Department for
Business, Energy
& Industrial Strategy

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

Pursuant to regulation 11(1) of the Reporting on Payment Practices and Performance Regulations 2017 and regulation 11(1) of the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017

05 April 2022

Any enquiries regarding this publication should be sent to us at:
responsiblepaymentculture@beis.gov.uk

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Ministerial foreword

I am pleased to publish this report on the 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 Payment Practices Reporting duty aims to increase transparency in payment behaviour to drive improvements in payment practices. It also aims to assist suppliers – particularly small businesses, which can be particularly impacted by late payment – 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 review assesses the extent to which the Regulations have achieved their objectives and if there have been any unintended effects of the Regulations. It also looks at whether an alternative approach imposing less regulation could achieve the policy objectives better. I would like to thank all those who took the time to provide their views and evidence.

Late payment remains a significant problem for small businesses across the UK. Government has been proactive in attempting to stamp out the worst kind of poor payment practices to support small businesses who are least able to cover financial shortfalls and find temporary finance more difficult and more expensive to obtain.

Fast payment is very important to firms that aim to invest in training and skills, equipment, reaching Net Zero, innovating and creating jobs. We want to continue to help to build a culture of prompt payment between companies and challenge UK businesses to change their practices and stand by small partners at a critical time for the UK's economic recovery.

Executive summary

1. Regulations made under sections 3 and 161(2) of the Small Business, Enterprise and Employment Act 2015 (the Act) (and, for limited liability partnerships (LLPs), made under sections 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. They apply in relation to England, Scotland, Wales, and Northern Ireland.

2. The legislation governing the reporting requirements for companies is in the Reporting on Payment Practices and Performance Regulations 2017[1] and for LLPs, the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017[2].

3. The policy objectives of the reporting requirement are twofold; firstly, to increase transparency and public scrutiny of large businesses' payment practices and performance and secondly to give small business suppliers better information so they can make informed decisions about who to trade with, negotiate fairer terms, and challenge late payments.

4. 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.

5. A call for evidence was launched by the Minister for Small Business on 17 November 2021 and twenty-three responses were received from a range of stakeholders. Government has reviewed all views and evidence and has utilised statistical evidence provided by Government analysts, including consideration of the impact assessment that accompanied the Act and associated regulations, to assess the extent to which the Regulations have achieved their objectives and if there have been any unintended effects of the Regulations.

6. It is Government's assessment, based on the views and evidence submitted by stakeholders to the call for evidence, that we will now undertake a further consultation on the Regulations before we decide whether to amend the expiry date to extend the Regulations beyond 6 April 2024. This will provide an opportunity to consult on any other potential amendments to the Regulations resulting from the views expressed by those who took the time to respond to this review.

[1] SI 2017/395

[2] SI 2017/425

The Reporting on Payment Practices and Performance Regulations– including the Regulations as applied to LLPs

Rationale for intervention

7. 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 drew the conclusion that customers who do not pay on time cause problems for suppliers, affecting their cash flow, diverting resources towards chasing payment and potentially incurring costs of covering cash flow shortages through raising external finance. When suppliers are entering into contracts with customers, they may lack information on the reliability of the customers in terms of paying on time.

8. Government committed to intervene by developing a reporting framework to bring greater transparency on payment practices and performance, overcoming the asymmetry of information between large businesses and their suppliers to seek to put suppliers 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 when it happened. The aim was to increase the incentives on businesses to improve their payment practices and performance, reducing the overall level of late payment between businesses.

9. As a result, the Small Business, Enterprise and Employment Act 2015 introduced a new duty on large UK companies to report on payment practices and policies, which was implemented in 2017 through The Reporting on Payment Practices and Performance Regulations 2017.

The Regulations

10. Large companies and large limited liability partnerships (LLPs) are required under the Regulations to publish information about their payment practices and performance twice per financial year. 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.

Businesses which need to report

11. 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

12. 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.

13. At the time of publication, these general thresholds are:

- £36 million annual turnover
- £18 million balance sheet total
- 250 employees

14. 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 55 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008).

Reporting obligations

15. Businesses in scope of the reporting requirement must prepare and publish information about their payment practices and performance in relation to qualifying contracts[3], 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.

16. 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.

17. 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

[3] 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.

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

18. 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)

19. Narrative descriptions of:
    - the business' 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
        - the business' process for resolving disputes related to payment under a qualifying contract

20. Tick box statements about:
    - whether suppliers are offered e-invoicing
    - whether supply chain finance is available to suppliers
    - whether the business' practices and policies cover deducting sums from payments as a charge for remaining on a supplier's list, and whether they have done this in the reporting period
    - whether the business is a member of a payment code, and the name of the code

The sanctions if a business does not comply

21. 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.

22. 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 if they knew, or were reckless, about it being false or misleading at the time it was made. This applies to businesses and individuals.

23. These offences are punishable on summary conviction by a fine.

24. Since a new compliance approach was announced in June 2019, Government has initiated the formal enforcement process against several companies who neglected their statutory duty to report. This has led to full and swift compliance in all of those cases.

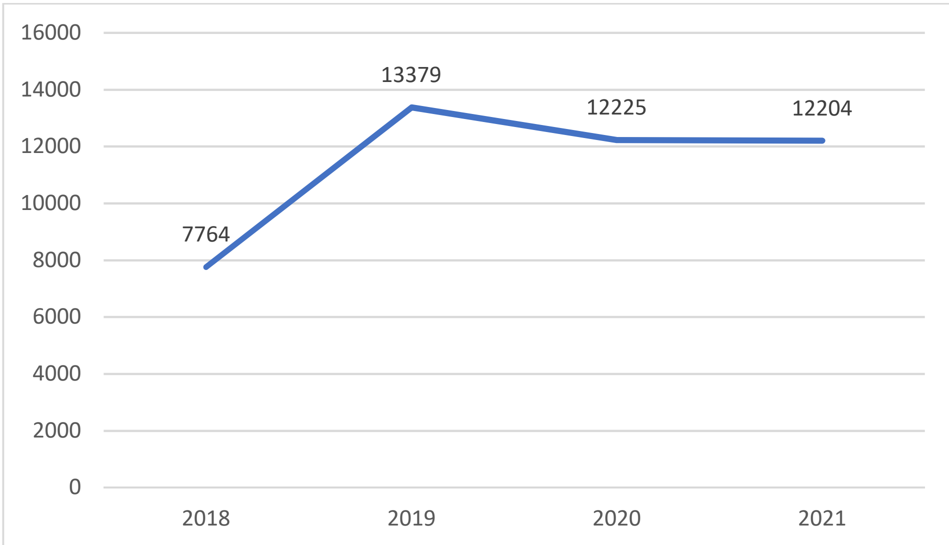
Analysis of Payment Practices Reporting Data

Number of reports published

25. As at the end of February 2022, around 50,000 reports on payment practices had been submitted and published on the gov.uk website[4] by around 8,000 businesses.

26. After an initial growth period in reporting with a peak of over 13,000 reports in 2019, reports per year have stabilised at over 12,000 per year. The drop from 2019 to 2021/2022 levels of reporting might be attributed to Covid-19, so we would expect to see an increase in reporting levels increase in 2022/23.

