

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Tenth Delegated Legislation Committee

DRAFT REPORTING ON PAYMENT PRACTICES
AND PERFORMANCE REGULATIONS 2017

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

Thursday 9 March 2017

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The Committee consisted of the following Members:

Chair: MR ANDREW TURNER

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| † Alexander, Heidi (<i>Lewisham East</i>) (Lab) | † Menzies, Mark (<i>Fylde</i>) (Con) |
| † Allan, Lucy (<i>Telford</i>) (Con) | † Morton, Wendy (<i>Aldridge-Brownhills</i>) (Con) |
| † Brown, Alan (<i>Kilmarnock and Loudoun</i>) (SNP) | † Spellar, Mr John (<i>Warley</i>) (Lab) |
| † Caulfield, Maria (<i>Lewes</i>) (Con) | † Spencer, Mark (<i>Sherwood</i>) (Con) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | † Tomlinson, Michael (<i>Mid Dorset and North Poole</i>) (Con) |
| † Esterson, Bill (<i>Sefton Central</i>) (Lab) | Umunna, Mr Chuka (<i>Streatham</i>) (Lab) |
| † Hall, Luke (<i>Thornbury and Yate</i>) (Con) | † Vaizey, Mr Edward (<i>Wantage</i>) (Con) |
| † James, Margot (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) | Dr Glen McKee, <i>Committee Clerk</i> |
| † Jones, Susan Elan (<i>Clwyd South</i>) (Lab) | |
| † Knight, Julian (<i>Solihull</i>) (Con) | † attended the Committee |

Tenth Delegated Legislation Committee

Thursday 9 March 2017

[MR ANDREW TURNER *in the Chair*]

Draft Reporting on Payment Practices and Performance Regulations 2017

11.30 am

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Margot James): I beg to move,

That the Committee has considered the draft Reporting on Payment Practices and Performance Regulations 2017.

The Chair: With this it will be convenient to consider the draft Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017.

Margot James: It is a pleasure to serve under your chairmanship, Mr Turner. Late payment is a significant issue for small businesses. It is estimated that small and medium-sized businesses are owed £26 billion in late payments. That can cause serious cash-flow issues for small businesses and, in the worst cases, cause them to go out of business. It can be difficult for small businesses to know who has a good reputation for payment and who has a poor reputation. They have no choice but to take it on faith that they will be paid in line with the agreed terms and conditions.

The Government are taking several steps to tackle the issue of late payments, one of which we are in Committee to discuss. Other measures include a Small Business Commissioner, whom we are recruiting at the moment, and the prompt payment code, which is an industry-led code of conduct setting out best practice. Today we are debating two statutory instruments that will introduce a requirement on large businesses to report on their payment practices and performance. The first instrument applies the requirement to large companies and the second to large limited liability partnerships. We are debating them together as the requirement is the same for companies and partnerships.

The reporting requirement will increase transparency, making it easier for suppliers to find information about large businesses' payment practices and performance. The improved transparency should help suppliers to make better-informed business decisions based on reliable information. The public nature of the data will highlight large businesses that are leading by example and engaging in good payment practice, and will shine a light on poor practice that is potentially damaging to suppliers, in particular small businesses. Late payment will become a boardroom issue for many large companies.

Even a small reduction in overall late payment can benefit suppliers, smaller ones in particular. Last year I met suppliers who had been able to grow and innovate as a result of the reduction in late payment that we have already seen from the voluntary prompt payment code. Taken in the round, less late payment will boost our economy and help it to grow. We have already begun to see steps in the right direction, but there is much more

to be done. The Government are committed to building on the prompt payment code by implementing the draft regulations.

The reporting requirement introduced by the draft regulations will mean that large companies must disclose information on a number of metrics about their payment practice and performance, including their standard payment terms, the average amount of days it took them to pay and the percentage of invoices that were not paid within the agreed terms. Businesses will need to report on those metrics, among others, for their first financial year starting once the regulations have come into force on 6 April 2017.

