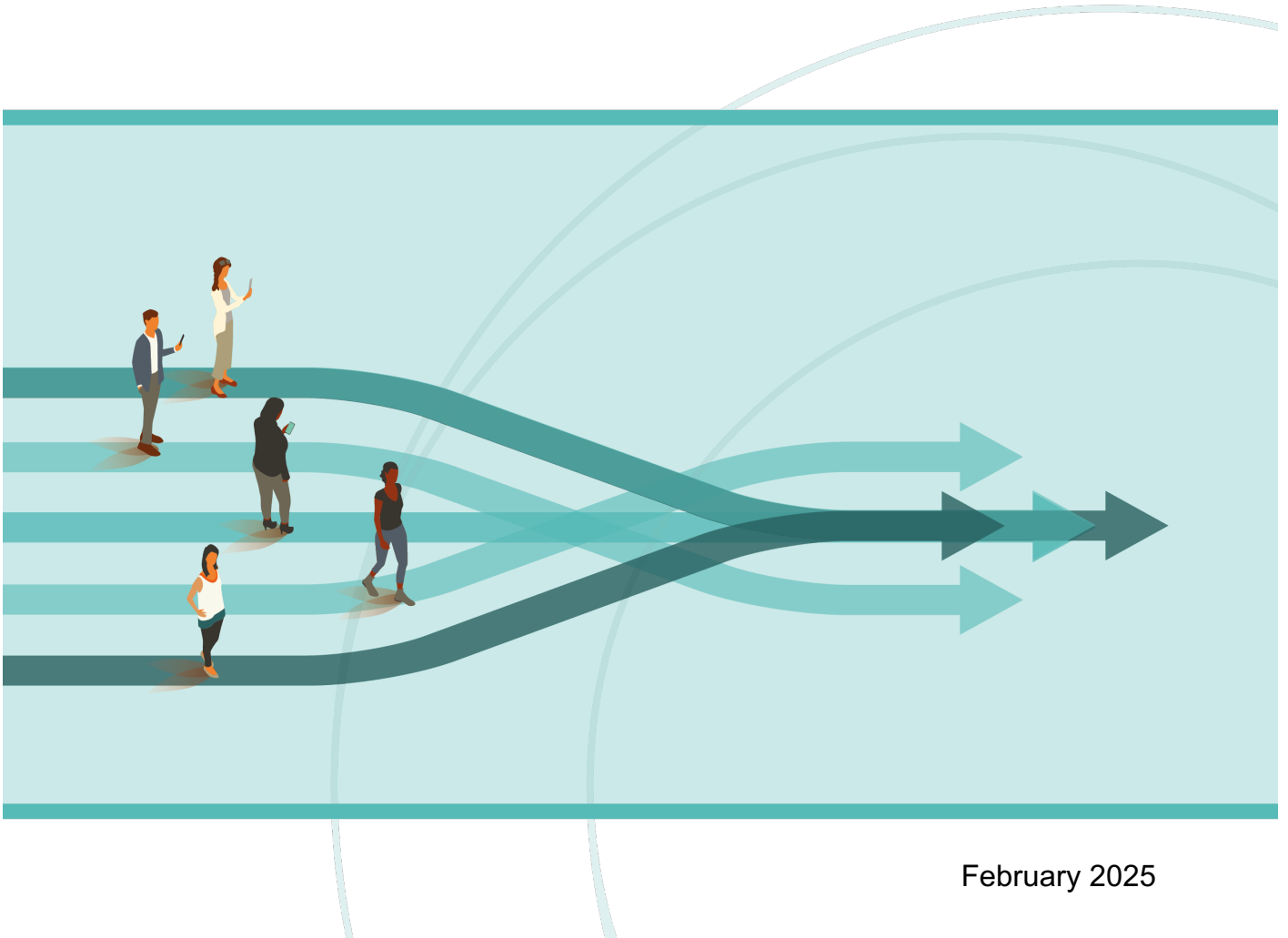




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Procurement Act 2023

Guidance: Payments Compliance Notices



February 2025

Guidance on Payments Compliance Notices

What are payments compliance notices?

