand behind businesses by reversing the National Insurance rise, which will save small businesses £4,200 on average, and brought in the Energy Bill Relief Scheme, which will protect small businesses from high energy bills over the winter.

As a critical part of our support, Government has been proactive in attempting to stamp out the worst kind of poor payment practices within the business community. The Payment Practices Reporting duty aims to increase transparency in payment behaviour to drive improvements in payment practices. It also aims to assist suppliers by providing access to the information they need to make informed decisions about which businesses they trade with, negotiate fairer terms, and challenge large business customers to improve their payment practices.

The late payment problem cannot be entirely addressed by means of legislation. It is ultimately a matter of encouraging a culture change in payment practices and how businesses deal with each other. But we want to continue to help to build that culture of prompt payment between companies and challenge UK businesses to improve their practices and stand by their smaller business partners.

Evidence from the recent statutory review of the Reporting on Payment Practices and Performance Regulations suggests there has been some improvement in payment practices since the introduction of a number of measures by Government. These include the Regulations themselves, along with the Prompt Payment Code, and the establishment of the Small Business Commissioner to hold non-compliant businesses to account.

The review concluded that the Regulations have indeed brought greater transparency to the payment practices and performance of large businesses, and the measures we are taking continue to shine a light on those businesses that are responsible for poor payment practices.

But while the objectives of the policy remain appropriate, there may be scope to do more to ensure compliance and to increase awareness in this area. That is why I am pleased to launch this consultation, to seek views from our stakeholders on how we can extend and strengthen these Regulations to further improve the payment practices of UK businesses in the future.

Kevin Hollinrake MP

Minister for Enterprise, Markets and Small Business

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General information

Why we are consulting?

Government recently carried out a statutory review of the Reporting on Payment Practices and Performance Regulations 2017 and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 (“the Regulations”). Views and evidence from stakeholders were important in helping the Government understand the extent to which the Regulations have achieved their objectives (see paragraph seven below), 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.

The review concluded that while 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.

This document consults more widely on the specific question as to 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.

Consultation details

Issued: 31 January 2023

Respond by: 28 April 2023

Enquiries to: responsiblepaymentculture@beis.gov.uk

Consultation reference: Payment and Cashflow Review: The Reporting on Payment Practices and Performance Regulations 2017 and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017

Audiences:

We are seeking views from all those with an interest in the Reporting on Payment Practices and Performance Regulations and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017, and their effectiveness. This includes, but is not restricted to, large companies who are required to report their payment data under the Regulations, as well as suppliers (including those that are large, medium, small and micro businesses) who deal with these reporting businesses.

Territorial extent:

The Reporting on Payment Practices and Performance Regulations 2017 and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 extend to England, Scotland, Wales and Northern Ireland.

How to respond

Respond online at: beisgovuk.citizenspace.com/business-growth/payment-practices-and-performance-regulations-2017

or

Email to: responsiblepaymentculture@beis.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this document, including personal information, may be disclosed in accordance with UK legislation (including the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable UK data protection laws. See our [privacy policy](#).

We will summarise responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This invitation to the public and stakeholders to provide comments and evidence has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this exercise has been conducted, please email: beis.bru@beis.gov.uk.

The Reporting on Payment Practices and Performance Regulations and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017

Rationale

1. In 2013, Government published a paper, *Building a Responsible Payment Culture*, which sought views on how to take action on late payment. Responses from the business community highlighted that customers who do not pay on time cause significant problems for suppliers, affecting their cash flow, diverting resources towards chasing payment and in some cases incurring costs of covering cash flow shortages through raising external finance. Importantly, responses highlighted that when suppliers are entering into contracts with customers, they lack information on the reliability of those customers in terms of paying on time.
2. Government committed to intervene by developing a reporting framework to bring greater transparency on payment practices and performance, addressing the asymmetry of information between large businesses and their suppliers. With greater access to information, suppliers should be in a better position to make an informed judgement about whether to enter into a contract, to negotiate fair terms and to challenge unfair payment terms. Greater transparency also increases the incentives on large businesses to improve their payment practices and performance, reducing the overall level of late payment between businesses.
3. As a result, the Small Business, Enterprise and Employment Act 2015 introduced powers to make regulations imposing a new duty on large UK companies to report on payment practices and policies. This was implemented in 2017 through The Reporting on Payment Practices and Performance Regulations 2017. The same duty was also imposed on large limited liability partnerships (LLPs) by the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 which was made under powers in the Limited Liability Partnerships Act 2000.

