



**Department for
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Dear Laura

Thank you for your letter of 14 July to Corinne Brooke, detailing your concerns about the Duty to Report on Payment Practices and Performance, related guidance and its application to construction contracts which fall within scope of the Housing Grants, Construction and Regeneration Act 1996 (the “Construction Act”). I have recently taken over from Corinne and am responding as the Official responsible for prompt payment policy.

We are grateful for your support for the objectives behind the reporting requirement and continued engagement on the guidance and regulations. We appreciate you are concerned about the calculation of statistics from ‘day 1’ and when this date is triggered for a transaction where an invoice is not present. However, the Regulations state that the clock starts the day after the date on which a business receives an invoice or otherwise has notice of an amount for payment – this is the requirement for all contracts and sectors. We understand that valuations often form an important part of the payment process in construction transactions, but the valuation date does not meet the requirement in the Regulations, as it does not provide the payer with a notice of an amount for payment.

Having considered evidence on construction contracts provided by construction stakeholders, including Build UK, we have identified a number of points in construction transactions at which a business would have notice of an amount for payment, and the earliest one is the application for payment, where used. We understand from the information provided that applications for payment are used in most cases. But if an application for payment is not present, then it would be a payment notice, or default payment notice. The guidance is designed to help construction businesses comply with their legal obligations under the Regulations and seeks to find the closest equivalent to an invoice in construction contracts.

For example, in a non-construction contract, a supplier will usually provide the customer with an invoice, which is generally the first notice of the amount that the supplier expects to receive in payment. This may be amended by the customer or supplier, dependent on the goods or services delivered. In a construction contract, the closest point to this is the application for payment or payment notice if an application for payment is not present. This is because it is the first point that the customer has notice of what the payee considers should be paid. This may be amended or superseded by one of the parties in light of a valuation, with a payment notice or ‘pay less notice’, dependent on what had been delivered.

Neither an invoice nor an application for payment is necessarily a final amount for payment, but both are usually the first notice of an amount for payment that the payer receives. This ensures consistency across the Payment Practices Reporting data. Under the Construction Act, the payer is ultimately obliged to pay the “notified sum” which, depending on the

circumstances, will be the sum which was specified in a payment notice, default payment notice, pay less notice or in some cases in the application for payment.

We appreciate the time that BuildUK and its members have taken in engaging with BEIS on this issue, and although I understand that the outcome is not as you would have wished, I hope you can understand the rationale behind this decision.

Yours sincerely,

Kathleen Minett