Figure 1: Number of reports published by calendar year



Source: Analysis of payment practices data submitted and published on the gov.uk website.

Average time to pay

27. Yearly average figures for average time to pay invoices has remained stable over the period 2018 to 2021, at 37 days.

Table 1: Average of businesses' average time to pay by calendar year

	Average time to pay
2018	37.2
2019	37.0
2020	36.9
2021	37.2

Source: Analysis of payment practices data submitted and published on the gov.uk website.

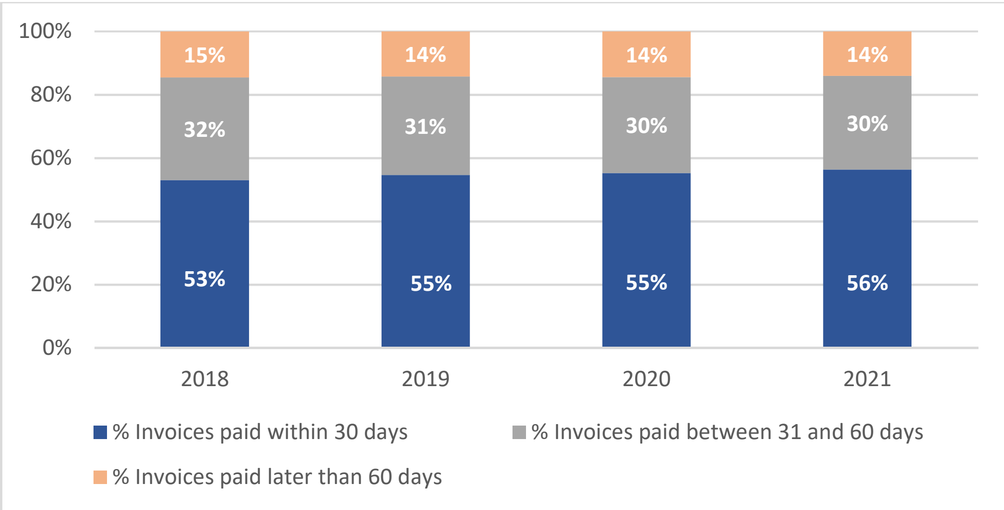
[4] https://check-payment-practices.service.gov.uk/export

Distribution of reported average time taken to pay invoices

28. Since 2018 there have been improvements in the overall speed that invoices are paid, with a 3% increase in the number of reporting businesses paying their invoices within 30 days.

29. In 2021, on average, businesses paid over half (56%) of invoices within 30 days, less than a third (30%) between 31 and 60 days, and 14% later than 60 days.

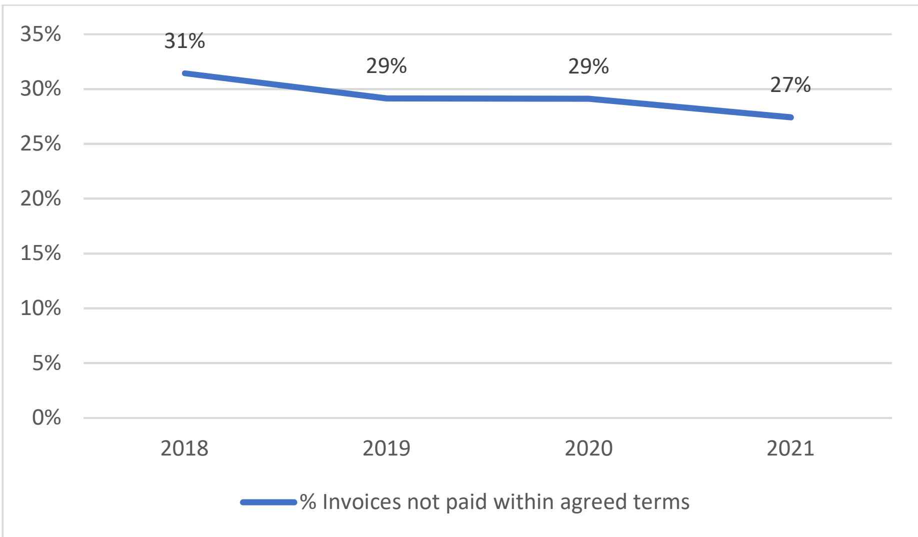
Figure 2: Percentage by business averages of invoices paid within timeframes by calendar year



Source: Analysis of payment practices data submitted and published on the gov.uk website.

30. Between 2018 and 2021, there has been a steady decrease of 4% in the percentage of invoices not paid within agreed terms by reporting businesses.

Figure 3: Percentage by business averages of invoices not paid within agreed terms by calendar year



Source: Analysis of payment practices data submitted and published on the gov.uk website.

Businesses that have stopped reporting

31. Around 1,200 businesses have previously reported their payment practices and reporting data but have since ceased reporting. There could be several reasons for this, the most common being that the business is no longer required to publish due to no longer exceeding two of the three reporting thresholds. Other reasons a business may no longer be required to report could be due to company restructuring, sale or disposal of previously reporting subsidiaries, mergers and acquisitions or staff and administrative changes leading to the reporting process being discontinued in error.

32. As it is a criminal offence to fail to report, Government will periodically write to directors of companies who have failed to comply, to flag that their report is overdue and to remind them of their duty to report. Letters also provide information on how to report, the penalties for not reporting, and links to the reporting portal, guidance and relevant legislation.

Businesses that are signed up to a payment code

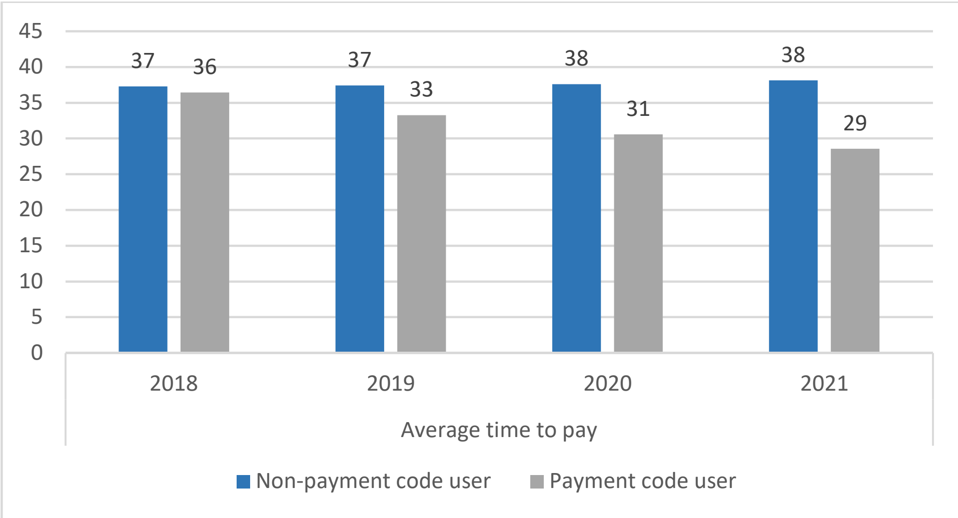
33. A payment code is a voluntary initiative, where signatories agree to undertake certain behaviours as a mark of good practice. The Prompt Payment Code is an example of this; signatories undertake to pay suppliers on time, give clear guidance to suppliers and encourage good practice.

