

June 2005



Improving Payment Practices in the Construction Industry

DTI Consultation

Response from the Construction Industry Council Consultation

On the payment related issues

	Consultation questions
Q1.1	Do you agree that the payment framework under the Construction Act would benefit from the inclusion of a definition of what should constitute an adequate mechanism for payment? Please explain.
	Yes – use scheme for exemplar system
Q1.2	Would providing guidance on what constitutes an adequate mechanism be more appropriate than changing the legislation? Please explain.
	No
Q1.3	Do you agree that the adequate mechanism should be expressly required to include terms stating: (a) what amounts constitute the payment under the contract Yes (b) when a payment is to be assessed under the contract Yes (c) how are the amounts to be determined Yes (d) the period of time that should elapse from the point of assessment of the payment is to be ascertained before the final date for payment Yes what information is to be communicated between the parties (who provides what, to whom and in what level of detail during the process) Yes
Q1.4	We would expect failure to operate the contractual mechanism correctly to lead to an ability for the parties to refer a dispute to adjudication as currently. Do you agree that this should continue to be the case?
	Yes
Q1.5	We would expect any failure to agree specific features of the adequate mechanism to lead to an ability for the parties to fall back to the payment mechanism as currently set out in Part II of the Scheme. Do you agree that this should continue to be the case? Please add any comments or justifications to your answers.
	Yes – but the scheme should be made more robust

Q1.6	Assuming that the requirement for an adequate mechanism in the Construction Act were included as proposed in paragraphs 1.3 - 1.5, do you agree that the mechanism in the Scheme for Construction Contracts satisfies all of the requirements of the payment mechanism as proposed?
	No – as the scheme would have to be changed, the scheme just needs to be made more robust.
	Regulatory impact
Q1(i)	What burdens/benefits do you believe will result from the redefinition of an adequate mechanism as proposed in paragraph 1.3?
	It would result in less administration and provide clarity and “best practice” and hopefully reduce disputes.
Q1(ii)	If you believe that burdens will result, what would be the extra cost per payment?
	None/Less
Q1(iii)	If you believe that benefits will result, what would they amount to per payment?
	Depends on the size of the project
Q1(iv)	Would there be a cost of transition to the new arrangement, if so, please indicate why and what cost you believe this would be? (£ per contract in the first year of operation)
	No cost would be incurred
Q1(v)	If you are proposing alternative items for the definition of an adequate mechanism please indicate the burdens, costs etc as requested in Q1(ii) to (iv) for these proposals.

2. Removing the requirement to serve a Section 110(2) notice in the Construction Act

Q2.1	Do you agree that the current requirement for a payment notice under Section 110(2) is ineffective (Yes/No - please explain)
	Yes there is no sanction against not issuing one.
Q2.2	Do you agree that the requirement in Section 110(2) should be removed and that in its place the legislation should clearly define what is meant by “an adequate mechanism for determining what payments become due under the contract, and when”? (Yes/No - please explain)
	Yes if Section 110 is made more powerful
Q2.3	If we remove this requirement, do you agree that at the same time the concept of a “due date” should be removed from the legislation in favour of, for instance, an “assessment date”? What would be the benefits or problems with this approach?
	Yes – would provide clarity
Q2.4	Do you consider that it would be sufficient to provide guidance on the current legislation setting out the intended effect of the notice rather than changing the legislation? (Yes/No)
	No, this would not work

