

Draft Regulations laid before Parliament under sections 3(9) and 161(4) of the Small Business, Enterprise and Employment Act 2015, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2017 No. XXXX

**COMPANIES
CONTRACTS**

**The Reporting on Payment Practices
and Performance Regulations 2017**

Made - - - -

Coming into force - -

6th April 2017

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 3(1), (2), (4), (5) and (7) and 161(2) of the Small Business, Enterprise and Employment Act 2015⁽¹⁾.

In accordance with section 3(8) of the Small Business, Enterprise and Employment Act 2015, the Secretary of State has consulted such persons as he considered appropriate.

In accordance with sections 3(9) and 161(4) of that Act, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Reporting on Payment Practices and Performance Regulations 2017.

(2) These Regulations come into force on 6th April 2017.

(3) These Regulations cease to have effect on 6th April 2024.

Interpretation

2. In these Regulations—

“the 2006 Act” means the Companies Act 2006⁽²⁾;

“director” includes any person occupying the position of director, by whatever name called;

(1) 2015 c.26.

(2) 2006 c.46.

“filing period” means 30 days beginning with the day after the last day of the reporting period to which a report relates;

“financial year” means a company’s financial year determined in accordance with sections 390 to 392 of the 2006 Act;

“qualifying company” has the meaning given in regulation 5;

“qualifying contract” has the meaning given in regulation 6;

“reporting period” means a period determined in accordance with regulation 7.

Duty to publish information on payment practices, policies and performance

3.—(1) For each reporting period, a qualifying company must publish a report containing the information set out in the Schedule.

(2) For the purposes of paragraph (1), to publish a report a qualifying company must publish it—

- (a) within the filing period, and
- (b) on the web-based service provided for the purposes of these Regulations by or on behalf of the Secretary of State.

Approval of the information

4. A qualifying company’s information for a reporting period must be approved by a director of that company before it is published.

Companies to which the duty applies

5.—(1) These Regulations apply to a company in relation to every financial year in which it is a qualifying company.

(2) A company is not a qualifying company in—

- (a) its first financial year;
- (b) a financial year which began before 6th April 2017.

(3) A company other than a parent company is a qualifying company—

- (a) in its second financial year if on its last balance sheet date before that financial year it exceeded two or all three of the general thresholds;
- (b) in a subsequent financial year if on both of the relevant balance sheet dates it exceeded two or all three of the general thresholds.

(4) A parent company is a qualifying company—

- (a) in its second financial year if on its last balance sheet date before that financial year—
 - (i) it exceeded two or all three of the general thresholds, and
 - (ii) the group headed by it exceeded two or all three of the group thresholds;
- (b) in a subsequent financial year if on both of the relevant balance sheet dates—
 - (i) it exceeded two or all three of the general thresholds, and
 - (ii) the group headed by it exceeded two or all three of the group thresholds.

(5) In this regulation—

- (a) “balance sheet date” means the date as at which the company’s balance sheet was made up;
- (b) the “general thresholds” are the maximum figures for a company’s turnover, balance sheet total and number of employees set out in subsection (3) of section 465 of the 2006

Act (companies qualifying as medium-sized: general)(3), determined in accordance with subsections (4) to (6) of that section;

- (c) “group” means a parent company and its subsidiary undertakings;
- (d) the “group thresholds” are the maximum figures for a group’s turnover, balance sheet total and number of employees set out in subsection (4) of section 466 of the 2006 Act (companies qualifying as medium-sized: parent companies)(4), determined in accordance with subsections (5) to (7) of that section;
- (e) “parent company” has the meaning given in section 1173 of the 2006 Act(5);
- (f) the “relevant balance sheet dates” are—
 - (i) the company’s last balance sheet date before the relevant financial year, and
 - (ii) the balance sheet date preceding that;
- (g) “subsidiary undertaking” has the meaning given in section 1162 of, and Schedule 7 to, the 2006 Act.

(6) Paragraph (7) applies if the 2006 Act is amended so that the general thresholds or group thresholds which apply to a financial year (“X”) differ from those which applied to either of the preceding two financial years.

(7) For the purpose of determining whether a company is a qualifying company in financial year X, the company is to be treated as if the general thresholds or group thresholds which apply to financial year X had also applied to the two preceding financial years.

Contracts to which the information relates

6.—(1) A qualifying contract is a relevant contract which satisfies the conditions in paragraphs (2) and (3).

(2) The first condition is that the relevant contract is not a contract for financial services, as defined in section 2 of the Small Business, Enterprise and Employment Act 2015.

(3) The second condition is that the relevant contract is—

- (a) governed by the law of a part of the United Kingdom otherwise than by choice of the parties;
- (b) governed by the law of a part of the United Kingdom by choice of the parties, and—
 - (i) has a significant connection with that part of the United Kingdom, or
 - (ii) without that choice, its applicable law would still be the law of a part of the United Kingdom; or
- (c) governed by a foreign law by choice of the parties and—
 - (i) without that choice, its applicable law would be the law of a part of the United Kingdom, and
 - (ii) has no significant connection with any country outside the United Kingdom.

