*Draft Regulations laid before Parliament under sections 3(9) and 161(4) of the Small Business, Enterprise and Employment Act 2015 (c. 26) and section 17(4) of the Limited Liability Partnerships Act 2000 (c. 12), for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2024 No.

# COMPANIES

# CONTRACTS

# LIMITED LIABILITY PARTNERSHIPS

## The Reporting on Payment Practices and Performance (Amendment) (No. 2) Regulations 2024

*Made - - - -*

*Coming into force - - 1st October 2024*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 3(1), (2), (4), (5) and (7) and 161(2) of the Small Business, Enterprise and Employment Act 2015(**a**) and sections 15 and 17(2)(a) and (3) of the Limited Liability Partnerships Act 2000(**b**).

In accordance with section 3(8) of the Small Business, Enterprise and Employment Act 2015, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

In accordance with sections 3(9) and 161(4) of the Small Business, Enterprise and Employment Act 2015 and section 17(4) of the Limited Liability Partnerships Act 2000, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

**Citation, commencement, extent and application**

**1.**—(1) These Regulations may be cited as the Reporting on Payment Practices and Performance (Amendment) (No. 2) Regulations 2024.

(2) These Regulations come into force on 1st October 2024.

(3) These Regulations extend to England and Wales, Northern Ireland and Scotland.

(4) The amendments made by regulations 2 to 7 apply in relation to each financial year of a company beginning on or after 1st January 2025.

(**a**) 2015 c. 26.
(**b**) 2000 c. 12.

(5) The amendments made by regulation 8 apply in relation to each financial year of a limited liability partnership beginning on or after 1st January 2025.

### Amendment to the Reporting on Payment Practices and Performance Regulations 2017

**2.** The Reporting on Payment Practices and Performance Regulations 2017(**a**) are amended in accordance with regulations 3 to 7.

### Amendment to regulation 2

**3.** In regulation 2—

(a) before the definition of "the 2006 Act" insert—

""the 1996 Act" means the Housing Grants, Construction and Regeneration Act 1996(**b**);";

(b) after the definition of "the 2006 Act" insert—

""construction contract"—

(a) means a construction contract within the meaning of sections 104(1) to (3) and 105(1) to (2) of the 1996 Act; and

(b) excludes any construction contract with a residential occupier within the meaning of section 106(2) of the 1996 Act;";

(c) after the definition of "qualifying company" insert—

""qualifying construction contract" has the meaning given in regulation 6A;".

### Amendment to regulation 3

**4.** For regulation 3(1) substitute—

"(1) For each reporting period, a qualifying company must publish a report containing—

(a) the information set out in Schedule 1 in respect of its qualifying contracts; and

(b) the information set out in Schedule 2 in respect of its qualifying construction contracts.".

### Insertion of regulation 6A

**5.** After regulation 6 insert—

**"Construction contracts to which the information in Schedule 2 relates**

**6A.**—(1) A qualifying construction contract is a relevant contract which satisfies the conditions in paragraphs (2) and (3).

(2) The first condition is that the relevant contract is a qualifying contract.

(3) The second condition is that the relevant contract is a construction contract.".

### Amendment to the Schedule

**6.**—(1) The Schedule is renamed "Schedule 1".

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(**a**) S.I. 2017/395, as amended by S.I. 2024/444.

(**b**) 1996 c. 53, as amended by section 138 of the Local Democracy, Economic Development and Construction Act 2009 (c. 20); there are other amendments but none is relevant.

(2) In Schedule 1 (as renamed), in paragraph 1, for "regulation 3" substitute "regulation 3(1)(a)".

**Insertion of Schedule 2**

**7.** After Schedule 1 (as renamed) insert—

"SCHEDULE 2

Regulation 3

## Information in relation to qualifying construction contracts

**Introduction**

**1.** For the purposes of regulation 3(1)(b), the information for each reporting period that a qualifying company must publish in relation to qualifying construction contracts is set out in paragraphs 2 to 12.

**Information on retention clauses**

**2.** A statement as to whether a qualifying company's payment practices and policies in relation to qualifying construction contracts—

(a) include the use of retention clauses; or

(b) do not include the use of retention clauses.

**3.** Where a qualifying company makes a statement that paragraph 2(b) applies, paragraphs 4 to 11 do not require the qualifying company to publish any further information.

**4.** A statement as to which of the following apply—

(a) all the qualifying company's qualifying construction contracts with its suppliers include retention clauses;

(b) the qualifying company's standard payment terms include retention clauses; or

(c) retention clauses are included in the qualifying company's qualifying construction contracts with its suppliers only in specific circumstances.

**5.** Where the qualifying company makes a statement that paragraph 4(c) applies, a description of the specific circumstances in which retention clauses are included.

**6.** A statement as to whether there is—

(a) a maximum contract sum below which no retention clause is included in a qualifying construction contract between the qualifying company and its supplier;

(b) a standard percentage rate in retention clauses in qualifying construction contracts between the qualifying company and its suppliers;

(c) a practice of ensuring that a retention clause in a qualifying construction contract between the qualifying company and its supplier is no more onerous than any retention clause in a qualifying construction contract between the qualifying company and its client in that supply chain.

**7.** Where the qualifying company makes a statement that—

(a) paragraph 6(a) applies, a statement specifying the contract sum;

(b) paragraph 6(b) applies, a statement specifying the standard percentage;

(c) paragraph 6(c) applies, a description of that practice.

