



DEBATE PACK

Number CDP-2020-0034, 24 February 2020

Use of cash retentions in the construction industry

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Summary

A Westminster Hall debate on use of cash retentions in the construction industry is scheduled for Thursday 27th February 2020 at 3.00pm. The Member leading the debate is Mr Alan Brown MP.

This briefing contains background information, statistics, and parliamentary and press material, as well as suggested further reading which Members may find useful when preparing for this debate.

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The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

1. Background

The purpose of the debate is to discuss the use of cash retention in the construction industry.

1.1 What are cash retentions?

Cash retention is widely practised in the construction industry in the UK, although it is not universally used. It is

a sum of money withheld from the payments of a construction sector project in order to mitigate the risk that such projects are not completed... to the required quality standard.¹

They are a means of incentivising the contractors to complete the work to a good standard, and to return to rectify issues during a specified time period (the 'defects liability period').

The retentions are primarily held by the Tier 1 construction firms (the main contractor). The retention will usually cascade down throughout the supply chain.² It is usually written into contracts, and only a small number of clients have waived their right to hold retention funds.³

The total sum of held retention is around £3.2 billion to £5.9 billion⁴ for the construction sector in England over the course of a given year.⁵

1.2 Issues with retention

Cashflow and delays

[BIS analysis](#) into supply chains in the construction industry found that

The practice of retention is reluctantly accepted but seen as a burden on cash flow and performance.⁶

A [Scottish Government report](#) also round that the instability of retention payments (late payments or none at all), can inhibit business growth, and can send businesses towards insolvency.⁷

In a [Pye Tait and BEIS report](#), survey data found that 50% of contractors had their cash flow affected over the previous three years, as their retentions were held, whilst not holding retention monies themselves.⁸

¹ BEIS & Pye Tait Consulting, [Retentions in the Construction Industry](#), October 2017, p16

² Op. cit. p18

³ BIS, [Supply Chain Analysis into the Construction Industry](#), October 2013

⁴ 2015 prices

⁵ BEIS, [Retention payments in the construction industry](#), BEIS research paper no.17, 24 October 2017

⁶ BIS, [Supply chain analysis into the Construction Industry](#), October 2013

⁷ Scottish Government and Pye Tait, [Retentions in the Scottish Construction Industry](#), April 2019, p55

⁸ BEIS, [Retention payments in the construction industry](#), BEIS research paper no.17, 24 October 2017

Insolvency

There is no regulation or guidance on how retention monies are held or protected. If an employer enters into insolvency before the retention monies are paid, the money will be used to pay off creditors.

The [report by BEIS](#) found that 44% of the contractors surveyed had experience of retentions not being paid in the previous three years due to upstream insolvency.⁹

Financial difficulties

Chief executive of Specialist Engineering Contractors ([SEC](#)) Group, Rudi Klein has said that he believes that when they get into financial difficulties, Tier 1 construction firms sometimes withhold payments and retentions to small and medium enterprises (SMEs), and they do so 'with little to no consequences'.¹⁰

Tight margins

Increasing pressure from clients to bid for work at low prices and increasing cost of labour and materials has created small margins in construction. Large companies may sometimes take on a contract at a low and negative margin, and in doing so the 'risk' (cost of labour, and equipment) can be left to the subcontractors.¹¹

Brian Berry, chief executive of the Federation of Master Builders (FMB) has said large contractors working on very small margins make them 'highly vulnerable when things go wrong'.¹²

Ken Lewandowski, executive chair of [SEC](#) Group, Scotland has said that

it is unacceptable that so many businesses must waste valuable resources chasing money that they are... owed. This has a particularly detrimental effect on [SMEs] in the construction sector, which are effectively bankrolling the cash flow of larger organisations up the supply chain.¹³

1.3 Recent attempts to change retention

In 2018, just before the collapse of Carillion, Peter Aldous MP sponsored the [Construction \(Retention Deposit Schemes\) Bill 2017-19](#), a Private Members Bill

to make provision about protecting retention deposits in connection with construction contracts; and for connected purposes.¹⁴

Although the Bill had a first reading, it did not make a complete passage through parliament before the end of the session, and so made no further progress.

⁹ BEIS and Pye Tait, [Retention in the construction industry](#), BEIS Research Paper 17, October 2017

¹⁰ Megan Kelly, *Construction News* [requires subscription], [22 disasters in a year: why firms worth £1.2bn collapsed](#), 23 January 2020

¹¹ [UK building industry clears rubble of Carillion's collapse](#), 26 January 2016

¹² Peter Ranscombe, *Insider*, [New industry bosses to step up pressure for late payments crackdown](#), 11 February 2020

¹³ [New industry bosses to step up pressure for late payments crackdown](#), 11 February 2020

¹⁴ The [Construction \(Retention Deposit Schemes\) \[HC\] Bill 2017-19](#)

England

BEIS ran two consultations alongside one another from 24 October 2017 to 19 January 2019:

[Retention payments in the construction industry](#)

This consultation was to gain information on the practise of cash retentions in construction contracts in England. This consultation has concluded, and the Government response will be published in due course.

