



### Reporting under the Payment Practices Regulations and Modern Slavery Act

Large companies must be prepared to disclose increasing levels of information about their practices and relationships with suppliers.

The Reports on Payment Practices Regulations 2015 and the Modern Slavery Act 2015 are on the face of it two very different legislative measures. However, they share important similarities which mean large corporates should be considering their implications closely. Both create new and burdensome reporting obligations for large companies. Both require the public disclosure of information. Both carry significant adverse publicity risk for those required to disclose unfavourable information.

Importantly, both measures require companies to report on information and metrics which many companies are not currently capturing. It is for this reason in particular that companies ought to be considering the effect of these measures now. Companies cannot afford to be unprepared when the reporting obligations come into force later this year, particularly as both carry criminal sanctions.

#### Reports on Payment Practices Regulations

In May 2015, the incoming Business Secretary, Sajid Javid, announced plans to press ahead with implementation of the Payment Practice Regulations. The Regulations, made under section 3 of the Small Business, Enterprise and Employment Act 2015, are expected to come into force in April 2016.

The Regulations will require large quoted businesses to publish payment performance practices and data every six months. That information will need to be made available on the company's website.

#### An obligation on large quoted companies

The duty to report on payment practices will apply to all large quoted companies. It is strongly anticipated that the Companies Act definition will be used to determine the threshold of "large". Subject to amendment prior to enactment of these Regulations this would mean a company would fall within the reporting requirement if it has any two of: a turnover greater than £25.9 million; total assets on balance sheet greater than £12.9 million; and an average number of employees exceeding 250.

#### The reporting requirements

Whilst the basic reporting metrics are now clear (see box) important points remain uncertain. Chief amongst these is what is meant by the requirement to report "standard payment terms". Many large companies have different standard terms depending on the type of contract, the sector, supplier loyalty and relative bargain power. It is unclear what companies should report on as their "standard" in such cases.

The Government has confirmed that finer detail on this and other issues will be provided in Guidance on the Regulations expected in the autumn.

#### Payment practice reporting: the reporting obligations

- Standard payment terms.
- Average time taken to pay.
- Proportion of invoices paid:
  - in 30 days or less
  - between 31 to 60 days
  - beyond 60 days.
- Availability of supply chain finance.
- Whether financial incentives were required to join or remain on supplier lists.
- Dispute resolution processes.
- Proportion of invoices paid beyond agreed terms.
- Amount of late payment interest owed and paid.
- The availability of e-invoicing.
- Existence of preferred supplier lists.
- Membership of a Payment Code.

#### Sanctions and adverse implications

The accuracy of the report is likely to be a responsibility of the Board of Directors and the current proposal is that a failure to comply with the requirement to publish a payment practice report will be an offence punishable by a fine of up to £5,000 for each director in breach.

For many companies, the primary adverse implication of the Regulations will be the requirement to make their payment practice publically available at the click of a button. Whilst the professed aim of the Regulations is "to overcome the asymmetry of information regarding payment process between large and listed firms and their suppliers" and to "allow suppliers to price or bid for contracts accordingly, and mitigate against the risk of late payment" it is easy to see how companies reporting less favourable figures might become the subject of adverse publicity by the media or potential boycott by suppliers.

## What organisations can do to prepare

In the short-term, companies will need to focus resources on ensuring they are able to comply with the reporting obligations at all. Even modern finance systems may not contain the functionality to report on the required metrics. Finance Teams should be notified of these incoming requirements so that thought can be given now to sourcing appropriate solutions.

In the mid-term, companies may wish to consider mechanisms for improving and validating payment reporting. For example, quoted companies could consider harmonising their standard terms where these currently provide different payment terms and/or could add a clause to their standard terms requiring some or all suppliers to report back to the company on its payment performance as a way of allowing it to validate its own accounting information.

