Duty to report on Payment Practices and Policies

ICAEW welcomes the opportunity to comment on the consultation paper *Duty to Report on Payment Practices and Policies* published by the Department for Business Innovation & Skills on 27 November 2014, a copy of which is available from this link

This response of 27 January 2015 has been prepared on behalf of ICAEW by the Business Department in consultation with the Business Law Committee and Corporate Finance Faculty. These include representatives from public practice and the business community. The Business Department is responsible for ICAEW policy on wider business issues such as Enterprise and national and local growth issues and related submissions to government, think-tanks and other business organisations.

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MAJOR POINTS

The problem – Late payment of invoices by large businesses

The inability of SMEs (Small and Medium Sized Enterprises) to access sufficient finance is frequently acerbated by SMEs sales invoices being paid later than the SMEs standard payment terms by large customers.

Fundamentally the problem of late payment arises from the disparity in the negotiating power between large customers and SME suppliers. However, late payment is not only caused by large customers delaying payment of SMEs invoices. SMEs frequently do not undertake sufficient preparation and checks before negotiating sales contracts. In addition their practices and procedures in raising sales invoices and progressing payment with customers can contribute to the invoices being paid beyond the SME's normal terms.

Since the Late Payment of Commercial Debts (Interest) Act became law in 1998 government has sought to alleviate the problem of late payment. However this and subsequent measures have largely failed to change the position. As the consultation paper reveals, surveys vary in the degree of late payment experienced by SMEs. Comparison with other countries suggests the UK is somewhere near the EU average for business payment performance.

Past experience suggests that legislation may not provide a resolution of the problem. As the consultation paper states " Legislation introduced in 2008 requiring certain companies to report on their outstanding trade debt failed to provide information in a clear and approachable way for suppliers. The requirement did not provide information that added additional value beyond that already contained in company accounts, and included far less information than the proposal currently under consideration. For this reason, the Government repealed this particular reporting provision in 2013".

For that reason the ICAEW believes that for the payment practices and performance report to be effective, government and business organisations must raise awareness of the new customer payment information. A communications campaign should precede the introduction of the measures so that SMEs are prepared for the new information and understand what it tells them about their customer.

Other changes included in the Small Business, Enterprise and Employment Bill, particularly the proposed *Nullification of Ban on Invoice Assignment Clauses* measures, could materially improve SME access to finance, particularly through factoring and invoice discounting. ICAEW believes. that the combined effect of the payment practice information and the measures to increase SME access to finance could contribute to a significant improvement in SME financial management.

RESPONSES TO SPECIFIC QUESTIONS

Question 1: Do you agree that the reporting requirement set out in this document is clear and easy to understand?

Yes. We would recommend that government publishes a guide to help SMEs understand what the information tells suppliers about a company's payment performance.

Question 2: Do you agree that the reporting requirement should effectively only cover effectively payments related to business to business contracts?

Yes. We agree that business to consumer contracts should be excluded.

Question 3: Do you agree that we should be excluding financial services contracts? If yes, which financial services should we exclude; and how should we define them?

Yes financial services transactions should be excluded

Question 4: Do you agree that the reporting requirement should extend to (a) large UK companies, (b) large LLPs and (c) all quoted companies?

Yes. The reporting requirement should include large UK companies, large LLPs and all quoted companies.

Question 5: Do you agree that the Companies Act provides an appropriate threshold of whether a private company or LLP qualifies for an exemption from reporting?

Yes.

Question 6: Do you agree that businesses should be required to provide individual and non-consolidated reports on their payment practices?

We agree that businesses should be required to provide individual and non-consolidated reports on their payment practices.

Question 7: Do you agree that businesses should report on (a) their standard (b) their maximum payment terms, and (c) any changes to these over the last reporting period? Should the report require information on whether suppliers had been notified or consulted on this change in advance[3]?

Yes. We agree that businesses should report on (a) their standard (b) their maximum payment terms, and (c) any changes to these over the last reporting period?

We do not agree that the report should require information on whether suppliers had been notified or consulted on this change in advance[3]?

Question 8: Do you agree that this report should be a mandatory requirement for all companies in scope?

Yes.

Question 9: Do you agree that the reporting requirement should specify when the clock starts on the payment period? Do you agree that date of invoice is a suitable point to start the clock on payment?

Yes the reporting requirement should specify when the clock starts on the payment period. The invoice date is the best date to start the measurement of the payment period from.

Question 10: Do you agree that a metric of invoices paid beyond terms should be included in this report? If yes, should this be for (a) proportion of invoices (b) value of invoices (c) both the proportion of invoices and the value of invoices?

The metric of invoices paid beyond the customer's terms should be included in the report. Both (a) proportion of invoices and (b) value of invoices should be included.

Question 11: Should a business have to report on the average time taken to pay invoices? Does this add a valuable counter balance to the proportion of invoices paid to terms?

Yes an average time taken to pay invoices should be included.

