Department for
Business, Energy
& Industrial Strategy

Retention payments in the construction industry

A consultation on the practice of cash retention under construction contracts

Summary of responses

February 2020

Any enquiries regarding this publication should be sent to us at:
enquiries@beis.gov.uk

Contents

Foreword

Nadhim Zahawi, Parliamentary Under Secretary of State, Minister for Business and Industry

The construction industry is vital to our future prosperity. It has a turnover of around £380 billion a year, contributing 9% of all UK economic activity and employing around 9% of the UK workforce. It underpins the wider UK economy, both public and private sector, through providing the infrastructure, other buildings and homes that Britain needs.

However, it also faces a number of challenges, including ensuring prompt and fair payment to firms within the supply chain. The fragility of the construction sector's current business model is demonstrated by the number of firms that become insolvent, with poor or abusive payment practices within the sector often being a contributing factor to these. Cash retention is one example of a payment practice vulnerable to both insolvency and abuse. Concerns have been expressed by parts of the industry about unjustified late and non-payment of retentions. These practices can cause problems, particularly for small business owners and we are committed to ensuring that we improve them. That is why my Department published a consultation seeking views on the practice of cash retention under construction contracts.

I am grateful to all those who took time to respond to the consultation and participate in wider discussions. Responses were received from a range of organisations, from construction clients and large contractors, to professional advisors and smaller firms within the supply chain, as well as the organisations that represent them. These responses illustrate the breadth of views within the sector on the practice of retentions, and the possible policy solutions to addressing the problems that have been identified. These range from maintaining the current approach; to protection of the cash retention in a deposit scheme; and to introducing a ban on cash retentions, seen as an undesirable practice in a modern construction industry.

This document contains a summary of the responses and wider stakeholder engagement during the open consultation period, and highlights the issues raised during the consultation. It has provided a useful base but also highlighted a number of issues on the viability and impact of policy options that require further work and evaluation. We will continue to work with industry on these issues and the policy options for addressing the problem of unjustified and late payment of cash retentions.

N. Zahawi

Introduction

Prompt payment is a significant problem for UK businesses, especially small businesses within supply chains. Long payment terms and late payments can have a damaging knock-on effect on small businesses' ability to manage their cash flow and plan for growth, and in the worst case threatens their survival.

The Government is committed to tackling this problem and has taken action to improve payment practices and performance in all sectors. This includes the introduction of a statutory duty on large businesses to report on their payment practices, policies and performance, to increase transparency and provide small business suppliers with better information about those they intend to trade with. The Government has also appointed the Small Business Commissioner, who supports small businesses by encouraging the resolution of payment disputes and providing information on better payment practices that avoid such disputes arising in future.

In June 2019, a broad package of measures was announced by the Government to ensure small businesses get paid on time. Measures include holding company boards accountable for supply chain payment practices, consulting on strengthening the powers of the Small Business Commissioner and a Business Basics Fund competition to encourage businesses to use technology to simplify invoicing, payment and credit management.

September 2019 saw a further prompt payment initiative for Government procurement. Failure of companies to demonstrate prompt payment to their suppliers could result in them being prevented from winning government contracts. This measure applies to Central Government procurements, subject to the Public Contracts Regulations, in excess of £5m per annum.

The practice of cash retentions (often abbreviated to retentions) is an issue that is frequently raised during discussions on fair payment within the construction sector. Many construction contracts include provision for cash retention, which is a practice originally introduced to provide security against defective work or the insolvency of sub-contractors within construction supply chains. However, it can contribute to poor or late payment, and to the non-payment for work undertaken, with particular problems with security of payment in the event of insolvency, and the prompt release of retained monies when due.

The Government undertook a review of retention payments in the construction industry, which concluded in January 2018. This document provides a summary of direct responses to the consultation questions, written submissions and discussions with stakeholders during the consultation.

Conducting the consultation exercise

On 24 October 2017, the Government published a consultation paper which sought information on the practice of cash retention under construction contracts and gathered views on the supporting documentation.

The consultation was open for 12 weeks and closed on the 19 January 2018. Over this period wider stakeholder engagement was also conducted.

BEIS Research Paper no.17 – Retentions in the Construction Industry, was published alongside the consultation. It illustrated the challenges with cash retentions – in particular, understanding the extent to which this practice has a negative impact and what solutions would be effective and proportionate in addressing this.

The consultation set out the background and issues surrounding retentions and headline findings and conclusions from the research. Questions were set out in six sections and explored:

- the effectiveness of existing prompt and fair payment measures for retentions;
- views on the independent research on retentions in the construction industry and the BEIS Consultation Stage Impact Assessment;
- the incidence of unjustified late and non-payment of retention monies;
- the appropriateness of a cap on the proportion of contract value that can be held in retention, and the length of time it can be held;
- the effectiveness of existing alternative mechanisms to retentions; and
- the scope, operation, features and potential costs of holding cash retention in a 'retention deposit scheme' (RDS).

This consultation ran in parallel with one supporting the Post-Implementation Review of the 2011 changes to Part 2 of the Housing Grants, Construction and Regeneration Act 1996 (the 'Construction Act'). It covered general construction payment and the dispute resolution framework.

Summary of respondents

A total of 55 responses to the consultation document were received via Citizen Space or the electronic response form. Citizen Space is the online portal for government consultations. The nature of the respondents is set out below:

Organisation Type:

- 31 - Construction and civil engineering businesses
- 8 - Business representative organisations / trade bodies
- 7 - Individuals
- 5 - Other (other includes consultants and material suppliers / manufacturers)
- 3 - Legal representatives
- 1 - Charity / social enterprise.

Company Size: (number of direct employees)

- 16 - Micro (<10)
- 14 - Small (10 – 49)
- 9 - Medium (50 – 249)
- 9 - Large (>250)
- 7 - Declined to answer.

Supply Chain Tier Type: Of the construction and civil engineering businesses, the most common respondent classified themselves as a tier 2 sub-contractor.

- 1 - Client
- 7 - Tier 1 (Designers and contractors that have a direct contract with the ultimate client)
- 18 - Tier 2 (Designers, contractors and suppliers with a sub-contract with the tier 1 contractor)
- 6 - Tier 3 (Designers, contractors and suppliers with a sub-contract with a tier 2 sub-contractor)
- 12 - Other
- 11 - Declined to answer.

Most respondents indicated that they had direct experience of retentions.

The consultation also welcomed other comments and evidence. A further 24 submissions were received. These included formal submissions from trade associations and a number of responses from individuals.

A list of respondents is provided in Annex A.

Wider stakeholder engagement was conducted during the consultation. These discussions included trade associations, organisations, individuals and other central government departments and agencies.

