

New Payment Practices and Performance Regulations

Is your business ready?

The EY logo consists of the letters 'EY' in a bold, white, sans-serif font. Above the 'Y' is a yellow chevron shape pointing to the right.

Building a better
working world

Over £26bn of late payments were owed to SMEs in Britain

The new Reporting on Payment Practices and Performance Regulations came into force on 6 April 2017.

Is your business ready?

Introduction

The Government has identified that the late payment of undisputed invoices is a significant problem for UK businesses. According to Department for Business, Energy & Industrial Strategy (BEIS), as of June 2015 over £26bn of late payments were owed to small and medium sized enterprises (SMEs) in Britain.¹ Late payments clearly impact cash flow and can jeopardise solvency.

The Reporting on Payment Practices and Performance Regulations (referred to as Regulations throughout this document) came into force on 6 April 2017. The Regulations do not prescribe maximum payment terms, but rather introduce a new requirement for transparency that is intended to promote a culture of better payment practices. The Regulations require companies and Limited Liability Partnerships (LLPs)², which meet two or more of the size thresholds, to publish specific information regarding their current payment practices and performance. This increased transparency will enable potential suppliers to comparatively evaluate and make more informed decisions about who they choose to do business with.

The Regulations are in addition to the existing voluntary Prompt Payment Code and are the latest of a series of new reporting requirements that seek to influence corporate behaviour by requiring increased disclosure (for example, gender pay gap reporting under The Equality Act 2010).

Once companies and LLPs (referred to as businesses throughout this document) have gathered and

understood their current state and initial data, the following questions will need to be answered:

- ▶ How does disclosing this information impact your wider reputation as a responsible business?
- ▶ How do you compare to your competition and what is the likely impact of the disclosures on your supplier relationships?
- ▶ What will the impact on liquidity of working capital be if, as a result of the Regulations, payments are made faster than today?



Key functions involved responding to the Regulations

| | Finance | Procurement/ Accounts payable | IT | Treasury |
|----------------|-----------------------------------|-------------------------------|--------------------|---------------------|
| Areas impacted | Corporate reporting | Payment policies | Data accessibility | Liquidity |
| | Completeness and accuracy of data | Contract terms | Data integrity | Forecasting |
| | Shared services | Consistency of contracts | Systems landscape | Cash position |
| | | Dispute resolution | | Payment outsourcing |
| | | Preferred supplier payments | | |
| | Reputation | | | |

¹ BEIS press release 'Late payment reporting guidance launched for large businesses' Jan 31st 2017.

² As defined by the Companies Act 2006 or previous legislation and Limited Liability Partnerships Act 2000.



Businesses will need to bring together key functions across the organisation to navigate a careful balance between working capital, supplier relationships and the consequent impact on reputation.

Who needs to report?

The Regulations came into force on 6 April 2017 and apply to companies (private companies, quoted companies and LLPs) as defined by the Companies Act or Limited Liability Partnerships Act. A business will qualify and have a duty to report in relation to a financial year if, on the balance sheet dates for the two preceding financial years, it met two or more of the size thresholds:

- ▶ Annual turnover of £36mn
- ▶ Balance sheet total of £18mn
- ▶ 250 employees

These thresholds will be updated periodically.

Does it apply to foreign businesses?

The reporting requirement does not apply to businesses which are incorporated under another country's laws. International businesses with a UK subsidiary incorporated in the UK will need to consider if the thresholds are met by the UK subsidiary.

Does it apply to new businesses?

The reporting requirements will not apply to a new business in its first financial year. A business in its second financial year will be in scope if it meets two or more of the thresholds on both of its last two balance sheet dates.

Does it apply to parent companies and parent LLPs?

A parent company or parent LLP (with any subsidiaries) is required to report on their own practices and performance if it meets both of these requirements:

1. The parent company meets the size thresholds
2. Aggregate figures for the group exceed the thresholds for groups

The thresholds for groups are currently:

- ▶ Aggregate turnover of £36mn net³ (or £43.2mn gross)
- ▶ Aggregate balance sheet total of £18mn net³ (or £21.6mn or more gross)
- ▶ Aggregate number of 250 employees

Does it apply to businesses within a group?

