Payment Reporting Obligations Came into Force on 6 April 2017

New regulations came into force on 6 April 2017 requiring large LLPs and companies to report on their payment practices and performance. Whilst compliance with the reporting obligations will be seen as an additional administrative burden, they could help improve the pan industry issue of late payment.

The Reporting on Payment Practices and Performance Regulations 2017 (the “Regulations”) were introduced under Section 3 of the Small Business Enterprise and Employment Act 2015 and require large companies and large LLPs to report on their payment practices and performance. The Regulations came into force on 6 April 2017.

Why were the regulations introduced?

Late payment is a pan industry issue in the UK; as at the start of 2017 SMEs were owed £23.6 billion in overdue payment. This is particularly an issue in the construction industry. For example, the Asset Based Finance Association reported last year that delays in payment in the construction sector had increased 22% to 82 days.

Efforts to tackle this issue through legislation, including the Housing Grants, Construction and Regeneration Act 1996 (the “Act”) and the amendments which came into force in 2011 have provided some additional options such as commencing a “smash and grab” adjudication or suspending performance following a failure by the paying party to comply with the payment notice.

Nevertheless, whilst the Act may give an unpaid party additional “sticks” to use to recover payment, it has failed to create a culture of prompt payment and late payment remains a key issue. The Regulations may help improve this issue by providing additional clarity as to who the “bad payers” are.
Who do the new Regulations apply to?

The Regulations require large companies and large LLPs formed and registered in the UK to publish information about their payment practices and performance. Businesses who meet two of the three categories for a medium sized company under the Companies Act 2006, in their last two balance sheet dates are required to report. These thresholds are updated periodically and at the time of publication are:

- a turnover greater than £36 million;
- total assets on the balance sheet greater than £18 million; and
- over 250 employees.

Each business that meets these thresholds is required to report under the Regulations. The Regulations do have slightly different criteria for parent companies which are applied on both a net (adjusted to reflect intra group transactions) and gross (without adjustments) basis. Consolidated information about a wider group company published by a parent company will not meet the reporting obligations for subsidiaries who also meet the criteria, so both the parent company and the subsidiary may be required to report if they meet the thresholds.

Companies registered in the UK but formed overseas and traditional partnerships are not required to report.

When do the reports need to be published?

The Regulations apply to financial years beginning on or after 6 April 2017. Businesses need to report at the end of each financial “reporting period”. This means most businesses (if they have a 12 month long financial year) will need to report twice-yearly, i.e. every six months.

The first report will be due 30 days after the end of the first reporting period. The second report will be due 30 days after the end of the financial year.

This means that the deadline for submitting the first report is different for each business. For example, if its financial year started on 6 April 2017, a business will be required to report in November 2017. If however, its first financial year after 6 April 2017 starts on 5 April 2018, the business will not be required to report until November 2018.
What needs to be reported?

Businesses are required to publish information about their payment practices and performance on “qualifying contracts”, i.e. contracts:

- between two or more businesses;
- for goods, services or intangible property, including intellectual property;
- not for financial services; and
- with a significant connection within the UK.

The Regulations do not apply to business to consumer contracts.

Amongst other things, businesses are required to report on:

- the standard payment period and the maximum payment period;
- average time to pay from receipt of the invoice;
- percentage of invoices not paid in agreed terms;
- percentage of invoices paid in 30 days or less, between 31 to 60 days and in 61 days or longer;
- a description of a business’ dispute resolution process concerning payment; and
- whether the business offers e-invoicing, supply chain finance, charges for being on a supplier list and has signed a prompt payment code.

If payment is triggered by reference to the customer notifying its intention to make payment, rather than by reference to the invoice date (as is often the case in the construction industry) a business is required to report on the time taken from the amount of payment being notified.

For further information and detail of what needs to be included in a report, see the Department for Business, Energy and Industrial Strategy’s guidance on the duty to report on payment practice and performance (click here).

How must the reports be published?

Reports need to be published on a central government web service (not just on a company’s website as had been initially suggested). The report must be approved by a director/member and must contain the name of the director or designated member who has approved the information.
Consequences of non-compliance

Failure to comply with the Regulations has serious consequences. A criminal offence (punishable on summary conviction by a fine) will be committed by the business and every director of the company or designated member of an LLP if a business fails to publish a report containing the necessary information when required to do so, or provides false or misleading information in a report.

Practical Tips

The Regulations are certainly a positive step. The fact that the reports will be published in a central location suggests the Regulations will introduce significant additional transparency as to whether a business is a good or bad payer. This should lead to a “league table” of bad payers which employers and subcontractors can take into account during tenders and before entering into a contract. It is hoped that this will help create a culture of prompt payment.

Compliance with the reporting obligations will be seen as an additional administrative burden. Whilst the first report may not be required immediately, it will be essential for those businesses which are required to report to put systems in place as soon as possible to collect the required information given the criminal consequences of failing to report. They may also consider improving their payment practices and performance during the reporting period to avoid their reputation being damaged when the report is published.

We also expect that the Regulations will begin to be reflected in contracts, both in terms of an acknowledgement that a business has complied with them and in the way the payment process is structured.

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For further information please contact:

Andrew Croft
Associate
T: +44 (0) 20 7469 0412
E: a.croft@beale-law.com