1. A payments compliance notice is a notice setting out the extent to which, over a reporting period of 6 months, the contracting authority has paid its invoices in accordance with the term set out in section 68(2) of the Procurement Act 2023 (Act). It also includes other reporting requirements (set out in regulation 38(2)(c)) relating to when invoices were paid.
2. Contracting authorities are required to publish a payments compliance notice on the central digital platform (see paragraph 45 for more information on commencement and place of publication). The purpose of this notice is to provide transparency over contracting authorities' compliance with the Act and, more specifically, how promptly they pay their suppliers. Publication of payments compliance notices should incentivise faster payment, and allow contracting authorities' payment practices to be directly comparable with those of the private sector.
3. This guidance should be read in conjunction with the guidance on electronic invoicing and payment, which provides further guidance on payments which is helpful when collating information for the payments compliance notice.

What is the legal framework that governs payments compliance notices?

4. Section 69(1) of the Act requires that a contracting authority must publish a payments compliance notice within 30 days of the end of a 'reporting period' (see paragraph 12 below) if, during that reporting period, it made a payment under a public contract or a sum became payable under a public contract.
5. Regulation 38 sets out the information that must be included in a payments compliance notice published under section 69(1).
6. Section 68 of the Act is also relevant as this sets out the implied payment term that contracting authorities are required to report against in the payments compliance notice.

What has changed?

7. Payments compliance notices are intended to replace and strengthen regulation 113(7) of the Public Contracts Regulations 2015.
8. The principal changes from the PCR are:
 - a. the requirement under the Act to report on a six-monthly (rather than annual) basis;
 - b. the requirement under regulation 38(2)(ca)¹ (Procurement Regulations 2024) to report on payments made from the point an invoice is received (to reflect section 68(2) of the Act);

¹ See regulation 8(10) of The Procurement Act 2023 (Consequential and Other Amendments) Regulations 2025

- c. the requirement under regulation 38(2)(c) to provide the average number of days taken, from the day after the invoice is received, to make payments and the timescales in which payments were made (1-30 days, 31-60 days or 61+ days);
 - d. the requirement under regulation 38(2)(e) for sign off of the payment compliance notice by a finance director or equivalent; and
 - e. there is no requirement under the Act or regulation 38 to publish late payment liability interest.
9. Under the Act, payments compliance notices must be published on the central digital platform. This is a departure from the requirement under the PCR, which was to publish on the internet generally, for example on the contracting authority's website.

Key points and policy intent

10. The requirement to publish a payments compliance notice applies to any public contract (defined in section 3 of the Act) other than:
- a. those entered into by a transferred Northern Ireland authority;
 - b. those entered into by a private utility;
 - c. those entered into by a school; and
 - d. concession contracts.
11. Grants payments are not caught by the requirement to publish a payment compliance notice as grants are not public contracts.
12. Section 69(3) defines a reporting period. The first reporting period begins on the day on which section 69 comes into force and ends on the following 31 March or 30 September, whichever is earlier. Following that, the reporting period is each successive six months, i.e., the periods 1 April-30 September and 1 October-31 March, as relevant. As part of the phased delivery of the noticing regime under the Act, section 69 of the Act will not commence when the Act generally comes into force, but on a later date.
13. Regulation 38 sets out that the payment compliance notice must include:
- a. the contracting authority information;
 - b. the dates of the first and the last days of the reporting period;
 - c. in respect of payments under public contracts during the reporting period:
 - i. the average number of days taken to make those payments, (see paragraphs 18-19); and

- ii. the percentage of those payments which were paid within specified timeframes (see paragraphs 20-22).

These metrics are intended to enable the data to be directly compared with the data submitted by private companies under the Reporting on Payment Practices and Performance Regulations 2017²; and

- d. the percentage of invoices paid in accordance with the term in section 68(2) of the Act during the reporting period (see paragraphs 23-26;
- e. a statement of the director or similar officer approving the payments compliance notice (see paragraphs 27-28).

14. The objective of section 68(2) is to oblige contracting authorities to pay suppliers' invoices within 30 days from the day the invoice is received or, if later, by the day on which the payment becomes due in accordance with the invoice. There is an intention to clarify the wording of section 68(2) to ensure this is the only way the provision can be interpreted.

Calculating payment periods

15. In order to provide the payment information required by the payments compliance notice, contracting authorities will need to calculate the number of days it takes them to pay each relevant invoice:

- a. For the purpose of reporting under regulation 38(2)(c), day 1 is the day after the invoice day. Regulation 38(3) defines the invoice day as the day on which a contracting authority receives an invoice; and
- b. For the purpose of reporting against compliance with section 68(2) (as required by regulation 38(2)(ca), day 1 is the day the invoice is received or, if later, day before the day
- c. on which the payment falls due as set out in the invoice.

