
Construction (Retention Deposit Schemes) Bill 2017-19

Published 23 August 2018

Executive Summary

The cash-flow problems retention can cause to contractors and sub-contractors by late, or worse, non-payment, are exacerbated where they are required to commence proceedings for the retention monies to be returned. Given that retentions often represent 5% of the overall certified sums, they are often not insignificant sums.

Former chartered surveyor, Peter Aldous MP introduced the Construction (Retention Deposits Scheme) Bill 2017-2019 (dubbed the 'Aldous Bill') as a Private Members Bill January 2018 with the intention of fixing the problems with deposit retention in the construction industry.

The proposed Bill will amend the Housing Grants, Construction and Regeneration Act ('The Construction Act'). Firstly, under what will become section 111A, a duty will be imposed upon the Secretary of State (and Welsh and Scottish Ministers), to create a third-party trust scheme which would retain and safeguard the construction deposit on behalf of the client.

Secondly, under the proposed section 111B, cash-retention clauses in construction contracts will only be valid if: 1) Monies are deposited forthwith in a retention deposit scheme, and 2) prior to the first withholding, the client notifies the contractor/ subcontractor of the scheme administrator's details. On its current draft, it appears that the requirement to place retained monies into a scheme will apply to construction contracts agreed prior to the passing of the Bill. Should the retention not be placed into an approved scheme, the client will be required to return the retained payment to the payee within seven working days.

On 12 March 2018, 60 industry bodies gave their support to the Bill, and by April more than 100 MP's had expressed their support, notably Party leaders Caroline Lucas and Vince Cable. By the end of May 2018 the Association of Accounting Technicians (AAT), had become the 80th body to support the bill, meaning there are now more than 550,000 companies and self-employed professionals endorsing the Bill.

Notwithstanding its overwhelming support, the second reading of the Bill has been pushed back for a second time. Originally scheduled for the 27 April 2018, it will now take place on 26 October 2018.

Comment

In the event that this Bill is passed and the Construction Act is duly amended, retained monies will now be safeguarded and held within a third-party trust scheme. This should ensure the contractor/subcontractor is paid in full and in a timely manner following the completion of its contract works, protecting positive working relations and greatly reducing the need for legal action being taken to secure payment from clients.

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