(4) In this regulation “foreign law” means the law of a country outside the United Kingdom.

Periods in relation to which information must be published

7.—(1) Subject to paragraphs (2) and (3), a qualifying company has two reporting periods in a financial year—

(3) Section 465(3) was amended by [S.I. 2015/980](#).

(4) Section 466(4) was amended by [S.I. 2015/980](#).

(5) There are amendments to section 1173 but none is relevant to these Regulations.

- (a) the first reporting period is the six months beginning with the first day of that financial year;
 - (b) the second reporting period is the remainder of that financial year.
- (2) In the event that a qualifying company's accounting reference period is shortened in accordance with section 392 (alteration of accounting reference date) of the 2006 Act so that a financial year lasts 9 months or less, the reporting period is that financial year.
- (3) In the event that a qualifying company's accounting reference period is extended in accordance with section 392 (alteration of accounting reference date) of the 2006 Act so that a financial year lasts more than 15 months, there are three reporting periods—
- (a) the first reporting period is the six months beginning with the first day of that financial year;
 - (b) the second reporting period is the six months beginning with the day after the last day of the first reporting period;
 - (c) the third reporting period is the remainder of that financial year.
- (4) In this regulation “accounting reference period” has the meaning given in section 391 of the 2006 Act.

Failure to publish a report

- 8.**—(1) If the requirements of regulation 3 are not met in relation to a reporting period, the qualifying company and every person who was a director of the qualifying company immediately before the end of the filing period commits an offence.
- (2) It is a defence for a director to prove that the director took all reasonable steps for securing that the requirements of regulation 3 would be complied with before the end of the filing period.
- (3) A person guilty of an offence under this regulation is liable on summary conviction—
- (a) in England and Wales, to a fine;
 - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.

False statement offence

- 9.**—(1) It is an offence for a person knowingly or recklessly—
- (a) to publish or cause to be published, for the purposes of these Regulations, a report or any information, or
 - (b) to make, for any such purpose, a statement,
- that is misleading, false or deceptive in a material particular.
- (2) A person guilty of an offence under this regulation is liable on summary conviction—
- (a) in England and Wales, to a fine;
 - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (3) No proceedings are to be brought under this regulation—
- (a) in England and Wales except by or with consent of the Secretary of State or the Director of Public Prosecutions;
 - (b) in Northern Ireland except by or with consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

Summary proceedings: time limit for proceedings

10.—(1) An information relating to an offence under these Regulations may be tried by a magistrates' court in England and Wales if it is laid—

- (a) within three years beginning with the day after the commission of the offence, and
- (b) within twelve months beginning with the day after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to that person's knowledge.

(2) Summary proceedings in Scotland for an offence under these Regulations—

- (a) must not be commenced after the expiration of three years beginning with the day after the commission of the offence;
- (b) subject to that, may be commenced at any time—
 - (i) within twelve months beginning with the day after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to the knowledge of the Lord Advocate, or
 - (ii) where such evidence was reported to the Lord Advocate by the Secretary of State, within twelve months beginning with the day after the date on which it came to the knowledge of the Secretary of State.

(3) Section 136(3) of the Criminal Procedure (Scotland) Act 1995⁽⁶⁾ (date when proceedings deemed to be commenced) applies for the purposes of this regulation as for the purposes of that section.

(4) A magistrates' court in Northern Ireland has jurisdiction to hear and determine a complaint charging the commission of an offence under these Regulations provided that the complaint is made—

- (a) within three years beginning with the day after the commission of the offence, and
- (b) within twelve months beginning with the day after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or the Secretary of State (as the case may be) to justify the proceedings comes to that person's knowledge.

(5) For the purposes of this regulation a certificate of the Director of Public Prosecutions, the Lord Advocate, the Director of Public Prosecutions for Northern Ireland or the Secretary of State (as the case may be) as to the date on which evidence came to that person's knowledge is conclusive evidence.

Review

11.—(1) Before 6th April 2022 the Secretary of State must—

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provisions established by these 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.

(6) 1995 c.46.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory
Instrument: The Reporting on Payment Practices and Performance Regulations 2017 No. 395

Date

Name
Parliamentary Under Secretary of State, Minister
for Small Business, Consumers and Corporate
Responsibility
Department for Business, Energy and Industrial
Strategy

SCHEDULE

Regulation 3

Information

1. For the purposes of regulation 3, the information in relation to each reporting period that a qualifying company must publish is set out in paragraphs 2 to 12.

Information on payment terms

2. A description of the qualifying company's standard payment terms in relation to qualifying contracts, which must include—

- (a) the payment period specified in those standard payment terms, expressed in days;
- (b) where the qualifying company varied the standard payment terms in the reporting period—
 - (i) details of the variation, and
 - (ii) details of any notification or consultation conducted by the qualifying company with its suppliers before making the variation.