Q2.5	If the requirement for a payment notice in Section 110(2) were to be removed, do you agree that the requirement for a payment notice in Paragraph 9 of Part II of the Scheme for Construction Contracts should be retained as a fallback payment mechanism for cases where the mechanism in the contract proves inadequate? (Yes/No - please explain)
	Yes – as long as it is made more robust. Government must lead by example by introducing ways to encourage best practice.
Q2.6	Are there other amendments to the payment framework in the Scheme for Construction Contracts you would wish to suggest if we amend Section 110(2) as proposed?
	Yes – to be exemplar
Q2.7	Would you support the alternative proposal considered and rejected by the review (the imposition of a sanction for the failure to serve a Section 110(2) notice) and, if so, how could we tackle the issues that arise with this approach?
	Yes – but with a warning notice provision. This will make it work.
Q2.8	Do you have any other proposals for how the issues identified by the review could be addressed? If so, please describe them and the benefits / issues that would arise from your proposed approach.
	Please find attached TeCSA Report
Q2(i)	If you believe that the requirement for Section 110(2) notices should be dropped would this offset any burden resulting from the proposed change to Section 110(1) (Yes/No)
	Yes
Q2(ii)	What would you estimate to be the financial cost of serving a Section 110(2) notice? (£ per payment)
	Negligible
Q2(iii)	How frequently do you believe Section 110(2) notices are served under construction contracts: (a) for 95 - 100% of payments. (b) for 75 - 95% of payments. (c) for 50 - 75% of payments. (d) for 25 - 50% of payments. (e) for 5 - 25% of payments. (f) for 0 - 5% of payments.
	d
Q2(iv)	How often do you believe a payment dispute arises in part due to a payer's failure to serve payment notice under Section 110(2) of the Construction Act and/or the misunderstanding that there is a legal entitlement to payment of the amount in the notice if it is served? (a) as a result more than one in 10 failures to serve a payment notice; (b) as a result of between one in 10 and one in 100 failures; (c) as a result of fewer than one in 100 failures to serve a payment notice.
	c

3. Providing an application for payment in the legislation

<p>Q3.1</p>	<p>Do you believe that an application should be provided in the legislation for a payee to submit...</p> <ul style="list-style-type: none"> (a) as of right (as in our suggested proposal)? (b) as a requirement of a contract that complies with the Construction Act? (c) where the contract does not contain any provision for an application? (d) other (please specify)? or, (e) not at all. <p>Please indicate the benefits/problems with these options and why you believe your recommendation to be the best option.</p>
	<p>a. Needs to be covered in both the Act and the Scheme. Gives “best practice”</p>
<p>Q3.2</p>	<p>If we pursued the proposed amendment, do you believe there should be any restriction on the timing of a valid application for payment? If so, please say why and what the burden or benefit of this restriction would be.</p>
	<p>Yes but it should be between parties to agree e.g. a ‘Pre-Agreement’</p>
<p>Q3.3</p>	<p>What conditions do you believe should be set as to the circumstances in which a valid application should be made?</p> <ul style="list-style-type: none"> (a) No conditions should be set (as in the our suggested proposal). (b) An application should only be made where the payee believes the contractual payment mechanism has failed to operate correctly. (c) Other (please specify). <p>What would be the advantages/disadvantages of your preferred option?</p>
	<p>a see 3.1</p>
<p>Q3.4</p>	<p>What information do you believe should be contained within an application for it to be valid?</p> <ul style="list-style-type: none"> (a) The amount the payee expects to be paid (the amount due under the contract less any amounts that have been properly set-off by issuing a withholding notice under Section 111 of the Construction Act)? (Yes/ see note) (b) The final date for payment when the applicant understands he should receive/have received the payment applied for? (Yes/ (c) Other - please specify.
	<p>a. the amount expected by the payee is to be in accordance with the terms and conditions of contract agreed between the parties</p>
<p>Q3.5</p>	<p>Do you believe the payer should have...</p> <ul style="list-style-type: none"> (a) no right of response to the application? (b) a general right of response to the application? (c) a specified right of response with requirements as to content and/or timing of the response (please specify)? (d) Other - please specify?
	<p>c.</p>