This document provides a summary of direct responses to the consultation questions, written submissions and discussions with stakeholders during the consultation.

In the following sections an initial summary is provided of the direct responses to the specific consultation questions (received via Citizen Space). This is supplemented by wider comments and evidence from the written submissions and stakeholder meetings. Percentages may not add up to 100% due to rounding.

The consultation questions are provided in Annex B.

There are several points to take into account when reading this summary of responses and considering the responses to individual questions. Firstly, the summary reflects the views of the 55 respondents to the consultation on Citizen Space, and whilst these expressed a range of views, these are not necessarily reflective of the wider industry. Secondly, respondents also self-selected, and the distribution of these from different clients and contractor groups is also not necessarily reflective of the sector. Thirdly, when reporting the quantitative results from Citizen Space, all respondents to the survey are accorded equal weight, regardless of the size or nature of the organisation or whether they were made by individuals.

As a result, this summary should be treated as indicative, rather than fully representative of the range of views within the industry. We have also received a large number of responses which did not answer all of the questions in the consultation or did not follow the format of the consultation document. These responses have been taken account of in this summary, in order that it accurately reflects the input of respondents to the consultation.

Summary of responses

Section A – Existing measures

The effectiveness of existing prompt and fair payment measures for retentions

The consultation sought to establish whether people agree with the statement in the accompanying impact assessment that existing prompt and fair payment measures do not fully address the specific challenges with retentions.

- Of the 49 responses in Citizen Space, 82% thought that existing measures were ineffective in addressing the challenges of prompt release and security of retentions. Of the 6 business representative organisations / trade bodies that responded to this question, 83% thought the existing measures were ineffective.
- Comments suggest existing measures are well intentioned and positive, but only a small proportion are used, many measures are voluntary and are not sufficient to resolve the problems identified with respect to security and prompt payment of retentions.
- Notably, comments from those respondents within Citizen Space who indicated a neutral or positive view on the existing measures thought that:
    - existing measures had greater applicability to prompt payment in general rather than cash retentions;
    - there is limited implementation and traction of the initiatives down the supply chain, resulting in negligible impact for lower tiers;
    - implementation of existing measures requires organisations to adopt these, which in turn brings time and cost implications;
    - there is insufficient monitoring and an absence of sanctions for poor payment performance; and
    - the industry has a commitment to achieving zero cash retention by 2025, and this aim is widely supported.
- This was supported in stakeholder discussions and other submissions, with many outlining that whilst existing measures had positive intentions, they had achieved little discernible effect.
- Respondents outlined their opinion on the challenges presented by retentions, that are not addressed through existing fair and prompt payment measures. Several themes were apparent:
    - lack of protection against upstream insolvency. Retentions have no provision to safeguard contractors from loss of the cash retention as a result of insolvency higher in the supply chain;

    - the frequency of ‘unjustified’ late, partial and non-payment. Prompt payment of cash retentions is unusual, and there are often significant delays and / or non-payment of retention monies owed;
    - the current practice of retentions can have a significant negative impact on cash flow and a cumulative effect on small firms in the construction supply chain, through reducing working capital, and funds available for business development and investment;
    - there is a prevailing culture of mistrust within the construction sector, with firms higher up the supply chain often utilising retentions as a lever in wider payment negotiations. Firms will also seek to delay payment or find means of dissuading sub-contractors from pursuing retention payments. Other problems include a lack of transparency and ‘pay when paid’ practices; and
    - there is an imbalance of market power between the contractor and sub-contractor, which enables contracting firms to manipulate payment practices to their advantage and makes it harder for sub-contractors to challenge bad practices.

- Wider comments during the consultation illustrated both support and opposition to retentions:
    - payment abuse is rife throughout the construction supply chain, and cash retention is just one issue amongst a range of payment practices prevalent in the industry;
    - the underlying driver of retention abuse is cash flow. ‘Cash is King’ and temptation exists to utilise the funds for other purposes;
    - the principle of cash retention is sound - to guarantee performance and eliminate defects in an industry where the quality of work remains inconsistent;
    - some ‘payers’ do have good retention practices and deliver fair and prompt payment;
    - the value of retentions held often does not cover the value of defects. However, retentions act as a safety net and encourage contractors to return to site to remedy defects;
    - the amount of cash retention and length of time held can be significant to a ‘payee’. There are instances where it can be taken on the entire contract value with no exclusions e.g. prelims;
    - retentions are often the profit margin for the contract and the amount held at any one time across all contracts is significant;
    - the net effect for those at the bottom of the supply chain is the full retention levied against them with no option to pass on;
    - retentions have already been phased out by some specialist trades and sub-contractors within the industry;

- administering retention funds can be costly and time consuming across all tiers of the contracting supply chain; and
- retentions have no place in a modern construction industry, and the sector should seek better alternatives that work for clients and firms within the supply chain.

Section B – Supporting documentation

The Pye Tait research – Retentions in the Construction Industry and BEIS Consultation Stage Impact Assessment

Research

The consultation sought to establish whether people agree with the findings and conclusions of the independent research.

- Of the 54 responses in Citizen Space, 70% agreed with the findings and conclusions of the research. These respondents indicated broad agreement, citing that the report highlighted common practices and was consistent with their own experiences. Of the 7 business representative organisations / trade bodies that responded to this question, 86% agreed with the findings and conclusions of the research.
- There was also broad agreement when discussed in other submissions and wider stakeholder engagement.
- Of those who disagreed with the research (15%) or were unsure (15%), a mix of views were provided:
    - abuse of retentions is predominately influenced by main contractor behaviours;
    - retention payment delay is due to the lack of release from the client to main contractor. It is unrealistic to expect contractors to finance retention release to their supply chain;
    - several respondents felt that late payment was due to the 'payee' not completing the correct payment paperwork or fulfilling contractual obligations;
    - retentions are a well-known practice, properly operated by large major clients and main contractors. Any change would be costly and create security unease for project funders;
    - whilst 5% retention may be held on lower value contracts, a lower rate of around 3% is often held on higher value contracts;
    - legal costs can be disproportionately high for the recovery of retentions, and the policy options proposed would not decrease the incidence of disputes on retentions;
    - analysis of alternatives – many are 'additional' methods and require supplementary secured funds and other forms of security;
    - the practice of cash retention should be abolished and existing contract clauses should be utilised to guarantee performance through better contracts;
    - lack of understanding of the 2011 changes to the Construction Act including the ban on 'pay when paid' contract clauses. A wider information campaign may assist;

  - the risks and benefits of a RDS is that whilst this protects sub-contractors from insolvency and other payment risks, it locks money out of the supply chain, which could increase cash flow pressures; and
  - the research outlined a range of views on the benefits, costs and admin burden of Project Bank Accounts. These are felt to be a useful mechanism for ensuring prompt payment, but not one that is applicable or effective in all circumstances.