The Regulations

4. 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.

5. 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”).
6. The information must be published through a web-based service provided for the purposes of the Regulations by or on behalf of the Secretary of State which is available to the public.
7. The objectives of the reporting requirement are to:
 - increase transparency and public scrutiny of large businesses’ payment practices and performance; and
 - provide small business suppliers with better information so they can make informed decisions about who to trade with, negotiate fairer terms, and challenge late payments.

Businesses which need to report

8. 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

9. 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 two or all 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.
10. At the time of publication, these general thresholds are:
 - £36 million annual turnover
 - £18 million balance sheet total
 - 250 employees
11. 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 26 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008).

Reporting obligations

12. Businesses in scope of the reporting requirement must prepare and publish information about their payment practices and performance in relation to qualifying contracts¹, for each reporting period in the financial year. The information for each reporting period must reflect the policies and practices which have applied during that period, and the business' performance for that period.
13. 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 reporting period to which a report relates.
14. The report must contain the information required by the Regulations and must be approved by a director of the company 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.

Information required in relation to qualifying contracts

15. Statistics on:
 - the average number of days taken to make payments in the reporting period, measured from the day after the date of 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 counting time here, 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).
16. Narrative descriptions of:
 - the business's 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 or consulted on these changes;
 - a description of the maximum payment period specified in a qualifying contract which the qualifying company has entered into during the reporting period;
 - an explanation of the business' process for resolving disputes related to payment under a qualifying contract.

¹ 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.

17. Tick box statements about the business' payment practices and policies in relation to qualifying contracts:
- whether supply chain finance is available to suppliers (i.e. an arrangement of under which a supplier can receive payment of an invoiced sum from a finance provider before the end of the payment period, with the business paying the invoiced sum to the finance provider);
 - whether suppliers are offered e-invoicing (the electronic submission and tracking of invoices);
 - whether the business is a member of a code of conduct or standards on payment practices, and, if so, the name of the code; and
 - whether the business' practices and policies allow deducting of sums from payments as a charge for remaining on the business' list of suppliers or potential suppliers.

The sanctions if a business does not comply

18. 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.
19. 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. This applies to businesses and individuals.
20. These offences are punishable on summary conviction by a fine.
21. To date, Government has initiated formal enforcement against several companies who neglected their statutory duty to report. This has led to full and swift compliance in all those cases.

Statutory review of the Regulations

22. The Regulations provide that the Secretary of State is required to review each of the two sets of Regulations and publish a report before 6 April 2022. The report must in particular:
 - a) set out the objectives intended to be achieved by the regulatory provisions established by the Regulations,
 - b) assess the extent to which those objectives are achieved, and
 - c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
23. A call for evidence was launched by the Minister for Small Business on 17 November 2021, to assess the extent to which the Regulations have achieved their objectives and if there had been any unintended effects of the Regulations.
24. Government subsequently published a report on 5 April 2022 in which we considered that the Regulations met stated expectations in delivering their objectives because they have brought greater transparency to the payment practices and performance of large businesses and continue to shine a light on businesses with poor payment practices.
25. It was also concluded that the regulations remain appropriate and relevant because there is an ongoing need to ensure compliance and increase awareness of the payment practices and performance of large businesses. The reporting function will continue to ensure that qualifying businesses are required to report their payment data.
26. On whether the objectives could be achieved with a system that imposes less regulation, it was concluded that the Regulations remained the appropriate vehicle for delivery of the objectives compared with the alternatives assessed.
27. Government committed to continue to be proactive in attempting to stamp out poor payment practices and continue to encourage a culture change in payment practices and in how large businesses deal with their suppliers.
28. It was Government's assessment, based in part on the views and evidence submitted by stakeholders to the call for evidence, that we would undertake this consultation on the Regulations to specifically ask questions relating to the extension of the Regulations beyond 6 April 2024. It also provides us with the opportunity to consult on other potential amendments to the Regulations resulting from the views expressed by stakeholders.

The proposals

What are we consulting on?