34. The data indicates that businesses that report and are also signed up to a payment code have better payment times and are more likely to pay within the agreed terms.

35. In 2021, businesses signed up to payment codes paid their suppliers, on average, 24% faster than those businesses not signed up to payment codes, with 29 days and 38 days being the respective average times to pay.

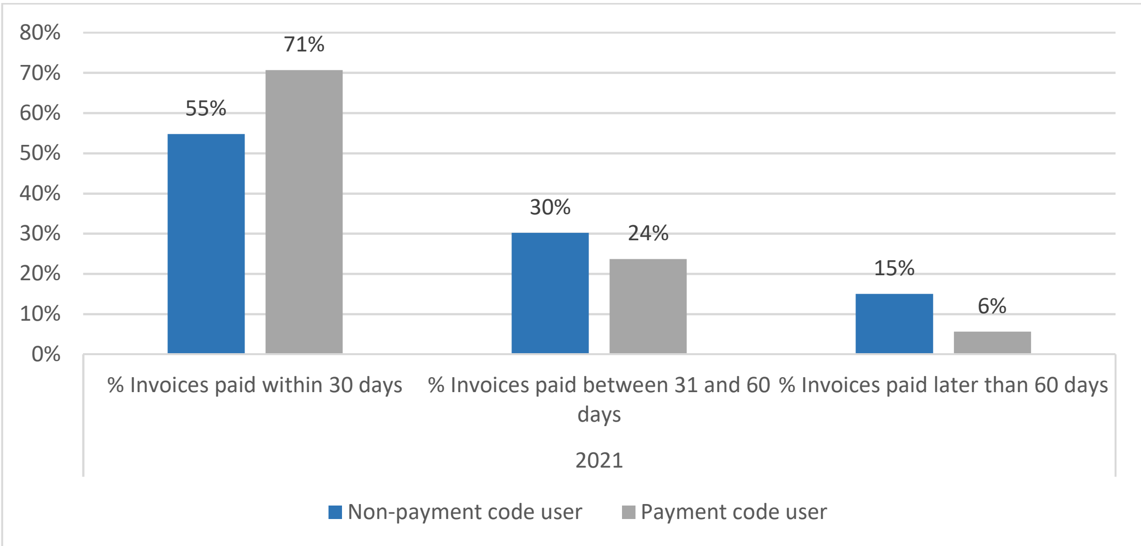
36. Businesses signed up to a payment code showed year-on-year reductions in their average time to pay, falling from 36 days to 29 days over the period from 2018 to 2021. Over the same period, businesses not signed up to a payment code remained largely stable at 37/38 days.

Figure 4: Payment code-using businesses against non-payment code-using businesses' average time to pay



Source: Analysis of payment practices data submitted and published on the gov.uk website.

Figure 5: Percentage by business averages of invoices paid within timeframes, by calendar year

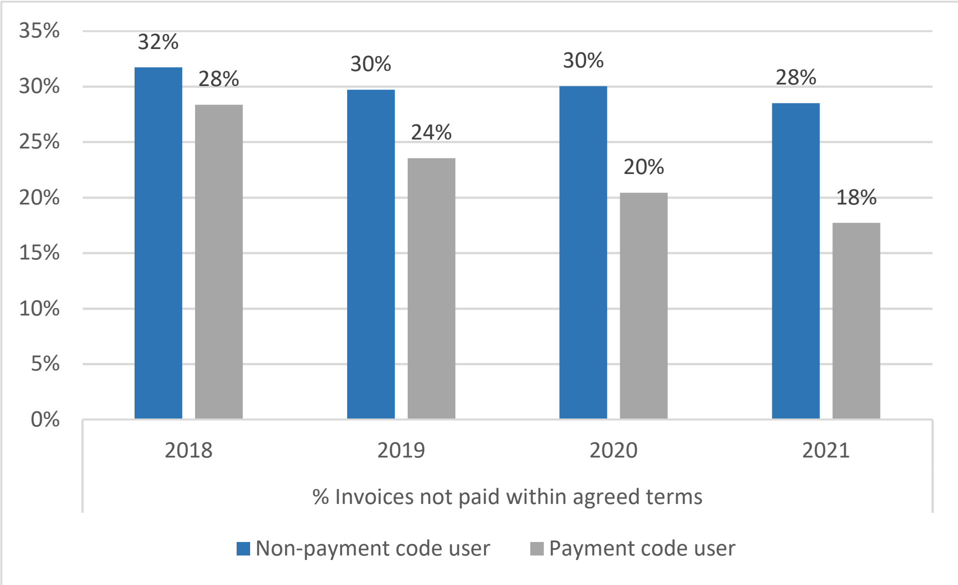


Source: Analysis of payment practices data submitted and published on the gov.uk website.

37. In 2021, those businesses signed up to a code were, on average, around 10% more likely to pay within agreed terms than businesses not signed up to a code, with 18% and 28% of invoices not paid within agreed terms respectively.

38. Businesses signed up to a code demonstrated year-on-year reductions in their average invoices not paid within agreed terms, falling from 28% to 18% over the 2018 to 2021 period. Businesses not signed up to a code demonstrated a much smaller improvement, of only 4% over the same period.

Figure 6: Percentage by business averages of invoices not paid within agreed terms, by calendar year



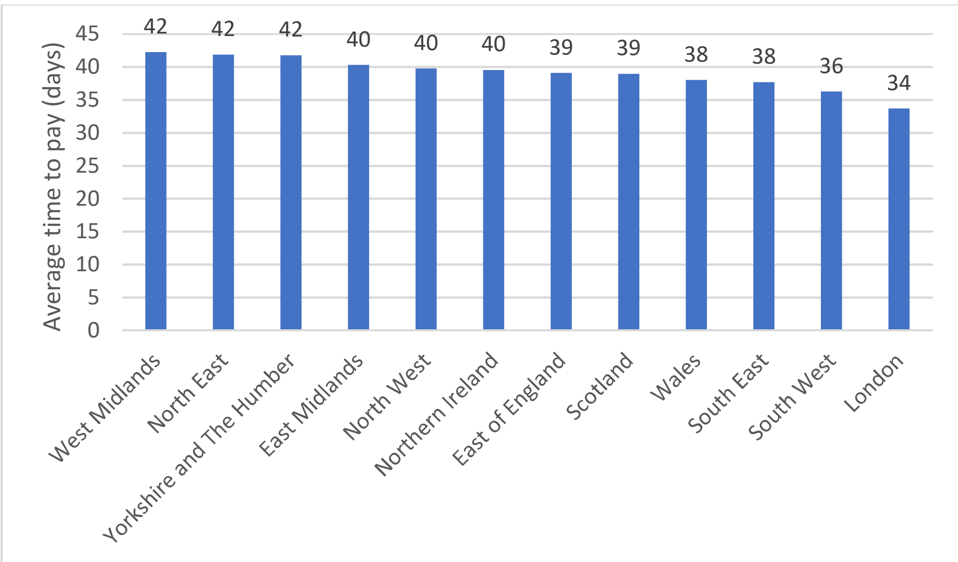
Source: Analysis of payment practices data submitted and published on the gov.uk website.