Consultation Stage Impact Assessment

The consultation sought to establish whether stakeholders agree with the estimates, methodologies and assumptions in the Consultation Stage Impact Assessment.

Value of retentions held in the construction sector as a whole

- Of the 51 responses in Citizen Space, 51% agreed with the estimate on the value of retentions in a given year being £3.2bn to £5.9bn, with a central estimate of £4.5bn in 2015 prices. Of the 7 business representative organisations / trade bodies that responded to this question, 71% agreed this was a reasonable estimate. These respondents indicated broad agreement with the methodology and assumptions used to arrive at the estimate.
- A minority of respondents (4%) did not agree with the estimate and thought it should be higher. None of these were business representative organisations / trade bodies. No respondent offered an alternative estimate or methodology for calculating this.
- Of those who were unsure (45%), a mix of views were provided:
  - respondents noted that retentions were held at 3-5% of contract value reducing by 50% on practical completion;
  - lack of clarity around practical completion. Views were raised that practical completion is not adequately publicised through the supply chain so the trigger point for initial retentions release can be delayed; and
  - retentions are typically offset at all levels in the supply chain except by those at the bottom of the supply chain.
- Of the 7 business representative organisations / trade bodies that responded to this question, 29% said they were unsure.

Value of retentions unpaid each year due to upstream insolvencies

- Of the 50 responses in Citizen Space, 44% agreed with the estimate on value of retentions unpaid due to upstream insolvencies. These respondents indicated broad agreement with the methodology and assumptions used to arrive at the estimate. Of the 5 business representative organisations / trade bodies that responded to this question, 60% agreed with the estimate.

- A minority of respondents (4%) did not agree with the estimate, thinking it could be higher. None of these were business representative organisations / trade bodies.
- Of those who were unsure (52%), the majority did not provide further detail explaining their response. A few respondents replied saying they lacked knowledge in this area. Of the 5 business representative organisations / trade bodies that responded to this question, 40% said they were unsure.
- No alternative methodology for the estimate on value of retentions unpaid due to upstream insolvencies was received.

Transfer generated by the absence of free trade credit

- Of the 50 responses in Citizen Space, 46% agreed with the methodology used to estimate the total amount that construction clients and contractors holding retentions would need to fund from elsewhere. These respondents indicated broad agreement with the assumptions used. Of the 5 business representative organisations / trade bodies that responded to the question on methodology used, 80% agreed.
- Of the respondents who were unsure or did not agree with the methodology, there were a range of views as to which tiers of the supply chain use retention monies to support cash flow.
- A minority of respondents (10%) did not agree with the methodology, none of whom were business representative organisations / trade bodies, a mix of views were provided:
    - only clients benefit from the use of retentions as those lower down the supply chain would not have to levy retentions for cashflow purposes if retentions weren't being held against them; and
    - the amount held in retentions and therefore any funds that need to be replaced from elsewhere change over time.
- Of those who were unsure (44%), the majority of respondents did not provide any further detail or alternative methodology. A view expressed was that the majority of retentions were held by main contractors rather than clients.
- Of the 5 business representative organisations / trade bodies that responded to the question on methodology used, 20% responded that they were unsure.

Section C – Late and non-payment of retentions

Measuring the incidence of unjustified late and non-payment of retention monies

The consultation questions sought to further understand the value of late and non-payment of retentions in the construction sector, and the reasons for this late and non-payment.

Due to the small sample of consultation responses, it has not been possible to estimate what proportion of the late or non-payment of retention monies is due to justified or unjustified reasons. An additional challenge is the different perspectives of respondents on what constitutes justifiable reasons, as there is no agreed definition. Therefore, the summary of responses in this section reflects the perceptions of respondents, rather than giving an assessment of the level of unjustified late or non-payment of retentions based on a clear definition.

Non-payment of retention monies due to insolvency

- Of the 53 responses in Citizen Space, 74% believed non-payment of retentions due to the company holding the retention becoming insolvent before return, was significant or very significant. 19% believed it was minor and 6% felt it was not an issue.
- Of the 6 business representative organisations / trade bodies that responded to this question, 67% believed non-payment of retentions due to the company holding the retention becoming insolvent before return, was significant or very significant. 33% believed it was a minor issue.
- The collapse of Carillion was referred to by a number of respondents, and several respondents stated that the insolvency of a client or tier 1 contractor impacted the whole supply chain. With the prevalence of low margins and irregular cash flow, financial security in the construction industry was cited as a significant business risk for firms, and that non-payment was always a concern whether in relation to retentions or other monies owed.
- Some outlined that insolvency was a cyclical issue for construction, becoming more significant in periods of recession. Others felt that retentions are only a small part of a loss caused by upstream insolvency. Several comments suggested that the bigger issue was delayed and non-payment of retention monies.

Late and non-payment of retention monies

- Of the 52 responses in Citizen Space, 87% thought unjustified non-payment (excluding insolvency) was significant or very significant. 10% felt it was a minor issue. Of the 6 business representative organisations / trade bodies which responded to the question, 83% reported that this was a significant or very significant issue. 17% felt it was a minor issue.
- Results were similar for unjustified late payment; of the 52 responses, 88% thought unjustified late payment was significant or very significant. 8% felt it was a minor

issue. Of the 5 business representative organisations / trade bodies which responded to the question, 80% said this was a very significant issue, whilst 20% felt it was a minor issue.

- In reviewing the comments provided for these questions, it was apparent that many respondents defined the term non-payment as late payment, rather than never receiving the money owed at all. Comments for both late and non-payment have therefore been considered together.

- Those who considered late and non-payment of retentions as significant or very significant, typically stated that it was uncommon for retentions to be released automatically on time. Many felt there was no transparency from ‘payers’ on attainment of practical completion to initiate initial retention release. It was perceived that there was a strong reluctance by the ‘payer’ to pay on time, in turn bolstering working capital. A variety of reasons were often cited by the ‘payer’ to decline or delay retention release. This led to significant chasing, administration and incurred costs by the ‘payee’.

- Others felt that there were even greater difficulties in obtaining the second half of the retention, once the defects liability period had ended, and the project team had been dispersed. This was described by one respondent as ‘the last lever in the power game’.

- Due to relatively small retention sums being held compared to total contract value, some respondents felt that it was better to avoid the risk of damaging their relationships with higher tier contractors in relation to future work, and the cost of pursuing retention payments through formal dispute processes.

