



Department for
Business & Trade

Late Payments

Tackling poor payment practices

July 2025

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Secretary of State Foreword

This Government is committed to tackling the scourge of late payments, which costs the UK economy almost £11bn per year and closes down 38 UK businesses every day.¹

Over 1.5 million businesses are affected by late payments. This represents a significant drag on UK growth and productivity.² A healthy cash flow is critical for the survival and growth of the UK's small businesses. Paying hard-working employees; settling bills with other businesses; and investing in new capital, skills and ideas for the future – all of this relies on timely and fair payment.

Since being elected last year, this Government has already taken rapid action:

- We are legislating to require large companies to include their payment performance in annual reports. This will give greater board-level oversight of payment practices and increase the transparency of large companies' their payment performance.
- We have launched a new Fair Payment Code, delivered by the Small Business Commissioner. This is showcasing those companies who are setting an example by paying their suppliers quickly and fairly.
- We have appointed Emma Jones CBE as the new Small Business Commissioner. Emma brings a wealth of entrepreneurial experience to the role and will be a key player in tackling late payments.

We know there is more to do. That's why we are proposing a package of new measures that amounts to the most significant legislation to tackle late payments in over 25 years. We are going further than previous Governments and our international counterparts – giving us the strongest legal framework on late payments in the G7. We are meeting our manifesto commitment to take action on late payments to ensure small businesses and the self-employed are paid on time.

These measures support the Government's ambition to make the UK the best place in the world to start, run and grow a business – a place where businesses are paid on time for the goods and services they deliver; a place where money flows quickly through supply chains; a place where small companies and the self-employed spend their time and resources running their business effectively instead of chasing unpaid invoices.

I would like to thank all the stakeholders that have provided their expertise and insights to help develop these proposals. This includes the Federation of Small Businesses, who have been a tireless advocate on this issue for many years.

I look forward to hearing a wide range of stakeholders' views on this package of policy measures to address late payment, supporting the growth of businesses throughout the UK.

¹ DBT (2025) – *Estimating the total economic cost of late payments and their impact on the UK economy*

² Ibid



The Rt Hon Jonathan Reynolds MP
Secretary of State for Business and Trade and
President of the Board of Trade

Jonathan Reynolds

Consultation Information

This consultation seeks views on a package of proposed legislative measures to address late, long and disputed business to business payments. The consultation will last from 31 July until 23 October 2025.

The proposals aim to improve cash flow through supply chains and support small businesses with payment disputes. We welcome views from all businesses, trade representative organisations, member organisations and interested parties to the proposals.

There are specific proposals referring to the use of retention clauses within construction contracts and we welcome responses from those in the construction sector and wider who are party to a construction contract.

Consultation scope

We are interested in gathering evidence on a UK wide basis. Final proposals will take account of devolved settlements and ensure international obligations are met.

Responsible body

The Department for Business and Trade (DBT)

Issued: 31 July 2025

Respond by: 23 October 2025

Enquiries to: promptpayment@businessandtrade.gov.uk

How to respond

You may respond to this consultation online:

https://ditresearch.eu.qualtrics.com/jfe/form/SV_0v37vzvBpfM5Exw

We strongly encourage that responses are made via the online platform. Using the online survey will assist our analysis of the responses, enabling more efficient and effective consideration of the issues raised.

If you cannot respond via the online platform, you may send your response by email to: promptpayment@businessandtrade.gov.uk

If you are responding in writing, please make it clear which question or paragraph number each comment relates to.

Written responses can also be sent to:

Prompt Payment Policy and Delivery

Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. When responding, please state whether you are responding as an individual or representing the views of an organisation. Evidence will be reviewed thereafter by the review team. If further information or clarification is required, the review team will be in contact with you.

Confidentiality and data protection

The Department for Business and Trade (DBT) is committed to protecting the privacy and security of your information. This notice informs you how we collect and process your personal data in accordance with data protection legislation when you respond to one of our public consultations, which we publish on GOV.UK. Dependent on the consultation, you can respond by post, by email or online.

The way in which your data is handled varies depending on how you submit your response, but all information submitted to us will be treated in accordance with data protection principles.

This privacy notice in full can be read at:

<https://www.gov.uk/government/publications/public-consultations-privacy-notice/public-consultations-privacy-notice>

We may modify or amend this privacy notice at our discretion at any time. When we make changes to this notice, the last modified date at the top of this page will be updated. Any modification or amendment to this privacy notice will be applied to you and your data as of that revision date. If there are substantive changes to how your personal data is processed, DBT will take reasonable steps to make sure you know.