Each business in scope will be required to publish its individual and non-consolidated reports. That gives a greater level of transparency for suppliers looking to contract with reporting businesses. As part of the consultation process and in conversation with interested parties since, we have received a wide range of opinions about which metrics were most important. Throughout that process, we have sought to find a balance between the needs of small and large companies.

For example, the requirement is that businesses publish a report twice per financial year on the Government web service. We changed reporting from quarterly to twice a year in response to concerns that the reporting would be disproportionately burdensome on large companies. That maintains the balance between providing relevant information to suppliers with the need to minimise the burden on large business.

Smaller stakeholders have told us that up-to-date information is important. Stakeholders also told us it was important that information was easy to access. That is why information will be available on the Government web service as soon as a business publishes it, for suppliers to search and download. The web service is currently being developed with input from future users. That input has shaped the service, making it more user-friendly for both those who are required to report and those seeking the information. We will continue to seek input from users as we finalise the Government web service, which will be available from April this year.

In 2014, the Department for Business, Innovation and Skills published a consultation impact assessment that estimated the annual net cost to business of these regulations to be £3.2 million. Further research showed that the annual net cost to business is likely to be higher than that, estimated in our recently published impact assessment to be £17.7 million. However, that has to be considered against the savings to business that a reduction in late payments will bring. The impact assessment estimates that even a 0.25% reduction in the cost of chasing late payment could lead to a £22.9 million benefit for UK businesses.

The regulations have been welcomed by representative bodies, including the Federation of Small Businesses and the Chartered Institute of Credit Management, as a positive step towards a culture where businesses are paid on time for the goods and services they provide. Successful businesses create jobs and are essential to economic growth. To support small businesses and other suppliers, we need to take action to give them more information about the larger companies and limited liability partnerships they do business with and their records on payment. We need to tackle late payment, and the reporting requirement is an important part of the Government's plan to do so.

Throughout the consultation process and the development of the policy, we have sought to strike a balance between the need for suppliers to have useful information and the need to minimise the burden on large companies. That has informed the development of the web service and the guidance that was recently published. We will continue to develop the web service in line with feedback from potential users. I commend the regulations to the Committee.

11.37 am

Bill Esterson (Sefton Central) (Lab): It is a pleasure to serve under your chairmanship, Mr Turner. The Minister quite rightly said that it is important that we do all we can to support business in this country, and in particular smaller businesses. That is exactly what improving payment practices should achieve. There is, of course, a big irony here, the day after the Budget, when many people who run small firms and are self-employed are scratching their heads, comparing the Prime Minister's previous comments about the UK being the best place to start and grow a business with the broken promise on not increasing national insurance contributions.

Michael Tomlinson (Mid Dorset and North Poole) (Con): On that point, it would be very helpful if the hon. Gentleman could inform us of the Labour party's policy.

Bill Esterson: The Conservatives are in government. It is a shame that they promised in their manifesto not to put up national insurance contributions and then went and did exactly that.

We have better news today. As the Minister rightly said, according to the Bacs report, £26 billion is owed in late payments. She mentioned the importance of attacking that, which the regulations will contribute to. She also mentioned the potential cost to business of the regulations of £17.7 million. The latest Bacs report cited a figure of £2.5 billion a year for the cost to business of late payments, and said that 50,000 business deaths will result if we do not do something about it. She quite rightly said that the investment of £17.7 million will reap an extremely positive return to the UK economy and businesses. That is why we broadly support the proposals and will not oppose the regulations.

There has been a delay in bringing forward the regulations, but I am glad they are now here. This is not a silver bullet; it is one of a number of tools needed to change a UK business culture where it has been seen as acceptable to pay small firms late. There has been systematic poor practice in the day-to-day business approach of some larger firms, which use it for their own credit management and to their own benefit, to the detriment of their smaller suppliers.

