The Chartered Institute of Building (CIOB)

submission to

The Department for Business and Trade (DBT)

on the consultation

Late payments consultation: tackling poor payment practices

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Introduction

The Chartered Institute of Building (CIOB) is the world's largest and most influential professional body for construction management and leadership.

We have a Royal Charter to promote the science and practice of building and construction for the benefit of society, and we have been doing that since 1834. Our members work worldwide in the development, conservation and improvement of the built environment.

We accredit university degrees, educational courses and training. Our professional and vocational qualifications are a mark of the highest levels of competence and professionalism, providing assurance to clients and other professionals procuring built assets.

Background

CIOB represents individual members across the construction sector and wider and built environment, including those who run their own businesses, work as self-employed professionals, or are employed by companies of all sizes – from micro businesses and SMEs to Tier One organisations.

While our work is not carried out for the direct benefit of members alone, we are committed to fostering a fair and effective business environment across the construction sector. Tackling the culture of late payments is an important part of this broader mission, as it directly impacts cash flow, productivity, and sustainability within the industry.

CIOB welcomes this consultation as an important opportunity to strengthen the UK's payment framework, address long-standing imbalances between large companies and smaller contractors, and ensure that payment practices support a healthy and competitive supply chain. In particular, we are keen to work collaboratively with Government and industry partners to identify workable reforms that not only improve payment performance but also bring lasting clarity and fairness to the issue of retention payments.

To inform this response, we convened a roundtable of members, many representing micro and SME companies, to discuss their experiences of late payments in the sector. The views expressed in this submission are therefore grounded in the practical realities faced by those operating within the construction industry, ensuring that our response reflects the perspectives of those directly affected by payment practices.

Summary of CIOB's Position

We welcome the Government's commitment to addressing late payments and improving transparency and fairness in business-to-business transactions. Overall, we support measures that strengthen accountability, incentivise timely payment, and protect SMEs from cash flow risks.

We look forward to continuing to engage with the Government on these measures and providing further evidence to support effective, practical solutions that benefit the construction sector and the wider UK supply chain.

Full response

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

- **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 extend 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. Explain the reasons for your answer to question 9c.**

Payment transparency at board level will already be strengthened by the new requirement under the Companies (Directors' Report) (Payment Reporting) Regulations 2025 for large companies to include payment performance data in their directors' reports from 1 January 2026. As company boards are required to approve these reports, this measure will inherently ensure senior-level oversight of payment performance and governance.

Our belief is that it is therefore difficult to determine whether additional measures, such as mandating Audit Committee commentary or correspondence from the Small Business Commissioner (SBC), are necessary before the impact of this forthcoming requirement can be properly assessed.

There is also a risk these additional proposals could create an administrative burden for companies without necessarily leading to meaningful improvements in payment practices. The effectiveness of such interventions will depend on whether they drive cultural and behavioural change, rather than simply increasing compliance activity.

With respect to the SBC's involvement, we note concerns about whether the Commissioner's office would have the capacity and resources to exercise these powers effectively. While some CIOB members of smaller businesses have expressed support for strengthening the SBC's remit, others have highlighted its limited scale and broad cross-sector remit could hinder its ability to provide consistent oversight or address all grievances in a timely and impactful manner. This raises questions about whether extending the SBC's correspondence and assurance functions would deliver measurable benefits or risk diluting its focus.

In summary, we consider that these proposals may be premature before the impact of the 2026 reporting requirements can be evaluated, and that additional measures should be assessed carefully to ensure they deliver tangible improvements rather than additional reporting obligations.

Measure 2 – maximum payment terms

- **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. Explain the reasons for your answer to question 10a.

We agree that removing the current ability for businesses to agree payment terms longer than 60 days represents an important and positive step toward improving payment culture and reducing the unfair burden placed on smaller companies. Establishing a clear legal maximum provides a stronger baseline for fairness and accountability, particularly for SMEs that often face cash flow pressures caused by extended payment arrangements imposed by larger firms.