Any businesses within a group that meets the size thresholds for the two preceding financial years will need to report individually on their own payment practices and performance. Companies and LLPs within a group that do not exceed the thresholds, do not need to report individually. There is no provision for aggregated group-wide reporting of payment practices and performance.

What are the reporting requirements?

Businesses are required to provide the following information in relation to the reporting period on www.gov.uk.

Narrative descriptions of:

- ▶ Standard payment terms, expressed in days
- ▶ Maximum payment terms
- ▶ Changes to these terms and the associated consultation process with suppliers prior to these changes
- ▶ Dispute resolution process

Statement of policies and practices as to whether:

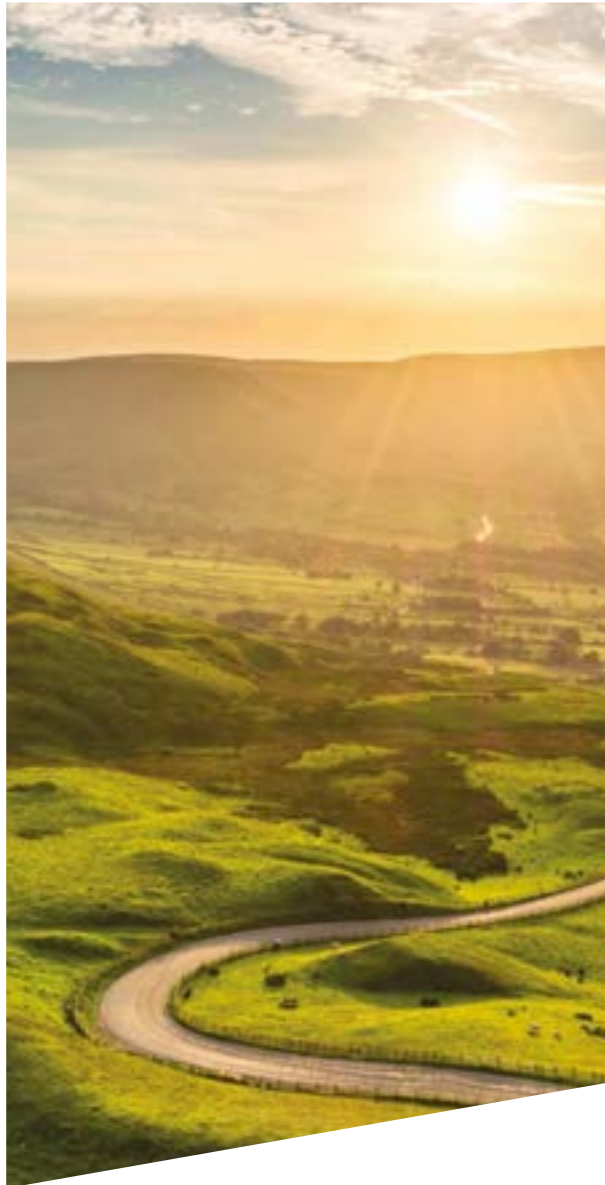
- ▶ Suppliers are offered e-invoicing
- ▶ Supply chain finance is available
- ▶ Sums can be deducted from suppliers to remain on supplier list and whether they have done so
- ▶ The business is a member of a payment code of conduct and the name of the code

Statistics on payment performance, including:

- ▶ The average number of days taken to make payments
- ▶ The percentage of payments made within 30 days, 31-60 days, or on or after 61 days
- ▶ The percentage of payments due which were not paid within the payment period (agreed terms)

The report must be approved by a director of the business before it is published.

³ Net = after any offsets and adjustments to exclude group transactions.



The Regulations and guidance documents contain definitions for the following:

- ▶ Standard payment terms
- ▶ Standard and maximum payment periods
- ▶ Supply chain finance
- ▶ Average time to make payments
- ▶ Percentage of payments made within the reporting period
- ▶ Proportion of payments due within the reporting period that were not paid within the agreed period

Which contracts should be reported on?

