



Department
for Business
Innovation & Skills

GOVERNMENT RESPONSE

Invoice finance: nullifying the
ban on invoice assignment
contract clauses

AUGUST 2015

Government Response to “Nullification of Ban on Invoice Assignment Clauses”

Businesses across all sectors and regardless of size are dependent on a strong cash flow and access to finance. For some businesses, in particular small businesses, the only assets against which they can borrow will be invoices for payment due to them for the goods or services they provide. Invoice finance can consequently provide a vital source of finance for suppliers. Yet a supplier’s commercial customers are currently able to contractually bar invoice assignment. This can raise the cost of, or even prevent access to, invoice finance. This is why we will nullify contractual terms which seek to prohibit assignment of invoices.

The Small Business, Employment and Enterprise Act 2015 provided a power to nullify bans on assignment.

In parallel, in December 2014, the Government consulted on its initial proposals ([Nullification of Ban on Invoice Assignment Clauses](#)), including draft Regulations. We received 20 responses from a range of respondents including invoice financiers, academics, legal practitioners, representative bodies and businesses of all sizes. We also held meetings with groups of businesses from across the industrial sectors, including the retail and construction sectors. Since publishing our [Summary of Responses](#), we have met with stakeholders to develop our final proposals.

Having considered the views received, the Government has concluded that the nullification of ban on invoice assignment clauses should:

- Apply to business to business contracts only (and not business to consumer contracts).
- Extend to all businesses, regardless of size.
- Exclude financial services contracts. This is because the functioning of some financial market products are dependent on non-assignment. For instance, in the case of derivative products between the debtor and the creditor, a ban on assignment may compromise mutuality for set off purposes
- Exclude contracts with interests in land. This is because there are already significant laws in place which these regulations do not seek to interfere with.
- Not create any special provisions for supply chain finance arrangements. This will allow suppliers to opt into supply chain financing arrangements or seek alternative arrangements with other invoice financiers.
- Permit debtors to take action against suppliers if they breach commercial confidentiality.
- Begin from commencement of the regulations. This means it will not apply to contracts retrospectively.
- Only apply where the parties conduct a business to business transaction using English contract law and one of them carries on business within the UK.

These proposals will directly benefit businesses, and will contribute to making the UK the best place in the world to start and grow a business. We will consequently aim to begin the Parliamentary process after the summer break in order to commence these proposals as soon as possible.



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