How to contact us

Contact our Data Protection Officer (DPO) with any concerns about how we or our services handle your personal information:

Data Protection Officer
Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

Email: data.protection@businessandtrade.gov.uk

Independent advice

You can contact the Information Commissioner for independent advice about data protection issues or to make a complaint:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Email: casework@ico.org.uk

Telephone: 0303 123 1113
Textphone: 01625 545860
Monday to Friday 9am to 4:30pm

If you make a complaint to the Information Commissioner, it does not prejudice your right to seek redress through the courts.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: enquiries@businessandtrade.gov.uk

Enquiries

For enquiries on this consultation please contact:
promptpayment@businessandtrade.gov.uk

Context

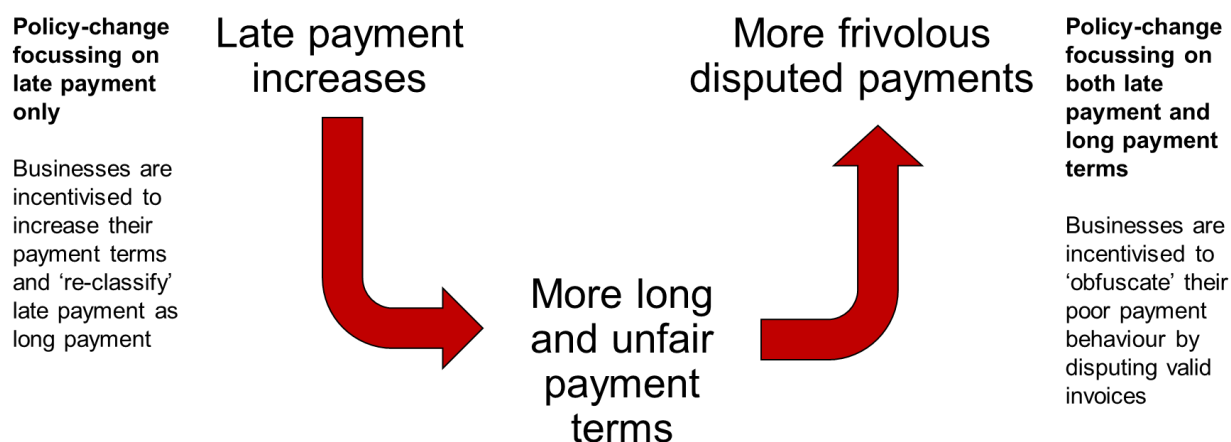
Healthy cash flow is critical for business survival and growth. For a business to conduct its daily activities it needs cash to buy stock and inventory, pay bills and staff, and to invest in research and development, product design and the skills of its staff. Late payment stifles growth and acts as a drag on business productivity. It disrupts the cash flow cycle, can prevent a business from paying its bills, and can even lead to business closures. Small and Medium-sized Enterprises (SMEs) are particularly exposed as they typically have less cash in reserve to act as a buffer.

The objectives of these proposals are to improve business-to-business payment behaviour and stop late payments, ensuring businesses are paid fairly and on time. Late payment is characterised by four different but inter-related problems. The policy measures proposed here seek to address them all:

- **Late payments.** Where businesses fail to pay an invoice within the agreed payment terms (30 days where no specific terms have been agreed).
- **Long payment terms.** Where payment terms are agreed over extended periods beyond 60 days.
- **Disputed payments.** Where businesses disagree over the goods or services supplied and payment is delayed or reduced.
- **Unfair practice around retention payments.** Specific to the construction sector, where retained money can be lost through upstream insolvency or subject to late, partial or non-payment.

All four problems need to be considered together, as making improvements in one area only risks displacing the issue rather than resolving the underlying problems. For example, if policies focus solely on reducing late payments, there may be risk that some businesses seek to extend their payment terms to give themselves more time to meet payment deadlines and to avoid any sanctions associated with paying late.

Figure 1 – Relationship between late payment, long payment, and disputed payments



Late payments arise from a range of different causes. In some cases, late payment can be the result of a deliberate and wilful strategy, with large businesses choosing to pay small businesses late or to impose long payment terms on them. Frequently however, issues arise because of administrative inefficiencies such as misunderstandings regarding contracts through to poor invoicing or issues with IT payment systems.

There are also sector specific payment problems, including the use of retention payments in the construction sector. Late or non-payment of retentions cause significant problems for firms in the supply chain, and contractors owed this money also face a risk of non-payment in the event of upstream insolvency, which can cause significant financial loss.