However, our members have reported some larger companies already employ practices that effectively allow them to delay payments without breaching existing regulations. For example, one such tactic is requesting that suppliers re-issue invoices with later dates when payments are missed. These types of practices enable companies to avoid formally recording payments as "late," thereby undermining the intent of the legislation.

For this reason, we believe while introducing a statutory cap on payment terms is an important measure, it will not by itself address the broader cultural issues underpinning late payments.

Businesses that wish to delay payments may continue to find alternative ways to do so. The proposal to review the maximum term again after five years, with a view to potentially reducing it further, is a welcome step in maintaining momentum toward cultural change. **However, parallel efforts to strengthen enforcement, transparency, and accountability will also be essential to ensure this measure achieves its intended impact.**

- Q10c. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?
  [Yes / No]
- Q10d. Explain the reasons for your answer to question 10c.

Our concern here is that introducing a statutory maximum of 60 days could inadvertently create a perception that this represents a *default* or *standard* payment term, rather than a long stop.

This may lead some businesses, particularly larger organisations that currently operate on shorter payment terms, to extend their terms up to the new limit, thereby worsening payment times overall.

Such an outcome would undermine the policy's intended purpose of improving cash flow and supporting SMEs. It will therefore be important for government communications and accompanying guidance to make clear that 60 days is a *maximum threshold*, not a target, and to continue encouraging prompt and fair payment practices wherever possible.

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

Exemptions often pave way for legal loopholes to be found. If the Government are serious about improving payment culture, we should seek to ensure consistency across the board and not create any exemptions or special circumstances.

The Chartered Institute of Building

Measure 3 – a deadline for disputing invoices

- 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. Explain the reasons for your answer to 11a.

We are supportive in principle of introducing a statutory time limit for disputing invoices and believes that a 30-day deadline could help address one of the mechanisms through which some businesses effectively extend payment terms. By requiring disputes to be raised promptly, the measure would improve clarity, promote discipline in financial management, and reduce the opportunity for payment delays disguised as "ongoing disputes".

However, we hold concerns about the potential incompatibility of this proposal with the Housing Grants, Construction and Regeneration Act 1996 (the Construction Act), which establishes a mandatory payment framework for construction contracts. Under the Construction Act, payment obligations are governed through a series of formal steps involving applications for payment, Payment Notices, and Pay Less Notices - each with its own time limits and legal implications.

Specifically, the Construction Act provides that:

- The payee may request payment through an application for payment.
- The payer must assess the amount due and issue a **Payment Notice** by a specified contractual date, creating a **Notified Sum** that must be paid by the final date for payment.
- In the absence of a Payment Notice, the amount requested by the payee becomes the Notified Sum.
- The payer may subsequently reduce this sum by issuing a **Pay Less Notice** before the final payment date.

This process effectively allows for disputes to be raised at various points up to the final date for payment. Introducing a separate statutory 30-day limit under the Late Payment of Commercial Debts (Interest) Act would therefore create a **parallel mechanism** for disputing invoices that risks being inconsistent with, or duplicating, the Construction Act framework. Such overlap could generate confusion and increase administrative burden for businesses operating in the construction sector, which are already subject to complex payment and adjudication processes.

We recommend that, if this reform proceeds, the Government should ensure that the **Construction Act and the Late Payment of Commercial Debts (Interest) Act** are reviewed and amended in tandem so that both systems align and share the same dispute notification deadlines. This would ensure legal clarity, avoid duplication, and maintain fairness across all payment frameworks affecting the construction industry.

- Q11c. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure? [Yes / No]
- Q11d. Explain the reasons for your answer to question 11c.

The construction industry already operates under a well-established statutory payment framework set out in the **Housing Grants, Construction and Regeneration Act 1996 (the Construction Act).** Introducing a 30-day statutory time limit for disputing invoices under the

Late Payment of Commercial Debts (Interest) Act risks creating two parallel regimes that are not aligned.