Regional summary

39. In 2021, the majority (10 of 12) of regions had a similar average time to pay of between 38 and 42 days. Only London and the Southwest had lower than 38 days average time to pay, with 34 and 36 days average respectively.

40. The south and east regions of England had lower average times to pay than the northern and western regions.

Figure 7: Average of businesses' average time to pay by region

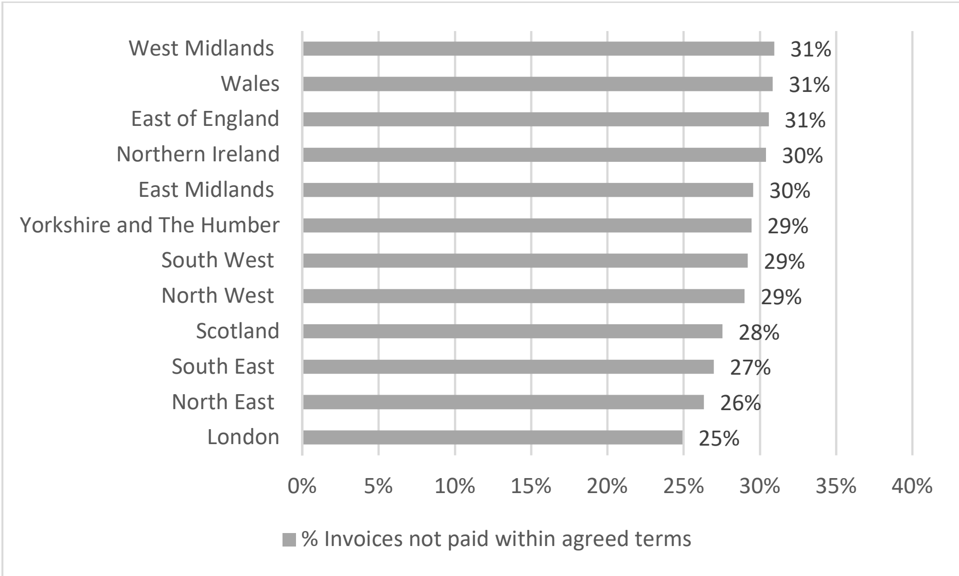


Source: Analysis of payment practices data submitted and published on the gov.uk website in conjunction with FAME data.

41. In 2021, the majority (8 of 12) of regions had a similar rate of invoices not paid within agreed terms of between 29% and 31%. The rest had lower rates of between 25% to 28%, with London having the lowest rate of invoices not paid within terms at 25%.

42. Unlike average time to pay, there was not a clear split between the south and east regions of England to the northern and western regions for rate of invoices not paid within terms.

Figure 8: Percentage by region of business averages of invoices not paid within agreed terms



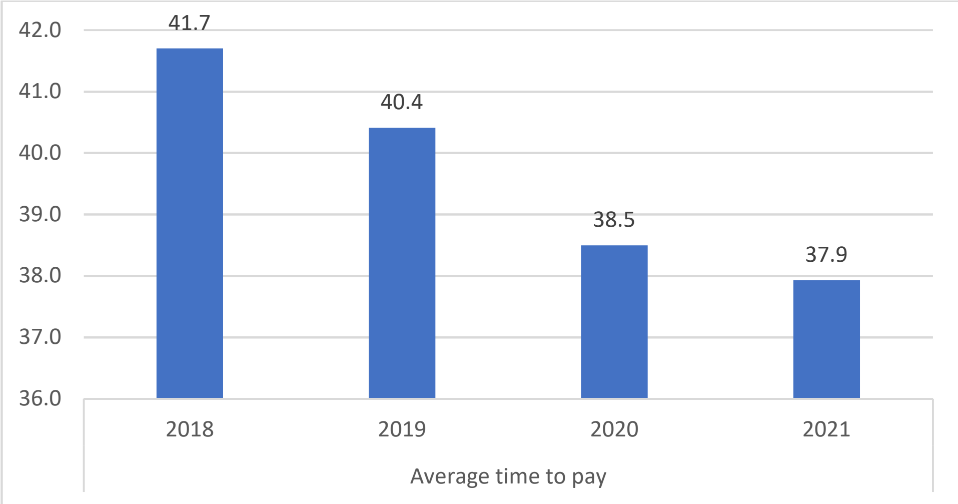
Source: Analysis of payment practices data submitted and published on the gov.uk website in conjunction with FAME data.

Payment Practices Reporting in the construction sector

43. Historically, the time taken to pay suppliers in the construction industry has been longer than in other sectors. The Regulations have had a positive impact on the payment performance in this sector, with representative bodies such as Build UK using the reporting data to benchmark its members and the wider industry in a payment table, enabling comparisons of large companies in the construction sector. This allows suppliers to make more informed decisions and drive good practice.

44. The impact on this sector can be seen in the data, where a steady fall in average time to pay from 42 days to 38 days is evidenced, over the 2018 to 2021 period.

Figure 9: Average time to pay in the construction sector (days)

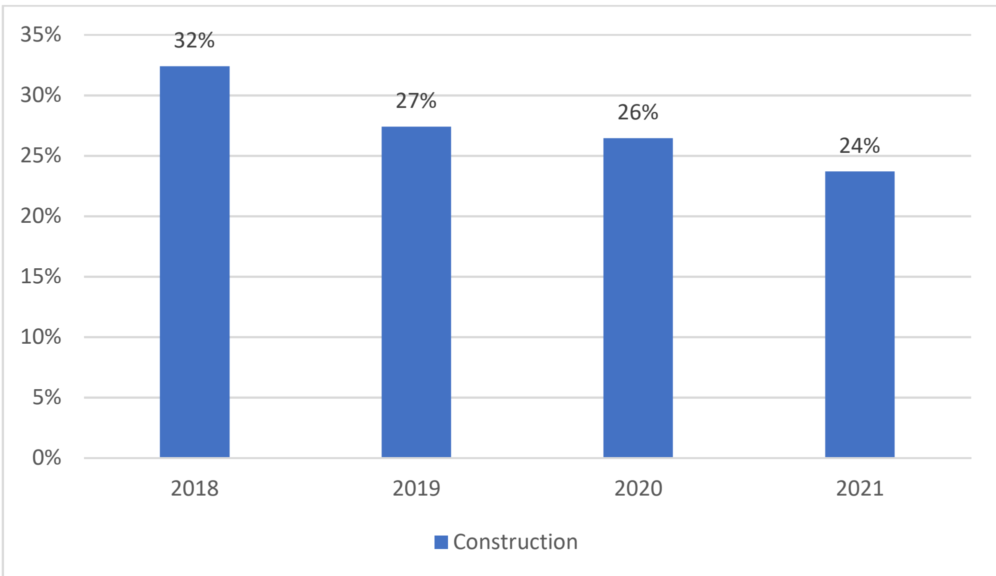


Source: Analysis of payment practices data submitted and published on the gov.uk website in conjunction with FAME data.