Previous Government interventions to improve payment practices in the UK

The Housing Grants, Construction and Regeneration Act 1996 – Part 2: Construction Contracts

The Act as amended created a specific payment and dispute resolution framework for the construction sector, intended to ensure fair and prompt payment through the supply chain and the right to dispute resolution via adjudication. The Act established rights to staged payments; rights to be informed when invoices would be paid and any amounts to be withheld; the right to suspend performance for non-payment; and made certain payment provisions in contracts unlawful (for example 'pay when paid' clauses).

The Late Payment of Commercial Debt Act 1998

The 1998 Act inserts an implied term into qualifying contracts and provides for interest to be claimed on debts paid after an agreed payment date or relevant statutory period. In the absence of an explicit agreement, a payment term of within 30 days is implied. The Act sets a maximum payment term of 60 days. However, a longer payment period can be agreed if it is not deemed to be grossly unfair to the supplier.

The Prompt Payment Code (PPC) 2008

Under the PPC businesses could voluntarily sign up to committing to paying 95% of invoices within 60 days, and 95% of invoices to small businesses within 30 days. The PPC was administered by the Small Business Commissioner. The PPC was replaced in December 2024 by the new Fair Payment Code.

The Small Business Commissioner (SBC) 2017

The SBC was created by Part 1 to the Enterprise Act 2016 with a statutory function to help resolve complaints that small businesses have with larger customers involving late payments. The SBC has non-statutory deliverables including the PPC and wider expectations to drive UK business culture change in payment practices.

The Reporting on Payment Practices and Performance Regulations 2017

These regulations require large companies to publish twice yearly on their payment practices, including their standard payment terms, use of digital invoicing, average payment times, payments made within 30 / 31-60 / 61+ days, and the percentage of payments made late. This data can be accessed by small businesses and third parties to check when large companies typically pay their suppliers.

These regulations were amended in 2024 and 2025 to introduce further metrics on the value of invoices paid within different timeframes, the value of invoices paid late, and practices, policies and payment performance for retention clauses in construction contracts.

Public Procurement (led by Cabinet Office) (2019 and 2023)

The Public Procurement Regulations 2019 sets out that government should pay all undisputed invoices to small businesses in 5 days, all payments to small businesses in 30 days, and all payments to all businesses in 60 days. The Procurement Act 2023 sets out that all bidders for government contracts above £5 million must pay suppliers in 55 days, reducing to 45 days in 2025 and then 30 days in future.

The Fair Payment Code (2024)

A new voluntary Fair Payment Code was launched in December 2024, overseen and administered by the Small Business Commissioner. The new Code encourages businesses across the UK to pay fairly and quickly. Businesses apply for the Award tier which reflects their payment performance: Gold, Silver or Bronze. The system of Awards is aimed at driving best practice and improving payment performance. The three Awards are:

- Gold Award – for those paying at least 95% of all invoices within 30 days
- Silver Award – for those paying at least 95% of all invoices within 60 days, including at least 95% of invoices to small businesses within 30 days
- Bronze Award – for those paying at least 95% of all invoices within 60 days

Wider ongoing reforms to address late payments and long payment terms

Alongside the policy proposals set out in this consultation, this government is taking forward a wider package of measures to address late payments.

We have launched a new Fair Payment Code, delivered by the Small Business Commissioner, with the first cohort of awardees announced in January 2025.

We have appointed Emma Jones CBE as the new Small Business Commissioner. Emma brings a wealth of entrepreneurial experience to the role and will be a key player in tackling late payments.

We are legislating to require large companies (i.e. those in scope of the Reporting on Payment Practices and Performance Regulations 2017) to include their payment

performance within their annual reports.³ This will increase transparency and provide greater oversight of payment performance reporting at board level, including by audit committees where they exist.

Proposed Package of Legislative Measures

This consultation seeks feedback on a proposed package of measures to go further than any previous Government on tackling late payments. These measures are summarised in Table 1 and Table 2 below.

³ From 6 April 2025, legislation will come into effect to increase monetary thresholds that determine company size by approximately 50%. This uplift accounts for inflation with some future proofing. Companies able to move down a size category will be entitled to the accompanying reduction in reporting requirements.

