



Governance *in brief*

Government focus on prompt payment practices

Headlines

- Signatories to the Prompt Payment Code are receiving a new level of scrutiny as the Chartered Institute of Credit Management (CICM) which administers the Code announced on 29 April 2019 that it had removed or suspended 17 businesses for failing to meet the Code's standard of supplier payment.
- Code signatories undertake to pay supplier invoices within 60 days unless there are exceptional circumstances and to work towards 30 day payment terms. As a reminder, the regime is designed primarily for the benefit of smaller suppliers to help release working capital into the economy.
- The CICM has used data drawn from reporting under the six-monthly duty to report on payment practices and performance, which came into force for large companies for periods commencing on or after 6 April 2017. Our calculation based on this data shows that over 60% of companies reporting on the past six months had not paid 95% of invoices within 60 days.
- The Small Business Commissioner, who now sits on the Prompt Payment Code's Compliance Board, has also cited this payment practices and performance data in an April 2019 report following a complaint of non-payment by a supplier.
- In addition, the Government has written to more than 10,000 of its suppliers, advising them of new rules that mean that suppliers who bid for government contracts above £5 million per year should be able to demonstrate that they are paying 95% of invoices within 60 days.

Background

Government is taking steps to crack down on late payment practices, particularly where those practices impact small and medium sized businesses, which it sees as critical to the UK economy.

During 2018, the Select Committee for the Department for Business, Energy & Industrial Strategy (BEIS) ran an inquiry into small businesses and productivity, which [reported](#) in December 2018. This highlighted how critical cash flow and prompt payment are to small UK businesses. Evidence gathered by the Committee indicated that compliance with the Reporting on Payment Practices and Performance Regulations 2017 had been patchy, with some large businesses not yet complying and no penalties suffered to date. It also explored a “credibility gap” with the Prompt Payment Code. At that point no company had been removed or suspended as a signatory to the Code.

The Government’s response highlights a number of planned actions:

- Introducing a “new, tough and transparent compliance regime” to underpin the Prompt Payment Code which is administered by the Chartered Institute of Credit Management (CICM).
- Appointing the Small Business Commissioner, Paul Uppal, to the Code’s Compliance Board to ensure the interests of small businesses are represented.
- Requiring companies bidding on government and public sector contracts to be able to demonstrate prompt payment to their suppliers, effective from September 2019.

The Government’s response did not comment on recommendations from the Select Committee to widen the Reporting on Payment Practices and Performance Regulations 2017 to include more businesses.

The Government’s response also indicates that it is looking into “the best way to ensure company boards put in place responsible payment practices throughout their supply chain, including elevating responsibility for prompt payment to Board level.”

Prompt Payment Code compliance regime

The CICM issued a [press release](#) on 29 April 2019 with the names of 17 companies that have been removed or suspended from the list of signatories to the Code. This is described as a “quarterly update”, indicating that further action can be expected on a regular basis. In each case, CICM has identified that the business has not been meeting the commitment to pay 95% of suppliers within 60 days, other than in exceptional circumstances.

The press release explains that CICM is reviewing the public reporting on payment practices and performance in order to determine whether businesses are meeting the standards of the Code and paying their suppliers promptly. It also explains that “more removals and suspensions [are] expected in the second phase of review currently underway.”

Prompt Payment Code signatories undertake to:

1. Pay suppliers on time

- within the terms agreed at the outset of the contract
- without attempting to change payment terms retrospectively
- without changing practice on length of payment for smaller companies on unreasonable grounds

2. Give clear guidance to suppliers

- providing suppliers with clear and easily accessible guidance on payment procedures
- ensuring there is a system for dealing with complaints and disputes which is communicated to suppliers
- advising them promptly if there is any reason why an invoice will not be paid to the agreed terms

3. Encourage good practice by requesting that lead suppliers encourage adoption of the code throughout their own supply chains

They also undertake to pay suppliers within a maximum of 60 days, to work towards adopting 30 days as the norm, and to avoid any practices that adversely affect the supply chain.