45. Over the period 2018 to 2021, the construction sector has seen a reduction in invoices not paid within agreed terms, from 32% to 24%.

46. In 2018, the construction sector was higher than the overall reporting population average of invoices not paid within terms, whereas by 2021 it fell below the population average.

Figure 10: Percentage of construction business averages of invoices not paid within agreed terms



Source: Analysis of payment practices data submitted and published on the gov.uk website in conjunction with FAME data.

Government's review

47. This section summarises Government's findings from the review and its proposed next steps, including any revisions to the Regulations.

Objectives intended to be achieved by the Regulations

48. The objective of the policy was to bring greater transparency on payment practices and performance to overcome the asymmetry of information regarding payment processes between large businesses and their suppliers.

49. By making this information easily accessible suppliers would have a better understanding of what to expect from their customers, and therefore be in a better position to:

- make an informed judgment on whether to enter into a commercial relationship (e.g. whether terms are fair and whether they are likely to be observed, so avoiding the cost of chasing late payments);
- negotiate fair terms;
- have information making it easier to challenge late payment.

50. The effect of the policy was envisaged to be that:

- the availability of this information should provide incentives on businesses to improve payment practices to distinguish themselves from their peers or at least to prevent being exposed as poor performers relative to their peers; and
- it should make it easier for business representative bodies, suppliers and other businesses to identify late paying businesses and put commercial and reputational pressure on these businesses to pay promptly.

51. It was envisaged that over time these effects would help change business culture in the direction of normalising prompt payment. The availability of information better informs choices for suppliers ahead of entering contracts, and increased transparency and accountability of payment performance continues to drive behaviour change and reduce incidence of late payment in the economy.

The extent to which the Regulations are achieving their objectives

The Regulations aim to bring greater transparency

52. There was largely positive feedback from respondents that the Regulations have brought greater transparency on payment practices and performance, with 92% either agreeing or strongly agreeing.

53. There was a consensus from several respondents that the existence of the Regulations has brought greater transparency as, prior to their introduction, there was simply no option to allow businesses to look at the payment performance of their customers. Further, it was noted that the visibility of a businesses' payment practices over time has enabled supply chain partners and competitors to make key decisions on who they do business with. This in turn has created an incentive for in-scope businesses to review and improve their payment practices to ensure they remain attractive to potential suppliers.

54. Several respondents noted that the Regulations, in conjunction with other Government initiatives such as the Small Business Commissioner and the Prompt Payment Code, have improved transparency and hold to account those large businesses with the greatest financial power. They considered this has provided suppliers with leverage to improve their commercial performance.

55. Respondents from the construction sector were generally positive about the impact of the Regulations, 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'.

56. However, some respondents felt that, while the Regulations create transparency and an ability to identify poor payments practices, it was still too early to measure their actual impact. It was suggested that, while on the surface the Regulations provide transparency, there were limitations to this. They suggested that as the first objective of the Regulations is to encourage small businesses to make an informed judgment on whether to enter into a commercial relationship with a particular business, it was essential that the data should be accurate and capable of being relied upon. Some respondents felt that, while public scrutiny of large businesses is beginning to gain traction, the Regulations don't yet have sufficient exposure to push them high up on the agenda of large business. They thought that transparency is therefore undermined because they perceive that many businesses who should be reporting are failing to do so.

57. There were also concerns raised over businesses allegedly using group reporting to muddy the waters around the transparency of their reported data. The point was made that groups are often structured quite differently from individual (single company) businesses, making it difficult to compare a group reporting under one legal entity, against a group structured under multiple legal entities. Some respondents suggested that businesses using group

reporting are deliberately masking poor performance within their reporting of subsidiary companies, reporting average figures to mask extremes.

58. Some respondents highlighted concerns that the reporting data only captures the volume of transactions paid within terms, and not the value of transactions paid within terms, and the inability to distinguish between high-value supply chain payments and small low-value payments means that there is only transparency on the volume of payments rather than their true value.

The Regulations aim to help overcome the asymmetry of information

59. Feedback from respondents on whether the Regulations have helped overcome the asymmetry of information regarding payment practices and performance between large businesses and their suppliers was mixed, with 46% of respondents agreeing, while 33% disagreed, and 17% neither agreeing nor disagreeing.

60. There was positive feedback from several respondents that having payment performance data publicly available in an easily accessible way on gov.uk has made it easy for suppliers to obtain information on payment performance, helping to overcome the asymmetry of information that previously existed. Others commented that the accessibility of information has provided some support in their decision making when bidding for work and provided some clarity to make comparisons between businesses' payment practices and performance, providing a 'temperature test' as to whether a business will meet their expected standards of payment.

61. Conversely, some respondents suggested many SMEs are unaware of the Regulations and how to access the reporting data or have limited capacity to engage with issues beyond the day-to-day operational running of their business. Therefore, they suggest, the asymmetry of information is not being sufficiently addressed if suppliers do not know that the service is available. Some commented that the report data should be made more accessible to the public, with Government increasing awareness of the service. It was also suggested that legislation should be amended to make it a legal requirement for businesses include their payment and performance information their annual report.

62. Similarly to objective one, respondents commented that asymmetry of payment performance information will always exist whilst there is no requirement for reporting businesses to report on the value of invoices paid within terms, as opposed to reporting purely on volume. Their view is that the lack of this 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.

63. Some respondents also commented that the Regulations don't currently include a separate reporting requirement for the percentage of invoices paid to SMEs within 30 days, thus making it difficult to scrutinise a reporting business's payment performance specifically for their SME supply chain. It was argued that this would be more valuable to a supplier, as the average payment days metric does not provide enough detail on performance, where a

business has different payment terms for different size suppliers (e.g., 30 days for SMEs, with standard payment terms being longer).

The Regulations aim to help businesses better understand what to expect from their customers

and therefore be in a better position to:

- **make an informed judgment on whether to enter into a commercial relationship**
- **negotiate fair terms**
- **have information making it easier to challenge late payment.**

64. Stakeholder views for objective three were mixed, with 37% of respondents either agreeing or strongly agreeing, while 25% either disagreed or strongly disagreed, with 33% neither agreeing nor disagreeing.

65. Several respondents agreed that the Regulations have provided transparency and a consistent means of comparing performance, which is essential to changing the culture around payment. It was also stated that having visibility of average payment terms and percentage of invoices paid within terms helps make an informed commercial judgment of whether to enter into a commercial relationship, and therefore put them in a better negotiating position.

66. However, it was clear from several respondents that, despite good intentions, the effects of the Regulations were limited in this regard. They suggested the Regulations in themselves were unlikely to empower suppliers to negotiate better terms than those the larger business was willing to offer. This is driven by the bargaining strength of the parties, with the larger business in a stronger financial position, coupled with the fear from the smaller supplier that business will simply be taken elsewhere, or that they will gain a reputation of being difficult to trade with. It was suggested this position of unbalance will outweigh any negotiating power provided by the information provided by the Regulations.

The Regulations aim to provide incentives on businesses to improve payment practices

67. 62% of respondents either agreed or strongly agreed that the Regulations provide incentives to improve business practices, while 17% either disagreed or strongly disagreed, with 21% neither agreeing nor disagreeing.