Table 1 – Summary of proposed legislative measures

Policy	B2B payment behaviour			Description
	Late	Long	Disputed	
1) Audit committees and board-level scrutiny of large company payment practices	X	X	X	In September 2024, the Government reaffirmed commitments to legislate on audit committees and other board level responsibilities to improve payment practices. The Government believes further positive change could be achieved by increasing discussion and scrutiny of large companies' payment practices at board level. We would welcome views on how Government could best achieve this in the future with proportionate regulatory burden. For example: - Ensuring audit committees or company boards, where companies have them, provide commentary and make recommendations regarding payment performance to company directors before the data is submitted to Government and included in the Director's report. This would include data provided as part of the Reporting on Payment Practices and Performance Regulations 2017, and any interest on late payment liabilities. - Ensuring the Small Business Commissioner writes to audit committees and company boards, where companies have them, when i) undertaking payment performance reporting assurance; and ii) when investigating any other matter relating to a companies' payment practices. We would welcome views on these ideas, including the likely positive effects, costs, or any unintended negative consequences. We would also welcome other additional ideas to encourage greater discussion of payment practices at board level.
2) Maximum payment terms		X		The policy will amend <i>The Late Payment of Commercial Debts (Interest) Act 1998</i>, removing the exemption that allows businesses to agree to payment terms longer than 60 days if considered not 'grossly unfair'. This will effectively limit payment terms between UK businesses to 60 days. Subject to further consultation, this policy may subsequently reduce this limit from 60 days to 45 days after 5 years.

Table 2 – Summary of proposed legislative measures

Policy	B2B payment behaviour			Description
	Late	Long	Disputed	
3) A deadline for disputing invoices			X	The policy will amend <i>The Late Payment of Commercial Debts (Interest) Act 1998</i> , introducing a 30-day invoice verification period. Businesses who wish to raise a dispute will need to do so within 30 days of receiving an invoice, otherwise they will be liable to pay the invoice in full within the agreed payment terms, alongside any statutory interest or debt recovery costs if the invoice is paid late.
4) Mandatory statutory interest	X			The policy will amend <i>The Late Payment of Commercial Debts (Interest) Act 1998</i> , making the statutory interest rate payable on late payments mandatory. This will remove the ability to negotiate compensation rates lower than the statutory rate. This will increase existing financial incentives to pay invoices on time.
5) Additional reporting on statutory interest	X	X		The policy will amend <i>The Reporting on Payment Practices and Performance Regulations 2017</i> to include additional reporting requirements around statutory interest liabilities. This will further increase transparency around poor B2B payment behaviour and informs other policies that aim to improve the utilisation and payment of statutory interest.
6) Financial penalties for persistent late payers	X			The policy will introduce new legislation, which gives the SBC powers to issue financial to businesses who persistently pay their suppliers late. The policy will use payment behaviour data submitted by businesses under <i>The Reporting on Payment Practices and Performance Regulations (2017)</i> to identify and issue financial penalties to persistently late-paying businesses, with penalties based on businesses' unpaid statutory interest liability.
7) Additional powers for the SBC, including assurance of payment reporting data	X	X	X	The policy will amend <i>The Enterprise Act 2016</i> to give additional powers to the SBC. The additional powers would improve the SBC's ability to conduct investigations into poor B2B payment behaviour (beyond its current complaints scheme), allow it to provide legally binding arbitration in disputes, and impose financial penalties or make arbitration awards after an investigation or arbitration process. The policy will also enable the SBC to investigate the accuracy of the payment reporting data that large businesses provide under <i>The Reporting on Payment Practices and Performance Regulations 2017</i> . This will improve the quality of reporting data and support the reporting regulations original objectives of improving transparency around B2B payment behaviour.
8) Use of retention clauses in construction contracts	X	X		The policy will amend <i>Part 2 of the Housing Grants, Construction and Regeneration Act (1996)</i> , to either prohibit the use of retentions; or to introduce requirements to protect retention funds deducted and withheld from insolvency and late or non-payment.

Consultation Questions

For each response, please also provide the following detail:

1. Name
2. Email (if you agree to be contacted about your responses)
3. Capacity (business, trade representative, other organisation, individual)
4. If responding on behalf of a representative body please make it clear who the organisation represents and, where applicable, how the members' views were assembled.
5. Size of business (if applicable)
6. Name of business / organisation / representative body
7. Region
8. Sector

Measure 1 – Audit committees and board-level scrutiny of large company payment practices

In September 2024, the Government reaffirmed commitments to legislate on audit committees and other board level responsibilities to improve payment practices. The Government believes further positive change could be achieved by increasing discussion and scrutiny of large companies' payment practices at board level.

