ICAEW
REPRESENTATION 36/23

THE REPORTING ON PAYMENT PRACTICES AND PERFORMANCE REGULATIONS 2017 AND LIMITED LIABILITY PARTNERSHIPS (REPORTING ON PAYMENT PRACTICES AND PERFORMANCE) REGULATIONS 2017

Issued 3 May 2023

ICAEW welcomes the opportunity to comment on *The Reporting on Payment Practices and Performance Regulations 2017 and Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017* published by UK Government in January 2023, a copy of which is available from this link.

For questions on this submission please contact the Corporate Reporting Faculty at crf@icaew.com quoting REP 36/23.

We agree with the proposal that *The Reporting on Payment Practices and Performance Regulations 2017 and Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017* should be amended to extend their effect beyond 6 April 2024. However, we have reservations about proposals to amend the current reporting requirements, in particular the proposal for qualifying businesses to also report their payment practices and performance reports in the directors' report.

We encourage the Government to consider how the reporting on supplier payments fits within the broader discussion on improving payment practices. It is important to develop a wider approach to tackling poor payment practices by large corporations, taking into account other initiatives such as the role and effectiveness of the Small Business Commissioner rather than focusing solely on reporting requirements.

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This response of 3 May 2023 has been prepared by the ICAEW Corporate Reporting Faculty. Recognised internationally as a leading authority on corporate reporting, the faculty, through its Financial Reporting Committee and Non-Financial Reporting Committee, is responsible for formulating ICAEW policy on financial and non-financial reporting issues and makes submissions to standard setters and other external bodies on behalf of ICAEW. The faculty provides an extensive range of services to its members including providing practical assistance with common corporate reporting problems.

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KEY POINTS

SUPPORT FOR EXTENSION

1. We broadly agree with the proposal that *The Reporting on Payment Practices and Performance Regulations 2017 and Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017* (hereafter referred to as 'the Regulations') should be amended to extend their effect beyond 6 April 2024. Our assessment has taken account of the Government's recent statutory review and the subsequent conclusion that the Regulations 'remain appropriate and relevant because there is an ongoing need to ensure compliance and increased awareness of the payment practices and performance of large businesses.'
2. However, as discussed below, we do not agree with the further proposed amendments to the Regulations and suggest further research would be needed before any such changes are introduced.

UNCLEAR RATIONALE FOR DIRECTORS' REPORT PROPOSAL

3. We do not support the proposal that it should be a requirement for reporting businesses to include their payment practices and performance reports in the directors' report. We set out our reasons for this position in response to question 3. Many of our concerns relate to the practicalities of the proposal but, more fundamentally, we believe the Government has not established a clear rationale for requiring information on payment practices and performance in the directors' report. Indeed, there appears to be a disconnect between the evidence gathered to date by Government, as set out in the consultation document, and the resulting proposal.
4. There needs to be a clearer articulation of the issue the Government is seeking to address, with supporting evidence to demonstrate the underlying issue(s). For example, if the objective is to ensure greater awareness of supplier payment practices among the Board, then we suggest a more effective and proportionate approach would be to bolster the director sign-off process for the web-based service (see paragraph 26 below) rather than introducing new reporting requirements into the directors' report, which as discussed below, is fraught with practical challenges. Additionally, the Government might explore ways to strengthen enforcement of compliance with the current Regulations which may serve to raise the profile of existing reporting requirements, as well as improve overall compliance.
5. If, on the other hand, the Government believes that despite the regulations achieving their original objectives (as indicated in the consultation document) payment practice culture across the economy has not improved sufficiently, then it may be that more direct action is required in relation to the payment practices as opposed to simply expanding disclosure requirements.

DETERMINING LOCATION OF INFORMATION

6. Generally speaking, we believe the objective for requiring certain information, and the intended users of that information, should determine the location and level of detail of any disclosure requirements for companies. The directors' report (and indeed the annual report more broadly) should not be the default location for all potential disclosures by companies. In this instance, we consider the public policy objective to be to improve payment practices by large companies and that the information is likely to be of most interest to current and potential suppliers. We believe that transparency and accessibility of the information to this primary user group is more likely to be achieved via the existing web-based service and would not be improved by inclusion in the directors' report.

MORE EVIDENCE NEEDED

7. We believe that any amendments to the Regulations should be underpinned by good quality data. This data should be analysed with a view to providing evidence of any underlying issue(s) and to provide the basis of any policy objectives and proposed changes. Taking this

data driven approach provides a more robust foundation for monitoring the effectiveness of the Regulations, and a more joined up approach between the identification of issues, setting of policy objectives and development of potential solutions.