Q3.6	<p>Do you believe that the amount applied for should become payable by the specified final date for payment under the legislation ?</p> <p>(a) No (as in our proposal)?</p> <p>(b) Yes - but only if the payer has not responded to the application?</p> <p>(c) Yes - though only to the extent considered appropriate by an adjudicator, arbitrator or court in certain circumstances?</p> <p>(d) Yes - but only to the extent agreed by the payer (leaving adjudication etc to settle any disputes)?</p> <p>(e) Yes - under the legislation as an automatic requirement in certain circumstances? If so, which circumstances?</p> <p>(f) Yes - other (please specify)?</p>
	B with proper safeguards
Q3.7	<p>Where the amount in the application becomes payable, what opportunities do you believe the payer should have to respond?</p> <p>(a) Should the payer be allowed to issue a withholding notice under Section 111 of the Construction Act? Yes</p> <p>(b) Should the payer be allowed to respond with an alternative amount or required to pay the full sum in the application? Yes : No – but Yes if no response</p> <p>(c) Should the payer be allowed to dispute the payment amount or date in the application? Yes</p> <p>(d) Is there a further option we have not set out? If so, please provide details and indicates the benefits/burdens it would impose.</p>
	Regulatory Impact
Q3(i)	<p>What do you believe is likely to be the administrative cost of</p> <p>(a) issuing an application under the legislation as described in section 3.5, and,</p> <p>(b) receiving such an application? How would this compare to current costs?</p> <p>(please specify your answer in £ per payment)</p>
	It should not cost anymore in administration, may even result in other savings
Q3(ii)	<p>Which part of the proposed application process would lead to a burden (if any) and why?</p> <p>(Please specify your answer in £ per payment)</p>
	None, they are all good business practice

Q3(iii)	<p>Which one of the following do you think would be the most likely way in which the right of application proposed in section 3.5 would be used?</p> <p>(a) In response to the large majority of payment transactions under the existing legislation of the proposed “adequate mechanism”.</p> <p>(b) When the payee is unhappy with the amount proposed to be paid.</p> <p>(c) When the payee believes the contractual payment mechanism has failed and an amount should have been ascertained.</p> <p>(d) At the conclusion of the withholding period under section 111 of the Construction Act when the payee is unhappy with the amount proposed to be withheld and / or paid.</p> <p>(e) When the payee believes he has not received the payment due by the final date for payment under the contract.</p> <p>(f) Other – please specify.</p>
	a
Q3(iv)	<p>Given your answer above, how frequently do you believe the right of application would be exercised under the proposal in section 3.5?</p> <p>(a) For 95 – 100% of payments.</p> <p>(b) For 75 – 95% of payments.</p> <p>(c) For 50 – 75% of payments.</p> <p>(d) For 25 – 50% of payments.</p> <p>(e) For 5 – 25% of payments.</p> <p>(f) For 0 – 5% of payments.</p>
	A – the payee is going to implement the right of application
Q3(v)	<p>Do you believe the number and complexity of disputes in the construction industry would be likely to increase or decrease by issuing an application under the proposal in section 3.5? Please indicate your reasons.</p>
	Maybe initial increase but more likely to decrease

4. Redefining the content of withholding notices under Section 111

Q4.1	Do you agree that the legislation should be changed to require that a Section 111 notice provides details of the final amount to be paid? (Yes/No)
	Yes
Q4.2	Do you agree that following the removal of Section 110(2) and the inclusion of a definition of an adequate mechanism in Section 110(1), Section 111 should include a requirement to state the amount the paying party intends to pay as well as the amount(s) to be withheld? (Yes / No)
	Yes
Q4.3	Do you agree that it would not be appropriate to amend the legislation to include a description of what would represent sufficient detail when giving grounds for withholding payment in a Section 111 notice? (Yes / No) Please explain your answers to the above questions.
	Yes – it would not be appropriate
Q4.4	What do you believe might represent an objective test of sufficient detail if the legislation were to include such a test?
	Look at the Standard forms of contract
	Regulatory Impact
Q4(i)	Do you agree with our assessment that there is only a negligible cost to the payer of stating the payment he now intends to make when issuing a withholding notice? (Yes/No)
	Yes
Q4(ii)	If you have answered “No” above, what additional costs do you believe might be involved for the payer to include the amount intended to be paid in a withholding notice? (£ per payment)
Q4(iii)	How often do you believe a payment dispute arises as a result of the failure of the withholding notice to state the amount intended to be paid after withholding? (a) As a result more than one in 10 failures to state the amount intended to be paid. (b) As a result of between one in 10 and one in 100 failures to state the amount intended to be paid. (c) As a result of fewer than one in 100 failures to state the amount intended to be paid.
	a
Q4(iv)	How often do you believe a payment dispute arises as a result of a payer’s failure to serve a withholding notice when revising the amount he understands to be due under the contract (by an abatement)? (a) As a result more than one in 10 failures to issue a withholding notice for an abatement. (b) As a result of between one in 10 and one in 100 failures to issue a withholding notice for an abatement. (c) As a result of fewer than one in 100 failures to issue a withholding notice for an abatement.
	a