We would welcome views on how Government could best achieve this in the future with proportionate regulatory burden. For example:

- Ensuring audit committees or company boards, where companies have them, provide commentary and make recommendations regarding payment performance to company directors before the data is submitted to Government and included in the Director's report. This would include data provided as part of the Reporting on Payment Practices and Performance Regulations 2017, and any interest on late payment liabilities.
- Ensuring the Small Business Commissioner writes to audit committees and company boards, where companies have them, when i) assuring payment performance reporting; and ii) when investigating any other matter relating to a companies' payment practices.

We would welcome your views on these ideas, including the likely positive effects, costs, or any unintended negative consequences. We would also welcome other additional ideas to encourage greater discussion of payment practices at board level.

Q9a 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

Q9b 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 agree / somewhat agree / neither / somewhat disagree / strongly disagree]

Q9c Are there any potential unintended consequences or considerations that could happen if this measure was introduced?

[Yes / No]

Q9d Please explain the reasons for your answer to question 9c.

[Narrative description]

Measure 2 – Maximum Payment Terms

The Late Payment of Commercial Debts (Interest) Act 1998 sets out rules for businesses payment times, including the right to statutory interest on late payments and sets out that payment terms beyond 60 days should be agreed by both parties and not “grossly unfair” to the supplier business. Whilst small businesses can challenge terms that are “grossly unfair”, they often choose not to because they do not have the resources or means to do so. In certain circumstances, this has enabled larger businesses to take advantage of their negotiating power to impose very long payment terms on their smaller suppliers.

We intend to remove the facility to agree payment terms longer than 60 days. This will introduce a clearer limit to payment terms between UK businesses. The intention is to address a current negotiating imbalance between small and large businesses, whereby small businesses frequently feel compelled to agree very long payment terms in order to agree a contract. Furthermore, this proposal should help address possible incentives on large businesses to lengthen their standard payment terms to avoid the sanctions associated with paying invoices late, such as interest on late payments.

As part of this proposal, we also propose that the maximum payment terms limit should be reduced over time from 60 days to 45 days after 5 years, subject to further consultation, to further improve business cash flow.

Q10a 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

Q10b Please explain the reasons for your answer to question 10a

[Narrative description]

Q10c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

[Yes / No]

Q10d Please explain the reasons for your answer to question 10c.

[Narrative description]

Q10e What exemptions, if any, do you think should apply and why – for example, in specific sectors or in particular circumstances?

[Narrative description]

Measure 3 – A deadline for disputing invoices

There are three common ways in which companies can delay payments to suppliers to extend their own cash flow cycle at the expense of their suppliers: through paying an invoice late, by extending payment terms, or by disputing an invoice just before the payment deadline approaches. With the introduction of stronger measures to tackle late and long payments, some businesses may look to dispute invoices close to the payment deadline to put the payment on hold.

We intend to address this potential issue through introducing a deadline of 30 days for a dispute to be raised. Businesses that wish to raise a dispute would need to do so within 30 days of receiving an invoice. Businesses that raise a dispute after 30 days will be required to pay invoices in full within agreed payment terms, with late payments accruing statutory interest.

Q11a 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

Q11b Please explain the reasons for your answer to 11a

[Narrative description]

Q11c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

[Yes / No]

Q11d Please explain the reasons for your answer to question 11c.

[Narrative description]

Q11e Are there more effective ways the Government could prevent frivolous disputing of invoices?

[Narrative description]

Measure 4 – Mandatory statutory interest

The Late Payment of Commercial Debt Act 1998 enables businesses to charge interest when an invoice is late. However, in practice, small businesses are reluctant to ask larger business for interest on late payments because they do not want to damage their relationships. Furthermore, there are also examples where larger businesses will set out standard terms which include payment of interest at a low percentage rate.

In order to increase the incentive to pay invoices on time, this proposal looks to repeal the provisions within the 1998 Act which allow parties to avoid the right to statutory interest or to vary the interest rate that is charged.

This will mean that all qualifying contracts will require the payment of interest after the agreed payment term has passed without exception and parties will not be able to offer an alternative remedy. The proposal will make it mandatory for businesses that pay their suppliers late to compensate their suppliers using the statutory interest rate set at 8% above the Bank of England base rate. Businesses will no longer be able to negotiate different compensation rates for late payments.

Q12a 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

Q12b Please explain the reasons for your answer to question 12a

[Narrative description]

Q12c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

[Yes / No]

Q12d Please explain the reasons for your answer to question 12c.

