

Construction (Retention Deposit Schemes) Bill

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TO

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

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Retention deposit schemes

- (1) The Housing Grants, Construction and Regeneration Act 1996 is amended as follows.
- (2) After section 111, insert—

“111A Retention deposit schemes

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- (1) The appropriate national authority must by regulations made by statutory instrument make arrangements for securing that one or more retention deposit scheme is available for the purpose of safeguarding any cash retention withheld in connection with construction contracts.

- (2) For the purposes of this section and section 111B—

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- (a) “cash retention” means monies which are withheld from monies which would otherwise be due under a construction contract, the effect of which is to provide the payer with security for the current and future performance by the payee of any or all of the latter’s obligations under the contract, and

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- (b) “retention deposit scheme” is a scheme which—

- (i) is made for the purpose of safeguarding cash retentions withheld in connection with construction contracts and facilitating the resolution of disputes arising in connection with such cash retentions, and

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- (ii) complies with regulations made under this section, and
- (c) “construction contract”, in addition to the meaning given by section 104, shall also include any contract created to have a similar effect to a construction contract for the purposes of

withholding monies which would otherwise be due under the contract.

- (3) Regulations under subsection (1) must in particular provide for—
- (a) arrangements to be made with any body or person under which the body or person (“the scheme administrator”) undertakes to establish and maintain a retention deposit scheme, 5
 - (b) the selection and appointment of a scheme administrator,
 - (c) the funding and management of a retention deposit scheme, in particular provision to ensure that only retention deposits and any interest accruing on such monies is held in the scheme, and 10
 - (d) the mechanism by which retention deposits are released from such a scheme.
- (4) In this section “appropriate national authority” means—
- (a) in relation to England, the Secretary of State,
 - (b) in relation to Wales, the Welsh Ministers, and 15
 - (c) in relation to Scotland, the Scottish Ministers.
- (5) A statutory instrument containing regulations made by the Secretary of State under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament. 20
- (6) A statutory instrument containing regulations made by the Welsh Ministers under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly of Wales.
- (7) A statutory instrument containing regulations made by the Scottish Ministers under this section is subject to the affirmative procedure.” 25

2 Retention deposit schemes: contractual requirements

- (1) The Housing Grants, Construction and Regeneration Act 1996 is amended as follows.
- (2) After section 111A (inserted by section 1 of this Act), insert— 30
- “111B Retention deposit schemes: contractual requirements**
- (1) Any clause in a construction contract, entered into after the passing of the Construction (Retention Deposit Schemes) Act 2018, which enables a payer to withhold cash retentions shall be of no effect unless—
- (a) upon their withholding, the monies are deposited forthwith in a retention deposit scheme under section 111A, and 35
 - (b) prior to the first withholding of the monies, the payer has notified—
 - (i) the payee of the scheme administrator’s name and contact details, and 40
 - (ii) the scheme administrator of the payee’s name and contact details.
- (2) If, after the coming into force of section 2 of the Construction (Retention Deposit Schemes) Act 2018—

- (a) any cash retention already withheld is not placed in a retention deposit scheme under section 111A, or
- (b) the payer has not notified—
 - (i) the payee of the scheme administrator’s name and contact details, and 5
 - (ii) the scheme administrator of the payee’s name and contact details,

the payer must, not later than 7 working days after the date on which the cash retention was withheld, refund the cash retention in full to the payee. 10
- (3) In this section—

“working days” shall be taken to exclude Saturdays, Sundays, Christmas Day, Good Friday and any day which is a bank holiday.”
- (3) In section 112(1), leave out “requirement in section 111(1) applies” and insert “requirements in section 111(1) or section 111B(2) apply”. 15

3 Power to make similar provision for Northern Ireland

- (1) Her Majesty may by Order in Council make provision for establishing retention deposit schemes in respect of construction contracts in Northern Ireland.
- (2) The power in subsection (1) is limited to the type of provisions made by this Act in respect of England and Wales, and Scotland. 20
- (3) An Order in Council under subsection (1) may make different provision for different purposes.
- (4) An Order in Council under subsection (1) may make such amendments of the law of any part of the United Kingdom as appear to Her Majesty to be necessary or expedient in consequence of any provision made by or under—
 - (a) Northern Ireland legislation; or
 - (b) any Act of Parliament passed before this Act in so far as the provision is part of the law of Northern Ireland.
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- (5) An Order in Council under subsection (1) may contain such consequential and supplemental provisions as appear to Her Majesty to be necessary or expedient. 30
- (6) No recommendation shall be made to Her Majesty to make an Order in Council under this section unless a draft of the Order has been laid before and approved by resolution of each House of Parliament. 35
- (7) In this section, “Northern Ireland legislation” has the same meaning as in section 98(1) of the Northern Ireland Act 1998 (interpretation).

4 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Sections 1, 3 and this section come into force on the day on which this Act is passed. 40
- (3) Section 2 comes into force—

- (a) in relation to England, on such day as the Secretary of State may by regulations appoint,
 - (b) in relation to Wales, on such day as the Welsh Ministers may by regulations appoint, or
 - (c) in relation to Scotland, on such day as the Scottish Ministers may by regulations appoint.
- (4) This Act may be cited as the Construction (Retention Deposit Schemes) Act 2018.

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

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