

28 April 2023

By email to: [responsiblepaymentculture@beis.gov.uk](mailto:responsiblepaymentculture@beis.gov.uk)

Dear Sir / Madam

## **The Reporting on Payment Practices and Performance Regulations 2017 and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 – Response to the Government Consultation**

Deloitte welcomes the opportunity to respond to the UK Government's Consultation on the Reporting on Payment Practices and Performance Regulations 2017 and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 (hereafter "the Regulations").

In the UK, Deloitte has over 20,000 professionals across our Audit & Assurance, Consulting, Financial Advisory, Risk Advisory and Tax & Legal practices, and provides advice to companies in every sector of the economy.

We agree with the Government's focus on the importance of responsible payment practices. Since they came into effect, the Regulations have had a recognisable impact in shaping how organisations have implemented prompt payment practices and the organisations that have approached us for advice in this area have taken their reporting obligations seriously.

This response is prepared in our capacity as an advisor. In summary, we agree that the Regulations should be extended beyond their current statutory expiration date. However, we would like to draw your attention to the following observations:

### **Reporting the value of payments that have not been paid within agreed terms**

We do not think this additional disclosure will deter organisations from making late payment any more than needing to report on the number of late invoices. There is a risk that this will drive the wrong behaviours, encouraging organisations to prioritise larger value invoices, which will typically be from larger organisations rather than the SMEs the Regulations were initially set up to support.

### **Disclosure in the directors' report**

We disagree with the proposal set out in the consultation to introduce a new requirement for organisations to disclose the information required by the Regulations in their directors' report as well as in their online submission.

For group directors' reports, the consultation proposes that the information disclosed should include the information required by the Regulations for each group entity that falls in its scope. No reconciliation to group information is proposed due to the difficulty and cost of preparing such a reconciliation.

In the Financial Reporting Council's recent publication, *What Makes a Good Annual Report and Accounts*, it describes the purpose of the annual report as to "provide investors with clear and relevant information on the company's performance and prospects to help them make informed investment decisions and promote effective stewardship." The FRC sets out the "4 Cs" of effective communication in the annual report as: company specific; clear, concise and understandable; clutter free and relevant; comparable. Including the information required by the Regulations in an annual report meets none of these communication goals for a group, other than "company specific" for individual in-scope entities in the group.

Critically, by the time the information is published in the annual report, it is unlikely to be relevant any longer: we consider that suppliers are likely to use timely data from the Government portal rather than referring to the group's annual report when deciding whether to do business with particular companies and this is therefore where attention and governance should be focused.

Some additional concerns regarding this element of the Consultation are set out below, with supplementary detail in the Appendix:

- **The information is not prepared on the same basis as the annual report information.** By the time an annual report is submitted, the payment practices and performance information will no longer be current and in many cases a more recent report will already be available. It is also prepared on a six-monthly basis rather than an annual basis.
- **There are greater differences still for groups.** The Regulations do not contemplate the elimination of intercompany transactions, which again put them on a different basis from that used to prepare consolidated information in the annual report and leave them susceptible to abuse, for instance by groups settling intercompany invoices more promptly than those with external suppliers. As there is no reconciliation proposed, it will not be possible for users of the annual report to understand the relevance of the entity-by-entity information to the group as a whole. Further, in the case of groups, the directors who are responsible for each company reporting under the Regulations will often not be the same directors as those who have accountability for the annual report at group level.
- **Length of the annual report.** Our assessment is that including the information required by the Regulations could more than double the length of some directors' reports.
- **The requirement is disproportionate.** We consider that there are other more proportionate actions that could achieve a similar goal, which could include the Regulations report being signed on behalf of the Board of Directors and referencing from the organisation's website.

The Appendix below sets out our detailed responses to those questions where we have particular views to share. If you would like to discuss any of our comments in more detail, please do not hesitate to contact either myself or Corinne Sheriff ([crsheriff@deloitte.co.uk](mailto:crsheriff@deloitte.co.uk)).

Yours sincerely

A handwritten signature in black ink, appearing to read 'V Poole', written on a light-colored background.

**Veronica Poole**  
Vice-Chair and UK National Head of Accounting and Corporate Reporting

## Appendix

**Question 1: Do you agree that the Regulations should be amended to extend their effect beyond 6 April 2024?**

Yes.

**Please explain your answer / provide evidence**

Since they came into effect, the Regulations have had a recognisable impact in shaping how organisations have implemented prompt payment practices and the organisations that have approached us for advice in this area have taken their reporting obligations seriously. Some of these organisations have substantially reduced the time taken to pay external suppliers and increased focus at executive and board level on payment practices, particularly as these impact smaller suppliers.

It is also noticeable that the Small Business Commissioner, the Prompt Payment Code, and other organisations that support small businesses with cash flow matters such as Good Business Pays use the data obtained from reporting under the Regulations to encourage better practice. We understand that the Government also uses the data from reporting under the Regulations to inform their own tendering processes.

**Question 2: Do you agree that the Regulations should be amended so that a qualifying business is required to report the total value of payments due in the reporting period that have not been paid within agreed terms?**

Disagree.

**Please explain your answer / provide evidence**

We do not think this additional disclosure will deter organisations from making late payment any more than needing to report on the number of late invoices. There is a risk that this will drive the wrong behaviours, encouraging organisations to prioritise larger value invoices, which will typically be from larger organisations rather than the SMEs the Regulations were initially set up to support.