68. Several respondents agreed that having their payment practices and performance data in the public domain encourages businesses to seek to improve. It was suggested that public awareness of how a business treats its smaller suppliers can create a strong reputational incentive to improve and conduct themselves fairly. Additionally, it was suggested that with the reputation and responsibility being not only with the business, but also with board members held accountable and individual directors carrying personal legal liability if the reporting is not accurate or complete, there is greater incentive to strive to improve.

69. Some respondents noted that, while the Regulations do not provide a direct incentive to improve payment practices, they have created focus due to these reputational impacts, as well as drive from within the industry and evolving client requirements. It was noted that in some instances, CFOs and CEOs of large businesses have stood up and taken note of their payment practices at a level they previously would not have been involved with, which has naturally led to an improvement in the leadership culture of those businesses.

70. It was also noted that the Regulations have provided a ‘catalyst enabler’ for other initiatives in the payment landscape, for example the Prompt Payment Code, payment league tables and open source platforms such as those provided by the Good Business Pays campaign and Build UK (discussed in the next section).

71. It was reported that, while the collection of accurate and timely data in order to comply with the Regulations has been a challenge, many businesses have seen it as an opportunity to replace outdated payment systems and streamline processes effectively and smartly analyse their payment data to ensure they can keep on top of regulatory compliance and improve the efficiency and speed of payments. They noted there has also been evidence of large businesses providing help and guidance to their SME suppliers in areas such as how to submit invoices correctly to ensure prompt payment.

72. However, some respondents felt that, while some businesses may be aware of the potential reputational damage from being identified as having poor payment practices, it was too early to assess whether there was widespread improvement in payment practices. It was suggested that many businesses still appeared to be failing to publish their performance data with little apparent consequence for businesses that continue to not pay on time. It was noted that, at present, there was no validation process for businesses when submitting their data, meaning what is submitted is effectively self-certified. This was seen as a concern unless Government addressed this by introducing a validating process for existing data to ensure accuracy.

The Regulations aim to make it easier for business representative bodies, suppliers, and other businesses to identify late paying businesses and put commercial and reputational pressure on these businesses to pay promptly

73. 67% of respondents either agreed or strongly agreed with objective five, while 17% either disagreed or strongly disagreed, with 13% neither agreeing nor disagreeing.

74. Several respondents agreed that the increased transparency provided by the Regulations has made it easier for representative bodies to apply reputational pressure on late paying businesses to improve their practices, thus putting data in the hands of those who have more substantive power than individual suppliers alone. This has allowed business representative bodies to actively promote to their members, contracting opportunities where the customer has demonstrated good payment performance and, likewise, refuse promotion of such opportunities to customers with poor performance.

75. It was noted by respondents that small suppliers generally do not have accounts departments and are currently extremely busy running their day-to-day business, therefore

are not in a position to put enough pressure on a big business customer for faster payment. They reported the Regulations have therefore been invaluable in helping identify those businesses with poor payment performance and allowing business representative organisations to open a dialogue with those businesses, to 'name and shame' and widely publicise those businesses with poor payment performance.

76. This has been evidenced by the Good Business Pays campaign, that uses the payment practices and performance data via an online portal where businesses can search their client's payment record, thus putting reputational pressure on businesses to pay promptly. The campaign, backed by some of the UK's largest business representative groups (Federation of Small Businesses, Confederation of British Industry, Make UK, the Institute of Directors, British Chambers of Commerce and the Creative Industries Federation) calls out poor payment practice and awards their Good Business Pays badge to businesses who demonstrate good practice in fast and on-time payments to their smaller suppliers.

77. The Federation of Small Businesses stated in their evidence that they have also enabled member organisations to work directly with large businesses with historic poor payment performance and put in place programmes to help turn this around. They state this collaborative approach has been their preferred method of using the payment reporting data, rather than inciting commercial and reputational pressure on any one business.

78. The Construction industry has historically suffered from high levels of late payment. This sector has used the Duty to Report data to 'provide the transparency needed to empower the supply chain and to apply peer pressure on contractors and clients to make the changes required'. For example, the reporting data has enabled Build UK, a leading representative body in the construction industry, to benchmark its members and the wider industry in a payment table made available on its website, that enables comparisons of large companies in the construction sector.

79. In addition, the Office of the Small Business Commissioner, who administer the Prompt Payment Code on behalf of BEIS, use reporting data where appropriate to measure the compliance of its signatories against the requirements of the Code, which the majority of Build UK contractor members have signed up to.

80. The Build UK model has been widely praised by wider business representative bodies and Government as a good model for trade organisations across other sectors to adopt where they publish league tables on their members' performance, to identify poor performing businesses and put commercial pressure on those businesses, raise awareness of the need to pay promptly, and drive improvements in their payment behaviour.

81. Some respondents noted that the Regulations have enabled Government to monitor the payment performance of its suppliers and challenge where performance needs to improve. It has also enabled Government buyers to easily assess whether businesses are meeting the minimum payment performance standards expected when bidding for Government contracts above £5 million per annum.

82. Conversely, it was suggested that, despite the best of intentions by Government, the Regulations have failed to increase pressure on large business to any great extent, and where business do report, there is little or no public awareness of the data that is disclosed. It was suggested that even within a poor performing business, there will be many board members unaware of the extent of its own poor payment practices.

Unintended effects of the Regulations?

83. Views on whether there were unintended consequences from the Regulations were mixed, with 38% of respondents saying they thought there were unintended consequences while 29% thought there weren't any, and 25% said they didn't know.

84. Several respondents stated that the Regulations have caused considerable bureaucracy, with companies incurring significant cost, time and resources to ensure they are set up to report, some with the view that the end product is largely unused by their suppliers. Such effects were anticipated in the original consultation and impact assessment process, but still entail significant resource.

85. Some respondents stated that the Regulations do not take disputed invoices into consideration, which ultimately pushes any inefficiency in resolution to the supplier as their payment is ultimately late. They say this can result in suppliers suffering a shortfall in cash flow. It is Government's view that disputed invoices which fall due in the reporting period and are not paid should be included in the statistics that record the proportion of invoices which were not paid within agreed terms. Any disputed invoices that have been paid in a given reporting period should be included in the statistics for that period 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 less, between 31 and 60 days, and in 61 days or longer).

86. Further, it was reported that a desire to make fast payment to drive down a business's average payment times can sometimes lead to partial payments to suppliers, rather than being paid in full and on time. This is clarified in guidance to the Regulations[5], where it states that invoices which are partially paid without the agreement of the supplier should be reported in the same way as disputed invoices. If an invoice is partially paid by mutual agreement, for example, in monthly instalments, the payments can be reported as having been paid in full providing the instalments are made on time. In this instance, the "receipt of invoice" date would be the day after the latest instalment was paid, as with direct debits.

87. Feedback suggested that it is difficult to distinguish between businesses who pay late as part of their business model, and those who might be paying late for legitimate reasons, for example, due to the economic effects of Covid-19 or the commercial environment within which they sit. The feedback suggests this results in all late payers being grouped under one umbrella of negativity. Therefore, it is essential that trends are assessed, and the economic climate understood.

