

Insights

LATE PAYMENTS CONSULTATION: TACKLING POOR PAYMENT PRACTICES

Sep 18, 2025

SUMMARY

In this Insight, Jack McFadden takes a closer look at the Late payments consultation and considers the key proposals, in particular plans for retention reform in the construction industry.

It has long been acknowledged that payment is one of the key issues in the construction industry, with late payment and long payment terms causing significant issues across the supply chain. Recent high profile insolvencies and the associated impacts have further highlighted this issue.

There have been a significant number of initiatives attempting to tackle the issues of late payment, including statutory interventions, industry led voluntary codes, construction standard form guidance and government guidance. Despite the various initiatives, significant issues still persist.

While not specific to the construction industry the Department for Business and Trade has noted in its 2025 report titled 'Estimating the total economic cost of late payments and their impact on the UK economy', that:

- over 1.5 million businesses are impacted by late payments;
- late payments cost the UK economy almost £11 billion per year; and
- late payments close down 38 UK businesses every day.

In this Insight, we explore the government's recently announced proposed legislative measures to tackle late payments to small businesses and the related public consultation on the proposals, with a particular focus on the impact on the construction industry.

BACKGROUND

As noted above, there have been a range of initiatives aimed at solving the problem of late payments. Our Insight, ['Fair Payment Practices: Recent Developments'](#) set out these various

initiatives, including the more recent initiatives relating to the British Property Federations's Fair Payment Charter and the Department for Business and Trade's Prompt Payment and Cash Flow Review Report.

Since our previous Insight in Spring 2024, the government has now taken further measures, including:

- commencing the process of legislating to require large companies to include their payment performance in annual reports; and
- launching a new Fair Payment Code.

LATE PAYMENTS CONSULTATION

In addition to these measures, on 30 July 2025, the government proposed a series of legislative measures to tackle late payments to small businesses and launched a related public consultation which set out the proposals in detail.

The consultation closes on 23 October 2025 and the plan is to publish the outcome within 12 weeks.

PROPOSED MEASURES

The proposed legislative measures include:

- an amendment to the Housing Grants Construction and Regeneration Act 1996 (Construction Act) to either prohibit retention clauses or require protection of retained sums, aiming to prevent losses due to insolvency and improve payment reliability;
- amending the Late Payment Act to remove the option to agree payment terms longer than 60 days (if considered not 'grossly unfair'), setting a clear limit to protect smaller suppliers;
- amending the Late Payment Act to introduce a 30-day limit for raising invoice disputes. If a business fails to raise a dispute within 30 days of receiving an invoice, it will have to pay the full amount within the agreed terms, and any late payments will incur statutory interest;
- amending the Late Payment Act to make the statutory interest rate payment on qualifying late payments mandatory so that parties will be unable to agree a lower rate;
- amending the Reporting on Payment Practices and Performance Regulations 2017 to include additional reporting on statutory interest;
- introducing new legislation granting the Small Business Commissioner enforcement powers to impose financial penalties on large companies that repeatedly pay suppliers late;

- the strengthening of audit committee and board-level responsibilities to improve payment;
- amendment of the Enterprise Act 2016 to give additional powers to the Small Business Commissioner. These would include enhancement of its ability to investigate unfair payment practices and enable it to check the accuracy of payment data submitted by large companies and conducting spot checks. The Commissioner would also gain authority to compel disclosure of information, arbitrate disputes and impose financial penalties for non-compliance or persistent breaches.

RETENTION

While the proposed legislative reforms are broad and far-reaching, the most significant proposed measures for the construction industry are the proposed measures relating to retention.

The consultation proposes that retentions either be banned OR that significant safeguards be introduced to ensure payees are not harmed by the use of retentions (these restrictions would only apply to retentions under construction contracts governed by the Construction Act). These changes would be introduced through amendments to the Construction Act and Scheme for Construction Contracts.

The plan is to implement this change for new construction contracts after a prescribed date, with a transitional period to apply.

If retentions are to be retained in a limited form, the following rules are proposed to apply:

- if the contract did not include the required retention provisions, then these would be implied by the Scheme for Construction Contracts;
- a single retention sum would only be allowed to be deducted and withheld from the final payment in respect of works until the expiry of the applicable rectification period. Monies would be automatically segregated and held for the benefit of the payee when deducted and withheld;
- payers could either segregate the retained sums in a separate bank account or protect the sums through use of an instrument of guarantee (insurance or surety bond). Government expects the market to produce suitable products;
- the retention sum would be automatically released unless the required notification was made and the payee would own any interest earned on the retention sum;
- the payer must report to the payee on all retention sums held and the mechanism(s) of protection and also keep accounting and records for all retention sums (and make them available to the payee for inspection within a reasonable time, without charge);

- any disputes about the amount and timing of the release of retentions payments will be dealt with by existing dispute resolution processes.

Retention abolition is a controversial topic in the construction industry. Heavyweight proponents of abolition such as Build UK and the Construction Leadership Council have argued consistently in favour of scrapping the use of retentions for many years. Interestingly, in recent years, some standard form providers have taken note of this position with NEC, for example, issuing guidance with the CLC on alternatives to retentions (NEC and CLC Guidance for Dealing with Retention Payments Under NEC3 and NEC4 Contracts (2022)). There were rumours before the launch of the JCT 2024 suite of contracts that the retention provisions would be removed, but ultimately this did not happen.

Additionally, we have seen efforts to introduce a retention deposit scheme raised (similar to the second proposal above), through the Construction (Retention Deposit Schemes) Bill which was introduced in 2018 but ultimately did not proceed to second reading. For further detail and analysis of these developments please see our previous Insights:

- [Retentions: the latest developments | BCLP - Bryan Cave Leighton Paisner](#)
- [Retention release? | BCLP - Bryan Cave Leighton Paisner](#)

The ambition to move towards zero retention has not eventuated, with retention still widely used within the industry. A key reason for this is the perceived lack of viable alternatives to cash retentions that offer the same level of security to employers and funders in respect of ensuring performance and incentivising quality, reducing the risk of defects or the insolvency of businesses within the supply chain. The government's proposal acknowledges that alternative forms will be required which is a key aspect of the consultation which the government is asking respondents to directly address.

FINAL THOUGHTS

The proposed broad-ranging measures are positive in tackling the inherent problems associated with payment to small businesses, particularly those in the construction industry in which cash flow is so critical. Given the significant number of initiatives to tackle late payment and the use of retention to date, it will be interesting to see the results of the consultation.

RELATED CAPABILITIES

- Commercial Construction

MEET THE TEAM



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