[Narrative description]

Measure 5 – Additional reporting on statutory interest

Under The Reporting on Payment Practices and Performance Regulations 2017, large businesses must publish key payment performance information through Gov.uk, including the company's average time to pay, standard payment times and the percentage of payments paid late. There is currently no need to publish the amount of interest that large businesses pay or owe to their suppliers for late payment.

We propose amending The Reporting on Payment Practices and Performance Regulations 2017 to require qualifying businesses to report certain information relating to the payment of statutory interest. This would include a requirement to report the total statutory interest the qualifying company owed to its suppliers and the total statutory interest the company has paid out to suppliers in any given reporting period. There should be minimal impact on large reporting businesses required to report under The Reporting on Payment Practices and Performance Reporting Regulations as businesses should be able to easily calculate their statutory interest liabilities in line with proposed changes to make the statutory rate of 8% above the Bank of England base rate mandatory.

This policy measure will further increase transparency around large companies' payment behaviour. In particular it will highlight the level of interest large companies owe and the extent to which large companies are adhering to proposed changes to rules regarding statutory interest.

Q13a 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

Q13b Please explain the reasons for your answer to question 13a

[Narrative description]

Q13c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

[Yes / No]

Q13d Please explain the reasons for your answer to question 13c.

[Narrative description]

Measure 6 – Financial penalties for persistent late payers

Under the Reporting on Payment Practices and Performance Regulations 2017 businesses are required to publish the percentage of payments made late. Whilst the Reporting on Payment Practices and Performance Regulations 2017 has improved transparency around the payment behaviour of large businesses, there are currently no sanctions for businesses with a high percentage of late payments.

Under this measure, we propose to give the Small Business Commissioner powers to take enforcement action through financial penalties on large businesses that consistently pay their suppliers late. We propose that the data submitted by businesses under *The Reporting on Payment Practices and Performance Regulations 2017* would be used to identify companies that persistently pay late. Government proposes establishing a ‘trigger point’ – for example, companies that report that they have paid 25% of their suppliers late – at which point the Small Business Commissioner can investigate the circumstances of the company in question and, where appropriate, enforce a financial penalty. The investigation would consider any mitigating circumstances, past performance, and any evidence that the company will be changing their future payment practices.

The scale of the financial penalty would be based on businesses’ unpaid statutory interest liability – for example twice the amount of statutory interest owed in the last reporting period.

Q14a 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

Q14b Please explain the reasons for your answer to question 14a

[Narrative description]

Q14c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

[Yes / No]

Q14d Please explain the reasons for your answer to question 14c.

[Narrative description]

Q14e 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

Q14f Please explain the reasons for your answer to question 14e.

[Narrative description]

Measure 7 – Additional powers for the Small Business Commissioner, including assurance of payment reporting data

The performance of the Small Business Commissioner was reviewed in 2023 as part of a statutory review conducted under section 10 of the Enterprise Act 2016 and subject to a public consultation. The review considered the performance and effectiveness of the Small Business Commissioner.

Responses to the consultation showed that while there was continued support for maintaining the role of a Small Business Commissioner, a substantial number of respondents to the consultation said that the SBC has had limited impact in general on business relationships. The key reasons for this included:

- **Insufficient power** - the Small Business Commissioner has insufficient enforcement powers to support small businesses with complaints and investigate poor payment practices.
- **Low awareness** – limited awareness of the Small Business Commissioner has reduced impact.
- **Lack of cultural change to date** - the practices of some businesses needed to change, with some respondents suggesting a stronger statutory framework for payment times backed up with financial penalties.

The Government proposes to give a range of additional powers to the Small Business Commissioner to support small businesses with payment disputes and improve the payment culture in the UK. This would expand its existing remit which is limited to supporting small businesses in late payment disputes with larger businesses. Under the new powers, arbitration of payment disputes would continue to be limited to small businesses contracting with larger businesses, however, the proposed new powers will enable the Small Business Commissioner to investigate and address a range of unfair payment practices by large companies.

Alongside broader powers we also propose giving the Small Business Commissioner the power to investigate the accuracy of data submitted by large companies under The Reporting on Payment Practices and Performance Regulations 2017. The power to compel disclosure of evidence to assure data submitted is accurate does not exist currently. New powers for the Small Business Commissioner to verify data submitted will improve the accuracy and quality of the data being reported. We propose the Small Business Commissioner is empowered to undertake ‘spot checks’ on companies that report, and in cases where information and intelligence suggest assurance of payment performance data may be warranted.