[5] Page 23, Guidance to reporting on payment practices and performance: https://www.gov.uk/government/publications/business-payment-practices-and-performance-reporting-requirements

88. Further concerns were highlighted where, because reporting data only captures the volume of transactions, and not the value of transactions, the Regulations incentivise companies to prioritise settling large numbers of low-value invoices to boost their ‘volume of transactions paid within terms’ figures, which could be obscuring the true picture of supply chain late payment.

89. Some respondents again suggested that businesses using the parent-subsidiary relationship to muddy the waters of their payment performance, allowing the parent to pay its own subsidiaries quickly, and while the subsidiaries have a poor payment record when paying their suppliers, the company is only reporting as a group.

90. Some respondents also flagged again that the self-certification approach when a business submits their reporting data is undermining the objectives of the Regulations, as there is no validation process, meaning there is little or no means of currently identifying if the data submitted is an accurate reflection of their payment practices.

Should the Regulations remain in effect?

91. Responses to the call for evidence were overwhelmingly in favour of continuing with the Regulations, with 88% of respondents saying they should remain in force, while 8% thought they shouldn’t, and 4% said they didn’t know.

92. Most respondents agreed that it was vital that the Regulations remain in effect, and several reasons were given for this. One reason given is that the Regulations remaining in effect will ensure that advances made in improving payment practices and performance continue, which is all the more important as the economy recovers from the pandemic. Another reason offered is that the Regulations underpin many other tools to combat late payment, such as public transparency, leveraging buying and negotiating power, the Prompt Payment Code and such campaigns and league tables as those evidenced from the Good Business Pays campaign and Build UK. It was commented that without the Regulations and resulting publicly available payment practices reporting data, these would not be possible.

93. Some respondents stated that investment by large business has already been made to ensure they can comply with the Regulations, and while never favourable to Government to increase the cost to business, the outlay was only required at the beginning of the process, therefore there should be minimal cost to business going forward because of the Regulations. And with that investment made, the Regulations will only serve to assist responsible businesses forge and maintain good relations with their small business suppliers, when a business may be looking for cost savings in difficult commercial or economic times.

94. Many respondents who agreed that the Regulations should remain in effect thought Government should go further, giving them increased transparency and media and public awareness, to ensure that pressure continues to be increased on large businesses not just to report on their payment practices and performance, but to continuously improve.

Could the objectives be achieved with a system that imposes less regulation?

95. Responses to the call for evidence that formed part of this review have clearly demonstrated that these Regulations should remain in effect. As part of this statutory review, this section sets out alternative policy levers available to Government, which, if the Regulations were removed from statute, could help continue to tackle late payment.

Strengthen the Prompt Payment Code

96. The Prompt Payment Code is administered and promoted by the Office of the Small Business Commissioner on behalf of BEIS. This is a voluntary code that sets standards for payment practices and promotes best practice, and therefore represents an alternative to regulation.

97. In January 2021 the following reforms were introduced:

- A new requirement to pay 95% of invoices from businesses with less than 50 employees within 30 days.
- The Chief Executive or Finance Director or, in the case of smaller businesses, the company owner should sign or submit the application to join the Code.
- A logo is provided to signatories in a variety of formats with clear guidelines about how and where it can be used.
- The Code requirements are restricted to UK invoices, and inter-company transactions are out-of-scope.
- Compliance is measured using the Payment Practices Reporting data where appropriate. For signatories outside the scope of the Reporting, an annual declaration that the business has met, is meeting, and will continue to meet the Code requirements will be required from the Chief Executive or Finance Director or, in the case of smaller businesses, the company owner.
- The Code administrators can approach signatories to discuss supplier concerns received directly from a supplier, from a third party, or from intelligence received.

98. Government believes that whilst signatories to the Prompt Payment Code have a way to signal their own quality as prompt payers, there is no equivalent signal of bad quality for the late payers, especially as court claims tend not to be pursued. This alone would therefore not address the transparency and asymmetry issues that the Regulations achieve.

99. The Government considers that focusing solely on a voluntary measure such as the Prompt Payment Code would not do enough to tackle the problem of late payment, yet to make the voluntary Code mandatory would, in effect, set maximum payment terms for large companies when contracting with smaller suppliers. While setting limits on the maximum legal payment terms might address the problem of lengthy payment periods in some

commercial contracts, we believe the disadvantages of a ‘one size fits all’ approach are of greater significance.

Increasing penalties for late payment

100. Currently, UK legislation broadly gives suppliers the right to charge interest of 8% above the Bank of England Base Rate for any late payment and reclaim administrative costs for chasing late payment. Government believes that amending this existing power to charge higher rates of interest or compensation costs, would not necessarily increase usage by business, given the current perceived low level of uptake of use of this power. Awareness and confidence in using this existing power needs to be increased and is where efforts should be targeted.

Implement a maximum payment term

101. UK legislation already establishes maximum 30-day payment terms for transactions with public authorities and 60-day payment terms between businesses unless they agree longer terms and those terms are not grossly unfair to the supplier. This allows intentional flexibility for businesses to set terms that suit both parties.

102. While setting absolute limits on maximum legal payment terms for all business-to-business contracts (with no ability to deviate by mutual agreement) might address the problem of lengthy payment periods in some commercial contracts between the purchaser and supplier, we believe the disadvantages are of greater significance. Accepted payment terms vary across the economy from sector to sector and a ‘one size fits all’ approach is not the best way to deliver a culture change. If we were to take a sectoral approach to this policy, there would be significant variation in structures for payment terms for construction, retail, manufacturing etc. This would only complicate the landscape even further for small businesses.

103. Furthermore, Government would be restricting businesses’ ability to negotiate business to business contracts, which carries a risk of a negative impact on the UK economy of making business more difficult to do.

104. In relation to the definition of “grossly unfair”, there is no guarantee that amending the definition will lead to more small businesses exercising their legal rights. Businesses could still be discouraged by the costs associated with taking a case to court and many small businesses consistently mention wanting to avoid damaging the relationship with their purchaser. It is unlikely that a consensus on what should be deemed “grossly unfair” would be reached across the vast range of sectors. An attempt to clarify the definition may complicate it further and there is currently little evidence of whether attempts to clarify this in legislation have been successful in other countries - for example in Ireland, where they have included additional indicative criteria that the courts could consider. However, Government believes that the Small Business Commissioner has a role in promoting information and advice on the definition to make it easier for SMEs to understand.

Assessment

105. Government appreciates that the late payment problem cannot simply 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.

106. That said, it is Government's view that improvements in payment practices have been driven by a combination of the Payment Practices and Performance Regulations, along with the Prompt Payment Code, that sets standards and best practice in payment culture and the role of the Small Business Commissioner to hold non-compliant businesses to account. While there are still improvements that can be made to reduce the level of late payment in the UK, these measures continue to shine a light on businesses that are responsible for poor payment practices. As such, Government will continue to be proactive and strive to improve these measures where possible, in attempting to stamp out the worst kind of poor payment practices.

