

UK CORPORATE: BRIEFING

NEW REQUIREMENT FOR LARGE
BUSINESSES TO REPORT ON PAYMENT
PRACTICES

OCTOBER 2016

- UNDER PROPOSED REGULATIONS LARGE BUSINESSES WILL BE OBLIGED TO REPORT THEIR SUPPLIER PAYMENT PRACTICES AND POLICIES TWICE A YEAR
- REPORTING IS EXPECTED TO BEGIN FROM OCTOBER 2017
- THE REQUIREMENTS ARE EXPECTED TO BE FINALISED IN THE NEXT FEW MONTHS



Large companies and limited liability partnerships (LLPs) will soon be required to report on their payment practices and policies for suppliers. This new duty is contained in the Small Business, Enterprise and Employment Act 2015, and is expected to come into force on 6 April 2017. Organisations will have to publish twice yearly reports in a specified format and make them available on a central website. Large companies and LLPs should start preparing for the changes now. Failure to comply with the reporting requirements will be an offence.

This Briefing has been prepared on the basis of the draft Reports on Payment Practices Regulations for companies published in December 2014 (as part of the consultation on the duty) and information published subsequently.

Final regulations are expected to be laid before Parliament in early 2017, when it will become clear to what extent they differ from the draft. However, until then, organisations should familiarise themselves with the new requirements. Matters that affected companies and LLPs should consider include:

- their ability to comply with the reporting obligations and the functionality of their reporting systems to ensure that these include the required metrics and enable them to report on an individual company basis; and
- their current payment practices and policies in light of the possible reputational damage of perceived late payment to small businesses or use of unfair terms, which will become more transparent under these new reporting obligations.

Why is the duty being introduced?

The new duty is being introduced as part of a series of measures to tackle the growing problem of late payment to small businesses as suppliers. With overdue payments standing at £41.5bn (as of March 2015), it remains a significant problem for the economy, with small businesses shouldering the vast majority of this burden. The Government wants large companies and LLPs to lead by example in paying their suppliers promptly and fairly, with 30-day terms being the norm and 60 days the maximum. It is intent on tackling late and unfair payment practices and encouraging a culture of prompt payment to suppliers by publicising which large companies and LLPs are good payers and, critically, which are not.

Who is subject to the duty?

The duty to report applies to “large” companies and LLPs (as defined in the Companies Act 2006). These will be private or public companies (whether quoted or not) or LLPs that, during the relevant period, had any two of the following:



Micro, small- and medium-sized enterprises (as defined in the Companies Act 2006), whether quoted or not, will not be subject to the duty.

Does the duty apply at group or individual level?

The duty applies at an individual company level. Each company in a group structure that meets the criteria must file its own report. Groups should therefore review whether their systems allow individual companies access to the information required to produce a report.

What will be required from April 2017?

For financial years beginning on or after 6 April 2017, large companies and LLPs will need to publish for each six-month period information on:

- their payment practices and policies for business to business contracts under which they are supplied with goods, services or intangible assets (such as intellectual property); and
- how they have performed in relation to those practices and policies.

What information must be provided?

The following information on payment practices and policies must be published:

Standard payment terms (in days), including any changes in the last reporting period and whether suppliers were consulted.

How much late payment interest:

- has been paid; and
- is due to be paid.

What proportion of invoices were paid:

- beyond agreed terms;
- within 30 days;
- between 31 and 60 days; and
- over 60 days.

The average time taken to pay (from the invoice date).

The dispute resolution process for overdue invoices.

Whether a business:

- has requested payments for suppliers to join or remain on supplier lists;
- operates e-invoicing, supply chain finance, or preferred supplier lists; and
- is a member of a payment code (e.g. the voluntary Prompt Payment Code).

An indicative format for the report has been published (which can be accessed [here](#)) and accompanying guidance is also expected.

Where will the information need to be published?

Each applicable company and LLP will be required to:

- publish its report on a website within 30 days of the end of the six-month period to which it relates; and
- ensure the report remains available for at least three financial years.

The Government has indicated that publication will be to a single central website in order to make comparison between reporting companies and LLPs accessible and easy.

Who is responsible for the report?

The draft regulations indicate that:

- the directors of a company are responsible for preparing the payment practices report for the relevant period. Anyone who was a director immediately before the end of the reporting period, and who failed to take all reasonable steps to arrange for a report to be prepared, commits an offence and may be fined;
- the report must be signed by a director. If a signed report does not comply with the regulations, every director of the company who: (i) either knew of or was reckless as to non-compliance; and (ii) failed either to take reasonable steps to secure compliance, or to prevent the report from being signed, commits an offence and may be fined; and
- if a company fails to publish a report as required, every director in default commits an offence and may be fined.

What should organisations do now?

It is important to take action now to prepare for these changes and their likely consequences, even if the exact requirements of the new duty are yet to be finalised. Otherwise there is a significant potential for reputational damage to both the organisation and its directors, whether as a result of committing an offence by not complying or from publishing information that reflects negatively on the organisation.

We suggest that large companies and LLPs take the time to consider who will be responsible for ensuring compliance and the following questions:

- do you currently have the ability to comply with the reporting obligations?
- do your reporting systems allow you to provide the information that will need to be published in the report?
- are your current policies and procedures fit for purpose and in accordance with industry norms given that they will be made available to the public?
- how does your actual record of payment compare to your agreed terms for payment? What proportion of invoices are paid on time and what is the average length of time for payment? Do these timeframes need to be improved?

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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