- Of those who considered late and non-payment of retentions was a minor issue or were not sure, comments suggested that the second half of a retention payment was often written off, but in turn built into the tender by the sub-contractor. Others believed it was the contractual right of the ‘payer’ to dispute retention release due to frequent problems relating to building quality and defects. Some felt that the Construction Act provided suitable recourse in chasing unjustified non-return of retentions through suspension of work and dispute resolution.

- The above was echoed in written submissions and wider stakeholder discussions, reflecting the spectrum of the supply chain. Further comments included:

    - within the industry it is rare to have a ‘defect free’ building – there is a genuine need for redress and security in respect of contractor performance on works;

    - another reason given for late and non-payment was the ‘payee’ not fulfilling contractual obligations to address defects;

    - there are reputable ‘payers’, with good practices and who pay well;

    - late and non-payment is regarded as the ‘norm’, with consequential effects through the supply chain;

    - insolvency incidence was currently low in a buoyant market, but the risks are still high; and

- early trades on site have to wait even longer before practical completion.

Late and non-payment due to the 'payer' citing that obligations under another construction contract had not been met

- Of the 52 responses in Citizen Space, 65% believed non-payment of retentions due to 'payers' citing that obligations under another construction contract have not been met, was significant or very significant. 25% believed it was minor or not an issue. Of the 6 business representative organisations / trade bodies that responded to this question, 67% said this was a significant or very significant issue. 33% believed it was a minor issue or not an issue.

- Similar results were given for late payment of retentions due to obligations under another contract not being met, with 63% of respondents citing this as significant or very significant, and 25% believing this was minor or not an issue. Of the 6 business representative organisations / trade bodies that responded to this question, 67% said this was a significant issue, whilst 33% believed it was a minor issue.

- In wider discussions, many stakeholders raised 'pay when paid' practices. Some felt it was less frequent and if identified in a contract, effectively challenged. Conversely others said it occurred regularly, and was utilised as a stalling tactic for payment. Some flagged caution on the potential consequences of clamping down on this practice – suggesting it would lead to an extension to the period for which cash retentions are held.

- Many had experience of other delaying tactics that complied with the Construction Act but had similar impacts, for example linking the release of retention to another activity (such as a 'special meeting').

2011 amendments to the Construction Act

- Of the 51 respondents in Citizen Space, 80% were aware of the 2011 amendments to the Construction Act – making it no longer possible to make payment, including retention payments, conditional on the performance of obligations under another contract. 20% were not aware. Of 6 business representative organisations / trade bodies that responded to this question, all were aware of the 2011 amendments to the Construction Act.

- Those who were aware and challenged inclusion in contracts, suggested that a challenge may lead to a failed tender bid, or if corrected still did not mean prompt payment of retention monies held.

- Of the 52 responses, 25% believed 'payers' who cited 'pay when paid' were acting due to a lack of awareness. However, 46% thought there were other reasons, including business leverage, cash flow, absence of sanctions and reliance on the 'payee' not understanding or challenging. 29% were unsure. Of the 6 business representative organisations / trade bodies that responded to this question, 17% believed 'payers' who cited 'pay when paid' did so out of a lack of awareness. 50% thought there were other reasons, including business leverage, cash flow, and reliance on the 'payee' not understanding or challenging.

- From both Citizen Space and wider stakeholder discussion, some felt an information campaign could be of benefit to increase awareness of legislative changes, given the complexity of the legislative framework. A number of trade associations indicated that this was done at the time of the 2011 changes to the Construction Act but the payment framework is complicated and further information to the supply chain can only assist.

Discount

- Of the 53 responses in Citizen Space, 85% indicated that they had encountered a request for a discount on the overall contract price in return for prompt payment. Just under half of the respondents indicated that they had encountered this practice specifically in relation to retention payments. Of the 7 business representative organisations / trade bodies that responded to this question, 71% said they had experienced a request for a discount on the overall contract price in return for prompt payment. 57% of business representative organisations / trade associations indicated they had encountered this practice specifically in relation to retention payments.

- Comments included that prompt payment implied a waiver of the retention and questioning why a sub-contractor should have to pay to have prompt and fair payment.

Section D – Retention caps

The appropriateness of a cap on the proportion of contract value that can be held, and the length of time it can be held

The consultation sought to establish whether or not respondents believed that a cap on the proportion of contract value that could be held, and / or the length of time it could be held for, would be appropriate.

- Of the 51 responses in Citizen Space, there was not a clear view on the desirability in principle of a cap on retentions, although 55% believed that a cap would be ineffective. Of the 6 business representative organisations / trade bodies that responded to this question, 83% agreed that a cap would be ineffective.

- There was no consistent view on why a cap would be ineffective; however, there was greater focus on the percentage of retentions held. Several respondents seem to imply that rates are generally consistent and manageable. Others believe that other 'abuses' would simply develop.

- Of those who welcomed a cap, responses tended to concentrate on the duration for which the retention is held, citing a time limit would assist with cash flow and help stop 'abuses'. Some felt retentions should be held on labour only.

- A minority of respondents felt that no further action was required as freedom and flexibility for retention amounts is needed and a cap is already an option within contracts.

- During wider engagement and written submissions, stakeholders tended to state that whilst a cap could curb the worst excesses it would not address security and prompt payment.

- Some highlighted that the same problems of obtaining payment would still exist unless other measurements of enforcement were in place.

Section E – Existing alternative mechanisms to retentions

The effectiveness of existing alternative mechanisms to retentions

The consultation questions sought to establish the use and range of alternative mechanisms and their effectiveness in providing surety against defects and critical issues associated with retentions.

- Of the 39 responses in Citizen Space, 49% had not used alternative mechanisms. A further 38% had only used alternatives on less than 5% of contracts. Of the 5 business representative organisations / trade bodies that responded to the question, 40% responded that members had used alternatives on less than 5% of their contracts.

- Responses and wider submissions typically referenced parent company guarantees and performance bonds used in addition to cash retentions, and retention bonds as an alternative.

- Across the breadth of consultation responses and stakeholder engagement, a number of disadvantages were outlined for retention bonds. These included costs and difficulty in obtaining the bond, in particular for small businesses. Concerns were also raised about the typical duration of a bond and the potential requirement to extend for the defect liability period – in turn increasing costs. Bonds may not be appropriate for smaller value contracts. Others outlined that performance bonds were also costly and that parent company guarantees are only limited to those companies with a parent company willing and able to support a guarantee.

- However, some believed increased bond demand in the event of cash retentions no longer being used could assist in product development and market growth. There was a need for development of a suite of alternatives and model forms of bonds at reasonable costs. Alternatives to cash retention could be developed in partnership with government.

- It was highlighted that escrow accounts can serve as a third party held retention scheme.