107. It has been particularly encouraging to see how the payment practices reporting data is being utilised by private business to raise awareness of the need to pay promptly and drive improvements payment behaviour, as evidenced by the Good Business Pays campaign and Build UK league tables. Government similarly uses the data to monitor the payment performance of its suppliers, and if those businesses fail to meet the set Government payment standard, they could be prevented from winning Government contracts. The Office of the Small Business Commissioner is also using the reporting data to assist in measuring Prompt Payment Code compliance, where a Code signatory is also required to report.

108. Government believes that the Regulations have gone a long way to bringing greater transparency and asymmetry to the payment practices and performance of large businesses. However, there is clearly more to be done to increase awareness of the service, 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.

109. It is clear that Covid-19 and its associated effects on the UK economy has certainly had an effect on payment times across the UK and the number of reports filed under the Regulations. Early in the pandemic, the Office of the Small Business Commissioner wrote to some large companies, praising those businesses who showed good payment practices and also wrote to those who showed poor practices, asking them to reconsider their approach. The Small Business Minister wrote a joint letter with the Small Business Commissioner to the 100 Group, who represent FTSE 100 companies, asking them to consider how they can speed up payment to smaller suppliers. They also wrote to 18 of the top accountancy firms, asking them to not only pay their own small suppliers as quickly as possible but also to pass that message onto their large clients.

110. In March 2020 Government announced that they were suspending the Gender Pay Gap Reporting requirement, due to the unprecedented pressure on businesses during the pandemic. A decision was made not to pause the requirement to report payment practices,

because transparency in payment practices in supply chains and payment on time became more important than ever for those businesses who were heavily impacted by restrictions.

111. A decision was, however, taken to show forbearance to those companies who contacted the dedicated mailbox to explain that they had difficulties with reporting, and difficulties reporting on time, due to restrictions on travel and homeworking impacting access to systems needed to collect the payment data. Compliance work is back underway to identify lapsed reporters and follow up with them to check they are still in scope. Those that should have reported, but still have not, could ultimately face enforcement action and fines.

112. Government is sympathetic to concerns around a perceived lack of enforcement for those businesses who do not report on time or report false information, and around there being no validation process for businesses when submitting their data. However, the onus has to be on the reporting business to take responsibility. It is a criminal offence by the business (and each of their directors) if a business fails to publish a report containing the necessary information within the specified filing period. Anyone who publishes a report or makes a related statement which is misleading, false or deceptive commits a criminal offence if they knew, or were reckless, about it being false or misleading at the time it was made. This applies to the business and to individuals. Enforcement will be seriously considered when stakeholders report their concerns about other businesses' compliance, and when Government has initiated the formal enforcement process against several businesses who we know to have neglected their statutory duty to report, the initiation of the process alone has been sufficient to lead to full and swift compliance in all cases.

113. It has been reassuring to see sectors with significant public spending having generally improved payment performance during the pandemic, for example, in the construction sector, where the additional focus from trade bodies has had a positive effect.

114. Concerns raised around group reporting are shared by Government, whether this be a deliberate attempt to mask true payment performance, or general confusion around parent and subsidiary reporting. The Regulations are clear in that a parent company is required to report in the same way as a qualifying subsidiary whereby, if on its last two balance sheet dates it: (i) exceeds two or all three of the general thresholds; and (ii) the group it heads exceeds two or all three of the group qualifying thresholds. A business cannot choose whether to report at a group or individual level as this is not a clear way to provide suppliers access to meaningful and comparable information. We intend to carry out an exercise going forward, to ensure that this is better understood.

115. Several respondents commented that the reporting data would give a clearer picture of payment performance if both volume and value of payments were measured. Government believes that including the value metric could be used by businesses to skew their reporting data by ensuring that larger invoices are paid promptly. It could also be misleading, as a company with some very high value contracts could appear to be a particularly poor payer (or vice versa). However, we previously committed to keep these metrics under review to ensure that they remain effective and do not encourage businesses to ‘game the system’ or create perverse incentives that undermine the objective of the duty to report and will stand by that commitment.

116. In response to calls to reduce the reporting frequency to once a year, Government still considers that annual reporting would not provide suppliers access to timely information, and we believe that six-monthly reporting still strikes the right balance.

Guidance

117. It was suggested in responses that parts of the Regulations and the associated Government guidance document could be open to interpretation and may be being applied inconsistently, with some businesses taking advantage of ambiguities to present a more positive picture of their payment performance than was perhaps accurate.

118. Government appreciates that these Regulations are not straightforward, and like many regulations, can be interpreted slightly differently dependent on the individual, business size, and specific circumstances. However, as previously stated, the onus must be on the individual business **and** reporter to provide accurate statements when filing their payment practices and performance information. While it is important for users of the guidance to seek their own legal advice where appropriate, Government will undertake to consider the feedback we have received from stakeholders and will review the guidance accordingly.

Restoring trust in audit and corporate governance

119. It was suggested in responses to the call for evidence that legislation should be amended to make it a legal requirement for businesses include their payment and performance information their annual report. This statutory review of the Regulations is narrow in scope, and at this stage, is not specifically looking at how the Regulations might be amended or changed. In terms of developments which may require additional powers, Government intends to undertake a further consultation on the Regulations to enable ministers to decide whether they should be extended beyond 6 April 2024. This will provide an opportunity to consult on whether, and of so how, it will introduce any new measures to enhance transparency and accountability on supplier payment reporting. As part of this consultation, Government will take account of views provided in response to the recent White Paper on ‘Restoring Trust in Audit and Corporate Governance’, which invited views on whether summaries of payment practice reporting should be included in annual reports and subject to some form of assurance.

Conclusions

120. The objectives intended to be achieved by the regulations were to bring greater transparency on payment practices and performance, to overcome the asymmetry of information regarding payment processes between large businesses and their suppliers. This is set out in paragraphs 48 to 51 above.

121. Government considers that the Regulations meet stated expectations in delivering their objectives because they have brought greater transparency and symmetry to the payment practices and performance of large businesses and continue to shine a light on businesses that are responsible for poor payment practices.

122. The objectives of the policy remain appropriate because there is still a need to do more 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. Furthermore, Government will continue to be proactive in attempting to stamp out the worst kind of poor payment practices and continue to encourage a culture change in payment practices and how businesses deal with each other.

123. From our assessment of stakeholder feedback as discussed in paragraphs 95 to 104, we have not identified a less regulatory means of achieving the policy objectives.

Next steps

124. Government will undertake a further consultation on the Regulations to enable ministers to decide whether they should be extended beyond 6 April 2024. This will provide an opportunity to consult on any other potential amendments to the Regulations resulting from the views expressed by those who took the time to respond to this review. Government will also undertake to consider the feedback we have received from stakeholders and will review the reporting guidance accordingly.

List of respondents

Actuate UK Ltd

Balfour Beatty Group Limited

BAM Nuttall

BDO

British Retail Consortium

Build UK

Cadent Gas

Confederation of British Industry

Construction Leadership Council

Construction News

Electrical Contractors' Association

Federation of Small Businesses

FM Conway Ltd

Good Business Pays

Institute of Directors

National Federation of Roofing Contractors

NatWest Group plc

NEL Fund Managers Ltd

Nestle UK&I

SME Advisory Panel Payment Group

The Association of Accounting Technicians

UK Finance

Xero