We need two things to address the imbalance of power in supply chains. First, the regulations must be robustly enforced, with substantial fines and consistent sanctions against businesses that pay late and/or fail to report fully. Secondly, we need the published reports to be accessible and easily searchable, which would follow through on the "name and shame" element behind the regulations, as well as allowing small businesses to review potential clients' payment practices.

We also want more robust, wide-ranging action on late payments that goes far beyond the encouragement or very veiled threats to late-paying large firms that

have typified the approach of Conservative Governments—not just this one, but in previous years. That includes having the right person appointed to the role of Small Business Commissioner, which the Minister mentioned—someone with a background in small business and an expertise in the supplier side of business contracts. The Government also need to push forward with the corporate governance Green Paper, which has been discussed, ensuring that small business suppliers are represented at board level in large firms. That is a crucial element in making sure that the kind of level playing field hinted at can be achieved.

Who and what do the regulations affect? Companies and partnerships fall within scope of the two sets of regulations if they are medium-sized or above, which means having more than 250 employees. Contracts fall within scope if they are for goods, services or intangible assets—although I think I am right in saying that they do not include financial services—and if they are covered by the law of any part of the United Kingdom, unless they are specifically excluded from that by both parties. What happens if a firm falls below or goes above the threshold of 250 employees during the reporting period? Will that firm have to report on their payment practices for the whole or part of the period?

The regulations mean that qualifying companies and partnerships will have to report descriptions of their standard payment terms and of their dispute resolution process, where there is a payment issue with a supplier. What will happen in the event of some of the sharp practices that have led us to need these regulations—for example, where a company queries an invoice on the last day before payment is due and then the clock starts to run again, which is a well-known tactic used by some larger companies? What will the impact of such challenges be? How will the regulations affect the reporting in that kind of example? How will the reporting be policed? Without proper teeth, who is to say whether the reporting by companies is accurate? Will it be policed through the audit process, and how detailed will that policing be?

The regulations also require statements about payment practices and policies, including the availability of electronic invoicing, supply chain finance and whether businesses are members of a payment code of conduct—the Minister mentioned the prompt payment code, which I shall return to later—and statistics about performance for each reporting period, including the proportion of payments due in the reporting period that were not paid within the contractual payment period. Again, what is the mechanism for ascertaining whether that is happening? There will also be statements about the proportion of payments made in the reporting period that were made within the timeframes of one to 30 days late, 31 to 60 days late and more than 60 days late. I will come back to the point about more than 60 days, as there is a potential inconsistency with existing regulations.

Another reporting requirement is the average number of days taken to make payments, which is calculated by adding the number of days it took to make all the relevant payments and dividing it by the number of payments. Successive Governments have tried and failed to tackle the problem. Various approaches have been tried, from praising good payment practices, creating intra-industry codes, setting up a Small Business Commissioner and introducing the innovation of a

[Bill Esterson]

right to interest on late-paid bills. The latest initiative is to require large firms to disclose their payment practice and performance.

Conservative Governments in the 1990s opted for what was described as moral encouragement—naming and shaming—and shied away from more concrete steps, such as statutory rights to interest on unpaid bills. In the 1990s, businesses were able to claim interest only if a term to that effect was included in the contract or if the courts decided to award interest in their favour in the course of the recovery proceedings. When the Labour Government came to power in 1997, they introduced the Late Payment of Commercial Debts (Interest) Act 1998 to give companies legal remedies beyond those of the normal commercial courts. EU legislation followed that approach and extended creditors' rights further. However, none of those changes, whether voluntary or on a statutory footing, changed the tide on late payments. Will the measures that are being finalised today change the situation?

In 1993, the Forum of Private Business estimated that 89% of small and medium-sized businesses were paid late. On average, they were paid 51 days after the due date. Twenty three years later, the Federation of Small Business, in "Time to Act: the economic impact of poor payment practice", reported that 61% of small businesses are paid late, with an average payment delay of six weeks. Moreover, in 2016 the Federation of Small Business found that 30% of payments are typically late. That number was up from 2011, when it was only 28%. Hon. Members who are paying attention will have noticed that some of those figures say slightly different things. That is because different organisations use different data and baselines.

