

## Quick Guide to the Reporting on Payment Practices and Performance Regulations 2017

Large UK companies are now under an obligation to report, on a central government website, on their policies and practices regarding payment of invoices. This quick guide tells you who is covered and what they have to do.

1. What's happening?	New regulations require certain companies to report on their payment practices, policies and performance.
2. Who?	<p>Broadly, large companies and LLPs incorporated in the UK. A company or LLP falls within the regime if, on its last two balance sheet dates, it exceeded two of the following three thresholds:</p> <ul style="list-style-type: none"> <li>• £36 million annual turnover;</li> <li>• £18 million balance sheet total;</li> <li>• 250 employees.</li> </ul> <p>These thresholds are those used to identify medium-sized companies for the purposes of the accounting provisions of the Companies Act 2006. They tend to change from time to time, so companies should keep an eye on them even if they are not currently caught.</p> <p>The government estimates that there are currently around 15,000 companies and LLPs within the scope of the new requirements.</p>
3. How?	Companies must publish certain information about their payment practices on a digital platform provided by the government on the .gov.uk website. Information must be published twice a year.
4. When?	The regulations came into force on 6 April 2017 and apply for financial years beginning on or after that date. The first wave of reporting companies are those with a 5 April year end. See Q8 for more on reporting dates.
5. Why?	<p>The government has long been concerned with the impact on suppliers of larger businesses failing to pay them on time. There has been legislation in this area since 1998 when the Late Payment of Commercial Debts (Interest) Act started allowing businesses to charge interest of 8% above base rate on late payments and to claim administration costs and impose maximum 60 day payment terms unless agreed otherwise. Suppliers failed to take up their rights under this legislation fearing they would be blacklisted by important customers.</p> <p>Specific measures in the grocery, construction and public sectors followed, and in 2008 the Prompt Payment Code was set up by the Institute of Credit Management on behalf of the government.</p> <p>Responses to a government discussion paper issued in 2013 showed a clear desire for transparency around payment practices but a reluctance to have defined payment periods imposed by statute. The Small Business, Enterprise and Employment Act 2015 therefore gave the government power to issue regulations requiring increased transparency.</p>

<p><b>6. What information has to be reported?</b></p>	<p>Companies within scope will have to provide information on their payment practices in relation to “qualifying contracts” (see Q7). Primarily, this is:</p> <ul style="list-style-type: none"> <li>• a <i>narrative description</i> of the company’s payment terms and its process for resolving payment disputes;</li> <li>• <i>statistics</i> on the average number of days it takes to pay, the percentage of payments made within certain periods and the percentage of payments falling due within the payment period but not made within it; and</li> <li>• <i>tick box statements</i> about whether it makes e-invoicing and supply chain finance available, whether it asks for “pay to stay” payments and whether it is a signatory to a payment code.</li> </ul> <p>Payments to be included in the first two statistics in the second bullet point are those made during the relevant reporting period, regardless of when they were due. Percentages are to be calculated by reference to volume of payments, not value.</p> <p>The information must be aggregated across all qualifying contracts.</p>
<p><b>7. What is a qualifying contract?</b></p>	<p>A contract for goods, services or intellectual property entered into by two or more parties each in connection with their business. Contracts for financial services are excluded. The contract must have a <i>significant connection</i> with the UK. Simply being governed by the law of a part of the UK is not enough to constitute a significant connection, but performance of the contract in the UK is, as is one or more parties being established in the UK or carrying on a relevant part of their business in the UK. There is helpful case law on the 1998 Late Payment Act, which has a similar “significant connection” requirement.</p>
<p><b>8. How often must information be reported?</b></p>	<p>Generally, twice a year.</p> <p>Companies will have two reporting periods a year:</p> <ul style="list-style-type: none"> <li>• the six months beginning with the first day of their financial year; and</li> <li>• the remainder of the financial year.</li> </ul> <p>A report must be made within 30 days of the end of each reporting period.</p> <p>Companies with a 5 April year end will be first under the spotlight. Their first reporting period will be 6 April 2017 to 5 October 2017 so their first report will be due by 4 November 2017.</p> <p>The first reporting period for companies with a 31 December year end will be 1 January 2018 to 30 June 2018 with the first report due by 30 July 2018.</p> <p>If an accounting reference period is extended by more than three months there will be an additional reporting period for that financial year.</p>
<p><b>9. What is the sanction for non-compliance?</b></p>	<p>The chief sanction is intended to be public pressure due to the free availability of the information.</p> <p>There are legal sanctions provided though:</p> <ul style="list-style-type: none"> <li>• failure to publish a report containing the necessary information is a criminal offence by the company and every director of it; and</li> <li>• knowingly or recklessly publishing a report with false, misleading or deceptive information is also a criminal offence.</li> </ul> <p>Both are punishable with a fine.</p>

<p><b>10. What if I don't agree with an invoice that a supplier has sent me?</b></p>	<p>The government's intention is that disputed invoices should be included in the statistics. So, companies must include the disputed invoice in the calculation of the percentage of payments falling due within the relevant payment period but not made, and must then include any payment, when made, in the calculation of the average number of days taken to pay and the percentage of payments made within certain periods.</p> <p>The government's aim is to avoid larger businesses routinely disputing invoices as a way of deferring payment. However, the terms of the relevant contract will have to be considered in each case. It may be that, on a legal analysis, a genuinely disputed payment to a supplier has not actually "fallen due", particularly under more complex contracts.</p> <p>Payment disputes with small businesses will also be within the remit of the Small Business Commissioner, once he or she is appointed and established.</p>
<p><b>11. What about groups? Do they report on a consolidated basis?</b></p>	<p>No. Reporting is on an individual company basis, and only qualifying group companies have to report (see Q2). The size of the group is relevant, though, for parent companies, who only have to report if, on each of their last two balance sheet dates, they exceeded two or more of the thresholds AND their group exceeded two or more of the group thresholds, which are as follows:</p> <ul style="list-style-type: none"> <li>• £43.2 million annual turnover (aggregate for all group companies);</li> <li>• £21.6 million balance sheet total (aggregate for all group companies);</li> <li>• 250 employees (aggregate for all group companies).</li> </ul>
<p><b>12. My company is likely to come within the regime. Is there anything I can do now to prepare?</b></p>	<p>Ensure your organisation can:</p> <ul style="list-style-type: none"> <li>• identify the date on which invoices are received, as this is the date from which payment periods are measured;</li> <li>• track payment dates for individual invoices; and</li> <li>• report for all qualifying group companies individually.</li> </ul> <p>Ensure your accounting and procurement teams understand the technicalities, and perhaps also the spirit, of the new rules.</p> <p>Finally, consider analysing the payment provisions in your standard terms of business to ensure they are clear about when payments fall due particularly in relation to genuine disputes under long term or complex contracts.</p>

If you have any questions or require specific advice on any matter discussed in this update, please contact:



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