To ensure that the new powers are proportionate and operate effectively, the proposed approach will learn from and adapt the approach taken by the Pubs Code Adjudicator and

Groceries Code Adjudicator. This includes the powers to compel relevant businesses to provide certain information to the Small Business Commissioner for the purposes of an investigation, which it currently does not possess. Additionally, the Government believes the Small Business Commissioner can play a greater role in supporting businesses to resolve payment disputes through alternative dispute resolution in the way the Pubs and Groceries Code Adjudicators do well.

The new proposed powers for the Small Business Commissioner include:

- The ability to launch investigations into unfair payment practices based on anonymous or publicly available information, in addition to existing investigation powers, where there is a failure to meet certain legal obligations in relation to payments.
- The power to compel disclosure of relevant information by companies in investigations and payment disputes.
- The power to arbitrate disputes and make arbitration awards in relation to money owed and statutory compensation and interest due, subject to appeal at an appropriate body.
- The power to take enforcement action through financial penalties to companies that refuse requests for information, fail to adhere to Small Business Commissioner judgements, or persistently breach their legal obligations relating to payments.
- The power to investigate the accuracy of data submitted by large companies under the Reporting on Payment Practices and Performance Regulations 2017.

Q15a 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

Q15b Please explain the reasons for your answer to question 15a

[Narrative description]

Q15c 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

Q15d Please explain the reasons for your answer to question 15c

[Narrative description]

Q15e Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

[Yes / No]

Q15f Please explain the reasons for your answer to question Q15e.

[Narrative description]

Other changes to payment performance reporting

Under the Reporting on Payment Practices and Performance Regulations 2017 large companies are required to publish key payment performance information twice a year on GOV.UK. Separate to this consultation, we are taking forward legislation which will require large businesses to include key payment information in their annual reports, which are published annually. This measure is intended to further improve transparency and encourage more meaningful scrutiny and discussion of payment performance by company boards or audit committees.

We want to reduce the duplication and streamline the reporting requirements to make it easier for large businesses to fulfil both obligations. We are therefore also considering changing the Reporting on Payment Practices and Reporting Regulations 2017 so that large businesses will only report once a year. This should reduce administrative costs and better align with measures being introduced to require large businesses to include their payment information in their annual reports.

We also want payment performance information to inform company board and audit committee decision-making, highlighting poor performance and helping large businesses take steps towards improvement. Including this information in annual reports will help with this, alongside the FRC reviewing their audit committee guidance, but we also want to consider other actions that could support this.

Q16a 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 agree / somewhat agree / neither / somewhat disagree / strongly disagree]

Q16b Please explain the reasons for your answer to question 16a

[Narrative description]

Measure 8 – Use of retention clauses in construction contracts

This proposed measure is relevant to any party to a construction contract.

Ensuring prompt and fair payment has long been a challenge in the construction sector, with poor payment practices resulting in significant negative impacts on small businesses in the supply chain. This includes the long-established contractual practice of retention payments.

The purpose of withholding retentions is to ensure performance and provide security against defective work, or the insolvency of businesses in the supply chain. A retention is a percentage of the contract value (typically 3-5%), withheld by the paying business over the duration of the project and for a period post-completion. It is customary that the first half of the retention is released back to the supplier at project completion, and that the other half is released following the expiry of a defects liability period (typically 12 to 24 months) for the project. This form of surety is widely used in relation to smaller suppliers (sub-contractors), which struggle to obtain surety alternatives such as performance bonds.

Retention payments can be subject to late, partial or non-payment for the supply chain, or permanently lost through upstream insolvency. In addition, payment release mechanisms are often linked to dates that are not explicitly related to the completion of a supplier's work. This can benefit those who retain the retention and have a negative impact on the supplier, as the amount held at any one time across all contracts can be significant. The underlying incentives for businesses to use retentions include maintaining cash flow in an industry which averages 1-2% profit margins, and because there is no requirement to ring-fence retentions, which would prevent these being used for working capital.

The impacts of poor retention payments practices, and the risk of non-payment due to insolvency, include higher business overheads, weakened relationships throughout the construction supply chain, and increased costs of construction projects, as firms price in the risk of losing retentions, all of which constrain business growth.

The Housing Grants, Construction and Regeneration Act 1996 created a specific payment and dispute resolution framework for the construction sector, intended to ensure fair and prompt payment through the supply chain, and the right to dispute resolution via adjudication. However, the Act does not address the problems associated with retentions, including the protection of these during insolvency, or from delayed, partial or non-payment.