Longer term, if the Regulations has the intended effect, companies currently paying beyond 60 days may have to carefully consider solutions for optimising payment practices to reduce the time taken to pay invoices. The Government recently introduced a maximum 60 day payment term in the voluntary 'Prompt Payment Code' and is itself leading by example by requiring departmental reporting on meeting a 30-day standard. The tide may be turning on the current status quo where late payment is tolerated and shorter payment terms are merely an aspiration.

## The Modern Slavery Act

Given its title, directors would be forgiven for thinking that this Act was of little relevance to their business. However, the Act introduces new and onerous supply chain reporting obligations which are anticipated to come into force in October 2015.

The Act will require large businesses to publish a compliance statement annually to be made available in a prominent location on the company's website homepage.

### An obligation on larger companies carrying on UK business

The duty to report will apply to all organisations which supply goods or services; which carry on business or part of their business in the UK; and which have a turnover above a certain threshold. It will apply to quoted and unquoted companies.

On 29 July 2015 the Government announced the results of its consultation on the applicable financial threshold and likely timing of implementation of this measure. That announcement confirms that all commercial organisations carrying on business in the UK with a total turnover of £36m or more will be required to complete a slavery and trafficking statement for each financial year of the organisation. The reporting obligation will catch companies even if only a small part of their business is in the UK; there is no proposal for a materiality test in this respect. The reporting requirement is intended to commence in October 2015, subject to appropriate parliamentary clearance. To give businesses sufficient time to prepare, transitional provisions will be developed so that statements are not required where a business's financial year end is close to the date that the duty comes into force.

### The requirements

The basic requirement is to produce an annual 'slavery and human trafficking statement' confirming what steps (if any) the

organisation has taken in the previous financial year to ensure that slavery and human trafficking is not taking place in any part of its business or in any part of its supply chain.

Beyond the aforementioned, the Act is also not prescriptive on the content of the annual statement but suggests various issues which an organisation may report on (see box). In fact, the Act gives businesses the option of making a statement that the organisation currently takes no steps to combat modern slavery. Importantly, subject to guidance to the contrary, the reporting obligation only appears to require a company to report on its own supply chain and not those of its subsidiaries. The potential exception is where the subsidiary itself also falls within the reporting requirement in which event indications are that a single group statement may be made.

### Sanctions and adverse implications

The Act requires the report to be approved by the board and signed by a director (or in the case of partnership, approved by the members and signed by a designated member). There is no fine associated with non-publication. However, the Secretary of State may bring civil proceedings to force a company to publish a statement where it has not done so.

#### Reporting on modern slavery: suggested content

- the organisation's **structure, business** and **supply chains**.
- its policies in relation to slavery and human trafficking.
- its due **diligence processes** in relation to slavery and human trafficking in its business and supply chains.
- parts of its business and supply chains where there is a **risk** of slavery and human trafficking taking place, and **steps** taken to assess and manage that risk.
- its **effectiveness** in ensuring that slavery and human trafficking is not taking place in its business or supply chains.
- available **training** about slavery and human trafficking.

In its latest consultation on this provision, the Government stated that its aim was to "require those responsible for businesses... to sign [the statement to] ensure that those at the top level take this issue seriously and understand the implications of taking little or no action". The Government's expectation is that "businesses who disclose that they take little or no action may be subject to particular scrutiny and public pressure which may jeopardise both their reputation and their profit".

The expectation is that this reporting requirement will therefore drive companies to scrutinise the practices of their suppliers and to ensure that company boards can no longer plead plausible deniability if modern slavery is uncovered in their supply chain. The measure therefore has potentially serious publicity and financial consequences, particularly for organisations aiming to maintain an ethical image or marketing themselves to ethical investors.

## What organisations can do to prepare

The first step is to ascertain whether the business (and any subsidiary) is caught by the reporting requirement by reference to the turnover test and activity in the UK. Beyond this, how businesses choose to comply will differ widely in particular in light of each organisation's assessment of the difficulty and cost of compliance weighed against their assessment of the potential adverse publicity consequences of taking insufficient steps. So a sensible next step is simply to decide what sort of reporting statement the business plans to make and what its future ambitions are in this respect.