Businesses that meet the thresholds are required to publish information about their payment practices and performance in relation to qualifying contracts. According to the Government's guidance⁴ a qualifying contract is a contract which satisfies all of the following:

| | |
|---|---|
| It is between two (or more) businesses | ✓ |
| It has a significant connection with the UK | ✓ |
| It is for goods, services or intangible property, including intellectual property | ✓ |
| It is not for financial services | ✓ |

Whether a contract has a significant connection with the UK will depend on the circumstances. Examples include a contract that is performed in the UK, or where one or both parties is established in the UK or conducts a relevant part of their business in the UK.

Financial services covers any service of a financial nature, including (but not limited to) insurance-related services, banking services and other financial services.⁵

When will businesses be required to publish this information?

The Regulations came into force on 6 April 2017, and will apply to financial years that start on or after that point.

Businesses will be required to report twice-yearly, with reporting dates aligned to the financial reporting cycle as follows:

- ▶ First report – within 30 days after the end of the first six months of the financial year
- ▶ Second report – 30 days after the end of the financial year

The table below sets out reporting timetables for a range of financial reporting periods.

Where will the information be published?

Each business will be required to publish its payment practices report on www.gov.uk. This will provide suppliers and other interested parties with a single place to access the information and compare performance.

Example reporting deadlines

| Financial year beginning | First reporting period | First report published on or before |
|--------------------------|-----------------------------------|-------------------------------------|
| 6 April 2017 | 6 April to 5 October 2017 | 4 November 2017 |
| 1 May 2017 | 1 May 2017 to 31 October 2017 | 30 November 2017 |
| 1 June 2017 | 1 June 2017 to 30 November 2017 | 30 December 2017 |
| 1 July 2017 | 1 July 2017 to 31 December 2017 | 30 January 2018 |
| 1 January 2018 | 1 January 2018 to 30 June 2018 | 30 July 2018 |
| 1 April 2018 | 1 April 2018 to 30 September 2018 | 30 October 2018 |
| 5 April 2018 | 5 April 2018 to 4 October 2018 | 3 November 2018 |

Going forward we expect businesses will want to consider the extent to which they include payment practices and performance reporting in other corporate reports e.g. the Annual Report and Sustainability Report.

What will happen if a business fails to publish a payment practices report?

The Government has indicated that public pressure on businesses will be the main driver for compliance – this is about increasing transparency regarding performance.

Under the Regulations, failure to publish a report within the 30 day filing period will be a criminal offence, for which both the organisation and all of its directors (or designated members in the case of an LLP) will be liable to a fine on summary conviction. However, company directors and designated members of an LLP will not be personally liable if they can show that they took all reasonable steps to ensure that the requirements would be met.

It will also be an offence for a person to knowingly or recklessly publish a report, information or statement that is misleading, false or deceptive in a material manner.

⁴ Duty to report on payment practices and performance - Guidance to reporting on payment practices and performance. January 2017.

⁵ See Section 2 of the Small Business, Enterprise and Employment Act 2015 for the definition of financial services.

Road map to reporting

Below is an example road map for complying with the Regulations. Please refer to the reporting deadlines table on page five for your specific timings.



Five things for you to think about now...

- 1. Data quality:**
 - Which entities and contracts qualify?
 - Do current ERP systems have all the necessary data points, such as invoice receipt date?
- 2. Reputation:**
 - What are the possible reputational implications of disclosing the data?
- 3. Impact:**
 - What are the implications on the wider business (e.g. cash flow) if payment practices need to be changed?
- 4. Capacity:**
 - Who will be responsible for performing the calculations, given the deadlines for the disclosures?
- 5. Accountability:**
 - Which director will review and sign-off the data?

Responding to these Regulations may impact your reputation, your working capital and your supplier relationships.

Our team has the skills to:

- Rapidly generate the required reporting submissions for your business and help you understand the nature and implications of what you will be disclosing
- Help you plan, design and implement changes needed to meet the requirements on an ongoing basis
- Identify and address the wider implications to manage the business impact of the Regulations

If you would like any further information about any of the issues covered here, please do not hesitate to contact us.

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