BESA
BUILDING ENGINEERING SERVICES ASSOCIATION

PAYMENT PERFORMANCE REPORTING REQUIREMENTS

1. WHEN AND WHAT?

The government proposed draft **regulations** on a duty for large businesses to report on their payment practices, policies and performance under the Small Business, Enterprise and Employment Act 2015 section 3, which is expected to come in force in April 2017. The duty will apply to financial years beginning on or after 6 April 2017. If the financial year starts on 5 April 2017, the new duty will not apply until the year commencing 5 April 2018.[1]

2. REPORTING REQUIREMENTS

The duty to report will be mandatory and will apply to large UK companies and large LLPs which exceed the size thresholds set out in the Companies Act 2006.[2]

The thresholds for a business to qualify as 'large' are set out in section 465(3) of the Companies Act are as follows – In the year in which it is measured:

- annual turnover more than £36 million
- balance sheet total more than £18 million
- more than 250 employees

Companies or LLPs will come within the scope of the duty if they exceeded two or all of the thresholds set out in s465(3) of the Companies Act on both of the last two balance sheet dates[3] – which must be submitted to the Companies House within set period from the end of their company's financial year.[4]

[1] "Financial year" means company's financial year which is usually the same as the company's accounting reference period, determined in accordance with sections 390 to 392 of the Companies 2006 Act. The financial year is usually a 12 month period for which company prepare accounts. Every company must prepare accounts that report on the performance and activities of the company during the financial year. This starts on the day after the previous financial year ended or, in the case of a new company, on the day of incorporation.

[2] 'A company or LLP qualifies as micro, small or medium-sized for Companies Act accounting purposes, in a year in which two or all of its turnover, balance sheet total and average number of employees are within specified thresholds.' Payment practice and performance guide can be found here: **Payment Performance Reporting Guide**

[3] Balance sheet is a financial statement that summarises company's assets, liabilities and shareholders' equity at a specific point in time such as the end of a quarter or a financial year. It is a record of what a company has and how it has come to have it. More information on the balance sheet can be found here: **Balance sheet and Accounts glossary**

[4] To find out more information on accounts filing requirements please follow this link: **Annual Requirements**

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3. DUTY TO REPORT ON PAYMENT PRACTICES AND PERFORMANCE

The requirement is part of the Government's efforts to support small and medium sized businesses. Large companies and large limited liability partnerships, or LLPs, will be required to publish information about their payment practices and performance twice per financial year.

They will be required to report on the following:

- Their payment terms and any changes to standard payment terms
- Their business process for resolution of disputes related to payment
- Their average time taken to pay invoices from the date of receipt of invoice
- The percentage of invoices they pay in:
  - 30 days or less;
  - between 31 and 60 days; and
  - beyond 60 days
- Proportion of invoices due within the reporting period which were not paid within agreed payment terms
- Whether a business offers e-invoicing and supply chain finance
- Whether the business's practices and policies cover deducting sums from payments as a charge for remaining on a supplier's list, and whether they have done this in the reporting period
- Whether the business is a member of a payment code, and a name of the code

4. WHAT ARE THE PENALTIES FOR FAILURE TO COMPLY?

Under the Regulations, the failure to publish a report will constitute a criminal offence, for which both the business and its directors, or members in LLP, will be liable to a fine (unlimited) on summary conviction. However, the directors and members of an LLP will not be personally liable if they can show that they took all reasonable steps to ensure the requirement would have been met.

It will also be an offence for a person knowingly or recklessly to publish a report, information or statement that is materially misleading, false or deceptive.

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5. SUMMARY

Under the new rules, every 6 months a large company will be required to publish their report on an online portal provided by the Government. Businesses will be free to publish the information on their own website as well if they wish. Frequency of reporting will be as follows:

a) The first report will be due 30 days after the end of the first six months of a business' financial year

b) The second reporting period will end at the same time as the business' financial year, with the second report due 30 days later.

If you're in any unincorporated joint ventures the expectation is that each partner in the JV will be expected to account for their proportion of transactions according to the terms of the JV agreement.

The downside to this initiative is that the results may be fragmented and skewed by the following:

- Each company that exceeds 2 of the 3 thresholds will be reporting and not the entire group.
- All transactions – purchase ledger and supply chain ledger – are taken into account together. Therefore, it is inevitable that the volume of instantaneous electronic transactions, e.g. chip'n'pin travel receipts, with dramatically skew the figures in relation to payment performance for the construction supply chain.
- Inter-group transactions will, reportedly, be excluded.
- The new reporting submission website is reportedly going to allow you to enter your financial year such that it will tell you your six monthly reporting dates.
- As construction tends to invoice after payment is made, these requirements need to be reconciled with the Construction Act – current sources suggest that the date from which payment will be measured is the payment notice date. BESA is currently seeking to persuade the Government that if this innovation is to have the desired impact of achieving behavioural change it should measure from the date of the relevant payment period or the due date.

In theory, introducing digital transparency on payment performance forms part of the Government's overall campaign to help to tackle late payment of suppliers by large businesses.

It also marks a seismic step closer to the availability of transparent data on ethically strong commercial behavior such that the supply-chain can strategically move towards working for those who trade with integrity and clients begin to procure on the same basis, given the acknowledge fragility of the construction process due to enormously fragmented supply-chains and disaggregated project costs within those supply-chains.

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