A legislative measure would amend Part 2 of the Housing Grants, Construction and Regeneration Act 1996, to introduce requirements on the use of retention clauses under construction contracts. This would either:

- Prohibit the use of retention clauses; or
- Require the protection of retention sums deducted and retained.

Either proposed measure aims to prevent the non-payment of retentions due to upstream insolvency of the payer, and to reduce unjustified late, partial or non-payment of retentions due to poor payment behaviour from the payer.

Both options presented here are considered viable, and the cost calculations and the assessment of their effectiveness will be reviewed based on information received from the consultation.

Prohibiting the use of retention clauses in construction contracts

This proposed measure would prohibit the use of retention clauses in construction contracts.

It would amend the Housing Grants, Regeneration and Construction Act 1996, to make it unlawful for payers to deduct and withhold retention sums from payments to payees.

Payers could choose to seek alternative forms of insurance or surety, but this would not be mandated.

The measure will be implemented for new construction contracts after a prescribed date, which will provide a transitional period for payers to adjust to the new requirements including management of working capital.

Q17a 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 / somewhat agree / neither agree or disagree / somewhat disagree / strongly disagree]

Q17b Please explain the reasons for your answer to question 17a.

[Narrative description]

Q18 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.

[Narrative description]

Q19 What length of transitional period would be required for a payer to adjust to the ban measure? Please explain the reasons for your answer.

[Narrative description]

Q20 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.

[Narrative description]

Introducing requirements to protect retention sums deducted and withheld under retention clauses in construction contracts

This proposed measure would allow the use of retention clauses in construction contracts and require any retention sums withheld to be protected.

It would amend the Housing Grants, Regeneration and Construction Act 1996, to create the protection of retention sums for the benefit of the payee, and payers would have a choice of either:

- segregating the retained sums in a separate bank account; and/or
- protecting the sums through an instrument of guarantee (insurance / surety bond).

The measure will be implemented for new construction contracts after a prescribed date, which will provide a transitional period for payers to adjust to the new requirements including management of working capital.

It is envisaged that the measure would have the following features:

- Applicable to only the use of retention clauses in construction contracts (as defined by Part 2 of the Housing Grants, Construction and Regeneration Act 1996);
- Where the construction contract makes no such provision for the required protection measure, the Scheme for Construction Contracts will imply relevant terms;
- A single retention sum is only permitted to be deducted and withheld from the final payment in respect of works until the expiry of the applicable rectification period;
- Monies will be automatically segregated and held for the benefit of the payee when deducted and withheld;
- The market will deliver provision of any bank account or instrument of guarantee;
- A single bank account may be used with separate ledger records for each payee and each contract;
- The retention sum is automatically released unless the required notification is made;
- Any interest earned on the retention sum is owned by the payee;
- The payer will be required to keep accounting and records for all retention sums held for the payee, and make these available for inspection within a reasonable period of time and without charge;
- The payer will be required to report to the payee on all retention sums held and the mechanism(s) of protection; and
- Any disputes about the amount and timing of the release of retentions payments will be dealt with by existing dispute resolution processes.

Q21a 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 / somewhat agree / neither agree or disagree / somewhat disagree / strongly disagree]

Q21b Please explain the reasons for your answer to question 21a.

[Narrative description]

Q22a What would be the preferred mechanism of a payer to protect the retention sums?

- a) [Segregated bank account]
- b) [Instrument of guarantee]
- c) [Mixture of both]

Q22b Please explain the reasons for your answer to question 22a.

[Narrative description]

Q23 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.

[Narrative description]

Q24a To what extent do you agree with the proposed features of the retention protection measure?

[Strongly agree / somewhat agree / neither agree or disagree / somewhat disagree / strongly disagree]

Q24b 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.

[Narrative description]

Q25 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.

[Narrative description]

The following two questions apply to both options for the use of retention clauses in construction contracts.

Q26 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.

[Narrative description]

Q27 Do you have any further comments on either proposed measure for the use of retention clauses in construction contracts?

[Narrative description]

Miscellaneous

Q28 Do you have any further comments on any elements of the proposals that might aid the consultation process as a whole?

[Narrative description]

Next steps

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal contact details. The consultation analysis, as well as wider engagement during the consultation period, will help inform the Government's next steps.

The consultation outcome will be published within 12 weeks of the close of the consultation, or an explanation will be published if this is not possible.

Department for Business and Trade

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