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DRAFT STATUTORY INSTRUMENTS

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**2024 No.**

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

**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—

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

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—

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

### 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.”.