3. A description of the maximum payment period specified in a qualifying contract which the qualifying company has entered into during the reporting period.

Dispute resolution

4. An explanation of the qualifying company's process for resolving a dispute with a supplier in relation to payment under a qualifying contract.

Payment practices and policies

5. A statement as to whether the qualifying company's payment practices and policies in relation to qualifying contracts include an arrangement under which a supplier can receive payment of an invoiced sum from a finance provider before the end of the payment period, with the qualifying company paying the invoiced sum to the finance provider.

6. A statement as to whether the qualifying company's payment practices and policies in relation to qualifying contracts provide for the electronic submission and tracking of invoices.

7. A statement as to whether the qualifying company is a signatory to a code of conduct or standards on payment practices and, if so, the name of that code.

8. A statement as to whether the qualifying company's payment practices and policies allow the qualifying company to deduct a sum from a payment under a qualifying contract, as a charge to a supplier to remain on the qualifying company's list of suppliers or potential suppliers.

Payment performance

9. In relation to the payments made under qualifying contracts within the reporting period, a statement of—

- (a) the average number of days taken to make such payments, where day 1 is the first day after the relevant day;
- (b) the percentage of those payments which were made, where day 1 is the first day after the relevant day—
 - (i) within the period beginning on day 1 and ending with day 30;
 - (ii) within the period beginning on day 31 and ending with day 60;
 - (iii) on or after day 61.

10. In relation to the payments under qualifying contracts that fall due within the reporting period, a statement of the percentage of these payments which were not made within the payment period.

11. A statement as to whether the qualifying company has during the reporting period deducted a sum from a payment under a qualifying contract, as a charge to a supplier to remain on the qualifying company's list of suppliers or potential suppliers.

Approval

12. The name of the director of the qualifying company who has approved the information set out in paragraphs 2 to 11.

Interpretation

13. In this Schedule—

“average” means the arithmetic mean;

“payment period” means the period in which a company is contractually required to pay a sum;

“relevant day” means the day on which a company receives an invoice or otherwise has notice of an amount for payment;

“standard payment terms” means, in relation to a qualifying contract—

- (a) the standard terms relating to payment that the qualifying company uses for that type of qualifying contract, or
- (b) where the qualifying company does not use standard terms, the qualifying company's most frequently used payment terms for that type of qualifying contract.

14. For the purposes of this Schedule—

(a) a payment falls due on the last day of the payment period;

(b) a payment is made—

(i) when it is received by the supplier;

(ii) if there is any delay in the sum being received for which the qualifying company is not responsible, when it would have been received without that delay.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations require a company to which the Regulations apply to publish certain information about the company's payment practices and policies and its performance by reference to those practices and policies.

Regulation 1(3) provides that these Regulations are to cease to have effect on 6th April 2024.

Regulation 2 sets out the definitions used in the Regulations.

Regulation 3 imposes a duty on a qualifying company to publish, for each reporting period, information on its payment practices and policies in relation to qualifying contracts and its performance in relation to those practices and policies. The Schedule sets out the information that

is required in relation to each reporting period. The information must be published on a web-based service provided by or on behalf of the Secretary of State.

Regulation 4 provides that the information must be approved by a director of the qualifying company.

Regulation 5 defines which companies are qualifying companies. A company will be a qualifying company in relation to a financial year, if on the balance sheet dates for the two preceding financial years it exceeded certain thresholds in the Companies Act 2006 for medium-sized companies.

Regulation 6 defines which contracts are qualifying contracts. To be a qualifying contract, a relevant contract must not be for financial services, and must be governed by the law of a part of the United Kingdom other than by choice of the parties, or otherwise have a significant connection with the United Kingdom. A relevant contract is defined in section 3(2) of the Small Business, Enterprise and Employment Act 2015 – this is a contract for goods, services or intangible assets, made in connection with carrying on a business.

Regulation 7 determines the reporting periods for which a qualifying company must publish information. Generally there are two reporting periods per financial year. Regulation 7 provides for one or three reporting periods in a financial year if a company shortens or extends its accounting reference period under section 392 of the Companies Act 2006, so that a financial year lasts for 9 months or less, or for more than 15 months.

Failure to publish the information required, or publication of false or misleading information, is a criminal offence under regulations 8 and 9. Regulation 10 extends the time limit within which an offence under these Regulations can be prosecuted.

Regulation 11 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years of the Regulations coming into force. Following the review it will fall to the Secretary of State to consider whether the Regulations should be allowed to expire as regulation 1(3) provides, be revoked early, or continue in force with or without amendment. A further instrument would be needed to continue the Regulations in force with or without amendments or to revoke them early.

A full impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available from the Department for Business, Energy and Industrial Strategy at 1 Victoria Street, London SW1H 0ET and is published with an Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.