See paragraphs 18 - 26 below for the detailed reporting requirements.

16. If the contracting authority uses an electronic invoicing system, the day that the invoice is received onto the system is the date of receipt of the invoice or invoice day, as relevant (section 68(11) and regulation 38(5)).

Delays in payment being received

17. Regulation 38(4) provides that payment is made when it is received by the supplier. If there is a delay in receipt for which the contracting authority is not responsible, then the regulation provides that payment is made when it would have been received without that delay. A delay for which the contracting authority is not responsible may occur, for example, when a payment processing system suffers a system outage.

² <https://www.legislation.gov.uk/ukxi/2017/395/contents/made>

Calculating the average number of days to pay an invoice (regulation 38(2)(c)(i))

18. Regulation 38(2)(c)(i) requires that the payments compliance notice must set out the average number of days the contracting authority took to pay its suppliers during the reporting period, where day 1 is the day after the invoice day. Regulation 38(3) provides that 'average' means the arithmetic mean (the sum of all days taken to pay, divided by the number of invoices that were paid).
19. Invoices that a contracting authority has received but has not yet paid should not be included when calculating the average number of days taken to make payments in the reporting period. For example, if an invoice was received in the middle of the reporting period and was not paid before the end of the reporting period, it would not be included. When calculating the number of invoices paid during the relevant reporting period, the contracting authority should include invoices that were received in a previous reporting period and paid in the relevant reporting period.

Calculating the percentage of invoices paid within specified timeframes in a reporting period (regulation 38(2)(c)(ii))

20. Regulation 38(2)(c)(ii) requires that the payment compliance notice must set out the percentage of payments made during the reporting period within certain specified timeframes, where day 1 is the day after the invoice day. The percentage of invoices paid in each timeframe should be worked out by calculating the number of payments made within each specified timeframe as a percentage of the total number of payments made in the relevant reporting period. The three specified timeframes for payment align with the Reporting on Payment Practices and Reporting Regulations 2017 and are: within 30 days, between 31 and 60 days, and on or after day 61. The figures included against these timeframes should add up to 100% when entered into the payments compliance notice. Values may need to be rounded up or down to add up to 100%.
21. As when calculating the average number of days to pay an invoice under regulation 38(2)(c)(i), invoices that a contracting authority has received but has not yet paid should not be included in the calculations. Again, any invoices that are paid in the reporting period, but which were received in a previous reporting period should be included when calculating the percentage of payments made in the reporting period in which they are paid.
22. All percentages reported should be against the total number of invoices received, rather than against the total value of the invoices.

Reporting on the contracting authority's compliance with the term set out in section 68(2)(regulation 38(2)(ca))

23. Regulation 38(2)(ca) requires contracting authorities to report on their compliance with the implied payment term in section 68(2) of the Act. This figure is worked out by calculating the number of invoices paid in accordance with section 68(2) during the reporting period, as a proportion of the total number of invoices that were, or should have been, paid in accordance with section 68(2) during the reporting period. Section 68(2) requires payment to be made: (i) within the 30 days period that starts on the day on which the invoice is received, or (ii) if later, on or before the day on which the payment fell due in accordance with the invoice.

24. The term in section 68(2) does not apply if the contracting authority considers the invoice invalid or it disputes the invoice. When calculating whether the invoice is paid in accordance with section 68(2), section 68(3) is taken into account so that invalid and disputed invoices are not included. Section 68(8-9) sets out what it means for an invoice to be valid (see also guidance on electronic invoices and payment).
25. Where a valid and undisputed invoice is received in a reporting period, but the contracting authority was not required to pay it in that reporting period (e.g. because it was received less than 30 days before the end of the reporting period), that invoice is not taken into account in the calculation if it has not been paid in the period because it is both (i) not paid, and (ii) not an invoice that should have been paid. If that same invoice was paid within the reporting period, it becomes an invoice that was paid and therefore should be taken into account in the calculation.
26. However, where a valid and undisputed invoice is received during the reporting period and the contracting authority was required to pay it in that reporting period (i.e. because the deadline for payment was a date within the reporting period), but did not pay it, that invoice is counted as an invoice that should have been paid and therefore included in the calculation.

