

The proposed retention ban: what main contractors should prepare for now.

The Commercial Payments Bill is changing the direction of retention policy, requiring main contractors to prepare their contracts, cash flow and performance controls before implementation.

THE COMMERCIAL POSITION

The commercial implications extend beyond the removal of cash retention.

Cash retention has been built into the commercial structure of construction projects for decades. Main contractors often occupy both sides of that structure: sums are withheld from them by employers, while they withhold sums from subcontractors. The proposed ban in the Commercial Payments Bill [HL] challenges an established source of performance security and a familiar feature of project cash flow.

Reform remains prospective. But its commercial implications are already live for contractors pricing future work, negotiating long-duration agreements and managing portfolios with outstanding retention balances. The central question is not simply how to remove a percentage from the payment schedule. It is how to maintain control of performance, payment and cash exposure when that percentage can no longer perform its former role.

01 The ban is proposed, not yet law.

Legalbuild first examined the retention issue in March 2026, following the Government's late-payment consultation response, in "If retentions are banned, payment risk will move – not disappear." Our assessment was that removing retention could improve cash flow without removing the defects, completion and performance risks for which retention has long provided a financial buffer. Those risks could instead move into bonds, guarantees, certification, deductions and final-account provisions.

The direction of policy is now clearer, but the legal position remains important. The Government announced in March 2026 that it intended to prohibit retention payments under construction contracts. The Commercial Payments Bill [HL], introduced on 19 May 2026, contains the legislative machinery for that prohibition. As at 13 October 2026, the Bill has completed Report stage in the House of Lords; Third Reading is scheduled for 20 October. The ban is not yet in force.

This distinction matters in live contract administration. Existing retention provisions cannot simply be disregarded because reform has been proposed. Present rights to deduct, account for and release retained sums must continue to be assessed against the contracts in force and applicable payment law. Equally, a contractor negotiating an agreement intended to run well beyond commencement should not assume that familiar retention wording will continue operating unchanged throughout its term.

The legislation remains subject to parliamentary amendment and Royal Assent, and key provisions are intended to commence through regulations. The Government confirmed in September that a transitional period is contemplated so businesses can adjust working-capital arrangements and develop alternatives to cash retention. The practical question for a main contractor is therefore not whether to abandon retention today, but how to prepare its live portfolio and future contracting model for a materially different position.

02 Two clocks govern the transition.

The Bill does not describe an immediate, retrospective cancellation of every retention arrangement. Its structure distinguishes between clauses agreed after a transition period, clauses agreed or varied during the transition, and certain retained sums that may remain outstanding after it. The precise start dates depend upon the legislation being enacted and brought into force.

Under the Bill as amended on Report, the proposed two-year transition period runs from commencement of the relevant provisions. Retention clauses agreed after that period would be void, including clauses added to construction contracts or related agreements that began earlier. After the transition, variations of earlier retention clauses would also be constrained, subject to an exception for changes more favourable to the payee.

A separate proposed three-year long-stop measured from commencement addresses defined retention clauses agreed or varied during the transitional window and certain sums remaining withheld under them. The Bill provides payment-notice and payment-timing machinery for those transitional retained sums. Those technical distinctions should be checked contract by contract: the two-year and three-year milestones do different jobs, and neither should be presented as a blanket deadline for all historic retentions.

The clearest immediate preparation is an auditable retention register recording the clause, amount, counterparty, relevant project, contractual release events and whether subsequent amendments could affect transitional treatment. Without that visibility, the eventual change is likely to be managed as a collection of project-level surprises rather than a controlled commercial transition.

THE COMMERCIAL ASYMMETRY

The dates on either side of the contract need not align.

Employer and subcontract retentions may follow different release triggers and timetables, requiring the transition to be assessed across both contractual positions.

03

Main contractors sit on both sides.

For a main contractor, retention is not solely a downstream payment issue. It may be retained by the employer under the main contract while the contractor also retains a percentage of sums payable to specialist subcontractors. These two positions are rarely identical in amount, timing, release events or contractual qualifications.

A proposal to remove retention therefore affects both sides of the contractor's position. On the payment side, the contractor may lose a source of temporary cash and a familiar means of holding security against defective or incomplete subcontract work. On the recovery side, a corresponding reduction in amounts retained by employers may release cash previously held upstream. Neither effect should be assumed to offset the other.

For example, where an employer alleges £500,000 of defective work against a main contractor, that figure does not itself establish a £500,000 recovery from one or more specialist subcontractors. The contractor must identify the defective work, the breached obligation, the responsible subcontractor and the properly evidenced consequence. Retention can provide financial leverage while those matters are investigated; it cannot establish causation or entitlement.

Project mix makes the difference. Older projects may still carry substantial historic balances while new subcontract packages operate on different terms. Release may depend on practical completion, making good defects, certified milestones or other events that do not coincide between upstream and downstream contracts. Procurement pipelines and programme slippage add another timing layer.

Contractors should model a portfolio-level cash position rather than apply a headline retention percentage to turnover. The important questions are what is held, who holds it, when it is actually recoverable or payable, and which obligations will continue once new retention clauses can no longer be agreed. This is a working-capital, counterparty and contract-administration exercise, not just a drafting update.

