



### Protection for micro businesses in non-regulated sectors

ICAEW welcomes the opportunity to comment on the Consultation Paper Protection for micro businesses in non-regulated sectors published by the Department for Business, Innovation and Skills (BIS) on 16 March 2016, a copy of which is available from this [link](#).

This response of 26 April 2016 has been prepared on behalf of ICAEW by the Business Department in consultation with the Technical Advisory Committee. 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. The Technical Advisory Committee which includes representatives from public practice and the business community, functions as a forum for collecting the views of a wide variety of ICAEW members from different roles and locations around the UK on technical consultations of particular significance to members. The national TAC's work is supported by a network of TACs representing ICAEW's districts.

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## MAJOR POINTS

1. Micro businesses lack the time and skills to be “informed purchasers” and, when buying from larger businesses, lack the negotiating power to insist on specific contract provisions. Consequently many micro businesses tend not to be concerned with contract terms and conditions when purchasing goods and services until a dispute arises.
2. The creation of the Small Business Commissioner proposed in the Enterprise Bill provides an opportunity for businesses of all sizes, but particularly micro businesses, to avail themselves of advice and information which will help them better understand how to make purchasing decisions and to deal with suppliers of all sizes.
3. ICAEW believes that the Commissioner should be given the opportunity to provide support to micro businesses through advice and information before any other measures, such as suppliers providing pre-contract information should be considered. The Advisory Conciliation and Arbitration Service (ACAS) has a well-deserved reputation as a provider of impartial, informed advice on employment law. The Small Business Commissioner should aim to achieve a similar reputation on purchasing and supply and contracting issues. To achieve this they might choose to avail themselves of the expertise of the Chartered Institute of Purchasing and Supply which offers professional qualifications in this field.

## RESPONSES TO SPECIFIC QUESTIONS

### **Option One: The Small Businesses Commissioner's general advice and information**

**function, which will include providing information on current rights for micro businesses.**

**Question 1 Subject to the Enterprise Bill being enacted, we will develop a user-friendly site for the Commissioner's general advice and information. The advice and information will cover points useful to small (including micro) business, for their dealings with larger firms. Please provide your views on the kinds of advice and information, or any particular areas, that would be helpful for micro businesses through this site.**

4. The government response to the consultation on the Small Business Commissioner was clear about the Commissioner's role The Commissioner will:
  - Enable small businesses to resolve disputes and avoid future issues through general advice and information related to different ways of resolving disputes and agreement of contacts
  - Signpost to appropriate services e.g. sector ombudsman or regulators, existing independent advice services, approved alternative dispute resolution (ADR) providers or the Commissioner's own complaints handling function
  - Consider complaints by small business suppliers about payment issues with larger businesses that they supply
5. When the consultation was issued the focus was on the problems small businesses have **when selling** to large business with goods and services and subsequent disputes over issues such as late payment.
6. This consultation raises the issues faced by micro businesses (including sole traders) **when purchasing** goods and services from other businesses in non-regulated sectors, in (is) negotiating contracts, and (ii) being aware of their current protections – and how to use them – if there are issues with goods and services purchased. These issues are probably even more important to micro businesses as the resources they spent on purchasing are often a fraction of those spent on winning business and making sales. Any assistance the Commissioner can provide to make micro businesses “better informed purchasers of goods and services” would be invaluable. To achieve this they might choose to avail themselves of the expertise of the Chartered Institute of Procurement & Supply which offers professional qualifications in this field.

**Option 2: Guidance for the businesses when supplying micro businesses**

**Question 2 Do you support the introduction of guidance for companies when contracting with micro businesses?**

7. We believe guidance may be of assistance to Micro businesses which lack professional purchasing skills. Employees of larger businesses are used to dealing with customers, particularly those in smaller and micro businesses, on their terms, taking advantage of the relative disparity in negotiating power. However it might be of value to Micro business to receive from the large business supplier “a statement of key facts of the contract you will be signing””

**Question 3 Please comment on the potential advantages and disadvantages of option 2.**

8. Whilst the requirements are likely to be regarded as extra burdens by the larger businesses supplying the micro business, such a “statement of key facts of the contract “ could be relied upon by the Micro business should a disputes arise in court.. Such a practice should be non-statutory but regarded as best practice. Large businesses already are having to implement the duty to report payment practices and performance introduced in the Small Business Enterprise and Employment Act in 2015 and due to be implemented in October 2016.

**Question 4 Do you feel that any guidance should be statutory or more general, good practise in nature?**

9. If there is any guidance it should be non-statutory. The small Business Commissioner will be required to produce an annual report and the decision to introduce guidance may be a topic of his report.

**Question 5 Do you have any examples where the presence of statutory guidance has or would have assisted in resolving an issue (please give further details)?**

10. No

**Question 6 What specific areas would you find it useful to see any guidance cover in relation to contracting with micro business?**

11. Not applicable

**Question 7 Do you feel that having regard to statutory guidance would place particular burdens on contacting companies, both micro and other (please give further details)?**

12. Yes it would place extra burdens on both parties.

**Option Three: Requiring businesses to provide pre-contract information when dealing with micro businesses**

**Question 8 Do you support requiring businesses to provide pre-contract information to micro businesses?**

13. This would be perceived as an added burden and likely to become a routine exercise with little value to the micro businesses

**Question 9 Please comment on the potential advantages and disadvantages of option 3.**

14. None.

**Question 10 What would be the main costs if this option were to be implemented, and who would be bear them?**

15. Although initially the cost would be borne by the large businesses supplying micro businesses, ultimately the supplier would pass the costs onto the micro business customer in the form of higher prices, which because of the relative bargaining power of the larger business the micro business would be forced to accept..

**Question 11 Please comment on the types of contracts where pre-contract information should and should not be made available. For example should there be a threshold contract value above which pre-contract information must be made available, and below which it is not required? Or are there any types of contracts where pre-contract information is not appropriate?**

16. Not applicable

## **GENERAL**

**Question 12 Do you have any views on where any of the potential options detailed above may have an impact on businesses supplying a micro business purchaser, as well as on the**

17. See response to question 10.

**Question 13 Do you have further views or evidence of the issues faced by micro business purchasers, or their suppliers, in (i) negotiating transactions and (ii) awareness and use of their current legal rights if goods or services are substandard?**

18. As we mentioned in our response to question 1 many Micro businesses lack the resources to become “better informed purchasers of goods and services” as well as being disadvantaged by their relative negotiating power. The Small Business Commissioner can help them overcome these disadvantages by issuing guidance. Attached is an excellent guide to Choosing and Managing Suppliers produced by [The Business Gateway](#), a Scottish service. This information together with the advice and information to help micro businesses avoid disputes and to resolve disputes which do arise will be welcomed by micro entities.

**Question 14 Are there any other comments or suggestions you would like to make about the issues covered in this consultation?**

19. None

**Question 15 Do you feel that financial thresholds would be helpful to define a micro business that would be covered by any support or protections in relation to purchasing goods or services; or would this unduly complicate the definition in this context?**

20. ICAEW believes that guidance issued by the Small Business Commissioner should be targeted at the smallest businesses (micro businesses with 9 or less employees) but be available for those above this size to use as necessary. Businesses larger than micro businesses are more likely to employ their own purchasing professional such as those with the Chartered Institute of Procurement & Supply (CIPS).