**8.** A description of the mechanism or process for the release of monies deducted or retained by the qualifying company under any retention clause in a qualifying construction contract between the qualifying company and its supplier.

**9.** The description referred to in paragraph 8 must include information as to whether the release of sums deducted or retained occurs in stages and if so what those stages are.

**10.**—(1) A statement, expressed as a percentage calculated in accordance with the formula set out in sub-paragraph (2), of the difference between—

(a) the overall value of monies deducted or retained pursuant to retention clauses in qualifying construction contracts between the qualifying company and its suppliers ("sum A"); and

(b) the overall value of monies deducted or retained pursuant to retention clauses in qualifying construction contracts between the qualifying company and its clients ("sum B").

(2) The formula referred to in sub-paragraph (1) is—

$$\frac{sum\ A}{sum\ B} \times 100$$

**11.**—(1) A statement, expressed as a percentage calculated in accordance with the formula set out in sub-paragraph (2), of the difference between—

(a) the overall value of monies deducted or retained pursuant to retention clauses in qualifying construction contracts from payments made by the qualifying company to its suppliers ("sum C"); and

(b) the overall value of monies paid by the qualifying company to its suppliers under all qualifying construction contracts ("sum D").

(2) The formula referred to in sub-paragraph (1) is—

$$\frac{sum\ C}{sum\ D} \times 100$$

**Approval**

**12.** The name of the director of the qualifying company who has approved the information set out in paragraphs 2 to 11.

**Interpretation**

**13.** In this Schedule—

"client" means the person to whom the qualifying company supplies goods, services or works pursuant to a qualifying construction contract;

"condition" (in the definition of "retention clause") includes condition that some or all of the monies are not to be released until one or more of the following occur—

(a) B has met all of its obligations under the contract;

(b) B has met specified conditions under the contract;

(c) a period set aside for making good any defects has expired;

"contract sum" means the sum of—

(a) the amount payable to the supplier ("B") for any goods, services or works supplied by B, in accordance with the terms of the qualifying construction contract; and

(b) any additional monies payable to B, in accordance with the terms of the qualifying construction contract;

"retention clause" means provision in a qualifying construction contract that permits one party to that contract ("A") to deduct or retain monies equating to a percentage of—

(a) the amount payable to another party to the contract ("B") for any goods, services or works supplied by B in accordance with the terms of the qualifying construction contract between A and B;

(b) an interim payment due to B in accordance with the terms of the qualifying construction contract between A and B; or

(c) the contract sum of the qualifying construction contract,

until any condition set out in the qualifying construction contract for release or partial release of the monies to is met;

"standard payment terms" means, in relation to a qualifying construction contract—

(a) the standard terms relating to payment that the qualifying company uses for qualifying construction contracts; or

(b) where the qualifying company does not use standard terms, the qualifying company's most frequently used payment terms for qualifying construction contracts; and

"standard percentage rate" means, in relation to a retention clause—

(a) the percentage rate that is always used to calculate the amount deducted or retained in any retention clause in a qualifying construction contract between the qualifying company and its supplier; or

(b) where the qualifying company uses different percentage rates for calculating the amount deducted or retained pursuant to any retention clause, the most frequently used percentage rate used in retention clauses in qualifying construction contracts between the qualifying company and its suppliers.".

**Amendment to the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017**

**8.**—(1) The Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017(**a**) are amended as follows.

(2) In regulation 10, for "The Schedule" substitute "Schedule 1".

(3) After regulation 10, insert—

**"Application of the Principal Regulations to limited liability partnerships (qualifying construction contracts)**

**10A** Schedule 2 to the Principal Regulations (information in relation to qualifying construction contracts) shall be read as if—

(**a**) S.I. 2017/425, as amended by S.I. 2024/444.

(a) the word "company" and "company's" wherever they appear were "LLP" and "LLP's";

(b) in paragraph 12, the reference to the "director" were to the "designated member".".

*Name*
Title
Department for Business and Trade

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Reporting on Payment Practices and Performance Regulations 2017 ("the Principal Regulations") (S.I. 2017/395) and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 ("the LLP Regulations") (S.I. 2017/425) to introduce requirements on a qualifying company or a qualifying Limited Liability Partnership to publish certain information about their payment practices and policies with respect to retention clauses in any construction contract they have with their suppliers.

Regulation 3 amends regulation 2 of the Principal Regulations to introduce the definition of "construction contract" and "qualifying construction contract".

Regulation 4 amends regulation 3 of the Principal Regulations to impose a duty on a qualifying company to publish for each reporting period information on payment practices and policies in relation to qualifying construction contracts.

Regulation 5 inserts regulation 6A to the Principal Regulations to define qualifying construction contracts.

Regulation 6 amends the existing Schedule to the Principal Regulations to rename it Schedule 1 and makes a minor amendment to that Schedule to take other changes made by these Regulations into account.

Regulation 7 introduces a new Schedule (Schedule 2) to the Principal Regulations. This Schedule 2 sets out the information that a qualifying company is required to provide in respect of qualifying construction contracts.

Regulation 8 amends the LLP Regulations to apply equivalent provisions to certain limited liability partnerships.

An full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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ISBN 978-0-34-826167-7

£5.78

http://www.legislation.gov.uk/id/ukdsi/2024/9780348261677