



**Payment and Cashflow Review: The Reporting on Payment Practices and Performance Regulations 2017 and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 Government Consultation**

**BRC Comments**

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## **About the BRC**

The BRC is the trade association for UK retailers and our membership comprises over 170 major retailers - whether operating physical stores, multichannel or pureplay online - plus thousands of smaller, independent retailers through a number of smaller retail Trade Associations that are themselves members of BRC. Our members deliver an estimated £180bn of retail sales and employ just over 1.5 million colleagues. Our purpose is to make a positive difference to the retail industry and the customers it serves, today and in the future



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

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

**Answer: Agree**

Many BRC members have been required to report under the Regulations. They have not changed their view since the last review in 2022 when they supported retention of the Regulations at that time.

- a) The consensus among those who have been reporting from the beginning is that the Regulations are meeting their objectives - though they have some reservations which could be overcome by some research or changes, though not necessarily the changes outlined in the consultation.
- b) The Regulations should remain in effect to ensure the advances that have been made continue even in less favourable economic times. The investment in systems has already been made by those that are currently in scope - and is a one off for new entrants, albeit an unwelcome cost in times of economic difficulty. This is exacerbated if there is a lack of evidence of the Payments Reports being used.
- c) The Regulations also serve to assist those within a business responsible for good relations with suppliers when a business may be looking for cost savings in difficult commercial or economic times.
- d) The BRC believes that the reporting requirement has by its very existence inevitably brought greater transparency about payment practices and performance. The Regulations have also forced businesses in scope to review their practices and performance in the knowledge the information will be published and there is a potential for reputational damage. This should continue.
- e) By the very nature of publishing the information, there is the opportunity for suppliers to obtain information, including comparative information, that would not have been easily available previously and would be absent if the Regulations were not renewed.
- f) The BRC believes that Regulations have the potential to help businesses better understand what to expect and thus be in a better negotiating position - at least to the extent that contracts do not use standard terms. Even some large retailers find when negotiating with larger multinationals it is a matter or take it or leave it.
- g) The Reporting requirement is often used as an internal tool to ensure a business adopts standards that are consistent with or better than the sector or competitor standards.



Even if they do not benchmark themselves against others, members want to be seen as responsible payers.

- h) Although supportive of extension beyond next April 2024, the BRC does believe there are some issues that should be reviewed and addressed if the Regulations are to be fully effective.
- i) It is important that those who read the reports do not just take the headline figures but understand the full context. For example, the length of payment term is not the same as late payment. This should be made fully apparent in any literature. It might aid users of the payment reports if there was a guide to the reports in the portal itself.
- j) It is important to understand the economic context when interpreting the figures. It is difficult to distinguish between those who consistently pay late as a matter of their approach to business and those who might be paying late for other reasons, possibly due to the economic situation or commercial environment.
- k) The Regulations present a top line overview of the situation. Their main intention is to assist smaller businesses when they are dealing with larger ones. However, the Reporting matrix does not distinguish between payments to small suppliers and those to larger suppliers. It can be distorted by one payment to a large supplier compared with a number of payments to smaller suppliers and vice versa. It also cannot distinguish between different types of payments or businesses – for example, food and household goods suppliers as compared with non-food suppliers. Some wonder whether it is relevant to all sectors/businesses particularly those where small suppliers are not generally involved.
- l) The next question is whether greater transparency has resulted in a useful outcome – is the information actually used by suppliers, particularly small suppliers, to determine whether to enter into contracts?
- m) It is not clear whether or how the information is used by suppliers or others. The extent to which suppliers use the Report to decide whether or not to enter into a contract and indeed for any other purpose is unknown. Does it actually provide more clarity to suppliers than the contract itself that they are asked to sign? Even facts about traffic to the site other than the number of reports submitted would be interesting evidence of its value. Without that evidence it is difficult to make a full judgement.
- n) Members have not experienced suppliers wishing to enter into a contract indicating they have checked the Report and wish to negotiate different or better terms than those offered. The extent to which supplier negotiations are influenced by the reports is unclear and will remain unclear without further research.
- o) Some members have commented on a perceived lack of enforcement both in terms of actual reporting and accuracy of reporting. Some businesses have indicated that when they have tried to look for competitors' reports they have found they are not published but no enforcement action seems to have been undertaken.