- Several stated that the most effective solutions to ‘defect free projects’ do not involve any financial surety provisions. Instead collaboration and better procurement – departure from lowest cost tender, high quality sub-contractors, experienced clerks of works, and long-term supply chain relationships.

- Approximately half of respondents in Citizen Space agreed a range of alternatives could exist in the industry to account for variation in project and supply chain circumstances. Others cited increased choice would create additional confusion, contract complications and opportunity for new loopholes.

Pye Tait’s research concluded that a retention deposit scheme and holding retentions in trust appear to be applicable to the whole sector and could eliminate some of the critical issues associated with retentions.

- Of the 52 responses in Citizen Space, 60% considered a RDS could be applicable to the whole sector. Of the 7 business representative organisations / trade bodies that responded to the question, 71% considered that a RDS could be applicable to the whole sector.
- 25% of respondents were unsure and 15% did not agree with a RDS, citing:
    - difficulties in administering a scheme given the complexity of project supply chains;
    - avoidance of the provisions of a scheme through contract drafting;
    - unnecessary complexity, which would impose significant costs;
    - a scheme would still not address the prompt release of retentions as this could be delayed, for example by invoking disputes; and
    - they believed that abolishing the practice of cash retention would be a better solution for the industry in the long term, as part of wider reforms to payment practices required to help modernise the industry.
- Of the 7 business representative organisations / trade bodies that responded to the question, 29% were unsure of the applicability of a RDS across the sector.
- Of the 51 responses in Citizen Space, 65% considered a RDS could eliminate critical issues such as risk of delay or non-payment, and risk of loss through upstream insolvency. 18% of respondents were unsure and 18% did not agree. Of the 7 business representative organisations / trade bodies that responded to the question, 71% agreed, 14% were not sure, 14% disagreed.
- Wider stakeholder engagement and written submissions demonstrated a number of stakeholder organisations oppose a RDS, arguing retentions are an undesirable practice in a modern construction industry, and the sector should focus on delivering the commitment to achieving zero retentions by 2025 at the latest. Others gave support to a RDS, arguing that this would restore the original purpose of retentions of providing surety against defects, whilst removing incentives to use these for cash flow benefits. Several felt a RDS could be a catalyst for the abolition of cash retentions, although others disagreed, and argued it could entrench an undesirable practice. A small number thought any change was unnecessary and unjustified, and government intervention was not warranted.

Section F – Retention deposit schemes

The scope, operation, features and potential costs of holding retentions in a retention deposit scheme

The consultation questions sought to consider the scope, features and operation of a retention deposit scheme. Questions also sought information to help quantify the potential costs of operating such a scheme.

Scope

- Of the 52 responses to Citizen Space, 75% believed any measure to require retention money to be held in trust needs to be simple, consistent and transparent and a RDS may represent the best way of achieving this. Of the 6 business representative organisations / trade bodies that responded to this question, 50% agreed, whilst 17% disagreed. Responses given during stakeholder engagement and in submissions also supported this research.

- However, many suggested the scheme outlined in the consultation document was too complex and could create a significant administrative burden.

- There was not a clear view on whether a threshold should be applied to a RDS. Of the 53 responses, 38% thought a threshold was important or very important. 34% thought a threshold was only slightly important or not important at all. Of the 6 business representative organisations / trade bodies that responded to this question, 50% thought a threshold was not important, whilst 50% believed it was important or very important.

- Those who believe that a threshold should be put in place explained it was needed to stop the use of a RDS becoming uneconomic. Costs of the process could outweigh the value of the retention held. Others were of the view that the value of retention is immaterial. Small retentions have significant effects for small companies.

- 69% of the 49 responses in Citizen Space believed all retentions held for a contract should be placed in a RDS (and not just the amount held for the defects liability period). Of the 16% who felt protection of the final amount for the defects liability period would be most sensible, they suggested that this would be easier to manage. Of the 5 business representative organisations / trade bodies that responded to this question, 60% believed all retentions held for a contract should be placed in a RDS.

- Other comments proposed that the practice of retentions should remain unchanged, that there is no need for a RDS as retentions should be abolished, the Government should observe ongoing international work before any decisions and a cash retention should only be taken at the stage of practical completion.

Features

- 82% of 55 responses in Citizen Space believed a RDS should be set up on a statutory footing. Of the 8 business representative organisations / trade bodies that responded to this question, 75% believed a RDS should be set up on a statutory footing.
- There was broad agreement for the proposed features of a RDS if established. Additional comments and concerns raised broadly sat in the following categories:
    - some of the proposed features are complex and could create a significant administrative burden. Clarity would be required as to the release mechanism and rectification of defects. Stakeholders were also cautious that a scheme should not compel retention as a requirement for all contracts. Other stakeholders proposed including a lower limit, so not more costly than the value of retention;
    - retention disputes will continue to occur and any scheme would need to include a mechanism for interfacing with dispute resolution procedures within the sector. The existing dispute resolution process is costly, time consuming and often not pursued due to ongoing commercial relationships. Stakeholders suggested that features of any scheme could include a low value adjudication process, ombudsman or specific retentions adjudication panel; and
    - scheme providers should be regulated or government backed. There should be provision of set standards to ensure a fair and consistent approach across schemes.
- Throughout Citizen Space responses, wider engagement and written submissions there was the repeated statement that any policy option should be introduced through a statutory measure. It was thought that anything voluntary will not gain traction within the construction industry.

Operation

- Further features of the operation of a RDS were suggested including:
    - automated, transparent online system, potentially utilising established digital systems;
    - regulation of scheme providers by the Financial Conduct Authority or equivalent regulator;
    - construction clients or firms in the sector should not be able to set up their own schemes. However, scheme providers should have a good understanding of the construction sector;
    - schemes would be more equitable if both parties bear the costs equally;
    - some respondents argued any scheme should be self-funding from interest payments on deposits as far as is possible, but it was recognised this might be difficult in the current low-interest environment;

  - others believed that interest earned on funds deposited in a RDS should be paid to the 'payee' along with the sum held in retention;
  - consideration of sanctions for non-compliance and measures to enable recovery of monies not placed in a RDS; and
  - consideration needed to be given to the potential complexity, in particular the number of interim payments for each contract on which retentions would be withheld.

Further comments that might aid the consultation process as a whole

Throughout the consultation document, opportunity was provided for further comments that might aid the consultation process as a whole. Written submissions and discussions with stakeholders also delivered a variety of additional views. The comments illustrated the breadth of views within the sector on the practice of retentions, and the possible policy solutions to addressing the problems that have been identified. These comments included:

Advantages of a RDS

- Whilst retention monies are still taken, a RDS could provide security for that money. In turn this could deliver greater certainty to the supply chain and the ability to plan for business investment – such as apprentices and construction plant.
- A RDS could also lead to greater transparency and parity between the 'payer' and 'payee'.
- A RDS scheme removes the vested interest clients and tier 1 contractors have in holding retentions to bolster cash flow and would create a clearer, better documented and fairer framework for retentions, rather than the current system, which is imbalanced in favour of the payer.
- It may also remove the financial benefit of holding retentions and reduce the incidence of late and non-payment.