The 2011 EU directive on combating late payment in commercial transactions already states that the period for payment in a business-to-business contract should never exceed 60 calendar days—I said I would come back to that point. In these regulations, the Government are asking businesses and partnerships to report what percentage of their payments are made after 60 days. Is it not inconsistent merely to ask businesses about their payment practice after 60 days when the legal framework already says it is illegal to go beyond that 60-day period? It does not sound like a very good sign to me.

Another example of where more needs to be done is the prompt payment code. Although the total number of signatories is 1,936, according to the Government website, very few of them are medium-sized or large private sector firms. When NHS trusts, councils, Government Departments and so on are taken out, there are just 184 signatories with a turnover of more than £500 million a year, a further 84 with a turnover of between £100 million and £500 million year, and 110 with a turnover of between £25 million and £100 million. That means that only 378 firms with a turnover of more than £25 million have signed up to the prompt payment code. According to figures from the Department for Business, Energy and Industrial Strategy, there are 7,000 large firms in the United Kingdom. How will the regulations help us to move from the 378 that have signed up to the prompt payment code to all 7,000 carrying out the practices in the regulations, which is what we all want to see?

Is the duty to change what we need? While we are supportive of any measures to tackle late payment, in particular requiring larger firms to lay out their payment practices, all this prompts the question whether we are throwing another policy at a problem that has persistently withstood the "moral encouragement" approach. The duty in the regulations has the potential to do a lot more than that, but only if specific actions are taken. The reports will be published, to use the Minister's words, on a Government web-based service, and they are due to be published within 30 days after the last day of the reporting period, which I assume means the tax-reporting period.

How will simply saying, "It will be published online," help the smaller companies, which need to understand their potential customers' payment practices before deciding whether to contract with them? The web-based service needs to be easily searchable. It needs to show how different companies compare with each other and to show what the industry standard is. For small businesses to benefit from the regulations and for us to create the kind of balance between large and small firms that the Minister rightly referred to, the system needs to operate effectively. How the web-based service is run will be crucial, so can she say more about how it will work? If it works properly, we could see a step change in the way that smaller firms are treated by their larger customers.

This is not just fine detail. The danger, as we have seen, is that attempted actions on late payment amount to just moral grandstanding, rather than creating effective tools to tackle this scourge, which, as the Minister and I have both said, delays payments amounting to £26 billion at any one time. The regulations require companies to provide a statement on whether their payment practices and policies allow them to deduct money from payments as a charge to a supplier to remain on the qualifying company's list of suppliers or potential suppliers. That is clearly a step forward, but there is another problem, namely the ability of companies to award themselves a discount for early payment. That has been excluded from the regulations, and I will come on to what the Government response to the consultation said on that point.

The courts have a fairly broad take on what standard payment terms are, and obviously they will be the terms used in the vast majority of contracts. It would be for the company to prove in dispute that tweaks such as discounts are standard and known to all their contracting partners. I would be surprised if deductions for paying on time were considered to be so standard as to be not worth recording, but we can be reasonably certain that where there is wooliness, some of those most likely to cut corners will do just that. If we are going down the route of closing off loopholes, as the stipulation on deductions for remaining on a supplier's list suggests, we ought to go the full way and explicitly include deductions that allow companies to pay less for paying early.

The draft regulations were going to include a requirement to report on interest owed for late payments. However, that requirement has been dropped. The Government response to the consultation says:

"Several issues emerged through further engagement with businesses. Feedback suggested that most businesses do not routinely record how much late payment interest they may be liable for, and would therefore require costly upgrades to software in order to

report the total liability. Linked to this is the fact that a claim for interest under the Late Payment Act may be brought up to six years later. Businesses felt that requiring reporting to cover the previous six years would be particularly difficult because the data may not have been recorded in a way that allowed extraction. The costs associated could be substantial and could result in a figure that would be difficult for users of the data to interpret, as it would cover a different time period to other metrics which are limited to the six month reporting period.