If implemented without coordination, this could lead to confusion, additional administrative burden, and potential legal uncertainty for businesses operating within the construction sector, particularly where both Acts might apply to different aspects of the same transaction. To avoid this, any introduction of a statutory time limit for disputes must be developed alongside amendments to the Construction Act to ensure both frameworks are compatible and consistent.

As noted in our response to Q11b, we believe that harmonising these two regimes would be essential to prevent duplication and ensure clarity in how payment disputes are managed across the industry.

- Q11e. Are there more effective ways the government could prevent frivolous disputing of invoices?

N/A

Measure 4 – mandatory statutory interest

- 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. Explain the reasons for your answer to question 12a.

Ultimately, we support the continuation of a fixed statutory interest rate of 8% above the Bank of England base rate and the removal of provisions that allow businesses to negotiate a lower rate. This would help strengthen the deterrent effect of the legislation and promote timely payments across the supply chain.

However, we are concerned that making the payment of statutory interest mandatory without exception could introduce unnecessary administrative burdens, limit commercial flexibility, and potentially undermine collaborative business relationships. It is also unclear how such a measure would operate in practice and what enforcement mechanisms would be in place if interest was not paid automatically.

Feedback from our smaller members also suggests that the *option* to charge interest currently provides useful leverage to encourage prompt payment. Making interest mandatory in all cases could therefore remove an important negotiating tool that helps small businesses secure the payments they are owed on time.

- Q12c. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?
  [Yes / No]
- Q12d. Explain the reasons for your answer to question 12c.

We are concerned that making the payment of statutory interest mandatory in all cases after the agreed payment term has passed could have several unintended consequences.

Firstly, it may create a disproportionate administrative burden, reduce flexibility in commercial relationships, and risk undermining collaboration between businesses, particularly in industries such as construction, where ongoing partnerships and trust are essential. This would be especially problematic in instances where the payee, rather than the payer, is responsible for a delay in payment due to administrative error or other factors. A rigid system without exceptions would remove the ability to exercise reasonable judgment in such situations.

Secondly, feedback from CIOB members has been mixed. Some smaller firms report that they are unable to utilise the current statutory interest provisions due to the imbalance of power between themselves and larger companies. Others have said the *threat* of applying interest is an effective tool for securing prompt payment. Any future system should therefore aim to strike a balance: supporting smaller businesses to apply interest where justified, while avoiding a blanket approach that could lead larger companies to accept late payment as a cost of doing business.

While CIOB is not best placed to help create this system we would be happy to provide the details of members who may be interested to speak more about this subject.

Measure 5 – additional reporting on 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. Explain the reasons for your answer to question 13a.**

We recognise that the intention behind this proposal is to complement the introduction of financial penalties for late payers under Measure 6. However, it is unclear to what extent requiring businesses to report how much interest they owe or have paid would genuinely increase transparency in the supply chain. Similarly, it is unclear how much this would incentivise large companies to improve their payment practices beyond what is already achieved through existing reporting metrics.

Additionally, we are concerned that the administrative burden of collecting and reporting this data would be disproportionate to the limited benefit it would bring. It is important to consider whether this measure would provide any meaningful insight beyond the robust reporting requirements that already exist under the 2017 Regulations, or whether it would simply add another layer of bureaucracy with little practical value for businesses or suppliers.

- **Q13c. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?** [Yes / No]
- **Q13d. Explain the reasons for your answer to question 13c.**

One consideration is whether requiring businesses to report how much interest they owe or have paid would increase the administrative burden for companies which may have little to no benefit to the larger industry (see our answer to Q13b).

Separately, although linked, following the Grenfell Tower Phase 2 Inquiry, the UK Government is intending to implement a licensing scheme for principal contractors working on higher-risk buildings. Part of this is to ensure individual competence but it could include 'organisational capability' (which the Building Safety Regulator already oversees). As part of 'organisational competence' areas such as financial stability could be seen to be fundamental to this and therefore reporting business interest, amongst other financial stability measures, may be required or seen as a mechanism to define whether a business is competent and credible to carry out certain construction projects.