Disadvantages of a RDS

- Greater consideration needs to be given on the design of any scheme, not only in the administration by providers, but day to day project operation, mechanism for retention release and operation with the existing dispute resolution process.
- There are likely to be numerous complexities with drafting for a RDS including scope, consistency with existing legislation (such as tax, trusts, insolvency and money laundering) and potential assimilation across to the Devolved Administrations.
- The nature and complexity of construction supply chains creates potentially a complicated and costly RDS design.
- A RDS could create further complexity for the construction industry in relation to contractual conditions and payment practices.

- A ring-fenced custodial account locks money out of the entire supply chain for at least a year.
- A RDS would further entrench the use of retentions in the industry, and may create difficulties for those specialist sectors and individual businesses who already do not accept the contractual practice of retentions.

Abolition of cash retentions

- The consultation did not explicitly consult on a ban on cash retentions. However, preference for a retentions ban was proposed by many respondents. A ban on cash retentions was viewed as the solution most consistent with industry reform and would drive more sustainable business models.
- Others held concerns with the principle of zero cash retentions, given projects are rarely defect free and many ‘payers’ experience difficulties in getting their supply chain to return to site to rectify issues. Some method of redress is required, and whilst the value of the held retention does not often cover the work it provides a safety net. Abolition of cash retentions could increase demand for enhanced securities and extended, and more complicated payment regimes to control finances.

Market provision for alternatives to retentions

- The market (both banks and surety) provides a variety of bonds and guarantees for the construction industry, in particular, performance and retention bonds. However, they are not widely used within the industry and are dependent on client and tier 1 appetite. Performance bonds are more popular, but typically used in addition to, rather than as an alternative to cash retentions.
- Bonds are currently provided to large, low risk, financially secure contractors and typically serve as insurance against contractor insolvency during a particular period, rather than acting as means of rectifying defects.
- At present this market does not provide for the entire supply chain and new entrants and small businesses with limited security would either be excluded or charged prohibitively expensive premia. There is also uncertainty around capacity of provision for the entire supply chain in current form.

Payment abuse

- Some within the industry do have good payment practices and pay well. However, many need to change their practices. Payment abuse in construction is very common, and rarely challenged.
- Retentions are only one example of how payment practices can be abused, and only a small proportion of late or withheld payments are retentions.
- Many shared the view that payment abuse in construction would continue despite any possible policy solution for retentions. ‘Payers’ may substitute other forms of bad payment practice in order to seek to retain at least some cash flow benefits. There are

many other aspects to payment practice that are open to misuse in addition to retention payments e.g. under valuation of work, back loading of payment periods, complicating the process for obtaining final payments, extension of practical completion and defects periods. The frequency would be determined by the culture of the 'payer'.

- 'Pay when paid' is still common, despite being unlawful under the Construction Act. Others cite instances where 'payers' are legally compliant with the requirements of the Construction Act but use other key triggers or events to delay payment of retentions.

Payment framework

- Many felt that the Construction Act was a positive step for construction payment practices but much of the framework remains complex. The legislation was not straightforward.
- There are several software systems and digital platforms that could assist clients in visibility of project costs at all levels of the supply chain, and could offer a fast, low-risk open, collaborative perspective on what will be paid and when.

Industry views on retentions in the public sector

- The Public Contracts Regulations regulate the duration of tier 1, 2 and 3 supply chain payment periods to 30 days, but compliance, monitoring and enforcement remain fundamental obstacles to the practical success of this intervention. Many welcomed the Cabinet Office proposals to take account of suppliers' approach to payment in their supply chain in major government procurement.
- Retention practices should be reviewed within the Public Sector. With some believing that any policy intervention should commence in the Public Sector first. This would demonstrate commitment and the private sector would follow suit.

International work on cash retentions in the construction industry

- Reference was made to international comparisons for cash retentions and other alternative mechanisms. This included New Zealand, Australia, France, Canada and New Mexico.

Next steps

This consultation has provided a useful basis for ongoing work. It illustrated the breadth of views within the sector on both the practice of cash retentions and the possible policy solutions to address the problems that have been identified, taking account of the nature and complexity of the construction supply chain.

Our aim is to work with the construction industry and its clients to achieve a consensus within the industry on how to resolve the problems associated with cash retentions. Several policy options are under consideration, a possible retention deposit scheme, and phasing out of retentions completely, and work continues to assess the viability and potential impact of these.

Annex A: List of respondents

Respondents included:

- Association of Ductwork Contractors & Allied Services
- Beattie Contracts Ltd
- Birketts LLP
- Biswell Flooring Ltd
- British Property Federation
- British Woodworking Federation
- Build UK
- Building Engineering Services Association
- Civil Engineering Contractors Association
- Charles L Warren Ltd
- Chartered Institute of Credit Management
- City of London Law Society
- CMS Law
- Commercial Risk Management Limited
- Construction Claims Consultants Ltd
- Construction Products Association
- Contract Flooring Association
- Contractors Legal Group
- Diamond Resolution Consultants Ltd
- Doorfit Products Ltd
- Electrical Contractors Association
- Federation of Master Builders
- Federation of Piling Specialists
- Finishes and Interiors Sector Ltd
- Harris Consulting Limited
- Higgins Construction PLC

- Home Builders Federation
- JDP Contracting Services Ltd
- John Reid & Sons (Strucsteel) Ltd
- Kimpton Ltd
- King’s Lynn Flooring Co Ltd
- Middlesex Flooring Ltd
- MMAXX
- Pert Bruce Construction
- Pinewood Structures Ltd
- Proctor Flooring Ltd
- R A Gerrard Ltd
- Rakewood Contracts Ltd
- Renelec Groundworks Ltd
- Seddon Group Ltd
- Specialist Engineering Contractors’ (SEC) Group
- Sustain Landscapes Ltd
- Technic Concrete Floors Ltd
- The British Constructional Steelwork Association Ltd
- The Southport Gate Co Ltd also T/A SGC Steel Fabrication
- Thorp Precast Ltd
- Tonic Construction Ltd
- UK Finance
- W.B.Simpson & Sons
- W L West & Sons Ltd

A number of individual responses were also received.