29. Government believes that the Regulations have gone a long way to bringing greater transparency to the payment practices and performance of large businesses. However, we believe there is more to be done to increase awareness of the Regulations, not only to ensure that qualifying businesses are reporting their data, but also to ensure that it is better publicised and utilised by suppliers to determine whether to enter into contracts.
30. We are interested to hear views from all those with an interest in the Regulations and their effectiveness.

Amending the expiry date to extend the Regulations beyond 6 April 2024

31. When the Regulations were made, it was Government policy that regulations which impose burdens on business, and which do not implement European obligations, should include a sunset provision (a provision in legislation included to allow Parliament the chance to decide on its merits again after a fixed period). The normal length of time for a sunset provision is seven years, which is why the Regulations are currently due to cease to have effect on 6 April 2024.
32. In the recent statutory review, we asked whether the Regulations should remain in effect, to which most respondents agreed they should. It was suggested that this was vital to ensure that advances made in improving payment practices and performance continue, made even more important as the economy continues to recover from the pandemic.
33. Government believes that if the Regulations are extended beyond 6 April 2024, they will serve 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 years. We would welcome your view on this.
34. Ministers will decide whether to extend the Regulations beyond the expiry date based on responses to this consultation.

Question 1: Do you agree that the Regulations should be amended to extend their effect beyond 6 April 2024?

Additional value reporting metric

35. The Regulations currently require businesses to report on the proportion of (i) payments made within the reporting period paid in 30 days or fewer, (ii) between 31 and 60 days, (iii) in 61 days or longer and (iv) the proportion of payments due within the reporting period

which were not paid within the agreed payment period (see the second and third bullet points of paragraph 15 above). However, there is no requirement to report on the value of those metrics.

36. The decision not to require reporting on the value metric was made following consultation on the draft Regulations in 2014, to prevent qualifying businesses skewing the metric by ensuring that larger invoices are paid promptly. The Government's view at that time was that information on the value of invoices would be less useful than the proportion – for example, a company with some very high value contracts could appear to be a particularly poor payer (or vice versa) which may be misleading for suppliers.
37. At the time, it was also decided that a metric on both value and volume may be disproportionate and that the value of the information for suppliers may be outweighed by the additional burden it would place on reporting businesses. While it was considered that the approach taken would strike an appropriate balance, Government committed to keep these metrics under review to ensure that they remain effective and do not encourage businesses to 'game the system' and undermine the objective of the Regulations.
38. Several responses to the recent review highlighted concerns to this effect; that the lack of a value metric inhibits the ability to distinguish between high-value payments and low-value payments, thus hiding the true value of a reporting business's payment performance.
39. It was suggested that the Regulations, as currently drafted, may incentivise companies to prioritise settling large numbers of low-value invoices to boost their 'volume of transactions paid within terms' figures. This could be obscuring the true picture of supply chain late payment. Including the requirement to report the total value of payments not made within agreed terms could further increase transparency of payment practices by removing this obscurity.
40. We would welcome views on whether you agree that the transparency of payment performance would be increased if both volume and value of payments were measured. It would be particularly useful to hear views on what format would be most useful and impactful for the purposes of transparency of payment practices.

Question 2: Do you agree that the Regulations should be amended so that a qualifying business is required to report the total value of payments due in the reporting period that have not been paid within agreed terms?

Restoring trust in audit and corporate governance: referencing payment reporting in a company's directors' report

41. A payment report 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. Some respondents to the recent review commented that a self-certification

approach when a business submits their reporting data, where there is no validation process, means there is little or no means of currently identifying whether the data submitted is an accurate reflection of a business's payment practices. It was also suggested that legislation should be amended to make it a legal requirement for businesses to include their payment and performance information in their annual report.