We believe that businesses should focus their efforts on not incurring interest by paying on time, rather than calculating potential interest. This will be kept under review. We will also take into account the lessons that the introduction of reporting on interest liable in the public sector can teach us, once it has been introduced in April 2017.”

Perhaps the Minister will give us some more information on what is meant by “kept under review”.

The business response to the consultation was, “We don’t record that”, but that is a pretty poor excuse. Previously we have made the case, including during the Committee stage of what became the Small Business, Enterprise and Employment Act 2015, that interest should be applied automatically to late payments, because it is too onerous for small businesses to go after much bigger clients themselves. First, they do not have the internal resources to do so or to take legal action. Secondly, and probably more to the point, such action could damage a major contract, which might represent the majority of the supplier’s revenue. That has always been one of the problems, but the commercial reality is that a supplier challenging its big customers runs the risk of losing them for future business. That is one of the key challenges in dealing with the problem.

The Government response, quoting business submissions to the consultation, drives that point home. Businesses do not record such matters and they do not have the software to manage interest on late payments, because the threat of a small supplier slapping interest on their late payments is so remote that there is no incentive for them to do so. Perhaps the Government should consider such an incentive. After all, records have to be kept for seven years for audit purposes—I think it is 10 years for plcs; the Minister can correct me if I am wrong—so that kind of recording would sit naturally alongside existing requirements to record account information.

The good thing about the draft regulations is that they start to recognise that, because of the deep imbalance of power in supply chains, we cannot simply leave the problem to suppliers to fix. Obviously, automatically applying interest to late payments would be preferable, but a decent first step would be to require the recording and reporting of interest owed. That would serve as a wake-up call for large firms about how much they might find themselves out of pocket because of their behaviour, and as an easy way for suppliers to see how much they could collectively be entitled to, in particular from persistent late payers.

We broadly support the aims of the draft regulations. I have posed a number of questions. My sense is that this is the start of the process and not the end, and that there is room for improvement, adaptation and addition to the regulations, not least when the Small Business Commissioner is in post. Will the Minister tell us when that will be? I look forward to her response.

11.59 am

Alan Brown (Kilmarnock and Loudoun) (SNP): It is a pleasure to serve under your chairmanship, Mr Turner.

I agree with the Minister that the draft regulations are needed because of the effect that late payment can have on businesses. Before I came to this House, I worked as a civil engineering consultant. One aspect of the job that I certainly do not miss is the accounts department phoning me to ask why payments had not been made, and getting me to call clients and pressure them to release money and clear up why the payments were late. Not only did that have a cost in terms of performance, but it was not part of my day job, so I had to work extra hours to do the chasing up. I am sure that many other companies have the same experience. One can only imagine the stress of working for a small company or supplier that is in debt, owes money to creditors and has to chase that money up. It clearly has an impact on performance and productivity.

My one slight concern is whether the measures will be enough. They should allow for more transparency, but will that transparency be enough to change behaviour? Big companies clearly process thousands of invoices; the statistics might look good, but behind them there might be another story of the impact on small companies. As the hon. Member for Sefton Central said, companies may also still use the dispute resolution mechanism as an excuse for late payments.

What proposals are in place to review the success of the measures with regard to improved performance and the release of payments? If there is a review, further measures might need to be considered in the future. Finally, will the measures capture the release of cash retentions in the construction industry? That is a big issue in the industry and I have raised it before. Will the measures pick up on the industry’s performance in releasing cash retentions, and are the Government developing plans to phase out the use of cash retentions overall?

12.1 pm

Mr Edward Vaizey (Wantage) (Con): It is a great pleasure to speak to these important regulations, and to follow the hon. Member for Sefton Central, who covered many issues during his trenchant analysis of the regulations. I will also pick up on some of the points made by the hon. Member for Kilmarnock and Loudoun. May I say what a pleasure it is to be here to support the Minister? I am sure many Members know that she ran a highly successful small business; if anyone is well-placed to know the impact of late payments on small businesses and the myriad issues that true entrepreneurs who start a small businesses from scratch have to face, it is her. I know she will take the regulations seriously, both in their passing and in their implementation.

