Late Payment and Retentions Consultation Response Guide

Context:

This document is designed to help NFRC Members respond to the [government’s consultation on late payments and retentions](https://www.gov.uk/government/consultations/late-payments-tackling-poor-payment-practices/late-payments-consultation-tackling-poor-payment-practices). To complete the consultation survey, [follow this link](https://ditresearch.eu.qualtrics.com/jfe/form/SV_0v37vzvBpfM5Exw) and fill in the required fields. You may copy the suggested responses from below into the relevant question fields, but we encourage you to add your own insights wherever possible and share stories of your own experiences.

This response emphasises support for protecting retention monies and provides responses to all questions asked in the consultation, including those on late payment.

If you wish to only answer questions on retentions, skip to question 17.

Thank you for contributing. Broad participation is essential if we are to secure meaningful reform of payment practices in construction. Please share this guide with other businesses that would benefit from improved payment practices. If you have any questions or would like assistance with completing your response, please contact [policy@nfrc.co.uk](mailto:policy@nfrc.co.uk)

If you wish, you can [read the government’s full consultation here](https://www.gov.uk/government/consultations/late-payments-tackling-poor-payment-practices/late-payments-consultation-tackling-poor-payment-practices).

**Respond here:** https://ditresearch.eu.qualtrics.com/jfe/form/SV\_0v37vzvBpfM5Exw

The consultation closes on 23 October 2025 so make sure you respond before then.

Or email your response to: [promptpayment@businessandtrade.gov.uk](mailto:promptpayment@businessandtrade.gov.uk)

Continue reading for the response guide.

Response Guide:

1. Name: [XXXXXX]
2. Email (if you agree to be contacted about your responses): [XXXXXX]
3. Capacity (business, trade representative, other organisation, individual): Business
4. Representative body: N/A
5. Size of business (if applicable): Turnover [XXXXXX] Employment [XXXXXX]
6. Name of business/organisation/representative body: [XXXXXX]
7. Region: [XXXXXX]
8. Sector: Roofing/Cladding Services across construction, FM and maintenance.

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| Question | Suggested Response |
| 9a To what extent do you agree that Audit Committees, where companies have them, should provide commentary and make recommendations to company directors before data is submitted to Government and included in Directors reports? | Strongly agree. |
| 9b To what extent do you agree that the Small Business Commissioner should write to audit committees and company board, where companies have them, when undertaking payment performance reporting assurance and when investigating any other matter relating to a companies’ payment practices? | Strongly disagree. |
| 9c Are there any potential unintended consequences or considerations that could happen if this measure was introduced? | Yes. |
| 9d Please explain the reasons for your answer to question 9c. | The Small Business Commissioner (SBC) should only be required to write to audit committees and company boards where it is genuinely appropriate. Imposing a blanket obligation risks limiting the SBC’s ability to carry out payment performance reporting assurance or to investigate other issues relating to company payment practices. This decision should remain at the SBC’s discretion, without any legal requirement to formally notify audit committees or boards unless the SBC considers it necessary. |

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| Question | Suggested Response |
| 10a To what extent do you agree that limiting UK payment terms to 60 days at a maximum will be effective in addressing the stated problem of long payment times? | Strongly agree. |
| 10b Please explain the reasons for your answer to question 10a | Currently, public sector contracts must be paid within 30 days, while private sector contracts allow up to 60 days. However, longer terms are permitted unless deemed “grossly unfair”, a vague standard which leads to exploitation as it is rarely challenged. For construction SMEs, challenging these terms during tendering can prove prohibitively costly and it can also compromise supply chain relationships. The exception to the 60-day payment limit means the limit is effectively ignored by those looking to extract value out of the supply chain, making a mockery of the legal requirement.  When a business is asked to agree to longer than 60-day payment, it equates to financing the client’s business model and project. When this happens to a business, this directly increases solvency risk, restricts cash flow, and limits growth, investment in people, skills, marketing, and technology. Ultimately, it is unfair to SMEs at the delivery end of UK construction supply chains. |
| 10c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure? | No |
| 10d Please explain the reasons for your answer to question 10c. | N/A |

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| Question | Suggested Response |
| 10e What exemptions, if any, do you think should apply and why – for example, in specific sectors or in particular circumstances? | There are no sectors or circumstances within construction where exemptions are justified. Even on critical infrastructure projects where companies do not pay by monthly instalments, there is no need for special treatment. The 60-day countdown starts from the date the payment application is submitted, not from when the work itself is completed, meaning quarterly payments or other agreed schedules are still possible, but the payment deadline is clear, allowing for stability in forward thinking.  Exemptions open the door to loopholes for clients to delay payment by hiding behind complicated legal wording, perpetuating the preexisting problem. A foundational aspect of any legitimate business or organisation must be its ability to pay its suppliers on time. |