Measure 6 – financial penalties for persistent late payers

- **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. Explain the reasons for your answer to question 14a.**

We strongly support the introduction of financial penalties for large businesses that persistently pay their suppliers late. Persistent late payment continues to be one of the most damaging practices affecting SMEs across the construction sector, undermining cash flow, business resilience, and trust within supply chains. Introducing penalties would send a clear signal that late payment is unacceptable and would help rebalance the power dynamics between large companies and smaller suppliers. Furthermore, payees are often responsible for challenging the payer to recover monies owed, adding time and cost pressures to already stretched resources.

While transparency measures and voluntary codes of practice, such as the Fair Payment Code which CIOB has supported, have contributed to some progress, they have not gone far enough in changing behaviours. Financial penalties would introduce a tangible deterrent that directly targets poor payment performance and rewards businesses that comply with fair payment practices. We believe this would represent a meaningful step towards addressing the long-standing culture of late payment in the UK. Alongside this, we have long called for more mandatory systems surrounding prompt or late payments to be put in place to ensure that all clients, regardless of size are held accountable to the need to pay their contractors and suppliers.[1]

The definition of 'persistently' in terms of paying late is important, and our suggestion would be that Government mirrors what it has done with the required average payment time for companies working on central Government contracts by considering two consecutive six-monthly reporting periods.[2]

We are also concerned that the trigger point outlined in the consultation (companies that report that they have paid 25% of their suppliers late) might be too low of a threshold. While this is a good percentage to be aiming for, CIOB suggests introducing a staggered approach to the trigger point used by the SBC to launch investigations and apply financial penalties.

- **Q14c. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?**
  [Yes / No]
- **Q14d. Explain the reasons for your answer to question 14c.**

We suggest a higher threshold of payments being late should initially be applied, targeting the worst offenders, with the percentage gradually lowered over time as payment practices improve.

However, we are also concerned that the introduction of financial penalties could inadvertently encourage some companies to extend their payment terms to the maximum 60 days in order to remain compliant, particularly if they seek to avoid penalties. This could result in an increase in

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[1] Chartered Institute of Building (CIOB), Fixing the scourge of late payments on SMEs, 9 June 2025
[2] Cabinet Office - PPN 018: Taking account of a supplier's approach to payment in the procurement of major contracts, April 2025

average payment times and ultimately undermine the intended effect of these measures to accelerate payments and support SMEs.

- **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. Explain the reasons for your answer to question 14e.**

We are not best placed to form a definitive view on linking financial penalties to unpaid statutory interest liabilities due to a lack of detail in the consultation on how this would be enforced. It is unclear whether the proposed mechanism would mean that the higher the unpaid interest, the higher the financial penalty.

This raises a number of potential issues. For example, if a company has already paid the statutory interest but continues to pay its suppliers late beyond the established trigger point, would a financial penalty still apply? If not, this could create a loophole, allowing companies to avoid meaningful sanctions despite consistently poor payment behaviour.

To ensure the measure is proportionate and effective, we recommend that penalties should instead be linked directly to the late payments themselves, to the value of the company, or set as a fixed sum rather than a variable amount tied to unpaid interest. This approach would provide a clearer, more enforceable mechanism and ensure that financial penalties serve as a genuine deterrent to persistent late payment

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

- **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. Explain the reasons for your answer to question 15a.**

We support the principle of monitoring and enforcing compliance with regulations around payments. The extension of powers proposed for the SBC will help with fixing the culture of late payments and protect smaller companies. There is some concern about whether the Office of the Small Business Commissioner will have enough resource to successfully carry out additional functions in the way they are intended.

