

Will you pass the red face test?

Naming and shaming of late payers has now arrived

From 6 April this year, all large UK companies (and limited liability partnerships) are now subject to a new regime which requires them to publish, on a Government website, detailed reports on their supplier payment policies and practices. The Regulations are designed to create public transparency of large businesses' payment policies and practices, primarily for the benefit of small and medium-sized suppliers.

Late payment of invoices is considered by the Government to be a widespread issue, with a particular impact on small businesses. In 2008, a voluntary Prompt Payment Code was introduced, to which there are now some 1,800 signatories, and which serves as a kite mark for treating suppliers fairly. However, due to the practices of some corporates, the Government decided that Regulations imposing some mandatory rules were required. When the Regulations were first proposed, the then Minister for Business and Enterprise stated that *"We are determined to make Britain a place where late payment is unacceptable and 30-day terms are the norm - with a clear 60-day maximum."* In their revised form, the Regulations don't go as far as mandating specific payment terms, but they will create transparency which is likely to have the effect of reducing payment terms for some suppliers.

1. Who is covered by the new Regulations?

The Regulations apply to a company that meets two or more of the following "turnover", "balance sheet" and "average number of employee" thresholds on both of its previous two balance sheet dates:

- its annual turnover exceeds £36 million
- its balance sheet total exceeds £18 million
- it has more than 250 employees on average

In other words, it must exceed the Companies Act 2006 general conditions for qualifying as medium-sized for accounting purposes on those balance sheet dates.

Both quoted and unquoted companies are caught. The obligations apply at an individual entity level, although a parent company must only report if it qualifies as large itself under the separate thresholds applicable to parent companies.

The Regulations do not apply to a new company in its first financial year as it will not know whether it will exceed the qualifying size thresholds. A company in its second financial year will be caught if it met two or more of those thresholds on the balance sheet date in the previous year.

The same criteria also apply to LLPs.

2. What types of contracts are covered?

The Regulations apply to *all* contracts for the supply of goods (including IP and other intangibles) and/or services, except for a) financial services and b) contracts without a significant connection to the UK.

3. When do they apply?

The Regulations have been in force since 6 April 2017. This means that a business whose next financial year started on or after this date will be caught this year.

A business whose next financial year started prior to April 2017 will not need to address the Regulations until its next financial year starts in 2018.

4. What information needs to be reported?

Information that must be provided includes (among other things):

Details on payment terms

- 'Standard payment terms', expressed in days
- Details of any variation to those terms, including in relation to any prior notification or consultation with suppliers

Details on payment practices

- 'Average' number of days taken to pay (which means the 'arithmetic mean', which should help to avoid a distorted picture)
- Percentage of payments paid:
 - Within 30 days
 - Between 31 and 60 days
 - Over 60 days
- Percentage of payments *not* paid within the contractual payment period (one to watch!)
- Whether the company has deducted money from a contract as a charge for a supplier to remain on its supplier list (another one to consider carefully)

- The company's dispute resolution process for contractual payments
- Whether the company offers e-invoicing (including invoice tracking) and supply chain finance
- Whether the company is signed up to a voluntary payment code and, if so, which one (consider PR benefits here versus the cost of complying with the code)

There is no requirement to report on interest paid on late payments.

Online reporting portal

Details of the Government's online portal where the reports will need to be published have not yet been provided. It is expected that access will be given to the platform in the near future.

5. How often and when do we need to report?

Businesses will need to publish a report twice yearly within 30 days after the end of each reporting period. The reporting periods are linked to the company's financial year. They are generally the first and second six months of each financial year. This means we may not see the first report until the Autumn.

30 days doesn't give businesses much time to prepare the report in respect of the previous reporting period, so preparation will be key.

6. What happens if I do not comply?

Offences

Breach of the reporting requirement is a criminal offence for the company and its directors. There is a (limited) 'reasonable steps' defence for directors.

It is also an offence for a person (knowingly or recklessly) to publish a report, or make a statement (for such purpose), that is misleading, false or deceptive in a material element.

Reputational fallout?

The Regulations are designed to generate transparency, public scrutiny and a change in behaviour for some businesses. A key question for every Board and management team is to ask itself "Will we pass the red face test?" Once the online portal is up and running, you can expect canny suppliers to compare any payment terms that you offer them against the published figures that you have agreed with other suppliers. See the [Government Response](#).

7. What should be done now?

- Ascertain how easily you can obtain this information, check if the information is accurate and see how you might improve processes and systems to make the task easier for future reporting
- Review payment practices and implement appropriate remedial steps if disparities in terms offered (or observed in practice) might prove embarrassing or otherwise impact your business
- Consider the pros and cons of signing up to a voluntary payment code
- Review the Government guidance (released at the end of January), read the Regulations and watch out for the Government making its reporting portal available

8. Closing thoughts

It is easy to see why the Government wishes to help suppliers who may not be paid quickly enough. The Regulations may also help to send a message to overseas suppliers that it is good to do business in the UK. However, it will be interesting to see the extent to which the Regulations change behaviour in practice. Inevitably, some suppliers will ultimately be paid more quickly than in the past. However, some large corporates may choose to take the reputational risk. Others may find ways of adjusting their purchasing behaviour in a manner that attracts less public scrutiny but which offsets the cost of having to pay sooner (and one simple way of achieving that, of course, is to negotiate down pricing).

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