42. In March 2021, the Department for Business, Energy and Industrial Strategy published a consultation on Restoring Trust in Audit and Corporate Governance². That included a request for views on mechanisms to improve transparency and accountability in reporting on supplier payments and asked if larger companies should be required to summarise their record on supplier payments as part of their annual report, and to do so at a group level where the company was part of a group (noting that existing payment reporting is not consolidated at group level). Most comments received on this proposal came from individual businesses, business representative groups and professional bodies. The majority of those respondents were not supportive of the proposal. The main arguments against were that:
- it would in part duplicate existing reporting by companies under Regulations, albeit at a summary, consolidated group level; and;
 - it would be challenging and potentially misleading for large, complex multi-nationals to report on payment practices and performance at a group level, since supplier payments in other jurisdictions often follow local practices and norms.
43. Representatives of smaller businesses, around half of professional bodies and a minority of individual companies were in favour of the proposal, subject to various suggested changes. A recurring argument in favour was that large companies need to do more to show that they are driving a prompt payment culture across all their subsidiaries. Others were also keen to see supplier payment reporting subject to some kind of audit or other assurance.
44. The main suggested changes³ to the proposal were:
- i. to limit group reporting to 'material' subsidiaries, defined as subsidiaries which contribute at least 25% of the group's revenues;
 - ii. to limit group reporting to supplier payments that are 'sufficiently linked to the UK' (as the existing regulations allow);
 - iii. to require companies to disclose the total payments they make within 1-30 days, 30-60 days and 60-90 days (on the basis that a good performance against a company's standard payment terms may be misleading if those standard payment terms exceed 90 days);
 - iv. to link supplier payment reporting to directors' existing annual statement on how they are meeting their duty under Section 172 of the Companies Act 2006 to have regard

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970673/restoring-trust-in-audit-and-corporate-governance-command-paper.pdf

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1079594/restoring-trust-in-audit-and-corporate-governance-govt-response.pdf

(among other matters) to the need to foster the company's business relationships with its suppliers;

- v. to require companies' average supplier payment period to be included in the annual financial statements, which would ensure it was subject to the annual statutory audit; and
- vi. to include the new consolidated summary separately on the company's website, or on the government portal where existing supplier payment reporting at subsidiary level is provided, rather than within the annual report.

45. It can be argued that points i, ii, iii and vi above would potentially duplicate existing reporting by companies under the Regulations albeit in part and at a summary, consolidated group level. We believe, however, that points iv and v, has merit and could potentially bring greater compliance to the Regulations by businesses that are required to report whilst avoiding duplication.
46. Section 172 of the Companies Act 2006 ("the Act") places a duty for a company director to act in the way he or she considers, in good faith, would be most likely to promote the success of the company for the benefit of its members, regarding several factors listed within that section of the Act. One such factor is the need to foster the company's business relationships with suppliers, customers and others. While another is the desirability of the company maintaining a reputation for high standards of business conduct. Directors are required to prepare a report for each financial year to inform members of the company and help them assess how the directors have performed their duty under section 172. A reference or link to a qualifying business's payment practices and performance report could be made in the directors' report.
47. But it is Government's preference to go even further. Making it a legal requirement for qualifying businesses to include their payment practices and performance information in their directors' report would provide even greater transparency. Government believes that this could have a self-governing effect on reporting businesses by reaffirming awareness of the importance of reporting at Board level and amongst the audience for a company's directors' report, including its shareholders.
48. To ensure complete transparency, we propose that where more than one business within a group is required to report their payment practices, these should all be included within the director's report. There is a risk that if only a group summary of payment reporting was included, this may mask any poor performing companies within the group. While some respondents to last year's consultation suggested that reproducing their payment practices and performance reports in a company's annual report could be challenging and would add considerable length to the report, we believe the transparency benefits outweigh any additional burden on businesses.

Question 3: Do you agree that it should be a requirement for a reporting business to include their payment practices and performance reports in their directors' report?

49. We would be interested to hear views on whether you believe, if this measure were introduced, there would still be an appetite for further validation, for example, from a business' audit committee in addition to inclusion in the directors' report.

Question 3a: Do you agree that making it a requirement for a reporting business to include their payment practices and performance reports in their directors' report is a sufficient additional requirement for a reporting business?