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| Question | Suggested Response |
| 11a To what extent do you agree that introducing a 30-day time limit on the ability for businesses to dispute invoices will be effective in addressing the stated problem of the deliberate disputing of invoices to extend payment times? | Strongly agree |
| 11b Please explain the reasons for your answer to 11a | Within the construction sector, the Housing Grants, Construction and Regeneration Act 1996 sets out payment process milestones: when payment is due, when notices may be issued, and when the final payment must be made.  Due to Construction Industry Scheme tax rules and VAT domestic reverse charge rules, construction businesses typically submit an application for payment before issuing a formal invoice that matches the confirmed payment figure. Statutory guidance on the payment reporting regs outlines that, where general payment laws refer to ‘invoices’ in construction, this should be treated as the application for payment, the point when the client first knows how much they owe. The payer is given two opportunities to dispute the amount before the final payment date, but they must pay whatever figure is confirmed in their last notice. So, while the law already limits how a client can dispute payments, it doesn’t limit how long the whole process can take, opening the doors to exploitation. If parties cannot agree on timescales, the law’s fallback is 17 days, however, in practice there is no limit and it is often extended for lengthy delays, sometimes up to 120 days, depending on what some clients believe they can get away with. This is grossly unfair, wastes time, increases risk, and stifles the ability of UK construction SMEs to help the government meet its ambitious housing, retrofit, and infrastructure targets.  For the above reasons, a 30-day time limit on the process for disputing applications under the Housing Grants, Construction and Regeneration Act is essential. |
| Question | Suggested Response |
| 11c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure? | No. |
| 11d Please explain the reasons for your answer to question 11c. | N/A. |
| 11e Are there more effective ways the Government could prevent frivolous disputing of invoices? | A combination of:  - a 60-day maximum on all payments,  - mandatory interest on late payment at a significant punitive rate,  - accounting for interest on late payments,  - fining businesses who repeatedly pay late,  - a long-stop period to dispute invoices.  These measures would go some way to preventing the exploitation of payment systems which currently disadvantages specialist construction businesses. |

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| Question | Suggested Response |
| 12a To what extent do you agree that all qualifying contracts being subject to mandatory statutory interest on their late payments without exception will address the stated problem and help incentivise paying on time? | Strongly agree |
| 12b Please explain the reasons for your answer to question 12a | Currently, during the contract negotiation period within construction, some clients regularly lower or remove the right to claim statutory interest on late payments. SME contractors often feel obliged to accept these terms for fear of losing work, or they are otherwise overwhelmed by other excessive changes to standard form contracts to notice and understand the change.  This ability to undermine the statutory requirement makes it effectively meaningless. Removing the ability of negotiating parties to vaguely agree ‘some other substantial remedy’ to the rate of statutory interest set by the Secretary of State would help ensure there are meaningful consequences to late payment.  For too long, clients and large contractors within construction have been incentivised to sit on late payment for interest gains, capital, and liquidity, passing risk through their supply chain to smaller companies. This will help change that. |
| 12c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure? | No. |
| 12d Please explain the reasons for your answer to question 12c. | N/A |

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| Question | Suggested Response |
| 13a To what extent do you agree that requiring businesses that report under the Reporting on Payment Practices and Performance Regulations 2017 to report how much interest they owe and pay to their suppliers as a result of late payments will help incentivise reporting businesses to improve their payment practices? | Strongly agree |
| 13b Please explain the reasons for your answer to question 13a | Reporting brings essential transparency for improving payment performance. Without transparent reporting or enforcement on interest owed, businesses can and will negotiate settlements which do not include proportionate interest payments.  Legislating the need to pay interest on late payments is not a strong enough deterrent to change commercial behaviour, unless the consequences of non-compliance are clear and enforced, or payment performance is transparent and must be accounted for.  If businesses were able to see information about how much interest a firm owes, as well as how much they pay to their suppliers because of late payment, they would be able to make educated decisions about who they can afford to work with. |
| 13c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure? | No. |
| 13d Please explain the reasons for your answer to question 13c. | With the widespread uptake of technology platforms to automate payment reporting, which have the capacity to report on interest owed to suppliers, there will be no significant cost to implementing appropriate reporting. Any costs will be vastly accounted for in immediate gains for the wider supply chain. |