In addition, for companies that are part of a group, this increases the risk that disproportionate attention is drawn to intercompany invoices which are not eliminated under the Regulations, which can be sizeable and not reflect the company's usual approach to payments.

Guidance would be required to clarify how to report in order to ensure it is comparable between organisations, for instance in respect of which exchange rate should be used for invoices in foreign currencies.

## Question 3: Do you agree that it should be a requirement for a reporting business to include their payment practices and performance reports in their directors' report?

Strongly disagree.

### Please explain your answer / provide evidence

In the Financial Reporting Council's recent publication, What Makes a Good Annual Report and Accounts, it describes the purpose of the annual report as to "provide investors with clear and relevant information on the company's performance and prospects to help them make informed investment decisions and promote effective stewardship." The FRC sets out the "4 Cs" of effective communication in the annual report as: company specific; clear, concise and understandable; clutter free and relevant; comparable. Including the information required by the Regulations in an annual report meets none of these communication goals for a group, other than "company specific" for individual in-scope entities in the group.

This is due to the following considerations:

- **Relevance of information**  
By the time an annual report is published, it is likely that the information relating to the financial year in question is no longer current and has been replaced by a more recent report under the Regulations. We consider that suppliers are likely to use timely data from the Government portal rather than referring to the group's annual report when deciding whether to do business with particular companies and this is therefore where attention and governance should be focused.
- **The information is not prepared on the same basis as the annual report information.**  
The Regulations require information to be prepared and submitted on a six-monthly basis, within 30 days of the end of each such period. The annual report is prepared on an annual basis and required to be submitted to Companies House within nine months of the period end.
- **There are greater differences still for groups.**  
Since no reconciliation to group information is proposed, it will not be possible for users of the annual report to understand the relevance of the entity-by-entity information to the group as a whole. This will be particularly acute for multinational groups where the UK entities may represent a smaller part of the whole consolidation, which the directors' report is meant to reflect under Companies Act 2006 s. 415. The Regulations also do not contemplate the elimination of intercompany transactions, which again puts the Regulations on a different basis from that used to prepare consolidated information in the annual report and leave them susceptible to abuse, for instance by groups settling intercompany invoices more promptly than those with external suppliers.

Further, in the case of groups, the directors who are responsible for each company reporting under the Regulations will often not be the same directors as those who have accountability for the annual report at group level.

- **Length of the annual report.**  
Our assessment is that including the information required by the Regulations could more than double the length of some directors' reports. In the case of FTSE 100 UK-headed groups, some

have hundreds or even thousands of subsidiaries. Even if a relatively small proportion of those are large UK companies, the annual report will need to include many pages of information that is immaterial to the group as a whole and does not agree to the financial statements.

With two sets of reporting data, including the quantitative data, yes/no responses to questions such as membership of a payment code, and narrative reporting elements, we estimate that the most concise reporting would take at least half a page per entity in scope.

- **The requirement is disproportionate.**

We understand from the Consultation that the concern this is designed to address is a lack of transparency and that it “could have a self-governing effect on reporting businesses by reaffirming awareness of the importance of reporting at Board level and amongst the audience for a company’s directors’ report, including its shareholders.” Without adding undue cost to the annual report process and length to the annual report, we consider that there are other more proportionate actions that could achieve a similar goal.

For example, the updated Regulations could require a director to sign the reporting on behalf of the Board as a whole. They could require an explanation of what controls and review procedures are applied to the preparation of the reports and at what level of the organisation those take place. Another more proportionate alternative would be to follow the precedent of the Modern Slavery Statement and require a link to be disclosed on an organisation’s website.

We further note that under section 172(1) of the Companies Act 2006 directors already have a duty to have regard to the need to foster the company’s business relationships with suppliers, which ensures a level of Board focus on this area.

**Question 3a: Do you agree that making it a requirement for a reporting business to include their payment practices and performance reports in their directors’ report is a sufficient additional requirement for a reporting business?**

Strongly disagree that this should be a requirement – see answer to question 3 above.

**Please explain your answer / provide evidence**

See answer to question 3 above.

**Question 4: Do you agree that the Regulations should be amended to clarify payment dates used for reporting when supply chain finance is used?**

Agree

**Please explain your answer / provide evidence**

As supply chain financing can work in a number of different ways, this has been a longstanding topic of debate with organisations implementing the Regulations. Clarity around how reporting the requirements should apply would be welcome and would promote comparability.

**Question 5: Do you agree that the Regulations should be amended to consider disputed invoices as a separate entity, to improve the accuracy and transparency of the reporting data?**

Disagree

**Please explain your answer / provide evidence**

This would create an additional reporting burden for organisations. Many organisations would require system changes to identify and report on disputed invoices in the manner proposed in the Consultation. System changes are not only expensive but time-consuming, often taking a minimum of 6 – 12 months, and organisations may not be able to implement and test those changes in good time.

In order to start the process of a system change, further clarity is required on which invoices require separate reporting. For example, guidance would need to cover whether the invoices captured are only those invoices that have been disputed and therefore been paid beyond the agreed payment terms, or whether all invoices that have been disputed should be captured, and whether all reasons for invoices to be disputed should also be captured for the purposes of this reporting.

**Questions 6, 7, 8, 9 and 10**

No answers included for these questions.