Annex B: Summary of consultation questions

Number	Question
1a.	To what extent do existing prompt and fair payment measures, such as the Construction Supply Chain Payment Charter, Project Bank Accounts and the Public Contracts Regulations, help to address the specific challenges with retentions?
1b.	Please explain the reasons for your answer to question 1a.
2a.	Are there any challenges that these do not address?
2b.	Please explain the reasons for your answer to question 2a.
3a.	Do you agree with the findings and conclusions drawn from the Pye Tait research?
3b.	Please explain the reasons for your answer to question 3a.
4.	Do you have any further comments on the Pye Tait research?
5a.	Do you think this estimate is reasonable? (Estimate for the value of retentions held in the construction sector as a whole, as estimated in the Consultation Stage Impact Assessment. This is estimated to be £3.2 billion to £5.9 billion with a central estimate of £4.5 billion, in 2015 prices.)
5b.	If no, please explain the reasons for your answer to question 5a.
6a.	Do you agree that this is a suitable methodology for estimating the total amount held in retentions across the sector over the course of a year? (Impact Assessment methodology for estimating the total amount held in retentions across the sector over the course of a year.)
6b.	If no, please explain the reasons for your answer to question 6a. If you think that an alternative methodology is needed, please provide details and supporting evidence.
7a.	Do you agree that, as retentions are a proportion of contract value, sector turnover is a more appropriate basis for estimating the total amount held in retentions over the course of a given year than sector output?
7b.	If no, please explain the reasons for your answer to question 7a. If you think that an alternative methodology is needed, please provide details and supporting evidence.
8a.	Do you think that the assumptions made for this methodology look reasonable? (Impact Assessment methodology for estimating the value of retentions.)
8b.	If no, please explain the reasons for your answer to question 8a. If you think that alternative assumptions are needed, please provide details and supporting evidence.
9a.	Do you think that the assumptions made for this sensitivity are reasonable? (Impact Assessment sensitivity analysis assumptions applied to the estimate for the total amount held in retentions across the sector over the course of a year.)

Number	Question
9b.	If no, please explain the reasons for your answer to question 9a. If you think that alternative assumptions are needed, please provide details and supporting evidence.
10a.	Do you think this estimate is reasonable? (Impact Assessment estimate for the total value of retentions not paid across the construction sector over a year due to upstream insolvencies. This is estimated to be £229 million, in 2015 prices.)
10b.	If no, please explain the reasons for your answer to question 10a.
11a.	Do you agree that this is a suitable methodology for estimating the total amount of retention monies not paid over the course of a year due to upstream insolvencies? (Impact Assessment methodology for estimating the total amount of retention money unpaid each year due to upstream insolvencies.)
11b.	If no, please explain the reasons for your answer to question 11a. If you think that an alternative methodology is needed, please provide details and supporting evidence.
12a.	Do you think that the assumptions made for this methodology look reasonable? (Impact Assessment methodology for estimating the value of retentions not paid to contractors due to upstream insolvencies.)
12b.	If no, please explain the reasons for your answer to question 12a. If you think that alternative assumptions are needed, please provide details and supporting evidence.
13a.	Do you agree that this is a suitable methodology for estimating the total amount that construction clients and contractors holding retentions would need to fund from elsewhere, in order to maintain current levels of expenditure? (Impact Assessment methodology for estimating finance from elsewhere to maintain current level of expenditure.)
13b.	If not, please explain the reasons for your answer to question 13a. If you think that an alternative methodology is needed, please provide details and supporting evidence.
14a	Do you think that the assumptions made for this methodology look reasonable? (Impact Assessment assumptions.)
14b.	If no, please explain the reasons for your answer to question 14a. If you think that alternative assumptions are needed, please provide details and supporting evidence.
15a.	Over the last year did you make any use of the retentions monies you held (for example, as part of general expenditure, working capital, or to support investment)?
15b.	If yes, approximately what proportion of the total value of retentions held by you did you make use of last year?
16.	Do you have any further comments on the Consultation Stage Impact Assessment analysis?
17.	What was your annual turnover last year?

Number	Question
18a.	Do you believe that non-payment of retentions due to the company holding the retention becoming insolvent before the retention is paid is a significant issue in the construction sector?
18b	Please explain the reasons for your answer to question 18a, and if possible provide supporting evidence.
19a.	Excluding the money not paid because the company holding the retention became insolvent. Do you believe that unjustified non-payment of retention monies is a significant issue in the construction sector?
19b.	Please explain the reasons for your answer to question 19a, and if possible provide supporting evidence.
20a.	Do you believe that non-payment of retention monies due to payers citing that obligations under another construction contract not being met is a significant issue in the construction sector?
20b.	Please explain the reasons for your answer to question 20a, and if possible provide supporting evidence.
21a.	Approximately, what was the total value of retentions due to be released to you over the last year?
21b.	If retention money was due, approximately what proportion of this was not released?
22.	Please provide further details on the reasons for this non-payment:

	The company holding the retention became insolvent	Payer cited that obligations under another construction contract had not been met	Other reasons
What proportion of the total value of retentions not released to you was because of:			
(Note: this row should add to 100%)			

23a.	Of the non-payment unpaid for ‘other reasons’ in question 22 above, in your view, what proportion was unjustified within the contract terms?
23b.	Please explain the reasons for your answer to question 23a.
24a.	Did you challenge the non-payment that occurred due to the payer citing obligations under another construction contract not being met (outlined in question 22)?
24b.	Please explain the reasons for your answer to question 24a.

Number	Question
25a.	Do you believe that unjustified late-payment of retention monies is a significant issue in the construction sector?
25b.	Please explain the reasons for your answer to question 25a, and if possible provide supporting evidence.
26a.	Do you believe that late payment of retention monies due to the payer citing obligations under another construction contract not being met is a significant issue in the construction sector?
26b.	Please explain the reasons for your answer to question 26a, and if possible provide supporting evidence.
27.	Approximately what proportion of the total value of retentions due to be released to you over the last year was paid late?
28.	Please provide further details on the reasons for this late-payment:

	Payer cited that obligations under another construction contract had not been met	Other reasons
What proportion of the total value of retentions that was paid late was because of:		
(Note: this row should add to 100%)		

29a.	Of the late-payment for 'other reasons' in question 28 above, in your view, what proportion was unjustified within the contract terms?
29b.	Please explain the reasons for your answer to question 29a, and if possible provide supporting evidence.
30.	For the amount that you believe was 'unjustified' what was the typical length of delay?
31a.	Did you challenge the late payment that occurred due to the payer citing that obligations under another construction contract had not been met (outlined in question 28)?
31b.	Please explain the reasons for your answer to question 31a.
32a.	Are you aware that the 2011 amendments to the 'Construction Act' mean it is no longer possible to make payment, including retention payments, conditional on the performance of obligations under another contract?
32b.	Over the past year, approximately what proportion of contracts issued to you were inconsistent with the 2011 amendments that payment cannot be made conditional on performance under another contract?
32c.	Did you raise the inconsistencies with the awarding party?
32d.	If you did raise the inconsistencies with the awarding party, typically what was the outcome?
32e.	If you did raise the inconsistencies with the awarding party, what expense did the requirement to clarify the contract(s) incur?