5. Restricting the use of pay-when-certified clauses

Q5.1	Do you agree that pay-when-certified clauses have a valuable role to play in the operation of some types of contract? Do you agree that their use should be limited to particular circumstances? What would these circumstances be? What are the benefits/burdens of your approach?
	We do not think they have a valuable role. They only work with ‘nominated only’ subcontractors and suppliers.
Q5.2	Do you agree that there may be circumstances in which it is appropriate for a main contractor to ascertain the amount to be paid for work under a subcontract on the basis of certificate covering that work under the main contract (a “pay-what-certified” clause)? (Yes/No)
	No
Q5.3	Do you agree that there may be circumstances in which it is appropriate for payments to be triggered by the receipt of a certificate reflecting the work done rather than on specific dates in the contract? (Yes/No – please give reasons)
	No
Q5.4	Do you agree that where a pay-when-certified arrangement is provided in a contract... (a) the contract should identify the element of works in the certificate, of which the subcontract work forms a part and when the certificate becomes due under the main contract for the element in question? Yes (b) the contract should require that a copy of the certificate is passed to the subcontractor within five days of the ascertainment date? Yes (c) other – please specify.
Q5.5	Furthermore do you agree that where the amount to be paid under the subcontract is to be determined by the certificate under the main contract (a ‘pay what certified’ arrangement), the subcontract should a. provide that the work will be priced individually in the certificate as part of the package of work it covers? YES b. Describe how the payment due under the subcontract will be ascertained based upon the price in the certificate? YES c. other
	Only in special circumstances – see 5.1
Q5.6	Do you believe that the proposal is appropriate for “” construction management arrangements where they involve pay-when-certified clauses? (Yes/No - please give reasons)
	Yes
Q5.7	Do you believe that the proposal is appropriate for contracts with “nominated subcontractors” where they involve pay-when-certified clauses? (Yes/No - please give reasons)
	Yes

Q5.8	Do you believe the contractual payment mechanism should make any further minimum requirements on the determination of payment under pay-when-certified clauses? If so, what are these? Please comment on or explain to any of the answers you have given to the above questions.
	Yes – see Standard Forms of Contract
Q5.9	Do you support any of the alternative approaches? If so, please say why?
	see TecSA Report attached
Q5.10	Do you agree that the current payment mechanism in the Scheme (with the limited changes proposed in earlier chapters) would constitute a suitable fall back payment mechanism if a “pay-when-certified” or “pay-what-certified” clause were to be rendered void? (Yes / No – Please explain)
	No – the scheme needs to be more robust
	Regulatory Impact
Q5(i)	What proportion of subcontracts do you believe contain pay-when-certified clauses for one or more payment stages? (a) For 95 – 100% of subcontracts. (b) For 75 – 95% of subcontracts. (c) For 50 – 75% of subcontracts. (d) For 25 – 50% of subcontracts. (e) For 5– 25% of subcontracts. (f) For 0 – 5% of subcontracts.
	c
Q5(ii)	What proportion of contracts do you believe contain “pay-what-certified” clauses for one or more payment stages? (answer using list (a) – (g) in the question above)
	e
Q5(iii)	How often do you believe a payment dispute arises in part due to the inclusion of a “pay-when-certified” or “pay-what-certified” clause? (a) As a result more than one in 10 clauses in contracts. (b) As a result of between one in 10 and one in 100 clauses in contracts. (c) As a result of fewer than one in 100 clauses in contracts.
	b
Q5(iv)	Do you agree that the proposed requirement to provide information on the certification process during the contract agreement and assessment stages when using a pay-when-certified clauses places a very limited burden on the contracting process? (Yes / No – please state in £s per payment)
	Yes – a very limited burden