As mentioned, the reporting requirement contains no mandatory issues. Therefore, in initial years, many companies may choose to report on the steps that are taken to achieve their objectives rather than the objectives they have achieved. In this respect, an initial hurdle may be simply obtaining the information from suppliers about what (if any) measures that are taking to combat modern slavery.

For example, multi-national companies with suppliers in less regulated jurisdictions may find this particularly difficult and so wish to focus on 'easy wins' such as working with their biggest suppliers first.

Organisations might also want to consider the extent to which the compliance burden can be shared with suppliers, whether through contractual commitments, reward mechanisms, Q&As or offering to share training and resources.

The Government's **Modern Slavery and Supply Chains Consultation Response** provides further information on the likely content of Guidance to businesses on compliance with this reporting requirement, which is anticipated shortly.

## Contacts

For further information, please contact:



**John Houlden**  
Partner

+44 (0) 117 902 2796  
john.houlden@burgess-salmon.com



**Lloyd Nail**  
Solicitor

+44 (0) 117 307 6827  
lloyd.nail@burgess-salmon.com

## Other measures on the horizon

**Small Business Conciliation Service:** The conciliation service aims to be a forum to allow small businesses to settle their problems with large corporations without going through the court systems, thereby avoiding higher legal and procedural costs. The timescale for implementation is unknown. The service would complement other measure under the Small Business Enterprise and Employment Act 2015 aimed at assisting SMEs. As a conciliation service, resolution will presumably require a mutually agreeable solution. There are therefore questions about its utility: smaller companies wishing to maintain good relationships with large corporate customers may not want to access the service for fear of jeopardising these relationships; but where the companies have fallen out over late payment the supplier may prefer the determination of the Courts to a mutual compromise.

**Widening powers for representative bodies to challenge grossly unfair payment terms:** The Late Payment Regulations Act and associated Regulations currently require that the fixed period for payment should not exceed 60 calendar days unless expressly agreed in the contract and provided it is not grossly unfair to the creditor. So as it stands businesses can agree to payment periods longer than 60 calendar days provided they are not grossly unfair. Representative bodies already have the power to bring actions on behalf of a group of creditors to challenge terms alleged to be grossly unfair, but the current provisions are

underused. In June 2015 the Government completed a consultation on methods strengthening these provisions and is expected to publish a response shortly. Provisions may include a list of recognised representative bodies who can bring actions on behalf of others and clarification of what terms are likely to qualify as grossly unfair terms, therefore increasing the likelihood of challenge.

**Changes to the Prompt Payment Code:** Some changes, such as a commitment to pay invoices within a 60-day max, and setting 30-day payment as the norm, have already come into effect. However, in a move echoing the requirements of the Reports on Payment Practices Regulations, an announcement is expected before the autumn on measures to require all signatories to report annually (for small and medium sized signatories) on payment performance, on a comply or explain basis, and half-yearly (for large signatories) in line with the new statutory reporting requirement. A new Compliance Board to monitor compliance with the Code is also now active. The entry into the Code remains discretionary. However, even non-signatories should be aware that the growing numbers of businesses signing up to the Code will shape the 'norm' for payment practices. This may in turn effect, for example, the interpretation of what now amounts to a 'grossly unfair' extension to payment terms under the Late Payment Legislation.

Burgess Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400  
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

[www.burgess-salmon.com](http://www.burgess-salmon.com)

Burgess Salmon LLP is a limited liability partnership registered in England and Wales (LLP number OC307212), and is authorised and regulated by the Solicitors Regulation Authority. It is also regulated by the Law Society of Scotland. Its registered office is at One Glass Wharf, Bristol BS2 0ZX. A list of the members may be inspected at its registered office. Further information about Burgess Salmon entities, including details of their regulators, is set out in the 'Who we are' section of the Burgess Salmon website at [www.burgess-salmon.com](http://www.burgess-salmon.com).

© Burgess Salmon LLP 2015. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting [marketing@burgess-salmon.com](mailto:marketing@burgess-salmon.com).