However, complaints arising from the construction sector or matters governed by the **Housing Grants, Construction and Regeneration Act 1996 (the Construction Act)** fall outside the remit of the SBC. The Construction Act provides a legally defined dispute resolution system, including independent adjudication through the Construction Industry Council (CIC). As such, the new powers outlined in this consultation are unlikely to have a meaningful impact on the construction sector specifically.

- **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. Explain the reasons for your answer to question 15c.**

See answer to Q15b.

- **Q15e. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?**
  [Yes / No]
- **Q15f. Explain the reasons for your answer to question Q15e.**

We are concerned that expanding the SBC's powers without careful consideration of capacity and scope could create unintended consequences.

For example, if the SBC is expected to investigate a large volume of complaints across multiple sectors, this could strain resources and reduce the effectiveness of enforcement. In addition, there is a risk of duplication or overlap with existing regulatory frameworks, particularly in the construction sector, where disputes are already managed under the Construction Act. This could lead to confusion among businesses about which processes to follow, potentially increasing administrative burden rather than improving payment practices.

Other changes to payment performance reporting

- **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. Explain the reasons for your answer to question 16a.**

We strongly believe that reducing the mandated reporting frequency from twice a year to once a year would risk producing less reliable and less timely data for both companies and suppliers. The improvements in payment performance observed in the construction sector since the introduction of the Regulations demonstrate the value of biannual reporting.

Most companies are already accustomed to producing reports every six months, and many have internal systems aligned with these timelines. Maintaining biannual reporting ensures that trends in payment practices can be monitored effectively, enabling timely interventions and helping to maintain a level playing field across the sector.

Measure 8 – use of retention clauses in construction contracts

Prohibiting the use of retention clauses in construction contracts

- **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. Explain the reasons for your answer to question 17a.**

Retention payments were originally intended to give clients confidence that any defects or incomplete work would be rectified appropriately. However, in practice, they have proven unfit for purpose and problematic for all parties in the supply chain. The amount of money withheld as retention often fails to cover the actual cost of repairs, and the length of retention periods varies from project to project, creating uncertainty and making financial planning extremely difficult, particularly for smaller firms. Many small businesses report waiting over a year to receive their full payment for completed work, and in cases of upstream insolvency, these payments are often lost entirely.

Government-backed research has found that more than 70% of contractors have experienced delayed or withheld retentions, and 44% have lost retention payments altogether due to insolvency further up the supply chain.[3] In construction the high-profile liquidation of Carillion in January 2018 found that it owed around £800m in retention monies. More recently, in September 2024, the collapse of ISG has once again highlighted the continuing problems of retentions. This demonstrates that the system, as it currently stands, does not provide an effective or fair mechanism for ensuring quality and accountability. Rather, it undermines cash flow, discourages investment, and places undue risk on those further down the supply chain, especially SMEs.

The government had initially committed to achieving zero retention payments by 2025 through the Construction Supply Chain Payment Charter, a voluntary scheme published in collaboration with the Construction Leadership Council (CLC) in 2014. However, this plan was abandoned when the Charter was withdrawn in 2022, and subsequent efforts to revisit the issue have stalled. The industry, particularly SMEs operating within it, have been waiting for meaningful reform in this area, and we hope this consultation will result in decisive legislative action to address the issue once and for all.

We have heard from members that in some cases they have waited as long as four years to receive retention payments. Members further expressed concerns that introducing alternative technological or protected retention schemes could impose additional administrative burdens without resolving the underlying issues. For many, a full ban on retentions would be far more effective than layering new complexity onto an already flawed system.

We believe the industry should now move towards more collaborative and regulated mechanisms for ensuring quality and rectifying defects, approaches that do not disrupt cash flow or impose unnecessary bureaucracy. Given the long-standing nature of retention practices, legislative action is essential to drive behavioural change and support the industry in adopting better alternatives.

The sector has already made significant progress in improving standards, accountability, and competence, particularly following the introduction of the Building Safety Act 2022. By establishing clear responsibilities for dutyholders, the building safety regime is expected to enhance the quality of work and reduce reliance on retentions as a safeguard. While some form of protection against defects will always be necessary, there are many viable alternatives that can be tailored to the needs of individual projects.