8. While we note that the Government has conducted an Impact Assessment alongside this consultation, this focuses on the proposed policy options. It is not clear what data or other evidence has been collected in advance of reaching these policy options. For example, what data (if any) has been collected with respect to the usage and effectiveness of the current web-based service? Also, how has the Government identified the specific issues that it considers need further reporting requirements? Overall, we believe more research is needed on these matters and, until then, the Regulations should be extended but without the proposed changes to the reporting requirements.

COMPLEXITY VS TRANSPARANCY

9. The consultation proposes additional reporting requirements in several areas including a new metric on the value of payments, supply finance arrangements, disputed invoices and retention payments. While we appreciate the underlying issues the Government is seeking to address, we do not believe they can be looked at in isolation. Instead, they should be assessed within the wider context of payment practice culture and behaviours. We are concerned that introducing reporting requirements for very specific issues in this way will introduce complexity without necessarily tackling underlying behavioural issues.

10. We also note that the consultation does not present evidence to demonstrate the extent to which these issues present a widespread concern to small businesses, and the degree to which these issues would be mitigated by introducing disclosure requirements. Our overall view at this stage is that the additional reporting requirements would introduce unhelpful complexity, without a clear benefit to the end users.

TACKLING UNDERLYING BEHAVIOUR

11. On reviewing the feedback to this consultation, we encourage the Government to consider how the Regulations fit within the broader discussion on improving payment practices. Reporting on payment practices and performance is an important mechanism to ensure accountability and transparency which can drive better behaviour, but it is not the only solution. It is important to develop a wider approach to tackling poor payment practices by large corporations, taking into account other initiatives, for example, the role and effectiveness of the Small Business Commissioner.

ANSWERS TO SPECIFIC QUESTIONS

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

12. Yes, we broadly agree with the proposal that the Regulations should be amended to extend their effect beyond 6 April 2024.

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?

13. While we acknowledge that the current lack of a value metric limits the ability of users to distinguish between high-value payments and low value payments, potentially hiding the true value of a reporting business’ payment performance, this has not been identified to us as a widespread concern. We are also concerned that introducing a value metric could have unintended consequences in practice, for example, it could imply that larger payments are more important than smaller payments. This would appear to be contrary to the intention of these Regulations which is to protect smaller business ie, there is a risk it could encourage a

behaviour whereby larger invoices are paid before smaller invoices which could be detrimental to small business.

14. Overall, we believe the added cost and complexity for business to comply with this additional requirement would outweigh the expected benefits with minimal improvements to transparency. Therefore, we do not believe the Regulations should be amended to require a qualifying business to report the total value of payments due in the reporting period that have not been paid within agreed terms.

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?

15. No. We do not support the proposal that it should be a requirement for a reporting business to include their payment practices and performance reports in the directors' report. An earlier requirement for companies to disclose details of the policy and practice on payment of creditors within the directors' report was abolished in 2013 as part of the introduction of *The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013.* We understand that part of the rationale for removing this requirement was that it was generally not considered to provide sufficiently useful information and had limited impact in influencing behaviours in relation to supplier payments.

16. We have nevertheless reviewed our consideration of this matter for the purpose of this consultation and outline our conclusions below.

Unclear rationale

17. It is not entirely clear to us what the underlying rationale is for requiring this information in the directors' report. Paragraphs 24 – 26 of the consultation explain that the Call for Evidence launched by the Minister for Small Business in 2021 led the Government to conclude that the Regulations had met the 'stated expectations in delivering their objectives because they have brought greater transparency to the payment practices and performance of large businesses and continue to shine a light on businesses with poor payment practices.'

18. Furthermore, the consultation document goes on to outline in paragraphs 42 - 46 how there was little support for the separate BEIS proposal (issued as part of the recent *Restoring Trust in Audit and Corporate Governance* consultation) for larger companies to summarise their record on supplier payments as part of their annual report. Within the minority that were in favour, amendments to the proposal were recommended with none suggesting that the full payment practices and performance information be duplicated within the annual report. In fact many of the suggestions, as outlined in paragraph 44 of the consultation, appear to suggest a far more proportionate approach, for example, requiring the information on the company's website or linking the current supplier payment reporting to the s172 statement in the strategic report.

19. There appears to be a disconnect between the feedback gathered to date by Government and the resulting proposal in this consultation to require qualifying businesses to include their full payment practices and performance information in their directors' report.

