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 the complete prohibition of retention clauses and we recommend that, after filling out the personal information at the beginning of the survey, you skip ahead to question 17a.

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

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 |
| 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? | Strongly Agree |
| 17b Please explain the reasons for your answer to question 17a. | Banning abusive retention clauses is essential to unlocking growth for roofing businesses and the wider construction sector. 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.  Legislation to ban retentions must be airtight to prevent alternative methods of delaying payments arising. An explicit statutory ban on retention clauses, alongside an appropriately broad definition of retention and an anti-avoidance clause, would go a long way to ensuring that companies can only revert to using alternative, fair forms of insurance or surety when required.  Prohibiting the use of retention clauses would unlock productivity within the SME construction space and help the government meet its goals. |
| 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. | Ensuring quality is essential, but retentions are no longer fit for this purpose, and superior alternatives are already in widespread use throughout my industry and have been for a long time. 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. Additionally, robust accreditation and investment in operative training, which is often restricted by cash flow issues caused by unjustly withheld retentions, go much further towards preventing defects in the first place. Legislative reform could strengthen defect liability remedies other than retentions by mandating that construction contracts explicitly include a defects rectification clause.  There must also be an increased focus on strong pre-qualification and supply chain management, strategic pipeline/framework/dynamic purchasing relationships and early supply chain involvement. If businesses are financially robust, a good specification is in place, good quality control exists, adequate other protections such as workmanship guarantees are in place and the approach is collaborative, there is no need for cash retention. For too long, cash retention has driven a lowest price approach and, over the long term, driven sub-optimal margins and compromised the quality of the UK’s built environment.  Moreover, the Security of Payment regime remains available, meaning that if a client finds defects, they can still issue a Pay Less Notice for the value of defects before the final payment. What must be banned is the blanket pre-emptive withholding that inherently occurs with retention clauses. |

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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? | Disagree |
| 21b Please explain the reasons for your answer to question 21a. | In roofing and cladding, there are far more effective ways to protect against supplier insolvency and defective work than cash retentions. Workmanship guarantees and manufacturer warranties, backed by insurance backed-guarantees in the event of contractor insolvency, are already widely used by accredited, reputable firms. These protections exceed the standard two-year defect liability period linked to retentions and offer clients far greater assurance. If contracts were awarded only to businesses meeting these standards, such protections would apply across all roofing and cladding works. While measures such as project bank accounts or other forms of surety might mitigate some of the risks associated with retentions, the practice would continue to restrict cash flow and undermine the ability of businesses to grow at the pace needed to meet government housing, retrofit, and infrastructure targets. |

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| Question | Suggested Response |
| 22a What would be the preferred mechanism of a payer to protect the retention sums? | Workmanship guarantees, manufacturer warranties, and insurance-backed guarantees provide stronger protection for both clients and contractors than retentions, even when those retentions are secured. |
| 22b Please explain the reasons for your answer to question 22a. | The roofing and cladding industry already has sufficient protections in place to ensure the quality of works and the protection of clients, as outlined previously. |
| 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? | Disagree |
| 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. | Abolition would be a preferable and more effective option than protection. |
| 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. | The fees associated with holding a bond would further erode the already narrow margins of specialist construction firms. |
| 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. | Protecting retention monies risks diverting funds to lawyers and banks that administer them, at the expense of the struggling businesses least able to bear the cost. The tightly managed abolition of retention clauses, with measures to ensure they do not arise under another name, is the most straightforward way of eliminating this harmful practice from the construction sector. |

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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? | Abolition is the more effective option for the industry. Without reform of harmful retention practices, the construction sector’s potential to deliver on the Government’s key priorities of housing, skills, growth, infrastructure, and net-zero will be compromised. |
| 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. |