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| Question | Suggested Response |
| 14a To what extent do you agree that introducing financial penalties for large businesses persistently paying their suppliers late will address the stated issue and incentivise reporting businesses to pay on time? | Strongly agree |
| 14b Please explain the reasons for your answer to question 14a | Companies that unjustly withhold payment reap benefits in the form of interest, capital, and liquidity, costing the UK economy £11 billion a year and closing 38 businesses a day. It is essential there are consequences for this destructive behaviour.  Fines and fee-for-fault models are already used in the UK with competition, data privacy and health & safety law to ensure the system is self-sustaining and cost neutral as an enforcement system. Similar models can be extended into the payment sphere. |
| 14c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure? | No |
| 14d Please explain the reasons for your answer to question 14c. | N/A |
| 14e To what extent do you agree that linking financial penalties for consistently late- paying businesses to their unpaid statutory interest liabilities is a proportionate and effective approach? | Strongly agree |
| 14f Please explain the reasons for your answer to question 14e. | Current solutions which rely on the payee to spend money challenging the payer to recover monies owed are fundamentally unequal. Time and resource limitations often lead to smaller businesses writing off owed money due to an inability to pursue justice, which is prohibitive to driving cultural change across the construction sector. Automatically tying financial penalties to transparent and accurate unpaid statutory interest liabilities would drive essential positive change |

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| Question | Suggested Response |
| 15a To what extent do you agree that the introduction of the new powers for the Small Business Commissioner will be effective in improving compliance and enforcement of new and existing regulations around payments? | Strongly agree |
| 15b Please explain the reasons for your answer to question 15a | The Small Business Commissioner (SBC) currently has its jurisdiction and powers limited by the lack of investigative and enforcement abilities. The proposed improvements would unlock the SBC’s potential. |
| 15c To what extent do you agree that the introduction of the new powers for the Small Business Commissioner will enhance its ability to support small businesses to resolve payment disputes? | Strongly agree |
| 15d Please explain the reasons for your answer to question 15c | As it stands, the Small Business Commissioner does not have the scope and enforcement powers to significantly improve the experiences of SMEs across the UK. |
| 15e Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure? | No |
| 15f Please explain the reasons for your answer to question Q15e. | N/A |
| 16a To what extent do you agree that the requirement for businesses to report under the Payment Practices and Performance Reporting Regulations should be changed from twice a year to once a year? | Strongly disagree |

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| Question | Suggested Response |
| 16b Please explain the reasons for your answer to question 16a | Once a year would risk data being 11 months out of date, harming the ability of businesses to make educated decisions about who they work with. As the data mainly involves aggregated averages and percentages, a reduction in regularity would make the data 50% less reliable. To maintain credibility the reports must be kept as 6 monthly. If reporting is reduced to once a year the reports would risk becoming redundant. |

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| Question | Suggested Response |
| 17a To what extent do you agree that prohibiting the use of retention clauses in construction contracts would be effective in addressing the stated problems associated with retention? | Agree |
| 17b Please explain the reasons for your answer to question 17a. | Tackling the issue of abusive retention clauses is a helpful tool for unlocking growth for roofing businesses, the wider construction sector, and the UK as a whole. Currently, payees must fight to prove payment is due, while payers hold the money, earn interest, and often delay or deny release. Many firms give up chasing retentions, losing time, money, and wellbeing.  Retentions risk being lost entirely if a company collapses, as seen with Carillion and ISG. In 2017, a government report estimated that around £6 billion is tied up in retentions, with over £229 million lost to insolvency each year, and these figures will only have grown. This is a key factor keeping construction one of the UK’s most insolvent sectors.  A legislative prohibition on the use of retention clauses in construction contracts would be effective, but only if steps are taken to prevent alternative methods of delaying payment being created to fill the space. The primary issue is not retention clauses themselves, but the abuse by payers of our cash which is withheld as retentions and the risk it is lost in the event of their insolvency. |