20. The rationale appears to rest instead on Government's desire to provide even greater transparency, and the belief that requiring this information in the directors' report will 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.' Assuming these are the ultimate drivers for the proposal, we address these in turn below.

Transparency

21. We are not convinced that duplicating the payment practice and performance information in the annual report will provide greater transparency. Instead, we believe duplicating reporting requirements in this way is unnecessary and risks adding clutter to the overall annual report, going against Government's broader aims to promote 'brevity' and 'usefulness' of corporate reporting.

22. In our view, the underlying objective for requiring information, and the intended users of that information, should drive the location and level of detail of any requirements. There is a clear public policy objective here – to improve payment practices by large companies. With this in mind, we believe that information on supplier payments is likely to be of most interest to current and potential suppliers, and that transparency (and accessibility) for these users is best achieved via the current dedicated web-based service.

23. Other factors which suggest the web-based service provides a sufficient and appropriate level of transparency and should not be duplicated on the directors' report include:

- The information required under the Regulations as included on the web-based service is prepared on a six-monthly basis and will therefore be more up to date compared to information published in the annual report. Similarly, the Regulations require the information to be reported on the web-based service within 30 days of reporting date, which does not align to the timeline for the annual report.
- Furthermore, as the Regulations require information on a six-monthly basis, if duplicated in the directors' report, groups will be expected to include information for each six-month period for each entity that is required to report. This will add further clutter and confusion to the directors' report, reducing rather than improving transparency.
- There may also be a challenge for auditors with regards to checking consistency with any relevant information within the financial statement audit, especially if the information on payment practices and performance has been prepared on a different basis.
- The consultation document does not set out any proposals for how the information would be laid out in the directors' report and therefore it could potentially take up a large amount of space in a report (depending on how many subsidiaries are required to report).

24. In addition to the above points, there are further related matters which we believe would limit transparency of information provided in the directors' report. These include:

- The consultation proposes that where more than one entity within a group is required to report their payment practices, these should all be included within the group directors' report individually. There is no suggestion that this information would be reconciled to group data, or to annual data, and therefore would be standalone information for certain entities with the group and with little context. We therefore question the value of including the information in this way.
- Furthermore, requiring separate disclosures for certain individual entities within a group directors' report is inconsistent with the general principles for consolidated reporting within the annual report, including the directors' report. If material information is being distorted or masked in summarised group reporting, then (as is already the case for many other types of reporting) entities should find an appropriate way of disaggregating their disclosures to communicate relevant information, which does not typically involve setting out details by entity. It is also not clear if inclusion within the group report would exempt a relevant subsidiary from providing the supplier payment information within its own individual directors' report.
- The Regulations require data relating to payments to all suppliers including intercompany transactions. While this works for the purpose of reporting on an external website, it would be unusual to include such information on intercompany balances

within a group directors' report and we question the usefulness of this information to the end users of the annual report.

- Including information on qualifying subsidiary's supplier payments within a group directors' report essentially requires the parent company directors to sign-off on the supplier payment information provided by the subsidiary. Currently, the Regulations require one director from the individual company to which the supplier payment information relates, to approve the information before it is published on the web-based service. In our view, this provides a more appropriate level of director oversight, although we address below ways in which this could be bolstered, if deemed necessary by the Government.

Board awareness

25. As noted above, we assume that one of the key drivers behind the Government's proposal is to try and raise awareness of the information on supplier payments at the Board level. However, we are not convinced that the proposals will achieve the Government's objective. Companies should already be thinking about supplier payments to the extent that it is relevant to support their stakeholder and s172 disclosures within the strategic report, and other relevant non-financial reporting. Adding mandatory disclosures for specific metrics to the annual report does not seem necessary given existing reporting requirements. It is also inconsistent with other expected developments in sustainability reporting including the Government's overarching objective of streamlining the existing non-financial reporting frameworks.

Identifying the underlying issue

26. Following on from our comments above, we believe there needs to be a clearer articulation of the issue that the Government is seeking to address. For example, if the Regulations are generally working well and achieving their objectives (as suggested in the consultation paper), but there is a desire to ensure greater awareness of supplier payment practices by the Board, then a more effective and proportionate proposal may be to bolster the director sign-off process for the web-based service. One option would be to require that the information provided on the web-based service is signed-off by a director on behalf of the whole board. This would be more akin to the level of approval required for the directors' report, and a step up from current requirements which simply require one director to approve the information before it is published.
27. Alternatively, the Government may consider whether the current level of enforcement for compliance with the current Regulations is sufficient and whether or not this might be enhanced, with a view to raising the profile of the reporting requirements with the Board as well as improving compliance more broadly.
28. If, on the other hand, the Government believes that, despite the Regulations achieving their objectives, payment practice culture more generally has not improved sufficiently then it may be that more direct action is required in relation to the payment practices themselves, as opposed to amending the related reporting requirements.