A prohibition on retentions would deliver substantial benefits to both the industry and its clients, freeing up working capital across the supply chain to support investment, productivity, and growth. It would also promote fairer payment practices, strengthen trust between contractors and clients, and provide greater assurance that defects will be addressed appropriately.

We believe any legislative change should include a clear and practical transition period, with the new requirements applying only to contracts signed after the implementation date. This will give the sector sufficient time to adapt and establish effective alternative mechanisms for ensuring quality and accountability.

- ### 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? Explain the reasons for your answer.

See answer to Q17.

[3] Department for Business, Energy & Industrial Strategy - Retention payments in the construction industry: summary of responses, February 2020

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

See answer to Q17.

- **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.**

N/A

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

- **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. Explain the reasons for your answer to question 21a.**

It is widely accepted that retentions do not provide a proportionate or effective mechanism for ensuring quality and fair payment as they currently stand and a change is required.

Whilst introducing requirements to protect retention sums would mitigate the risk of insolvency and support the fair and timely release of money, it would not solve other issues associated with retentions, such as inconsistency in rectifying defects and loss of working capital from the supply chain. We are also concerned this would create a disadvantageous system for SMEs, whereby they would have to accept whatever protection system larger companies impose on them, resulting in SMEs having a different retention protection system for each large company they work with. At the same time, large companies could impose their preferred retention payment system on their suppliers. This would create an additional, unwanted administrative burden for SMEs, who, from our understanding and evidence, would much rather see a complete ban.

As such, while legislating for protected retention payments would be preferred to no action being taken, we believe the right move for the industry at this point is to legislate for a complete ban.

- **Q22a. What would be the preferred mechanism of a payer to protect the retention sums?**
  [Segregated bank account / instrument of guarantee / mixture of both]
- **Q22b. Explain the reasons for your answer to question 22a.**

This would give flexibility to companies to find the best solution that fits their needs.

- **Q23. What length of transitional period would be required for a payer to adjust to the retention protection measure? Explain the reasons for your answer.**

See answer to Q17.

- **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. 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.

N/A

- Q25. 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.

N/A

- 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? Explain the reasons for your answer.

Yes. we recognise that both proposed measures, either prohibiting retention clauses entirely or introducing protected retention schemes, could have unintended consequences that need careful consideration.

For protected retention schemes, our members highlighted the potential for increased administrative burden, particularly for SMEs, who may be required to navigate multiple systems imposed on them by larger companies. This could create inefficiencies, complicate contract management, and increase compliance costs. There is also the risk that SMEs may have less flexibility and bargaining power, as they would need to accept the retention protection mechanisms dictated by larger clients.

For a full ban on retention clauses, while this would simplify processes and improve cash flow, it would require an appropriate transition period to allow the industry to adapt. We also heard from our members that, in practice, some retention payments can take up to four years to be returned, highlighting the need for legislative clarity and strong enforcement to ensure a ban is effective.

Overall, we believe that whichever measure is introduced, it should be accompanied by clear guidance, an adequate transition period, and consideration of the practical impacts on SMEs to avoid unintended administrative burdens or operational difficulties in the supply chain.

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

Miscellaneous

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

We encourage the Government to take a phased and proportionate approach to implementing the proposed reforms, including:

- Monitoring the impact of the new reporting requirements and statutory interest measures before introducing additional, overlapping requirements.
- Ensuring clarity and alignment between the Late Payment of Commercial Debts (Interest) Act and the Construction Act, to avoid parallel or conflicting regimes for disputing payments in construction contracts.

- Considering transitional arrangements for retention-related reforms, applying changes only to new contracts, and providing clear guidance to support consistent implementation across the industry.
- Paying particular attention to the potential administrative burdens for SMEs and smaller suppliers, to ensure reforms drive improved payment behaviour without inadvertently creating disproportionate compliance costs.