Companies have been given the opportunity to respond, to demonstrate compliance and, where suspended, to propose an improvement plan. The press release explains that the five companies that have been removed from the Code have not proposed such a plan. Those that have been suspended have proposed a plan to improve towards compliance which will be monitored. One company was able to demonstrate that it is now compliant and was neither removed nor suspended.

Duty to report on payment practices and performance

The duty came into force for financial years beginning on or after 6 April 2017. Our [Governance in brief](#) covering the detail of the regulations was published in April 2017.

Under the regulations, almost all UK companies that qualify as large under the Companies Act have a duty to report, on an individual company basis, quantitative data about their payment practices and performance as well as qualitative data explaining their approach to payment and answering a series of questions. The reporting takes place in respect of each six month period of the financial year and must be submitted within 30 days and signed off by a director.

Although compliance with this legal requirement is steadily improving, some large companies have not yet reported. In these cases this means that there are two or more reports already outstanding. We understand from BEIS that companies that have not yet reported on each relevant period are expected to bring previously unfiled reports up to date as well as submitting reports on a go-forward basis.

It is straightforward to identify companies that have not published data for previous periods and it is one of the criteria on which BEIS can pursue action against a company and its directors.

Although we are not aware of action being taken so far, failing to submit the report within the filing period, or filing an inaccurate report, is a criminal offence for the company and each director, punishable by a fine on summary conviction. There is a three-year period during which charges can be brought.

Prompt payment by government suppliers

During April 2019, the Cabinet Office wrote to over 10,000 businesses, including strategic suppliers, explaining that businesses will need to be able to demonstrate prompt payment to their suppliers, effective from September 2019.

Consistent with the measures for compliance with the Prompt Payment Code, companies should be able to demonstrate that they pay 95% of invoices within 60 days. One way of demonstrating compliance is likely to be through the regular required reporting on payment practices and performance.

This is not only intended to help the supply chain, but to deliver a fairer playing field for smaller potential government suppliers, who are not only exposed to cash flow issues when large contractors fail to pay on time, but also find themselves unable to manage their cash flows in the same way, giving them a disadvantage when bidding for government contracts.

Government itself has announced the ambition to pay 90% of its own undisputed invoices within five days.

Further reading:

[BEIS Select Committee report on Small businesses and productivity](#)

[Government response to Select Committee report on Small businesses and productivity](#)

[Small Business Commissioner's reports](#)

[Prompt Payment Code website](#)

[Press release on quarterly update to the Prompt Payment Code](#)

[Government gateway for reporting on payment practices and performance](#)

[BEIS Guidance to reporting on payment practices and performance](#)

[Government announcement regarding prompt payment by its suppliers](#)

[Deloitte Governance in brief: New duty to report on payment practices and performance](#)

Deloitte view

- There are legal and reputational issues at stake for companies and directors in respect of prompt payment practices.
- Poor payment practices hamper the cash flows of many small and medium-sized enterprises and, in the worst cases, threatens their survival.
- We encourage all companies to work to improve payment practices and performance, as well of course as bearing in mind their own working capital requirements. Signatories to the Prompt Payment Code should take time to review their current practices and performance to ensure they are confident they meet all the requirements for a signatory of the Code or to put remediation plans in place.
- We recommend that Boards ensure that all group companies that are in scope for the duty to report on payment practices and performance have been identified, that their reporting is subject to suitable controls and governance structures and is fully up to date.
- Especially given the increased government focus on this topic, boards should ensure that payment practices and performance are on the board's agenda and that directors are informed about the public reporting that is carried out and the level of public scrutiny that may attract attention.
- Improving payment performance will be particularly critical for government suppliers in advance of the September 2019 deadline.

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Contacts – Centre for Corporate Governance

Tracy Gordon	020 7007 3812 or trgordon@deloitte.co.uk
William Touche	020 7007 3352 or wtouche@deloitte.co.uk
Corinne Sheriff	020 7007 8368 or csheffield@deloitte.co.uk



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Fax: +44 (0) 20 7583 1198.

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