EXPLANATORY MEMORANDUM TO

THE REPORTING ON PAYMENT PRACTICES AND PERFORMANCE (AMENDMENT) REGULATIONS 2024

2024 No. 444

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Reporting on Payment Practices and Performance Regulations 2017 (the Principal Regulations) (S.I. 2017/395) and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 (the LLP Regulations) (S.I. 2017/425), which impose a requirement on large companies and limited liability partnerships (LLPs) to publish certain information twice per financial year about their practices, policies and performance in relation to paying suppliers. These Regulations extend the Principal Regulations and the LLP Regulations beyond their current sunset date of 6th April 2024 to 6th April 2031 and require additional information to be reported by qualifying companies and LLPs.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

4.3 The UK Government is responsible for this policy in England and Wales, and in Scotland. The Northern Ireland Assembly passed a legislative consent motion in relation to section 3 of the 2015 Act (under which this instrument is made) extending to Northern Ireland, on 20 January 2015. The Northern Ireland administration has been informed about this instrument.

5. European Convention on Human Rights

5.1 The Minister for Enterprise, Markets and Small Business, Kevin Hollinrake MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Reporting on Payment Practices and Performance (Amendment) Regulations 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 The Principal Regulations and the LLP Regulations implement section 3 of the Small Business, Enterprise and Employment Act 2015 (the "2015 Act"); using the regulation-making powers in that section for the first time, to create a new reporting requirement about certain companies' payment practices, policies and performance.

6.2 These Regulations amend the Principal Regulations using the powers under section 3 of the 2015 Act and amend the expiry and review dates under the Principal Regulations. These Regulations also use powers contained in sections 15 and 17 of the Limited Liability Partnerships Act 2000, which enable legislation relating to companies to be applied to LLPs.

6.3 These Regulations amend the Schedule to the Principal Regulations which sets out the information that a qualifying company is required to publish in relation to each reporting period. This includes requirements for qualifying companies to publish information on the value of payments made within a qualifying period and information on payments that were not paid under qualifying contracts.

7. Policy background

What is being done and why?

7.1 Late payment remains a significant issue for UK businesses, particularly small businesses. In 2022, Small and Medium-sized Enterprises (SMEs) were owed on average an estimated £22,000 in late payments.[1] This represents a significant cash flow challenge for small businesses - undermining opportunities to invest and innovate. Late payment causes problems for businesses that are not paid on time as it: adversely affects their liquidity; constrains their ability to invest; and can force businesses to exit the market.

7.2 There are several existing measures which seek to address late payment, alongside the Payment Practices and Performance Regulations 2017. The Late Payment of Commercial Debts (Interest) Act 1998 enables businesses to claim interest for late payment. Since 2009, the voluntary Prompt Payment Code has enabled good payers to highlight their positive practices and be recognised as prompt payers. In the public sector, it is a requirement for public sector buyers (other than devolved bodies) to have 30-day payment terms in their new contracts and through their supply chains. Additionally, public sector buyers are required to publish annual data on their payment performance.

7.3 However, late payment continues to be an issue, particularly for small businesses who can find it difficult to challenge larger customers. The Payment Practices and Performance Regulations 2017 were introduced to increase information and transparency in the market regarding the payment practices and performance of large businesses - giving small businesses greater understanding of those they do business with, without unduly interfering with freedom of contract. The greater transparency is also intended to drive a culture change toward more prompt payment, as payment practices and performance are increasingly a reputational issue for company boards.

7.4 A formal consultation on the Payment Practices and Performance Regulations 2017 was conducted from 31 January 2023. Through the consultation there was strong support for extending the regulations beyond the sunset date of 6 April 2024 and for

[1] Smart Data Foundry (2022) – Payment Speed and Timeliness for UK Small & Micro Businesses – https://cms.smartdatafoundry.com/wp-content/uploads/2022/11/221103-late-and-slow-payments-part-one-Final59.pdf

amending and improving the requirements further in the manner reflected in this statutory instrument.

7.5 The benefits of the policy will come through continued reductions in payment times to suppliers, driven by additional transparency. It is estimated that there are about 10,000 companies and LLPs required to report (under this instrument and a separate instrument in relation to LLPs).[2]

7.6 This instrument carries forward the existing reporting requirements. In addition, it amends the Regulations so that companies will also be required to report the proportion of invoices that are disputed which subsequently result in payments being made outside the agreed payment terms. The amendments will also require businesses to report the monetary value of their invoices paid along with the existing requirement to report information on the volume of invoices. Businesses within scope will be required to report on the percentage of payments which were paid in 30 days or fewer, between 31 and 60 days, and in 61 days or longer, and the percentage of payments due within the reporting period which were not paid within agreed terms. Combined with the existing reporting requirements this should enable small businesses to be more informed about large businesses they are considering contracting with.