Question 12: Would metrics demonstrating how many invoices are paid in (i) 30 (ii) 60 and (iii) 120 (iv) over 120 days be valuable to suppliers? If yes, should this be for (a) proportion of invoices (b) value of invoices (c) both the proportion of invoices and the value of invoices?

We believe that including all periods i.e. 30, 60 , 120 and over 120 days would confuse SME suppliers. We there recommend that, as 60 days is a normal maximum set out in the EU Late Payment Directive, that this metric be the only one included.

Question 13: Do you agree it that it would be useful for the report to include additional information, in narrative form, to give suppliers an understanding of a firm's wider payment?

Yes additional information in narrative form would be helpful for SME suppliers.

Question 14: Do you agree that it would be beneficial for a business to report on their existing dispute processes?

Yes. The dispute process should be clearly stated.

Question 15: Would it be helpful for the Government to provide a definition of a disputed invoice in the report?

We recommend that the government issues guidance on the payment practices and performance report and issues such as disputed invoices should be included in that.

Question 16: Have you experienced companies disputing invoices as a way of delaying payments? Do you see a role for Government intervention on this issue, and if so, what is it?

Government action would be best focussed on addressing issues such as achieving greater inter-operability between e-invoicing platforms, extending the reach of broadband, improving SME credit management, etc.

Question 17: Do you agree that a business should report on whether they offer e-invoicing? Should this disclosure include any further information or simply be a 'tick box' disclosure?

Yes the business should report on whether they accept e-invoicing, the systems which are compatible with their software, etc.

Question 18: Should businesses report on whether they offer supply chain finance? Should this disclosure also include the payment terms and average cost of this finance, or simply be a 'tick-box' disclosure?

Yes the report should specify if the customer offers supply chain finance, whether it is an in-house scheme or through an external finance supplier and how the SME supplier can access the finance.

Question 19: Do you agree that a business should disclose whether it is a signatory of a Code and which code they belong to, if any?

Yes, the report should indicate if the business is a signatory to a Code or relevant industry sector organisation scheme.

Question 20: Do you have concerns about the practice of some suppliers having to pay to be included on supplier lists? If yes, why?

Yes. Any practices which cause the supplier to make payments to the customer or customers to make deductions from payments to suppliers should be covered.

Question 21: Do you think that Government should take any action with respect to supplier lists, through this reporting requirement or otherwise? If so, what?

Recent media coverage suggests that this industry practice may be replaced by simple contract negotiation around the prices and volumes purchased by the customer. This would be preferable to government intervention.

Question 22: Do you agree that companies should report every three months covering at least the whole three month period?

Yes ICAEW recommends that the reporting requirement is quarterly. However, as most of the reporting companies will have a 31 December year end we recommend that that the first report covers the quarter to 31 March. This will allow reporting companies' finance departments time to complete their year-end reporting and to set up systems for reporting the information required on payment practices and performance.

Question 23: Is a 30 day period enough time after the end of a quarter to provide a report of this nature?

No. Given the penalties for breach of the requirement more time should be allowed. We recommend a minimum of 60 days.

Question 24: Do you agree that companies reporting dates should be aligned with their financial reporting cycle?

Yes. See our response to question 22 . We recommend starting with the quarter ended 31 March for companies with a 31 December year end.

Question 25: Do you agree that this reporting requirement should not be included in a company's annual accounts but instead have to publish it on their website? If yes, do you think it would be useful for the information to also be released alongside the publication of a company's annual accounts?

This reporting requirement should not be included in the company's annual accounts. There is already a great deal of information included in annual accounts. However the report should be published quarterly and directors must ensure that the information published on the company's website on payment practices and performance is consistent with the annual accounts.

Question 26: Is The Gazette an appropriate online resource for companies without a website to use for reporting? If no, are there more suitable alternatives?

Yes although inclusion on a company's website is the preferred option.

Question 27: Do you agree companies should be asked to report consistent with open data principles, if so what should these be?

We agree that the data should be made available to the widest range of users for the widest range of purposes at no cost. However the primary purpose is to inform suppliers and potential suppliers of the company's trading practices.

For this reason, in addition, the government should publish its views on whether publication of the data could impact on the reporting companies 'credit ratings. .

Question 28: How could we make this data as accessible and useful as possible?

We would recommend the government work with trade and business organisations to publicize the information including our proposal for a government guide for SMEs. Practices such as debit notes or contra items need to be thought through to ensure they are consistently treated in the payment practices and performance reports.

Question 29: Do you agree that a company director should be responsible for signing each report?
Yes.

Question 30: Do you agree that breach of this requirement should be sanctionable by a criminal offence?

No. Defining levels of culpability and the impact on the intended beneficiaries of the report – suppliers and potential suppliers – it might be more appropriate to make a fine the punishment for breach of the requirement.

Question 31: Would you find guidance in complying with this reporting requirement helpful? If yes, who should produce this guidance?
The government should produce guidance for both the providers of the reports and the SMEs who are the intended beneficiaries.

Question 32: What comments do you have on our draft Regulations?

None