[2011 Changes to Part 2 of the Housing Grants, Construction and Regeneration Act 1996](#)

This consultation aimed to look into the 2011 changes to the Housing Grants, Construction and Regeneration Act 1996 (also known as the 'Construction Act') and how effective the changes were in achieving their objectives. Feedback is currently being analysed.

Scotland

More recently, in December 2019, the **Scottish Government** has begun a consultation on [Cash retention under construction contracts](#), which is seeking information on the retention practise in Scotland.

2. Press Articles

[New industry bosses to step up pressure for late payments crackdown](#)

Peter Ranscombe, *Insider*, 11 February 2020

[22 disasters in a year: why firms worth £1.2bn collapsed](#)

Megan Kelly, *Construction News*, 23 January 2020

[CLC endorses zero retentions in construction by 2023](#)

Real Estate Monitor Worldwide, 11 December 2019

[Business owners stop paying employees due to late payment](#)

Credit Connect, 3 December 2019

[What's wrong with retention in construction?](#)

Peter Hibberd, *PBC Today*, 19 February 2019

[Construction contracts down 13.1% during 2018](#)

PBC Today, 24 January 2019

[UK building industry clears rubble of Carillion's collapse](#)

Gill Plimmer, *Financial Times* [requires subscription], 26 January 2018

[Deposit protection scheme could provide boost for builders](#)

Katie Morley, *The Telegraph* [requires subscription], 18 December 2017

3. Parliamentary material

3.1 Written questions

[Carillion: Written question - 125692](#)

Asked by: [Bill Esterson](#) (Sefton Central), 30 January 2018

To ask the Secretary of State for Business, Energy and Industrial Strategy, with reference to his oral contribution of 30 January 2018, on Carillion, when he plans to apply the lessons on the need for project bank accounts.

Answered by: [Andrew Griffiths](#), 2 February 2019

My rt. hon. Friend the Secretary of State and I have set up a Taskforce with industry and unions to advise and help Government to mitigate the impacts of Carillion's insolvency. Our priority, at this stage, is focusing on the supply chain and their employees. Wider lessons from this insolvency will be learned in due course taking account of the findings of enquiries by the Insolvency Service, Financial Reporting Council, Financial Conduct Authority and several Select Committees.

The Government Construction Strategy committed government departments to use Project Bank Accounts for their projects unless there are compelling reasons not to do so. Since 2011, there has been over £10 billion in cumulative committed spend through PBAs. We are committed to improving payment practices. Our consultation on the contractual practice of cash retention, alongside, a parallel consultation on the effectiveness of the 2011 changes to the "Construction Act" closed on 19 January 2018. We are now considering the responses to the consultation including those referring to the use of Project Bank Accounts.

[Construction: Payment Methods: Written question - 5691](#)

Asked by: [Alan Brown](#) (Kilmarnock and Loudoun), 18 July 2017

To ask the Secretary of State for Business, Energy and Industrial Strategy, when his Department plans to publish the (a) Pye Tait research and (b) consultation documents on the practice of cash retentions.

Answered by: [Margot James](#), 5 September 2017

The Department will be publishing the Pye Tait research alongside a consultation document on the practice of cash retentions under construction shortly.

3.2 Oral questions

[HC Deb Topical Questions c712 13 March 2018](#)

[Douglas Ross \(Moray\) \(Con\)](#)

T3. Late and non-payment of retention payments in the construction industry is affecting small firms in Moray and across the UK. When will Ministers deal with that issue? [904351]

[The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy \(Richard Harrington\)](#)

The Government are determined to improve payment practices, and we understand that retentions have caused problems for contractors in the supply chain. We consulted on the contractual practice of cash retention and we are now considering the responses to assess the extent of the issues and to determine what further intervention is required.

[Construction Industry: Cash Retentions c443 27 June 2017](#)

[Stuart C. McDonald \(Cumbernauld, Kilsyth and Kirkintilloch East\) \(SNP\)](#)

3. What his policy is on the non-release or late release of cash retentions in the construction industry. [900018]

[The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy \(Margot James\)](#)

Unjustified late and non-payment of a retention payment or any amount owed is unacceptable. These practices cause particular problems for small businesses in the construction sector, and the Government are committed to tackling them. We will shortly be publishing research into these issues, alongside a consultation document.

[Stuart C. McDonald](#)

The system of cash retentions has been wreaking havoc in the construction industry for decades. Can the Minister assure us that there will soon be radical action to overhaul the system, and can she explain why it has taken so long?