Approving a payments compliance notice (regulation 38(2)(e))

27. The payment compliance notice must include a statement of the director or similar officer of the contracting authority who is responsible for the contracting authority's finances setting out that they approve the payments compliance notice. The person's name and job title must also be included in the payments compliance notice. The purpose of this requirement is to increase professional scrutiny and trust in the notices and hold the public sector to the same standards as the private sector.
28. The person providing the statement should be someone in a position of authority within the contracting authority. In central government contracting authorities, this should be someone of Senior Civil Service level. In other contracting authorities, this should be someone with the equivalent level of seniority.

Payment types and methods

Disputed invoices

29. Invoices which are partially paid, for example, where 75% of the total invoiced amount is paid) should be treated as unpaid and reported as paid within the relevant reporting period in which they are fully paid where the supplier has not agreed to accept the partial payment as full payment of the invoice. If the supplier has agreed to the partial payment, the invoice is considered paid on the date the payment was made or, if later, the date the supplier agreed to the partial payment.

Payments by instalments

30. If an invoice is paid in instalments by mutual agreement at the outset, the payments can be reported as having been made for the purpose of calculating the information to be included

in the payments compliance notice, provided the instalments are paid on time. Where payment by instalment has been agreed, in order to comply with reporting requirements, contracting authorities should treat each instalment as a separate invoice, and the 30 day period during which payment should be made will commence, for each instalment, on the day on which the invoice was received (for the first instalment), and for subsequent instalments, the day on which it was agreed each instalment was to be paid. Generally, if an invoice is being paid in multiple instalments (for example, monthly payments), contracting authorities should encourage suppliers to use separate invoice numbers for each instalment.

31. If an invoice is being paid in instalments due to a supplier agreeing to defer to a later date part of what had previously been payable under the invoice as a total amount, the day of receipt of the invoice is the day the invoice was received for the initial total amount. The number of days within which payments are made is measured by reference to the day of receipt of the original full invoice.

Payment card solutions

32. There are three main types of payment cards, which are sometimes used by contracting authorities for high volume, low value payments. When these cards are used, generally each purchase with the card should be treated as a separate invoice (rather than a statement containing a number of purchases being treated as a single invoice), although there is an exception:
 - a. physical cards: each transaction is a separate invoice. Where physical cards are used for staff expenses (rather than designated expenses cards), these should be excluded and are not invoices for the purpose of the Act or regulations;
 - b. single use account cards: each transaction is a separate invoice;
 - c. lodge cards: these are typically replacing high volume invoices from suppliers. The number of transactions that should be included in an invoice relates to the number of invoices that the card has replaced. For example, if a supplier previously submitted a single monthly invoice covering a number of different purchases, the statement for the lodge card is a single invoice, even if it lists each purchase separately.

Batch upload/feeder files

33. Invoices contained within batch upload files should be included when calculating the number of days or percentages for the purpose of the payments compliance notice. If each line within a batch upload file has been allocated an individual invoice number by the supplier, each invoice number should be counted once rather than counting each line relating to the same invoice number separately.
34. Feeder files that present general payment information are not invoices and should not be included when calculating the number of invoices for the purpose of the payments compliance notice.

Other payments

35. Only sums payable under invoices for the supply of goods, services or works under a public contract should be taken into account in the calculations for a payments compliance notice. Contracting authorities should exclude payments that are unrelated to the purchase of goods, services or works. Pass-through costs such as benefit payments, staff reimbursements, compensation payments, doctors' payments, etc. should not be inadvertently included in payments made.

Credit notes

36. Credit notes received from suppliers are not invoices and should not be inadvertently included when calculating the number of invoices for the purpose of the payments compliance notice.

BACS payments

37. In order to ensure payment is received within the period required in section 68(2), contracting authorities making payments by BACS should arrange for payments to leave their bank accounts 3-5 days ahead of the due date for payment to allow for transaction time, weekends and bank holidays.

International payments

38. International payments of invoices made by contracting authorities under public contracts should be included when calculating the payments made in the reporting period in the same way as any other payment, but if the international element is the primary reason for any late payment, this should be noted in the free-text field on the payments compliance notice.