Q5(v)	What do you believe would be the cost of transition to the arrangement under the proposal for “pay-when-certified” clauses? (Please specify in £s per contract during the first year of operation)
	Very small if any
Q5(vi)	Do you believe that there will be a change in the proportion of contracts containing “pay-what-certified” clauses for one or more payment stages under the proposed way forward (answer using list (a) – (c) in Q5(i) above – please explain).
	It would increase
Q5(vii)	What would be the cost of revising the certification process to enable the value of works to be identified within a broader range of works covered by a certificate? How would this cost compare with the current situation where a sub-contractor seeks payment in this situation? What do you believe is the likely cost of transition to the arrangement under the proposal for “pay- <u>what</u> -certified” clauses? (please state in £s per contract affected in the first year of operation)
	Minimal
Q5(viii)	Do you believe there is likely to be a reduction in the use of “pay- <u>what</u> -certified” clauses as a result of the proposed amendment to the Construction Act? If so, please say why and what the cost would be in £s per payment.
	If the payment process is right – it will reduce costs and cause savings in the industry
Q5(ix)	Do you believe there is likely to be any ongoing cost to main contractors who have to alter their practices in order to use “pay- <u>what</u> -certified” clauses because of the proposed amendment to the Construction Act?
	No

6. Introducing a right to reimbursement for the costs of suspension and remobilisation and providing additional time for remobilisation under Section 112 of the Construction Act

Q6.1	Do you agree that it is necessary to supplement the right to suspend performance under the contract? If so, please explain the impact of the current deficiencies in the legislation (in terms of cost, time, disputes etc.).
	Yes
Q6.2	Do you believe that an enhanced right of suspension should include... (a) the right to recover the reasonable costs of suspension? Yes (b) the right to recover the reasonable costs of remobilisation? Yes (c) the right to require an appropriate delay in remobilisation? Yes (d) other - please specify.
Q6.3	Do you agree that the issue of what constitutes (a) the reasonable costs of suspension; (b) the reasonable costs of remobilisation; (c) an adequate delay in remobilisation is best dealt with as a matter of contract? (Answer Yes/No for each of (a) - (c))
	It does not have to be any of the above, something could be put in the scheme
Q6.4	Do you believe that, in the absence of any contractual agreement, there should be a fallback position in the Scheme for Construction Contracts? Yes
	Yes
Q6.5	If there is a fallback, do you agree that it should: (a) set the reasonable maximum cost of suspension and remobilisation at 5% of the value of the payment in default? If not, please indicate in what circumstances you believe this figure could be inappropriate and what alternative figure you believe would be more appropriate; No (b) set the appropriate maximum delay in remobilisation at seven days? If not, please indicate in what circumstances you believe this figure could be inappropriate and what alternative figure you believe would be more appropriate.
	6.5b Possibly, be it would depend on the period of suspension
	Regulatory impact
Q6(i)	How frequently in cases of defaulted payment do you believe the right to suspend performance under the contract is exercised: (a) in more than one in 10 instances of defaulted payment; (b) in between one in 10 and one in 100 instances of defaulted payments; (c) in fewer than one in 100 instances of defaulted payment.
	c