- p) The BRC also believes that now the Regulations and reporting requirement have been well established and their overall success in achieving their objectives recognised, it would be desirable to move to annual reporting to improve efficiency and save some costs. This would not undermine the value of the Reports as there is little change in reporting in the course of 6 months.

**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?**

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

***Answer: Disagree***

The BRC believes that the Reporting requirement should be as simple and straightforward as possible – both for the benefit of those reporting and for the benefit of those trying to understand the Reports. We have indicated in response to Question 1 above issues that might be worthy of consideration but which should not unduly complicate the Reporting. Indeed, most require actions by others rather than those reporting.

- a) For this reason, any amendments should be judged by whether the additional work justifies the outcome – do the changes actually assist smaller suppliers to assess whether a larger business is likely to pay as per the terms of the contract or are they essentially information gathering for no defined purpose, even if interesting.
- b) In our view, the balance in general should be with the status quo. Most changes would require gathering more information and setting up new procedures at a cost and should, therefore, be closely judged against evidence of need to make the report more useful.
- c) In respect of this proposed amendment, the potential advantage is not clear. One clear issue would be that the picture could be distorted. One or two high value invoices that were paid late or over a longer time could distort the fact that most low value invoices were paid on time or in a shorter time frame. On the other hand, two high value invoices paid quickly or on time could distort the fact that many low value invoices were all paid late or over a longer time frame.
- d) The reality is that in all likelihood smaller suppliers are more likely to be presenting lower value invoices. Moreover, in a mixed business no indication would be given of whether the late or later payments were for say clothing where these might be for relatively high value while the others were for food which tends to be paid more quickly.
- e) At the end of the day, the number is more directly relevant to smaller businesses trying to get an overview than the value.



- f) The value of invoices not paid on time is only given full context if the Report includes the value of invoices paid on time. This would require a further development of the existing technical reporting and would involve additional resource (time and money).

**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 agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

**Answer: Disagree**

Members disagree because they do not see any particular benefit in including these statistics in what is already a long Report.

- a) Small businesses – and indeed larger businesses – are unlikely to read an Annual Report before deciding whether to enter into a contract especially when, if they are interested, they can find the same information more easily elsewhere.
- b) Internally, the Payments Report will almost certainly have been signed off by the Director who is subject to personal liability and the Board, and undergone an internal audit check so placing this in the Annual Report will not add any internal transparency to the Report.
- c) Given Reports are generally Annual, the Annual Report would need to include two of the Payments Reports. Our view is, in fact, that the Payments Reporting Requirement should change to an annual requirement and that should certainly be the case if this amendment was to be agreed.

**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 agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

**Answer: neither agree nor disagree**

Given our answer above to question 3, that we believe Directors and the Board would be well aware of the Payments Report without the need for any additional measures, we do not support any amendments in this area.



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

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

***Answer: Disagree***

The BRC believes that the key issue is when payments are received by the supplier. Supply chain funding can take a variety of forms and may or may not be extensive. These are not apparent in the yes/no tick box responses in the Payments Reporting.

- a) Against that background we do not believe this additional complication would be useful to a small business supplier when deciding whether to consider entering into a contract.

**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?**

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

***Answer: Disagree***

As above, we approach the question from the perspective of whether such a change would really assist a small supplier.

- a) Businesses usually provide all suppliers with details of how and when to submit an invoice and the information needed for it to be paid.
- b) There are two types of disputed invoices – those which the system will automatically dispute because they have not been submitted correctly and are non-compliant and those which are disputed in terms of what has been ordered and supplied.
- c) The key relevant information is when a supplier can expect to be paid once a compliant correct invoice has been submitted.
- d) It is possible that the percentage of invoices that are disputed and the percentage that are non-compliant could indicate process issues but isolating these as a separate entity in terms of payment times would not provide accurate information on overall payments of invoices. Suppliers would hope and expect they would not have an issue and would be unlikely to have regard to the length of time they would have to wait for an issue to be resolved – which would, anyway, depend upon the nature of the issue.

**The remaining questions are for response by the Construction industry (6 and 7) or individual businesses**