Supply chain finance

50. There may be cases where supply chain finance is used as part of the arrangement between a qualifying business and the supplier, so that the supplier receives the payment from a finance provider or other third party rather than from the qualifying business itself. The qualifying business would then reimburse the finance provider or other third party. It is a requirement under the Regulations for a reporting business to disclose if their qualifying contracts include such an arrangement.
51. As described in paragraph 15 above, a qualifying business is required to report on the proportion of payments made within specified parameters. The Regulations currently state that a payment is made when it is received by the supplier, or, if there is any delay in the sum being received for which the qualifying business is not responsible, when it would have been received without that delay. No provision is currently made as to the impact of supply chain finance arrangements on this counting of time.
52. This presents a risk that a reporting business using supply chain finance could potentially report achieving a higher percentage of payments made within agreed terms (i.e., when the supplier is paid by the third party rather than when the reporting business reimburses the third party), while their suppliers are forced to bear the cost of any fee for receiving monies owed to them within agreed terms.
53. We therefore propose to amend the Regulations to provide that, if the supplier receives the full amount due without having to pay a fee or having any amount deducted from the payment, then the date on which the supplier received the payment from the supply chain finance provider can be reported as the date of payment. However, if the supplier does not receive the full amount, or has to bear the cost of any fee for the supply chain finance, then the date of payment to be reported will be the date on which the payment made by the qualifying business (generally to the finance provider) is received from the reporting business (discounting any delays outside of the qualifying company or LLP's responsibility).
54. We would welcome views on amending the Regulations to bring greater clarity in future reports.

Question 4: Do you agree that the Regulations should be amended to clarify payment dates used for reporting when supply chain finance is used?

Guidance

55. The guidance document⁴ (September 2019 version) currently states that, where the supplier has to bear the cost of any fee for supply chain finance, the date of payment is the date on which the payment made by the qualifying business (generally to the finance provider) is received (discounting delays outside of the qualifying businesses' control). However, the legal position under the current Regulations is that, whether or not the supplier has to pay a fee for supply chain finance, or, whether or not supply chain finance is in place at all, payment is made to the supplier when the supplier receives it. Nonetheless, the current position under the Regulations – notwithstanding the proposal outlined above - could potentially lead to businesses reporting a higher number of invoices paid to terms, depending on their supply chain finance arrangements with their suppliers. The guidance document could be updated and aligned to any subsequent changes to the Regulations depending on the outcome of this consultation.

Disputed invoices

56. There is currently no requirement for a qualifying business to explicitly report disputed invoices as a subset of total invoices. If there is a dispute on the payment of an invoice at the time of reporting, it should be included in the statistics for the proportion of invoices not paid within agreed terms. Any disputed invoices that are subsequently paid at the time of reporting can be included in the statistics on the average time taken to pay and in 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.
57. It was suggested in the recent statutory review of the Regulations that the extent to which a reporting business has disputed invoices could be useful for a supplier to inform their decision making prior to contracting. Explicitly reporting on disputed invoices could increase transparency and accountability of a reporting business's payment practices.
58. We are therefore interested to hear your views on whether the Regulations should be amended so that disputed invoices are reported in a way that improves the accuracy and transparency of the reporting data. If most responses to this consultation are in favour of the proposal to include an additional value reporting metric (see proposal 3 above), Government would need to consider how to deal with disputed invoices for both volume and value metrics.

Question 5: Do you agree that the Regulations should be amended to consider disputed invoices as a separate entity, to improve the accuracy and transparency of the reporting data?

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Retention payments in the construction sector

59. The construction industry has historically suffered from high levels of both late and non-payment. Many in the sector have welcomed the Regulations and the positive impact they have had, with some calling them an ‘essential catalyst for changing the culture around payment in the construction sector’ that ‘underpin the recognition that large businesses are as strong or as fragile as their supply chains’.
60. Holding retention payments is a long-established construction contractual practice used through the tiers of the supply chain. The purpose of retentions is to ensure performance and provide security against defective work, or the insolvency of businesses in the supply chain. A retention is a percentage of the contract value (typically 3-5%) withheld by the business over the duration of the project and for a period post-completion. It is customary that the first half of the retention is released back to the supplier at project completion, and that the other half is released following the expiry of a defects liability period (typically 12 to 24 months) for the project. This form of surety is widely used in relation to smaller suppliers (sub-contractors), which struggle to obtain surety alternatives such as performance bonds.
61. Retention payments can be subject to late, partial or non-payment for the supply chain or permanently lost through upstream insolvency. This can benefit those who retain the retention and have a negative impact on the supplier, in particular as the amount held at any one time across all contracts can be significant. The underlying drivers include cash flow in an industry which averages 1-2% profit margins, and because there is no requirement to ring-fence retentions that are withheld to prevent these being used for working capital.
62. The proposals that we are consulting on under questions six and seven will only apply to large companies who are required to report their payment data under the Regulations (as set out in paragraphs four to eleven of this consultation document). We are seeking views from all those with an interest in the Regulations and their effectiveness. In particular, views are sought from companies and suppliers in the construction sector and experience of construction contracts utilising retentions. Wider stakeholder engagement will also be undertaken with the construction sector who may be affected by these proposals.
63. We would be interested to hear views on whether the Regulations should be amended to require the reporting of business’s standard retention payment terms in qualifying construction contracts. This may include percentage of retention value held, payment deduction and release milestones, minimum contract value held and type of contract. This provides greater transparency and better information to suppliers so they can make informed decisions about who to trade with, negotiate fairer terms, and challenge late payment.