I know that the Minister shares my reluctance to regulate in this area; as a party and a successful Government, we are reluctant to regulate small businesses. Of course, when we leave the European Union I am sure we will be able to reduce a great many of the regulations that burden our small businesses—at least, that is what the leave campaign promised and I know that the leave campaigners will see through on their promises. I know that the Minister only regulates with a heavy heart and where she sees it as essential. *[Interruption.]* I could not hear the hon. Member for Bristol West comment from a sedentary position, because I was talking so loudly, but I know it was pertinent.

[Mr Edward Vaizey]

I have a number of questions. I may have misheard, but I think the Minister said that the transition costs are £27 million and the ongoing annual costs are about £15 million, affecting about 15,000 businesses. Does she feel that might be an underestimate, because it works out at roughly £1,000 a business? It seems to me that reporting on payment practices across a large business on a six-monthly basis might cost slightly more than that. In any event, I was struck by her saying that her Department's estimates had increased from something like £3 million to £15 million, which seems a very large increase. Will she shed light on that? Is she confident that that is what the cost will be to businesses?

Picking up on what the hon. Member for Kilmarnock and Loudoun said, and to use business terminology, what does success look like? What will the Minister think success is when we review the impact of the regulations in a year or two? Does she expect perhaps a 1% or 5% reduction in late payment? Will some of the 15,000 businesses subject to the regulations go on a journey that results in the improvement of their payment practices? It was a mantra of the last Government—I am sure that the same is true of this Government—that every time we imposed a regulation on business, we would seek to abolish one. In fact, I think we got to the position where we would abolish two. Will the Minister highlight which regulations will be abolished in order to make way for these very important regulations? Indeed, perhaps some are being consolidated.

We have discussed sanctions for late payers and whether fines should be imposed. I am surprised that it will be a criminal offence not to publish. I wonder whether the Government might pause to consider whether that could be held in reserve. It seems to me that this is part of the nudge agenda: we are trying to encourage good behaviour. The criminal statute book is replete with offences, so I wonder whether almost arbitrarily making failure to publish a criminal offence is the right approach.

In terms of stick and carrot, I hope that the people who rise to the challenge presented by the regulations—the big businesses that comply with them promptly and show improvement—will be lauded by the Government. Perhaps we can think of an award for the most prompt paying business as the regulations come into play.

I may not have listened as carefully as I should have to the Minister's excellent introduction of the regulations, but I did not hear—*mea culpa* if she did mention this—whether the Government are a prompt payer and what our current record is. I said “our”; I probably still think I am a Minister—pathetic, really. I would like to know what the Government's record is. I know that the Government have made a huge effort to allow small businesses to contract with them, and the Government are obviously hugely well placed to lead by example, so I assume that the Government are the promptest payer of all.

As I have said, we are all reluctant to introduce regulations, and I notice from the explanatory memorandum that in this context the Brits operate true to form: the average contract says that we will pay in 29 days, and we do pay in 29 days. Every other European country pays later than they contract for, showing that British businesses are truly businesses of their word. We are very high up the table for prompt payment. Obviously,

the Germans beat us—they beat us at quite a lot of things—but we are very much prompt payers, apart from, also, the Scandinavian countries, which in my view are the most ideal countries on the planet, although that is another matter. We are doing very well, so although this measure will make a difference, I do not think we should beat ourselves up or beat up British businesses too much as outliers in terms of not supporting small businesses through prompt payments.

I look forward to the Minister answering some of the points I have raised, after she has dealt with the excellent points made by Opposition Members.

12.7 pm

Margot James: I thank hon. Members for their pertinent comments, questions and observations—I have learned quite a bit in the process. I shall deal first with the shadow Minister's speech and questions. He referenced the prompt payment code and some of the efforts that have been made to date to improve what I think we all agree is a serious problem facing small businesses. He said that not many companies abide by the prompt payment code or have signed up to it—it has limitations—and he gave some numbers. Almost 2,000 big companies have signed up to the code and, anecdotally, it is having an effect.