Ensuring the invoice is sent to the correct address for payment

39. Section 68(11) and regulation 38(5) provide that an invoice is received by a contracting authority when, for example, the invoice is delivered to the address, or through an electronic invoicing system, specified in the contract in question for that purpose. This is not an exhaustive description of what it means for an invoice to be received and the relevant electronic invoicing system may not have been specified in the contract, but may be subsequently specified by the contracting authority, or an address may change. In the absence of any specific instructions, the invoice is received the day the invoice is received within the contracting authority, even if this is not received by the person responsible for processing it.
40. To avoid late payment and potential disputes, the contract should set out specific instructions for submission of invoices, for example, the email address and named person to which the invoice must be submitted, and the dispute resolution procedure to apply in the event the contracting authority disputes an invoice. Contracting authorities should note that section 68(4) requires the contracting authority, on receiving an invoice, to notify the payee without undue delay if it considers the invoice is invalid or it disputes it. For further information please refer to the guidance on implied payment terms and electronic invoicing and payment.

What is an invoice?

41. The term 'invoice' is not defined in the Act (unlike 'electronic invoice') or the regulations and may take different forms; for example, rather than a traditional invoice, the supplier may submit a timesheet setting out services delivered for a particular month under a services contract and the amount due. Provided the information submitted for payment includes the minimum required information (see section 68(9)) (or is in the required electronic form (see section 68(8)(a)) then it is a valid invoice. The period for payment in section 68(2) will apply and be calculated from the day the information, i.e. the valid invoice, is received by the contracting authority (provided it is valid and not disputed).

How should supply chain finance be treated?

42. Unless a shorter period is agreed, the payment period will always be as set out in section 68(2). Using supply chain finance to ensure the supplier is paid within the implied payment period is not compliant with section 68(2) if the absence of supply chain finance means that the supplier would have been paid later than the 30 day payment period. If a supplier wishes to use supply chain finance to receive payment earlier than the payment period in section 68(2), that is a matter for the supplier.
43. If a supplier using supply chain finance receives the full amount due under the invoice without having to pay a fee or having any amount deducted from the payment, the date the payment is made is the date on which the supplier receives the full payment from the supply chain finance provider.
44. If the supplier wishes to receive payment earlier than the period set out in section 68(2) and to do so is happy to bear the cost of any fee for the supply chain finance or to receive a reduced amount, the date the reduced payment is made is the date on which the payment should have been made in accordance with the invoice (even where payment is received before that date). For example, if payment is originally required in 30 days from the day of receipt of the invoice, but the supplier accepts a reduced amount to receive payment from supply chain finance in 15 days, the number of payment days should be recorded as 30. If the supplier had received the full amount (without any amount deducted from the payment), the number of payment days would be recorded as 15.

Where should the payments compliance notice be published?

45. Under the regulations, payments compliance notices must be published on the central digital platform. As part of the phased delivery of the noticing regime, section 69 of the Act will come into force after the Act generally comes into force. This means that contracting authorities are not required to publish a payments compliance notice until section 69 comes into force. This guidance will be updated in due course.

Reporting on payments relating to below-threshold contracts

46. The Act does not require payments compliance notices relating to below-threshold contracts to be published. However, it is permissible to publish a payments compliance notice relating to a below-threshold contract. This voluntary reporting is encouraged because it provides a more complete picture of a contracting authority's payment performance and it may be

easier for the contracting authority to publish payments compliance notices without having to identify and exclude payments relating to below-threshold contracts.

What other guidance is of particular relevance to this topic area?

Guidance on e-invoicing

Guidance on the central digital platform and publication of information

Guidance on thresholds

Annex A

Template for interim payments compliance notices

Payment performance for *(INSERT Contracting Authority)*

Reporting period: *Dates the report covers e.g. 01 April 2024 to 30 September 2024*

Report filed: *Date the report was uploaded to Contracting Authority Website*

Approved by: *Relevant Official and Job Title*

Payment statistics

Average number of days taken to pay invoices: *e.g. 22 days*

Invoices paid:

- **within 30 days:** *e.g. 97%*
- **between 31 and 60 days:** *e.g. 3%*
- **on or after day 61:** *e.g. 0%*

Proportion of invoices paid in accordance with the term in section 68(2) of the PA 2023 during the reporting period: *e.g. 98%*

Accompanying narrative: *Any explanation to add context to the above numbers*

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