[Margot James](#)

There is, indeed, far too much abuse of the system of cash retention, and it has been going on for too long. The burden of administrative time spent securing payments and the drain on working capital weigh far too heavily on smaller firms in the supply chain, and I can assure the hon. Gentleman that we will be taking action.

[Toby Perkins \(Chesterfield\) \(Lab\)](#)

If the Government had only listened in 2015 to the amendments the Labour party tabled to the Small Business, Enterprise and Employment Bill, we would already have a solution. We were told then that the Government were going to take action. We were told again a few months ago that they were taking action with their proposals about

naming and shaming businesses that did not publish their late payments. We now have yet another consultation. Research from Crossflow Payments shows that 74% of small businesses do not believe that the Government's recent changes will make any difference. Can we have a policy that actually enforces action on late payments, rather than the series of consultations that we have had?

[Margot James](#)

I agree that action is needed, but it is important that we take the right action. We have undertaken a consultation, the results of which will be published shortly. That will be followed by a consultation on the 2011 changes to the Housing Grants, Construction and Regeneration Act 1996, which will consider the merits of ring-fencing retentions and the extent to which contractors are making the payment of retentions conditional on the performance of obligations under other, completely separate contracts.

3.3 Written statements

[Publication of construction payment consultations: Written statement - HCWS194](#)

Made by: [Margot James](#) (Parliamentary Under Secretary of State for Small Business, Consumers and Corporate Responsibility (Department of Business, Energy and Industrial Strategy), 24 October 2017

My noble friend the Parliamentary Under Secretary of State for the Department for Business, Energy & Industrial Strategy (Lord Prior of Brampton) has today made the following statement:

Today we are publishing two consultations on payment practices within the construction sector. In publishing these consultations, the Department is delivering two commitments.

The first is to undertake a non-statutory post implementation review of the 2011 Changes to Part 2 of the Housing Grants, Construction and Regeneration Act 1996 (the "Construction Act"). The consultation will gather evidence on the effectiveness of the 2011 changes, the framework of rules created by the amended Act, the affordability of these changes for business, relevance and misuse of adjudication.

The second, to complete a review of the practice of cash retention under construction contracts. The review, of which the consultation is a part, is being published alongside independent research carried out by Pye Tait Consulting. The research draws a number of conclusions and also identifies areas for further investigation, which the consultation will seek to gather evidence on.

The consultations run in parallel, with a response period of 12 weeks, closing on the 19 January 2018.

Prompt and fair payment has long been an issue in the construction industry and many consider that some practices can be a barrier to investment, productivity improvement and growth in the sector. Both consultations and supporting documentation will be used to assess the

extent of the issues; and whether and what further intervention is needed.

This statement has also been made in the House of Lords: [HLWS194](#)

3.4 Debates

[Businesses: Late Payments](#)

HC Deb 19 June 2019 c256-264

[Construction Sector Deal](#)

HC Deb 5 July 2018 c523-533

[Prompt Payment Code](#)

HL Deb 10 May 2018 c287-299

[Small Businesses: Retention](#)

HL Deb 21 February 2018 c122-123

[Construction \(Retention Deposit Schemes\)](#)

HC Deb 9 January 2018 c205-207

4. Further reading

4.1 House of Commons Library

[The construction industry: statistics and policy](#)

SN01432, *House of Commons Library*, 16 December 2019

4.2 Government consultations

[Consultation on the Practice of Cash Retention Under Construction Contracts](#)

Scottish Government, 4 December 2019

[Retention payments in the construction industry](#) (consultation)

BEIS, 24 October 2017

[2011 Changes to Part 2 of the Housing Grants, Construction and Regeneration Act 1996](#) (consultation)

BEIS, 24 October 2017

4.3 Press releases and reports

[Annual review](#)

Jeremy Glover (ed.), *Fenwick Elliott*, November 2019

A round-up of key developments in the construction, engineering and energy arena

[Retentions in the Scottish Construction Industry](#)

Scottish Government, Pye Tait Consulting, April 2019

[Select Committee Backs Retentions Reform](#)

Excellence in Electrotechnical & Engineering Services (ECA), 6 December 2018

[Small business and productivity](#)

BEIS, 5 December 2018

[RETENTIONS 'MUST BE HELD IN TRUST', SAY BESA AND ECA](#)

Building Engineering Services Association (BESA), 25 October 2017

[Retentions in the Construction Industry](#)

BEIS Research Paper 17, *BEIS, Pye Tait Consulting*, October 2017

[Supply Chain Analysis into the Construction Industry](#)

BIS Research Paper no. 145, *BIS*, October 2013

4.4 Other information

[Industrial Strategy: Construction Sector Deal](#)

BEIS, HM Government, 22 July 2019

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