

Late Business-to-Business Payments - Tackling Poor Payment Practices

Lead department	Department for Business and Trade
Summary of proposal	The proposals would introduce new legislation designed to address poor business-to-business payment behaviour, including late payment, long payment terms, disputed payments, and unfair practices around retention payments in construction contracts.
Submission type	Options Assessment – 11 February 2025
Legislation type	Primary and secondary legislation
Implementation date	2026/27
RPC reference	RPC-DBT-25033-OA(1)
Date of issue	21 March 2025

RPC opinion

Rating	RPC opinion
Fit for purpose	A sufficient assessment of the rationale for intervention has been provided based on the continued prevalence of poor business to business payment behaviour despite previous interventions. This could be strengthened by including more discussion of the lessons from previous evaluations and post-implementation reviews (PIRs) of these previous interventions. The assessment includes a suitable evaluation of the short list of options, although this should be expanded with external stakeholders post-consultation with greater monetisation. The SaMBA provided is sufficient. The assessment includes a good regulatory scorecard and monitoring and evaluation plan.

This opinion has had some material redacted from the version originally issued to the department for the reason(s) stated in the redaction.

RPC summary

Category	Quality	RPC comments
Rationale	Green	The assessment outlines the problem under consideration and the argument for intervention, which is focused on the continued prevalence of poor business to business payment behaviour despite previous interventions. The Department uses evidence effectively to support the argument for intervention, however this could be linked more directly to each of the specific proposals. This could be strengthened by including more discussion of the lessons from previous evaluations and PIRs of previous interventions.
Identification of options (including SaMBA)	Green	The assessment considers various long-list options, progressing eight forward to the short list, where various sub-measures for each option are then assessed instead. This assessment of sub-measures should be improved following consultation. The assessment considers alternative options to regulation, justifying why these were not carried forward. The SaMBA provided is sufficient.
Justification for preferred way forward	Green	The assessment includes both a qualitative justification for the preferred way forward and a monetised appraisal of the proposals. It should, however, provide more monetisation of the potential benefits as this is limited in the OA, and should use consultation to improve this.
Regulatory Scorecard	Good	The scorecard provides a good summary of expected impacts on business of the preferred options, including an estimated NPV figure. This assessment also does well to consider a range of impacts on the business environment and international considerations.
Monitoring and evaluation	Good	The assessment includes a satisfactory M&E plan, with a clear timeframe, methodology and objectives. This could be improved by considering the potential effect of external factors.

Summary of proposal

The Government set regulation that governs payment practices between businesses, including a range of measures aimed at addressing poor payment behaviour. Despite this, poor businesses-to-business payment behaviour remains widespread in the UK. The Government have, therefore, proposed a package designed to address this behaviour, including late payment, long payment terms, disputed payments, and unfair practices around retention payments in construction contracts.

The OA considers eight measures have been proposed:

- Introducing maximum payment terms, which cannot be derogated.
- Assuring the payment behaviour information reported by large businesses.
- Requiring additional reporting from large businesses, relating to their statutory interest liabilities.
- Introducing penalty fines for late-paying businesses.
- Creating additional powers for the Small Business Commissioner.
- Introducing an invoice-verification period, with restrictions on disputed invoices.
- Making mandatory, the statutory interest that businesses can charge to compensate for invoices paid late.
- Banning or protecting retention payments being withheld in construction contracts.

The Government propose to proceed with these eight measures, and have used the options assessment to determine the preferred way forward for each of these proposals individually. A consultation on the proposals is due to be held in 2025.

Rationale

Problem under consideration

The Department sets out the problem under consideration indicating that businesses are often supplying goods and services on 'trade credit' basis, where payment is deferred, which can lead to late payment, long payment terms, disputed payments and unfair practices around retention payments. These are all examples of poor business-to-business payment behaviour, which disadvantages small and micro businesses disproportionately, disrupting cash flows and undermining investment and growth.

The Department does well to provide evidence to support the problem under consideration, using a combination of external research, survey data and its own analysis and research to demonstrate the issues faced by businesses. This has been used to show that, despite improvements in some areas, poor business-to-business payment behaviour can still frequently occur, with large

businesses taking advantage of their relative size, being a particular source of late payments. The OA would be improved by expanding on this justification to make the case for why regulation is necessary now given the reduction in average days to be paid and the increased possibility of late payment issues being addressed by technology.

The assessment could be improved by linking the evidence used to support the problem statement more directly to the specific problems identified. The Department uses the evidence to highlight multiple areas where business-to-business payment behaviour is improving without intervention and should, therefore, do more to argue directly how the recurring negative behaviour is more relevant to the problems identified.

