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New regulations on reporting payment practices are now in force

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CATEGORY:
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In April 2017, new regulations came into force which require larger companies to report information twice annually about their payment practices for financial years beginning on or after 6 April 2017. The Reporting on Payment Practices and Performance Regulations 2017 (the 'Regulations') are part of a government initiative to promote timely payments to small suppliers from larger organisations. The Regulations apply to all companies formed under the Companies Act 2006 which meet the criteria below and there is no exemption for charitable companies.

A company (including a charitable company) will be a 'qualifying company' under the Regulations if it exceeds any two (or all three) of the following thresholds:

- an annual turnover of £36 million;
- a balance sheet of £18 million; or
- an average number of employees of 250.

Where a charitable company has one or more subsidiary companies and is therefore part of a group, there is a two-stage test to determine whether it is a qualifying company. First, the parent charitable company must individually meet at least two of the threshold requirements. Second, the group of which the parent is the head must meet at least two of the thresholds. Additionally, each UK subsidiary within the group (for example a trading subsidiary) has a separate duty to report if it meets the thresholds on a stand-alone basis. All UK companies, whether a parent or subsidiary, therefore must consider their own positions under the Regulations.

A 'qualifying company' must report on payment practices and performance for 'qualifying contracts', meaning contracts for goods or services or for intangible assets, including intellectual property (contracts for financial services are excluded). The information which must be reported is set out in full in the Schedule of the Regulations and includes:

- Information on payment terms (including narrative descriptions of standard payment terms);
- Information on dispute resolution (an explanation of the resolution process for payment-related disputes with suppliers);
- Information on payment practices and policies (including electronic submission and invoice tracking); and
- Information on payment performance (including information on the average number of days to make payments).

The information will be accessible to the public and must be approved by a director of the company before publication. In the case of a charitable company, this means approval by a trustee.

Reporting obligations will not apply to a new company during its first financial year. However, a company in its second financial year will be within the scope of the Regulations if it exceeds two or more of the thresholds in its first financial year. Companies will have two reporting periods during each financial year and are required to publish their information within 30 days of the end of each reporting period.

Charities required to report under the Regulations (because they fall within the criteria discussed above) should consider starting to review their existing payment practices and policies and to assess which of their contracts will fall within the scope of the reporting requirements. A breach of the Regulations constitutes a criminal offence!