04

Replace the control, not just the cash.

Cash retention has traditionally served more than one function. It can create an incentive to complete outstanding work and remedy defects; it can also give a payer practical security where performance deteriorates. Removing that mechanism does not remove the underlying completion, workmanship or defects risk.

The Government has indicated that the transition should support development of alternative surety products and improvements in quality management. But the Bill does not require every contractor to replace retentions with a particular bond, guarantee or insurance instrument. Nor should the market availability or price of those products be treated as settled.

The appropriate response is to review the protections already available under each contract: clear scope and quality standards, inspection and testing arrangements, defect notification and remedy periods, step-in or replacement rights where properly drafted, contractual damages and available security instruments. Bonds, parent-company guarantees and insurance may be options in specific procurement circumstances, but each carries cost, conditions, financial-strength requirements and enforcement limitations.

Critically, the contractor should avoid solving a cash-retention problem by importing a disproportionate security package into the supply chain. The replacement must correspond to the underlying risk, the commercial strength of the subcontractor and the obligations the contractor has accepted upstream. Defects evidence, commissioning records and close-out governance become more valuable when cash is no longer sitting in reserve.

THE POSITION IN VIEW

Performance control cannot depend on retained cash alone.

Completion records, defects responsibility, payment notices and proportionate security must support each other when retention is unavailable.

Rebuild payment and evidence discipline.

A stronger position without retention will depend more heavily on ordinary contractual administration being completed correctly and on time. The end of a work package must be supported by a clear account of what has been delivered, what remains outstanding, which defects are genuine, and what payment or other remedy is contractually justified.

Main contractors should test how their payment notices, pay less notices, valuation processes and final-account procedures will operate where retention deductions are absent or progressively restricted. A poorly evidenced deduction does not become stronger merely because it is described as a quality adjustment. The relevant statutory payment framework and each contract's notice requirements still matter.

The same discipline is needed upstream. Where employers continue to hold legitimate historic retentions during a transition, contractors will need to establish what triggers release, what records demonstrate satisfaction of those triggers, and when applications or notices must be made. Outstanding defects lists should be current, attributable and capable of closure rather than accumulating as an indefinite reason to delay a final account.

This is a practical opportunity to connect commercial and delivery records more closely: inspection results, defect schedules, completion certificates, correspondence, contemporaneous photographs, instructions, variations and final-account evidence. A contractor that can prove its position promptly is less dependent on withholding cash as a substitute for active contract control.

THE EVIDENCE STANDARD

A defensible position is established through reliable records.

Defect schedules, inspection results, completion evidence and compliant payment notices should support each decision when it is made.

06

Prepare the portfolio now.

Implementation is not yet fixed, so main contractors should avoid presenting a speculative commencement date as settled law. That uncertainty does not justify leaving preparation until the final months of a statutory transition. The relevant commercial relationships and project commitments may already be in place well before the prohibition takes effect.

First, establish a portfolio-wide view of amounts retained from subcontractors and by employers, separating current liabilities from disputed or overdue releases. Second, identify the forms of retention clause in standard subcontracts, main contracts, framework agreements and related documents, together with upcoming tenders and renegotiations. Third, model realistic cash movements under scenarios with reduced or no new retention, allowing for the differing dates at which cash is released upstream and payable downstream.

Fourth, select proportionate alternatives to cash security and confirm their procurement, price and practical enforceability. Fifth, strengthen defects closure, testing and payment governance so that completion risks are managed through clear contractual rights and evidence rather than informal withholding. Sixth, assign senior ownership of the transition and keep legislative developments under review as the Bill proceeds.

The objective is not to eliminate every uncertainty before regulations are made. It is to identify where legacy retentions, new procurement terms and changing cash flows could pull the contractor's commercial position in different directions — and to bring those exposures into view while there is still time to respond.

WHAT MAIN CONTRACTORS SHOULD TEST

Prepare the commercial position across the portfolio before retention reform takes effect.

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| • Which retentions are held upstream? | • Which sums are held downstream? |
| • When is each amount due for release? | • Which contracts require amendment? |
| • What security can replace retention? | • What evidence supports completion? |

LEGALBUILD VIEW

The commercial position on retention reform.

The proposed prohibition should not be assessed only as a redistribution of cash from main contractors to specialist contractors. It will require a deliberate reassessment of the controls currently embedded in the payment and defects process, and of the timing relationship between employer receipts and supply-chain liabilities.

Some contractors may experience an improvement in working capital as upstream withholding falls. Others may face a period in which legacy employer retentions remain outstanding while new procurement takes place without an equivalent downstream buffer. The outcome will depend on project composition, contract terms, delivery performance and the transition actually enacted.

The strongest response is therefore portfolio visibility, contract-by-contract analysis and proportionate performance controls. Retention registers, release evidence, payment discipline and credible alternatives to security should be developed together—not after a particular retention mechanism becomes unavailable.

Commercial protection should be redesigned while the contractual and cash position can still be shaped, rather than reconstructed after old mechanisms stop applying.

POSITION PRINCIPLE

Replace the control before the mechanism disappears.

Source: Commercial Payments Bill [HL], parliamentary proceedings and Government late-payment consultation response. Legislative status assessed as at 13 October 2026.