



Getting Paid: Changes on the Horizon

You have probably been there. You finish the job. You submit your application on time. Then a pay less notice lands two days before the final date for payment for a fraction of what you expected. Or the retention has been sitting there for three years, promised on practical completion, and still not paid. Or you are handed 90-day payment terms because the main contractor says that is just how it works.

If any of that sounds familiar, keep reading because the law is changing. Late payments cost the UK economy an estimated £11 billion per year and are responsible for around 14,000 business closures annually. Around 44% of invoices from small construction businesses are paid late. The Government has finally decided to do something about it.

You Have Probably Already Heard Something About This

There has been a fair amount of noise about late payment reform, and you may well have seen some coverage already. The Commercial Payments Bill was introduced in May 2026 following a government consultation and has been making its way through Parliament since.

One important caveat: the Bill has not yet received Royal Assent. It still has further parliamentary stages to complete before it becomes law, and further changes to the detail

remain possible. That said, our view is that these reforms are coming. The Bill passed its Lords second reading unopposed and has cross-party support for its core objectives. Despite over 100 amendments being tabled at Committee Stage, its key provisions emerged intact. Report Stage in the Lords began on 15 September and Commons stages will follow and, it is fair to say that the Commons can be a less predictable forum. Even so, the Government's direction of travel is clear, and we therefore are of the view that contractors should prepare for these reforms.

Here is what the Bill proposes and what it will actually mean on the ground.

The Key Changes

1. Payment terms capped at 60 days. The current regime allows parties to agree longer terms provided they are not "grossly unfair." That loophole goes. Terms beyond 60 days will be void, with 30 days applying instead. For public sector contracts, the cap is 30 days.
2. Mandatory interest at 8% above base rate. Interest will run automatically on late payments and cannot be contracted away. Sitting on your money will cost the payer and they will know it from the outset.
3. Pay less notice period fixed at 7 days before the final date for payment. Contractual provisions allowing shorter notice periods of one or two days are commonplace. However, this will become unlawful. Seven days gives you meaningful time to review, take advice, and manage your cashflow accordingly.
4. Retention banned. This is the big one. The Bill proposes an outright ban on the deduction and withholding of retention in construction contracts.
5. The Small Business Commissioner gets teeth. New powers to investigate poor payment practices, adjudicate disputes, and impose substantial financial penalties on persistent late payers will make the reputational and financial stakes for poor payment practices materially higher.



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Retention

On the face of it, a ban on retention is a significant win for . But the construction industry did not arrive at retention by accident, it exists because employers and main contractors want security against defects and incomplete works. If that mechanism is removed, they may look for something else and industry commentators have identified a number of possible consequences worth being alive to:

- A higher bar for practical completion. Without retention as leverage, employers may push for practical completion to be more tightly defined and more difficult to achieve. If there is no retention pot held against defects, the argument goes, those defects need to be cleared before PC is granted. The fight that used to be about getting your retention back could become a fight about whether you are entitled to PC in the first place.
- Greater use of performance bonds and alternative security. Employers and main contractors may seek other forms of security such as retention bonds, performance bonds, or parent company guarantees. These carry a cost, and that cost may find its way to you. There are also concerns in the industry that smaller contractors may struggle to obtain the bonding capacity needed to tender for certain projects at all.
- Condition precedent clauses and anti-avoidance risks. The Bill contains anti-avoidance provisions designed to catch mechanisms that replicate the commercial effect of retention even if they do not use the word. Milestone structures or payment conditions that effectively withhold money until certain criteria are met may fall within the prohibition, but this is an area where the boundaries are likely to be tested, and disputes about whether a particular payment mechanism is a legitimate contractual protection or an unlawful substitute for retention are a real possibility.

- More aggressive contra-charging. Without a retention pot to draw from at the end of a job, some payers may become more assertive in pursuing back charges and set-off rights during the works themselves.

What Should You Do Now?

The legislation is not yet in force, but the direction of travel is clear. Here is how to use the time:

1. Chase your retentions now. Do not wait for the ban.
2. Review your contracts. Look not just at payment terms but at when the clock starts running and what pre-conditions must be met before an application is valid. That is the next battleground.
3. Think about practical completion. In a post-retention world, the definition of PC becomes critical. Make sure your contracts are clear and keep meticulous records of handover and defects clearance.
4. Keep good records. Documentation of instructions, variations, applications and payment correspondence is the foundation of any payment dispute, and it matters now, not just when the new law comes in.

How We Can Support You

At Holmes & Hills Solicitors, we advise contractors and subcontractors on construction disputes, payment recovery, and contract terms. If you are dealing with a withheld retention, a disputed application, or a contract that simply does not work in your favour, get in touch. Our specialist team of construction lawyers can be reached on **01206 593933**, or by emailing the team at enquiriesconstruction@holmes-hills.co.uk.



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