

REVIEW OF THE PRACTICE OF CASH RETENTION UNDER CONSTRUCTION CONTRACTS

BIS Ministers have asked the Construction Leadership Council to undertake a review of the practice of retention under construction contracts.

The Review will consider:-

- the effectiveness of retentions as a “warranty” against defective work
- the effectiveness and practicality of alternative means of providing a warranty
- the extent of misuse and “mischief” around the practice
- the impact of retention across construction supply chains, from the project customer through to supply chain SME
- retention and insolvency
- the effectiveness of the 2011 changes to Part 2 of the Housing Grants, Construction and Regeneration Act 1996 in improving access to adjudication and certainty of what will be paid and when
- a desk review of international practice

The Review will be informed by 3 key pieces of evidence:

- Research by Pye Tait for BIS on Retention Payments in the UK Construction Industry. This research has been commissioned and will be completed by end March 2016. [The research specification is attached at A].
- The Post Implementation Review, approved by the Regulatory Policy Committee, of effectiveness of the 2011 changes to Part 2 of the Housing Grants, Construction and Regeneration Act 1996
- A BIS commissioned industry consultation on the practice, based on the research inputs and discussions with key stakeholders which will run in April and May 2016.

Plus such other evidence sources as the Review team determines.

The Review will make recommendations on:

- whether there are particular misuses which should be explicitly prevented
- whether further changes are required to the “Construction Act” to improve its effectiveness.
- whether there are commonly effective ways of protecting project customers which remove or minimise the need for retention.

The Review will be completed within 9 months of the Enterprise Act coming into force. The “Construction Act” is devolved and any recommendations from the review will therefore be focussed on England.