Argument for intervention

The argument for intervention is based on previous government interventions failing to effectively address poor business-to-business payment behaviour, the existence of multiple market failures and recommendations from PIRs of previous interventions. The assessment lists previous interventions on this issue, highlighting the challenges facing the current statutory framework, reporting regulations and the Small Business Commissioner, such as a lack of transparency in the current framework, low compliance rates and insufficient powers to investigate poor behaviour. This would be improved by providing more discussion of the lessons learned from previous evaluations and PIRs of these interventions, and how these then link to the new measures proposed.

The assessment gives two examples of market failures to support the case of intervention, asymmetric information occurring when a creditor has insufficient knowledge of their customers' prior payment behaviour and unequal market power leading to large business using their size or position to gain favourable credit terms at their creditor's expense. The Department also includes details of PIRs assessing previous interventions, such as the Payment and Cash Flow Review and The Reporting on Payment Practices and Performance Regulations 2017. The assessment could be improved by highlighting any specific recommendations from these reviews and linking them to the proposals.

Objectives and theory of change

The Government's policy objectives are reducing instances of late payment, preventing unfair and long payment terms, preventing disputed payments and preventing unfair practice around construction retention payments. The assessment does well to link these objectives to specific intended outcomes, however, it could be improved by discussing how these objectives are SMART (specific, measurable, achievable, realistic and time-limited). The Department has also usefully set out a theory of change and a set of logic models for each of the four broad areas on which the Government propose to intervene.

Identification of options (inc. SaMBA)

Identification of the ‘long-list’ of options

The assessment includes thirteen potential measures to form its long list of options relating to prompt payments policy. A further three options have been included in a separate long list of options relating to retention payments in the construction industry. These long-listed options have been split into a broad set of categories: voluntary codes of practice and guidance, increased accessibility, quality and usage of payment reporting data, increase government powers to investigate payment issues and changing the existing legal framework.

The assessment could be improved by including detail on the process behind developing the long list of options, such as how research and other evidence have been used to form these proposals. The long list of options has been assessed well using a clear structure using critical success factors (CSFs), which consider the options’ strategic fit, affordability, value for money and achievability.

Consideration of alternative options to regulation

The OA does not provide a specific discussion of alternative options to regulation, although the long list does include non-regulatory options. For example, the Department assesses two policies that fall under the ‘Voluntary codes of practice and guidance’ option *[text redacted from the issued opinion reflecting policy in confidence material removed from the version of the OA published by government]*.

Justification for the short-listed options

The assessment has discounted six of the proposed long list interventions, with the remaining eight progressing to the short list. This includes seven prompt payment measures and one policy for retention payments. Each of the options has then been considered separately against a ‘do nothing’ baseline, with four of these also assessed against a set of alternative options.

The assessment usefully sets out the four CSFs used to assess the long-list and short-list options. These have been used to help demonstrate how rejected long-listed options fail to meet the Government’s policy objectives. The assessment could be improved by providing the CSF assessment of the short-listed options and not just those that were rejected, which would allow for comparison between the two, and help further to show why long-listed options were not progressed.

SaMBA

The assessment includes an adequate SaMBA. The assessment sets out the scope of the impact on small and micro business for each of the eight proposals, ranging from some that affect only SMBs and others that place costs on only large businesses. Not exempting small and micro businesses

has been justified by the Department, claiming either that it is not necessary due to a lack of costs to SMBs, or that it is not possible to have an exemption and still meet the policy objectives. This is aside from additional reporting on statutory interest, which SMBs have been exempted from. The assessment could be improved by considering the potential for large businesses to pass on stricter terms to SMBs in their supply chain, thus shifting the burden.

The assessment also contains a brief summary of the potential impact on medium-sized businesses, including the same rationale for not providing an exemption as was used for SMBs.

Justification for preferred way forward

Appraisal of the short-listed options

For the short-list appraisal, the Department has provided eight separate, potential areas for intervention. These have each been subject to a separate options appraisal, with a 'do nothing' baseline and a set of alternative regulatory options in some cases, alongside the preferred option. These options have been assessed quantitatively and qualitatively, with a Net Present Social Value (NPSV) estimate for each option, and brief summary setting out why each option has been either preferred or discounted.

The assessment includes an NPSV of the preferred option, however given the Department's approach of assessing individual proposals separately, there is no alternative overall package to allow for quantitative comparison between options. The NPSV has been estimated as -£1,175m (2024/25 price year, 2024/25 pv base) and has been included in the summary and regulatory scorecard sections of the assessment. Individual NPSVs for each sub-option have been included in the options appraisal, however in most cases there is very limited monetised assessment of the benefits, leading to a quantified cost being contrasted with a non-monetised benefit. This has resulted in the NPSV and EANDCB figures not being a factor in the options assessment process. The assessment should monetise more of the benefits identified by the Department as this is very limited in the OA, perhaps using the future consultation to test some of its assumptions. The OA could consider if businesses could obtain economies of scale from addressing the package of new regulation as a whole rather than each individually, therefore reducing their costs.