Q6(ii)	Under the proposed change in the law, how frequently do you believe that the right of suspension will be exercised: (a) in more than one in 10 instances of defaulted payment; (b) in between one in 10 and one in 100 instances of defaulted payments; (c) in fewer than one in 100 instances of defaulted payment.
	b
Q6(iii)	What do you believe are the typical costs of suspension of performance? (£)
	Varies Widely
Q6(iv)	What do you believe are the typical costs of remobilisation? (£)
	Varies widely
Q6(v)	How would these costs change if we introduced the fallback outlined above in paragraph 6.6?
	They would remain the same, however originate from a different source
Q6(vi)	Given your answers above, what do you believe would be the typical minimum defaulted payment for which a contractor would consider suspending performance (a) under the current law? (£) (b) under the DTI's proposed change in the law? (£)
	Varies widely

7. Making contractual provisions on cross-contract set-off ineffective

Q7.1	Do you agree that the use of cross contract set-off should be limited? Please explain the costs/benefits to the industry of your recommended approach.
	Yes – But as current common law position
Q7.2	Do you believe that the common law definition of “equitable set-off” (“a close relationship exists between the dealings and transactions which gave rise to the respective claims”) provides sufficient flexibility to meet the reasonable requirements of the construction industry?
	Yes
Q7.3	Do you believe that cross contract set-off should generally be permitted where the work is part of a series of projects under framework or similar agreements?
	Yes
Q7.4	If yes, please explain which contracts/commercial arrangements would fall into this category which you believe would not be covered by the right of equitable set-off.
	Some frameworks
Q7.5	What safeguards or contractual terms would be needed to ensure that such agreements were fairly used?
	Common Law position

Q7.6	Do you believe that allowing contractual provisions on cross contract set-off where the contract allows for the prior agreement of the set-off represents the best way forward?
	Yes, however unlikely to happen
Q7.7	If yes, please explain the circumstances in which you think this would be beneficial and the costs / benefits of the contractual freedom you propose.
	Regulatory Impact
Q7(i)	What is the cost to the industry of the use of set-off clauses? What would be the impact on these costs of the different options discussed in this section (limiting set-off to the common law definition, permitting set-off in defined contractual arrangements, allowing pre-agreement to specific set-off clauses)?
	None
Q7(ii)	How often do you believe contracts contain cross-contract set-off clauses: (a) in 95 – 100% cases. (b) in 75 – 95% cases. (c) in 50 – 75% cases. (d) in 25 – 50% cases. (e) in 5 – 25% cases. (f) in 0 – 5% cases.
	c
Q7(iii)	How often do you believe set-off clauses are invoked? (a) In more than one in 10 cases where the clause is contained in the contract. (b) In between one in 10 and one in 100 cases where the clause is contained in the contract. (c) In fewer than one in 100 cases where the clause is contained in the contract.
	c
Q7(iv)	Do you believe that invoking a cross contract set-off clause in a contract is likely to (a) cause or escalate a dispute between contracting parties? Yes (b) shift a dispute from one project to another project without resolving it? Yes (c) help to prevent or resolve a dispute between contracting parties? No

8. Making “pay-when-paid” clauses ineffective in cases of “upstream” insolvency proceedings

Q8.1	Do you believe it is beneficial to the industry to retain the ability to invoke “pay-when-paid” clauses in cases of “upstream” insolvency proceedings?
	No