Question 6: Do you agree that the Regulations should be amended so that payment practice and performance reports should include information on the standard retention payment terms in qualifying construction contracts?

64. We would welcome views on whether reporting on retention payment statistics would provide greater transparency and better information to suppliers. Under the current Regulations, for construction contracts in scope of the Housing Grants, Construction and Regeneration Act 1996, businesses must use the earliest point at which they have notice of an amount for payment, which would generally be the date they receive an application for payment.
65. This could include:
- 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; and
 - the average value of retention held per construction contract (% of contract value).

Question 7: Do you agree that the Regulations should be amended so that payment practice and performance reports should include statistical information on retention payments?

Impact assessment

66. A consultation impact assessment has been published alongside this consultation, which 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. We will then consider what may be done to further develop the evidence base for the final impact assessment that will be prepared alongside any amendments to the Regulations following consultation.

Question 8: How many hours does your business spend and which staff are required (please give an indication of hours by level of seniority) in order to comply with the Reporting on Payment Practices and Performance Regulations 2017?

Question 9: What does this cost your business in terms of pay for each level of seniority?

Question 10: What (if any) additional costs did your business incur (beyond staff pay) in complying with the Reporting on Payment Practices and Performance Regulations 2017?

Consultation questions

Question 1: Do you agree that the Regulations should be amended to extend their effect beyond 6 April 2024?

Yes / No / Don't know

Please explain your answer / provide evidence

Question 2: Do you agree that the Regulations should be amended so that a qualifying business is required to report the total value of payments due in the reporting period that have not been paid within agreed terms?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer / provide evidence

Question 3: Do you agree that it should be a requirement for a reporting business to include their payment practices and performance reports in their directors' report?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer / provide evidence

Question 3a: Do you agree that making it a requirement for a reporting business to include their payment practices and performance reports in their directors' report is a sufficient additional requirement for a reporting business?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer / provide evidence

Question 4: Do you agree that the Regulations should be amended to clarify payment dates used for reporting when supply chain finance is used?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer / provide evidence

Question 5: Do you agree that the Regulations should be amended to consider disputed invoices as a separate entity, to improve the accuracy and transparency of the reporting data?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer / provide evidence

Question 6: Do you agree that the Regulations should be amended so that payment practice and performance reports should include information on the standard retention payment terms in qualifying construction contracts?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer / provide evidence

Question 7: Do you agree that the Regulations should be amended so that payment practice and performance reports should include statistical information on retention payments?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer / provide evidence

Question 8: How many hours does your business spend and which staff are required (please give an indication of hours by level of seniority) in order to comply with the Reporting on Payment Practices and Performance Regulations 2017?

Please explain your answer / provide evidence

Question 9: What does this cost your business in terms of pay for each level of seniority?

Please explain your answer / provide evidence

Question 10: What (if any) additional costs did your business incur (beyond staff pay) in complying with the Reporting on Payment Practices and Performance Regulations 2017?

Please explain your answer / provide evidence

Next steps

Comments made in response to this review will be considered by the Small Business Payments Team in BEIS and will inform the final policy proposals we recommend to ministers. We may contact you if, for example, we have a query in respect of your response.

A government response covering the policy proposals and potential amendments to the Regulations will be published within 12 weeks of the close of this consultation and published on the GOV.UK website at: www.gov.uk/government/consultations/amendments-to-the-payment-practices-and-performance-regulations-2017

This consultation is available from: www.gov.uk/government/consultations/amendments-to-the-payment-practices-and-performance-regulations-2017

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