The good news is that we accept that the prompt payment code does not go far enough. That is why we are setting in stone the regulations under discussion today. As my right hon. Friend the Member for Wantage pointed out, approximately 15,000 of the large companies are likely to come within the scope of the regulations. That puts its likely impact on a much more secure footing.

The hon. Member for Sefton Central rightly pointed out that the measure is not a silver bullet and that it has to be seen as part of a package of measures, not the least of which is the appointment of the Small Business Commissioner. He asked when that measure was likely to be implemented. We anticipate having the Small Business Commissioner in post, with the resources needed to undertake inquiries and deal with complaints, by October this year.

The hon. Gentleman said that companies sometimes use late payment almost as a systematic policy, and I could not agree more. There is no doubt that some companies use small enterprises almost like a bank, which is immoral and unacceptable. The measures are of course designed to tighten the net, so that it will not be possible for the larger companies that fall within the regulations' scope to continue with that approach.

The hon. Gentleman talked about the Late Payment of Commercial Debts (Interest) Act 1998, implemented by the Labour Government to make it a legal requirement for companies to abide by better payment terms. I agree that those were laudable aims. He implied that Conservative Governments are a bit too cautious, noting that we rely on culture change and shy away from statutory intervention. I agree about that, but we follow those instincts for a good reason: we want to arrive at a workable solution to the problem of late payment.

Unfortunately, the 1998 Act is not at all widely used, for the very reason the hon. Gentleman set out in his speech: smaller companies do not want to press home the situation they are in with their bigger customers because they fear losing the contract or the opportunity

to bid for further work. That is the problem with using the 1998 Act, and it would be the problem with any overly legislative and punitive approach. Ultimately it would rely on small companies coming out into the open and challenging their big customers, which is very difficult.

The consultation phase on the corporate governance Green Paper is finished, and I agree with what the hon. Gentleman said about it being one way to get the suppliers' voice heard more loudly in the boardroom. That is what we anticipate and I am glad he supports that element of the regulations.

The hon. Gentleman also mentioned companies going in and out of scope, as it were. In theory that could be an issue, but we have set three criteria, at least two of which should be met by companies if they are to be considered in scope. It is not just a question of the 250 employees; it is also a question of whether they have a turnover of £36 million or more, and whether the net asset value on their balance sheet is in excess of £18 million. Companies need to satisfy two of the three criteria to be in scope, to guard against the concern he raised.

I heartily agree that some companies tend to try to game the system—I hasten to add that most do not, but a good number do. That will be at the top of my mind when, in consultation with the Secretary of State, I appoint the Small Business Commissioner. He or she will need eyes in the back of their head to apprehend and anticipate the sorts of ruses that some large companies might get up to in trying to get around the reporting system.

That brings me neatly to the policing of the reporting, which the hon. Gentleman raised as a concern. Within five years there will have to be a formal review of the effectiveness of the regulations. I hope that answers to an extent the concerns raised by my right hon. Friend the Member for Wantage. In the meantime, the large companies that are in scope will have a legal obligation to report in the way I outlined. If they fail to report twice a year, or if they misreport on any occasion, they will have committed a criminal offence and, in the worst cases, my Department will resort to prosecution.

The hon. Gentleman asked about the web-based reporting system. We anticipate that it will be in place on the gov.uk site from April. We will keep that under constant review and consult stakeholders, particularly small businesses and their representative bodies, to ensure that the format is user-friendly and that they see value in having a simple way of identifying large companies' payment practices. Come October, that will be backed up by the Small Business Commissioner himself or herself.

The hon. Gentleman asked about the effect of the regulations on early payment discounts. I will investigate that in the Department and get back to him if there is anything to say. He is right that companies sometimes offer that or suppliers negotiate it. It is another area that I am not yet sure will be covered by the regulations, but I will look into it and let him know.