Further validation

29. Although not directly included in the question itself, we note that the consultation states 'We would be interested to hear views on whether you believe, if this measure were introduced, there would still be an appetite for further validation, for example, from a business' audit committee in addition to inclusion in the directors' report'.
30. We are a little unclear as to what is being proposed here and suggest that this would need to be clarified by the Government and subject to a separate consultation to ensure sufficient and high-quality feedback is received before any new requirements are made in this respect.

31. That said, if the intention is to explore ways to strengthen the internal validation process, then as noted above, we believe a better approach would be to consider ways to bolster the director sign-off process for the information provided to the web-based service.

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?

32. We do not believe it is necessary to make it a requirement for a reporting business to include their payment practices and performance reports in their directors' report. Please see our response to question 3.

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

33. We do not agree that that the Regulations should be amended to clarify payment dates used for reporting when supply chain finance is used. We believe the proposals would introduce complexity by requiring different requirements depending on whether or not the supplier has received the full amount from the supply chain finance provider. We believe the current requirement to check a tick box when supplier finance is used is sufficient to provide existing or potential creditors with an awareness that there may be discounting involved in the amounts received at the disclosed payment dates.
34. It may also be worth noting that the IASB is in the process of considering amendments to IAS 7 *Statement of Cashflows* and IFRS 7 *Financial Instruments: Disclosures* with regards to supplier finance arrangements which would introduce certain quantitative and qualitative disclosures into the financial statements. While similar changes are not yet under consideration for UK GAAP, the Financial Reporting Council has recently indicated (as part of its periodic review of UK standards) that this will be considered once the final amendments are made under IFRS Accounting Standards.
35. We are concerned with the suggestion in paragraph 55 that the Government guidance which accompanies these Regulations is incorrect with regards to how reporting companies should capture the payment dates for supply chain finance arrangements and agree that this guidance should be updated to accurately reflect the underlying regulatory requirements.

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?

36. No, we do not agree that the Regulations should be amended to consider disputed invoices. We believe there will be complexity in defining what is considered a 'disputed invoice' and that careful thought would be needed to ensure it captures the appropriate population. We are also not convinced that providing information on the number of disputed invoices is necessarily an appropriate indicator of a company not paying its suppliers promptly. For example, there may be valid reasons for invoices being disputed which are unrelated to the purchasing company's payment practice. As a result, we are concerned that this proposal would introduce complexity and increase costs for businesses without necessarily providing useful information to the end-users.
37. More generally, we consider that disputed invoices are just one example of why supplier payments may be delayed and should not be looked at in isolation. We encourage the Government to consider the wider context of payment practice culture, including how the internal processes of an entity can result in slow supplier payments and whether there are ways to tackle this behaviour more directly. For example, we have been made aware of concerns that suppliers are often unable to invoice a company until they receive a purchase order which can sometimes be considerably delayed, therefore delaying the final payment to the supplier. While we recognise that there is no easy solution to this issue, it demonstrates

that there are broader issues regarding supplier payment practices which require further consideration, and which may require more direct action to tackle the underlying causes.

Question 6: Do you agree that the Regulations should be amended so that payment practice and performance reports should include information on the standard retention payment terms in qualifying construction contracts?

38. We have not consulted widely with stakeholders within the construction sector and therefore limit our comments to more general observations. We believe care is needed when adding further complexity to the Regulations as it may result in extra costs to business without necessarily providing significant benefits to users. We have also heard, anecdotally, that reporting on retention payments is unlikely to improve payment practice across the construction supply chain. Rather, retention payments themselves should be reviewed as a business practice. We appreciate this is outside the scope of this consultation but would suggest it is factored into the Government's wider considerations of payment practices across the economy.

Question 7: Do you agree that the Regulations should be amended so that payment practice and performance reports should include statistical information on retention payments?

39. Please see our response to question 6.

Question 8: How many hours does your business spend and which staff are required (please give an indication of hours by level of seniority) in order to comply with the Reporting on Payment Practices and Performance Regulations 2017?

40. Not applicable.

Question 9: What does this cost your business in terms of pay for each level of seniority?

41. Not applicable.

Question 10: What (if any) additional costs did your business incur (beyond staff pay) in complying with the Reporting on Payment Practices and Performance Regulations 2017?

42. Not applicable.