7.7 This Statutory Instrument also provides clearer instruction as to how payments should be reported when third party ‘supply chain’ finance provider is involved, amending the regulations to provide that, if the supplier receives the full amount due without having to pay a fee or having any amount deducted from the payment, the date the payment is considered made is the date on which the supplier received the payment from the supply chain finance provider. If the supplier does not receive the full amount or has to bear the cost of any fee for the supply chain finance, the date the payment is made is the date on which the supply chain finance provider received the payment from the qualifying business (discounting any delays outside of the qualifying company or LLP’s responsibility). In all other circumstances, the date the payment is made is the date when it is received by the supplier (discounting any delays outside of the qualifying company or LLP’s responsibility).

7.8 The open nature of the reporting is intended to encourage businesses to comply and to improve their payment practices, through public pressure and good payment behaviour by responsible companies leading the way, encouraging other businesses to seek to match the best.

7.9 In addition to these ‘behavioural change’ mechanisms a clear sanction for noncompliance will remain in place, to deter any businesses from seeking advantage from not complying with the requirement. The Department will generally seek to encourage a business to comply with the reporting requirement before steps are taken to prosecute.

7.10 The duty to report helps inform business decisions on whether or not to enter into contracts, as businesses are able to compare the payment performance of alternative customers. The duty also helps businesses negotiate fair terms and prices in contract negotiations.

[2] Reporting on Payment Practices and Performance Regulations: Final Stage Impact Assessment (2023) – https://assets.publishing.service.gov.uk/media/655db812544aea000dfb322b/payment-practices-reporting-regulations-impact-assessment.pdf

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 The then Government published the Building a Responsible Payment Culture discussion paper in December 2013. This paper sought views on a range of options which could address late payment and improve businesses' treatment of suppliers. These included non-legislative options; one of which was a proposal for voluntary reporting on payment practices and performance. Respondents were keen for greater transparency around payment practices, and there was support for a mandatory framework. The summary of responses and Government Response was published in May 2014. As a result of the responses to the discussion paper the power to impose a duty to report was introduced in the 2015 Act.

10.2 There was a detailed public consultation (the Duty to Report on Payment Practices and Policies) on the implementation of the duty to report between 27 November 2014 and 2 February 2015, including draft regulations to show how it would translate into secondary legislation. The summary of responses to the consultation was published in March 2015. A Government Response, including updated draft regulations, was published on 2 December 2016. Consultation responses were broadly supportive of the implementation proposals, although some details have been refined in response to the consultation. In particular, the frequency of reporting was changed from quarterly to twice a year after consideration of responses which said that quarterly would be too onerous, without adding value.

10.3 On 31 January 2023, Government published on proposed "Amendments to the Payment Practices and Performance Regulations 2017". Through the consultation there was broad support for the extension of the Regulations and for the amendments set out in this instrument. The Government Response to the consultation was published on 22 November 2023.

11. Guidance

11.1 The Government is publishing updated guidance for large businesses in scope of the duty on how to comply. Copies will be placed in the House libraries and sent to the scrutiny committees.

12. Impact

12.1 The impact on business, charities or voluntary bodies is in the transition and ongoing costs. The transition costs to business are estimated to be £4.1m (including familiarisation, IT costs, information gathering, changes to processes). The ongoing annual costs to business are estimated to be £13.3m (including maintenance of systems and processes, cost of preparing, collating, approving and submitting reports twice a year).[3]

12.2 There is no impact on the public sector.

12.3 The expected impact involves a cost to large businesses in scope of the duty, with a benefit to suppliers (mostly small and medium-sized) that currently experience late payment from customers. The costs are those associated with complying with the requirements to provide reports on payment performance. Small, medium-sized and micro businesses are not in scope of the reporting requirement but will benefit from reductions in payment time that result from the increased transparency.

12.4 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website. The impact assessment quantifies the expected costs and benefits of the duty. The cost of producing accurate reports on their practices and payment performance include: familiarisation with the new requirements; adapting, purchasing and maintaining IT systems; updating processes; preparing and approving reports.

12.5 The benefits of the policy come through reductions in payment times to suppliers. The reporting requirements will put information into the public domain about the payment practices and performance of large businesses, exposing poor payment performance and allowing suppliers to check the payment record of potential customers before agreeing to enter into a contract. The extra transparency should encourage better payment practices. Reducing payment times will benefit businesses by reducing the costs incurred through late payment, such as needing to raise external finance to cover cash flow shortages or diverting administrative time chasing late payment.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 A review provision is included in this instrument, providing for a review 5 years after the Regulations are made. If the Regulations are not renewed following that review, they will expire on 6 April 2031.

15. Contact

15.1 Sean Overy at the Department for Business and Trade Telephone: 020 7215 4114 or email: sean.overy@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Drabwell, Deputy Director for Enterprise, Strategy & Corporate Team, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Hollinrake MP, Parliamentary Under Secretary of State (Minister for Enterprise, Markets and Small Business) at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

[3] Cost figures presented here differ slightly from those in the accompanying Impact Assessment. The Impact Assessment additionally considers costs associated with introducing retention payments for construction businesses, which do not form part of this Statutory Instrument.