Q8.2	If you believe these provisions should be prohibited, please explain the costs / benefits to the industry in comparison to the current position. Please explain the impacts on cash flow, risk, etc, within the supply chain of your proposed approach.
	Directly contracted parties take the risk
Q8.3	Alternatively, are you able to identify another way forward? (please explain)
	Improve what exists
	Regulatory Impact
Q8(i)	Do you believe that the removal of the ability to invoke “pay-when-paid” clauses in the case of upstream insolvency proceedings would result in fewer insolvencies elsewhere in the supply chain? If so, please indicate the cost / benefits to the industry, and to individual elements of the supply chain / clients of this change.
	Yes, resulting in an eventual reduction in risk
Q8(ii)	Alternatively, do you believe that the overall cost of insolvency to the supply chain would stay the same regardless of which option was chosen from those set out above?
	No
Q8(iii)	How frequently do you believe “pay-when-paid” clauses are included in contracts? (a) In 95 – 100% of contracts. (b) In 75 – 95% of contracts. (c) In 50 – 75% of contracts. (d) In 25 – 50% of contracts. (e) In 5 – 25% of contracts. (f) In 0 – 5% of contracts.
	c
Q8(iv)	How frequently do you believe upstream insolvencies arise under construction contracts? (answer (a) – (f) in the list provided above)
	f
Q8(v)	How frequently do you believe “pay-when-paid” clauses are invoked where they are included in construction contracts where an upstream insolvency occurs? (a) More than half the time? (b) About half the time? (c) Less than half the time? What is the impact on the companies and clients of this action?
	a Impact on sub-contractors - heavy bad debt provision - more insolvencies - less tax take to Government

9	Allowing stage payments under the Scheme for Construction Contracts to be made for materials in advance of their arrival on site
Q9.1	Do you agree in principle that the Scheme for Construction Contracts should make provision for stage payments for materials held off-site and off-site work upon them if this is possible? (Yes/No - please explain)
	Yes it would be good to do something positive
Q9.2	<p>If so, what conditions do you believe should apply for payment to be required for work off-site under the Scheme? (For each of the questions in this section, please indicate whether you agree the provision is helpful, and whether the provision as outlined would deliver the objectives described above or, if not, please indicate how the proposal could be amended to meet your concerns.)</p> <p>(a) That ownership for the materials paid for is substantiated as having transferred to the payee? Yes</p> <p>(b) That access will be provided to the payer, on demand, for inspection or collection? Yes</p> <p>(c) That a full refund for the value of the materials owned by the payer off-site will be available with the return of ownership to the payee? Yes</p> <p>(d) That a refund should also be available for any work done on the materials and components under Paragraph 2(2)(a) of Part II of the Scheme, once their ownership has transferred to the payer? Yes</p> <p>(e) That this refund should become available in cases where the work did not meet the original specification? Yes</p>
	For this to work an exemplar process together with standard forms e.g. certificate of indemnity, needs to be produced
Q9.3	Do you have any alternative proposals? If so, please specify them and explain how they would meet the objectives outlined above. How do contracts you are aware of currently operate?
	No
	Regulatory Impact
Q9(i)	<p>How often do you believe the framework in the Scheme for Construction Contracts is used in projects (either by agreement of as a fallback adequate payment mechanism or fallback framework for stage payments)?</p> <p>(a) in 95 – 100% of projects;</p> <p>(b) in 75 – 95% of projects;</p> <p>(c) in 50 – 75% of projects;</p> <p>(d) in 25 – 50% of projects;</p> <p>(e) in 5 – 25% of projects;</p> <p>(f) in 0 – 5% of projects.</p>
	F
Q9(ii)	How often do you believe projects include work on materials held off-site for delivery to site at a later stage (irrespective of whether stage payments are provided)? (answer (a) – (f) above)
	c

Q9(iii)	<p>On how many of the above do you believe stage payments are agreed for the work off-site?</p> <p>(a) More than half?</p> <p>(b) About half?</p> <p>(c) Fewer than half?</p>
	b
Q9(iv)	<p>How often do you believe the existence of payment provisions for work off-site in the Scheme could assist contractors in negotiating stage payments for work off-site where they cannot at present?</p> <p>(a) In more than one in 10 of the projects described above;</p> <p>(b) In between one in 10 and one in 100 of the projects described above;</p> <p>(c) In fewer than one in 100 of the projects described above.</p>
	b
Q9(v)	<p>Where up-front investment is required for work off-site at present, and there are no stage payments provided for in the contract</p> <p>(a) how great do you believe the supplier's investment to have been before he receives payment for the work and materials? (£)</p> <p>(b) how many days do you believe would follow the initiation of construction work off-site, on average, before a first payment covering the works and materials become due? (Number of days)</p>
	It depends on the project