The assessment could be improved by providing a greater amount of discussion justifying why the preferred option has been carried forward. As the preferred option in each case appears to have been selected based on its suitability to meet the Government's policy objectives, the assessment would, therefore, benefit from more detail on why this is the case relative to the alternative options. The level of discussion and analysis provided by the Department is sufficient, however it could be expanded. The assessment could also use more evidence to support its preferred choice of options and should, therefore, use the consultation to test and strengthen it.

The assessment could be improved by including a discussion of the potential risks and unintended consequences of the proposed measures as part of the appraisal of short-listed options. The risks and unintended consequences have been set out in the section on Monitoring and Evaluation; however, it would be beneficial to go into the possible risks for each measure rather than just the package as a whole.

SaMBA and medium-sized business impact

The small and micro business impact has been assessed individually for each option, setting out the potential impact on SMEs, whether the burden will fall more on them or larger businesses and discussing whether SMEs should be exempted. In cases where costs do not exclusively fall on either large or small business, an SME EANDCB has been provided. There is a limited discussion of potential benefits, which should be expanded given the lack of monetised benefits.

Some detail has been provided on potential mitigations for businesses when dealing with the impact of new regulation. These include a transition period and provision of new and existing information to businesses, available for example through the Small Business Commissioner. This could be improved by discussing how businesses might be made aware of this information to support their adaptation to new regulation.

Selection of the preferred option

Overall, the qualitative discussion provided in the options appraisal of the proposed measures is appropriate to justify the selection of the preferred options. The assessment has discussed the potential options from each of the measures, setting out how each performs against the policy objectives and why this has led to the selection of the preferred option in each case. The OA could be improved by discussing previous government interventions and the lessons learned from evaluations and PIRs to help justify why further intervention is preferable over the baseline scenario.

Regulatory Scorecard

Part A

The scorecard has been used to present the cumulative impact of the preferred options. As before, many of the costs have been monetised, with an NPV estimated at -£1.2 billion (2024/25 price year, 2022/23 PV base year), with costs driven largely by the impact of banning retention payments, which have a net cost of £1.1 billion. This figure includes significant transfers between businesses, with £10.2 billion in estimated costs, and benefits of £9.1 billion. This largely represents a transfer from other creditors of businesses with construction contracts which become insolvent while holding retentions to the payees for whom those retention payments were being held. As mentioned previously, this analysis could be improved by quantifying some

of the non-monetised benefits, using the external stakeholder consultation to build evidence to support this. The analysis is sufficient at this stage, though the consultation should be used to test and strengthen this.

As the proposals are expected to have an impact only on businesses, the discussion of total impacts also covers the business impact. As a result, no household impact or EANDCH has been provided. The OA should consider indirect impacts on households, such as higher prices due to firms passing on costs. The Department has provided a good summary of the impacts of Part A of the scorecard, however it could be improved by providing some more detail on the key components of the costs to business and more description of the policy's benefits, to compensate for the lack of monetisation.

Part B

The assessment includes a good summary of potential impacts on the business environment. These include discussing a potential increase in the attractiveness of the UK business environment due to increased surety over business-to-business payments, and the trade-off between allowing business freedoms and protecting businesses from poor practices. This could be improved by considering the consequences that the increased burden on businesses may have on the overall business environment. The scorecard could also discuss other potential unintended consequences arising from the proposals, as businesses may have to pay suppliers faster than they otherwise would have, which could reduce their cash flow flexibility and make it harder to manage working capital. This could lead to more insolvencies if firms lose the flexibility to manage cash flow by stretching payment terms in times of financial stress. It could also result in s more businesses disputing invoices as a way to delay payment and avoid penalty fines.

The Department has also usefully considered the possible international consequences of the proposed measures. These include potential for a loss of international competitiveness, as the new rules are set to be more stringent than other comparable countries, which may deter foreign businesses. This reduced flexibility could particularly impact sectors that have tight margins such as construction and manufacturing. However, this may be mitigated by future EU plans to introduce similar measures. The International Considerations could be improved by commenting separately on the potential for the new retention payments policy to cause construction projects to be moved to different countries.

Monitoring and evaluation

The assessment includes a good plan for monitoring and evaluation. The Department has outlined how it plans on conducting a PIR no later than five years after the proposals come into effect. The OA does well to set out the specific outcomes the Department wants to observe, what existing data it has

to monitor this and what data it plans to develop in order to assess the effects of the policy further.

The assessment has also usefully included a set of potential risks and unintended consequences that could be considered as part of the monitoring and evaluation process. This could be improved by including a discussion of the possible effect of external factors on the proposed intervention. The monitoring and evaluation plan could also be improved by committing explicitly to assess the potential negative impacts on the business environment caused by increased regulatory burden.

Regulatory Policy Committee

For further information, please contact enquiries@rpc.gov.uk. Follow us on X [@RPC_Gov_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](https://www.linkedin.com/company/rpc-gov-uk/) or consult our website www.gov.uk/rpc. To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).