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| Question | Suggested Response |
| 18 Under a prohibition on the use of retention clauses in construction contracts, what alternative measures would a payer seek to ensure performance and quality from a supplier? Please explain the reasons for your answer. | We would expect a Payer to also look at other traditional forms of contractual security against non-performance, e.g. parent company guarantees, personal guarantees – where available and of any value – or performance bonds. Within roofing, manufacturer and workmanship-backed guarantees outperform retentions in protecting clients, with defect liability periods commonly ranging from 5-30 years, far exceeding the standard two-year defect liability period of retention clauses. We would also expect that industry behaviour would adapt to form stronger supply chain relationships. There must be an increased focus on strong pre-qualification and supply chain management, strategic pipeline/framework/dynamic purchasing relationships and early supply chain involvement. If they are financially robust, a good specification is in place, good quality control exists and the approach is collaborative, there is no need for cash retention. Our view is that cash retention has driven a lowest price approach and, over the long term, resulted in sub-optimal margins, compromising quality. | |

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| Question | Suggested Response |
| 19 What length of transitional period would be required for a payer to adjust to the ban measure? Please explain the reasons for your answer. | With projects averaging 18 months, no more than 24 months should be required to allow industry to transition and ensure business models can cope. | |
| 20 Please provide an estimate and an explanation of any costs firms would incur as the result of prohibiting the use of retention clauses in construction contracts. | Some payers may see decreases in their profits in the short term, but this should not be considered a loss, as such profits were often gained at the expense of the wider construction industry.  Accounting for this will require some businesses to adjust their business model so that it does not rely on retention funds as freely available working capital to finance their own operations.  Any purported losses in productivity at the top by these large firms would be more than compensated by payee cost savings and productivity gains as SME businesses would no longer incur the significant overheads and costs of chasing retentions. |

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| Question | Suggested Response |
| 21a To what extent do you agree that requirements to protect retention sums deducted and withheld under retention clauses in construction contracts would be effective in addressing the stated problems associated with retention? | Strongly Agree |
| 21b Please explain the reasons for your answer to question 21a. | Clients will always look for security against the risks of: a) supplier insolvency, and b) failure to remediate defects. The problems of retentions surround the abuse of retentions and the loss due to insolvency, more than the concept. Protection would give both client and supplier the security and protection needed and has been proven to work in other similar jurisdictions. |
| 22a What would be the preferred mechanism of a payer to protect the retention sums? | Protection via a trust account. |

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| Question | Suggested Response |
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| 22b Please explain the reasons for your answer to question 22a. | For payers, it would be preferable if retention funds could be used alongside working capital but kept separate and protected in the event of insolvency. However, from a payee’s perspective, having retention sums placed into a protected trust account and identified as belonging to the payee would be a preferable way of ensuring security. Co-mingling has been proven not to work, whereas protection via trust accounts is fully operational and working as an industry norm in New Zealand. In recent years, it has been recognised that there is as much risk of large firm insolvency as there is of SME insolvency so we feel the system should be fair and proportionate to all parties. |
| 23 What length of transitional period would be required for a payer to adjust to the retention protection measure? Please explain the reasons for your answer. | With projects averaging 18 months, no more than 24 months should be required to allow industry to transition and ensure business models can cope. The capabilities of financial technology services are expanding rapidly, which will assist with adaptation. 24 months would also allow for contract bodies to adjust their templates appropriately with due consultation. |
| 24a To what extent do you agree with the proposed features of the retention protection measure? | Strongly agree |
| 24b Please explain the reasons for your answer to question 24a, including any further features to the design and operation of this retention protection measure that you would recommend. | We think that taking retentions from the final payment only and holding them in a protected fund is fairer than abolition to all parties and has been proven to work in other parts of the world. |
| 25 Please provide an estimate and an explanation of any costs firms would incur as the result of the introduction of a framework for protecting retention sums. | This would be unsubstantiated guess work. |
| 26 Are there any potential unintended consequences or considerations that should be taken into account for the introduction of either proposed measure for the use of retention clauses in construction contracts? Please explain the reasons for your answer. | N/A |

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| Question | Suggested Response |
| 27 Do you have any further comments on either proposed measure for the use of retention clauses in construction contracts? | We would support either option (abolition or protection), however we consider the option of protection will be more effective within the industry. Ultimately industry cannot carry on sustainably and deliver on the Government’s lofty missions (housing, skills, growth and infrastructure) and net-zero aspirations without reform to harmful retention practices. |
| 28 Do you have any further comments on any elements of the proposals that might aid the consultation process as a whole? | We have been encouraged by the Government’s Small Business Plan, Late Payment Research and consultation, but for Government to enable delivery on its missions, built-environment and net-zero ambitions, we need interventions in the ways this consultation describes. This consultation must lead to real reform, unlike past reviews of retention clauses that failed to materialise despite strong industry support. |