There was some debate about interest charges. The hon. Gentleman answered his own question by reading the Government's consultation response—I have read it and think it is correct. Our focus is on getting earlier payment. We are using transparency and the weight of the law to require that reporting in order to achieve prompt, earlier payments. Interest charges are not

widely used, for the reasons he set out. We will keep it under review, but I think it is too dependent on SMEs coming out into the open and charging interest on their customers, which few are prepared to do. We want to change the balance of power in the relationship through the means proposed in the regulations. For the time being, we will look to enforce the regulations before looking at further regulations for imposing interest rate charges.

The hon. Member for Kilmarnock and Loudoun asked whether transparency will be enough. It is a good question, and one to which clearly I do not yet have an answer. We will probably only know once the regulations have been in place for two years. In answer to the question from my right hon. Friend the Member for Wantage, we believe that transparency will have the desired effect of ensuring that payment is made earlier and more promptly in the majority of cases.

However, will transparency alone be enough? I am also responsible for the national minimum wage, and I see that transparency there, through the naming and shaming of companies that do not comply, is starting to have an effect. I think the regulations will have an effect as well. They will not have that effect on large companies that go through quite serious trouble and have to take measures that even the best-governed companies would prefer not to take, so I can see that there will be examples when transparency alone will not be enough. However, I hope and believe that those will be a minority of cases, and that the vast majority will register a considerable improvement.

The hon. Member for Kilmarnock and Loudoun also mentioned cash retention in the construction industry. I am very concerned by that issue and am working on it at the moment with officials. We have commissioned independent research to better understand the costs and benefits of retentions and the alternatives. It has taken longer than we hoped, because this is a real issue that has been going on for far too long and needs to be tackled vigorously. We will look at ways of perhaps applying the regulations to that, but if it needs more than that, I hope that we will be able to deliver an effective means of preventing what is an unscrupulous exploitation of legitimate circumstances in which construction works have not gone right and it is the customer's entitlement to hold some money back. I appreciate that it is too widely abused at the moment.

I thank my right hon. Friend the Member for Wantage for his kind remarks about my role in business. I agree with him that we are reluctant to regulate. We are trying to strike a balance between the legislative approach favoured by the previous Labour Government in 1997, which did not really work, and relying on just a nudge and setting an example. I think the regulations strike that balance. I think they will have an effect without having the unintended consequences that a more heavy-handed, legislative approach would have.

My right hon. Friend questioned the impact assessment. The cost currently stands at £15 million for large companies. There were further re-workings of the figures and further evidence supported an increase from the original estimate, which was an underestimate. He pointed out that that is not much per company. We cannot really look at it on a per company basis, because some companies are already behaving well and are already paying within a reasonable timeframe, so it will not cost them anything more.

[Margot James]

Regrettably, a large number of companies do not pay on time, so I will not call them outliers. I do not think the actual cost of paying people on time is necessarily administratively a great deal more than the cost of keeping people waiting. That is why the cost per company in the impact assessment is quite small. My right hon. Friend asked whether I feel that is an underestimate. In fact, I feel the opposite: I think the impact assessment does not take any account of the savings that the myriad small companies will enjoy as a result of being paid on time. Those savings are real, as I outlined in my opening remarks. A small employer told me that they were able to divert a whole person from their accounts department to make more productive use of their time, which should assist our industrial strategy of making companies in this country more competitive and productive. The regulations will go some way towards achieving that happy state.

Finally, the vast majority of the Government's strategic suppliers are now adhering to the prompt payment code, although there is another issue further down the

supply chain. The prompt payment code deals only with tier 1 suppliers. I hope the regulations will improve what happens further down the supply chain. In conclusion, I am in favour of the regulations. I think they are important. I hope the Committee agrees.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Reporting on Payment Practices and Performance Regulations 2017.

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

Resolved,

That the Committee has considered the draft Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017.—(*Margot James.*)

12.23 pm

Committee rose.