Number	Question
32f.	Would you have challenged the non-payment (due to performance of obligations under another contract), if you had known that this is what the ‘Construction Act’ means for retention payments?
32g.	Would you have challenged the late-payment (due to performance of obligations under another contract), if you had known that this is what the ‘Construction Act’ means for retention payments?
32h.	What measures would assist in increasing your awareness of such legislative changes?
33a.	Do you believe those withholding retentions due to reasons that are now illegal under the 2011 changes to the ‘Construction Act’ are doing so due to a lack of awareness of the 2011 changes or for other reasons?
33b.	Please explain the reasons for your answer to question 33a.
34a.	When the 2011 amendments were introduced it was suggested that some parties to construction contracts may respond by simply extending the defects liability period so that the retention was held for longer. Do you believe that this has occurred?
34b.	Please explain the reasons for your answer to question 34a.
35a.	It has been suggested that some parties to construction contracts ask contractors to give an overall discount on the contract price, in return for ensuring prompt payment. Have you encountered this practice?
35b.	Have you encountered this practice specifically with regard to retentions payments?
36.	Do you have any further comments on late and non-payment of retentions?
37a.	Pye Tait research provided no evidence that a large proportion construction customers are systematically setting retention rates at high levels. It presents a similar picture on the length of time retentions are intended to be held. It is therefore suggested that a cap on the time that a retention can be held or the retention rate that can be held would have limited impact. Do you agree?
37b.	Please explain the reasons for your answer to question 37a.
38a.	Over the last 5 years, on what proportion of your construction contracts, have alternative mechanisms to retentions or alternative mechanisms for implementing retentions been utilised?
38b.	Which alternative mechanisms were utilised?
38c.	Typically, were these alternative mechanisms used in addition to, rather than as an alternative to retentions?
38d.	Do you think that any of these alternative mechanisms would be applicable for wider use across the sector?
38e.	Please explain the reasons for your answer to question 38d. If applicable, please list those alternative mechanisms that you think would be applicable for wider use across the sector.
39a.	The Pye Tait research concludes that a retention deposit scheme and holding retentions in trust appear to be applicable to the whole of the sector. Do you agree?

Number	Question
39b.	Please explain the reasons for your answer to question 39a.
40a.	The Pye Tait research concludes that a retention deposit scheme and holding retentions in trust could eliminate some of the critical issues associated with retentions (notably the risk of delayed or non-payment of retention monies) and provide surety against defects. Do you agree?
40b.	Please explain the reasons for your answer to question 40a.
41a.	Do you agree that a range of alternative mechanisms could exist within the industry, to account for variation in projects and supply chain circumstances?
41b.	Please explain the reasons for your answer to question 41a.
42.	Do you have any further comments on the alternative mechanisms to retentions in the construction sector?
43a.	Do you think it is important to place a threshold on the application of any measure requiring retentions to be held in trust or ring-fenced in another way?
43b.	Please explain the reasons for your answer to question 43a.
44a.	Any measure to require the retention money to be held in trust needs to be simple, consistent and transparent. A retention deposit scheme may represent the best way of achieving this. Do you agree?
44b.	Please explain the reasons for your answer to question 44a.
45a.	In your opinion, what would be the most appropriate design of a retention deposit scheme?
45b.	Please explain the reasons for your answer to question 45a.
46 a – h.	It is proposed that, if established, a retention deposit scheme should have the following features: Do you agree that the following features should be included? a. The scheme should be set up on a statutory footing. b. The market will deliver private provision of any retention deposit scheme(s). c. Businesses holding retentions under construction contracts (as defined by Part 2 of the Housing Grants, Construction and Regeneration Act 1996) will be required to deposit retentions into the scheme. d. The scheme can only hold retention money (plus any related interest). e. The money will be held in trust for the ‘payee’. f. Where the contract makes no such provision, the Scheme for Construction Contracts will imply relevant terms requiring retention money to be held in a deposit scheme. g. Scheme operators would be required to report on an annual basis on their performance. h. Any disputes about the operation, amount and timing of the release of retentions payments will be dealt with by existing dispute resolution processes.
46i.	Please explain the reasons for your answers.
47.	Are there any further features to the retention deposit scheme that you would recommend?
48 a – e.	It is proposed that, if established, a retention deposit scheme would operate according to the principles listed below. Do you agree that the following features should be included?

Number	Question
	a. Organisations withholding retention payments will be required to register with a scheme as an account holder. b. The retention holder to register specific contracts and the relevant information (such as start and end dates, payment schedule and retention terms). c. The retention holder to notify the scheme of the timing, amount and allocation of retention money which is being deposited. d. The retention holder to notify the scheme if any changes are made to the timings and payment due, and why. e. The scheme operator to pay the retention on the retention release date.
48f.	Please explain the reasons for your answers.
49.	Are there any further features to the operation of the "retention deposit scheme" that you would recommend?
50.	There may be "in-house" costs which companies required to use the scheme will incur. We consider these administrative costs would comprise of the following: a. Provision of contract details (such as start and end dates, payment schedule and retention terms) to the retention deposit scheme. b. Notification to the scheme of the timing, amount and allocation of retention money which is being deposited. c. Notification to the scheme operator if any changes are made to the timings and payment due, and why. Please give an estimation of how much administration time you think would be reasonable for these processes?
51.	Are there any further features to the operation of the "retention deposit scheme" that you would recommend?
52.	If you hold retentions, who in your organisation do you envisage would be required to manage your contracts with the retention deposit scheme?
53.	If you have had retentions held from you, what cost per contract would you be willing to incur if it meant that your retention was held in trust in a retention deposit scheme?
54.	If you currently hold retentions, above what cost per contract for the retention deposit scheme do you think you would you no longer choose to hold retentions on your contracts?
55.	Changes to how retentions can be held would mean that parties to construction contracts would need to familiarise themselves with new guidance. How much time do you think it would be reasonable to expect you to spend reviewing guidance to familiarise yourself with any changes?
56.	What was the total number of contracts that you issued last year on which you hold retentions?
57.	Do you have any other comments that might aid the consultation process as a whole?

This publication is available from: www.gov.uk/government/consultations/retention-payments-in-the-construction-industry

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.