



HM Revenue
& Customs

Tackling the hidden economy: Extension of data- gathering powers

Consultation document

Publication date: 22 July 2015

Closing date for comments: 14 October 2015

Subject of this consultation:	Changes to HMRC's data-gathering powers to obtain additional data in order to tackle the hidden economy.
Scope of this consultation:	The government intends to legislate to extend HMRC's data-gathering powers to obtain data from business intermediaries and electronic payment providers. This consultation invites views on the scope of these changes, the best approach to delivering them in legislation, and ways to minimise any costs for businesses to comply with the new requirements.
Who should read this:	The extended powers will directly affect businesses who act as intermediaries or provide electronic payment services, as they may be required to provide data to HMRC under the new legislation. They may also affect the businesses who trade through these channels. Those who are tax compliant should see little or no impact.
Duration:	12 weeks, starting from 22 July 2015 and closing 14 October 2015.
Lead official:	Claire Williamson: HMRC Enforcement & Compliance Strategy Unit.
How to respond or enquire about this consultation:	<p>Please send email responses to:</p> <p>consultation.extensionofdata-gatheringpowers@hmrc.gsi.gov.uk</p> <p>Please send written responses to:</p> <p>Claire Williamson HMRC 3rd Floor, Charles House 8 Winckley Square Preston PR1 3HY</p>
Additional ways to be involved:	If you would like to meet to discuss this consultation please send an email to : claire.williamson@hmrc.gsi.gov.uk
After the consultation:	Responses will be taken into account in developing the proposal and a response document will be published.
Getting to this stage:	This is the first consultation on this issue, although the bulk data-gathering powers were modernised and simplified in 2011 and in 2013 HMRC obtained new powers to access data from merchant acquirers.

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1. Introduction

Tackling the hidden economy

1. The hidden economy consists of businesses who fail to register for tax, and individuals who fail to declare a source of income. HMRC estimates that the tax gap in 2012/13 due to the hidden economy stood at £5.9bn, which equates to 17% of the total tax gap. The tax gap is the difference between the receipts HMRC actually collects and the amount of tax that should be collected if all taxpayers complied with the letter and spirit of the law.
2. HMRC's aim is to achieve a significant and sustained narrowing of the hidden economy tax gap. To achieve this, HMRC must make compliance the easy option for customers. HMRC's compliance strategy is based on three principles:
 - **Promote** good compliance, making it easier for people to get it right;
 - **Prevent** non-compliance, preventing mistakes and stopping things from going wrong; and
 - **Respond** to non-compliance, targeting our approach to tackling complex cases and deliberate cheats.
3. Effective tackling of the hidden economy will ensure a level playing field between those businesses and individuals who comply with their tax obligations and those that do not. In the hidden economy context, this means working to improve the processes by which our customers register for tax and report their income to HMRC, helping them to get things right first time. HMRC will also make the hidden economy an increasingly difficult place to enter and in which to operate, and robustly tackle those who continue not to pay the right amount of tax.

The role of data

4. Data about taxable activity plays a key role in enabling HMRC to detect those operating in the hidden economy, and to target resources to tackle them more efficiently.
5. Data can be particularly powerful when it is collected from third parties who facilitate trade, either between businesses, or between businesses and consumers. This is because they can provide information in bulk about the activity of large numbers of traders, and because third party data can be used as an independent check against the data that taxpayers themselves report to HMRC (third party data is less likely to be subject to accidental misuse or deliberate manipulation). Targeted data-gathering powers also minimise the burden on business, obtaining data in bulk from a few sources rather than imposing broad-based reporting requirements.
6. Third party data also plays an important part in HMRC's ambition, where possible, to present its customers with data to check rather than forms and tax returns to complete. Pre-filling or pre-populating information in this way will help to reduce error and improve overall compliance.

7. In 2013 (Finance Act 2013 section 228) HMRC obtained new powers to collect data from merchant acquirers – businesses that process credit and debit card transactions. This data helps HMRC identify traders that are receiving income but are not registered for tax, as well as those who are registered but under-declare their income to HMRC.
8. The government has now announced its intention to legislate to extend access to two similar sorts of data to help tackle the hidden economy. These changes will apply to data held by:
 - Electronic payment providers – businesses that perform a similar function to merchant acquirers by handling monetary transactions, but not necessarily in relation to credit and debit cards (increasingly these transactions are online and take different digital forms); and
 - Business intermediaries – these businesses can take many forms, for example allowing customers to make orders, purchases or reservations, relating to goods, services or digital content. Again, these businesses increasingly operate on digital platforms.
9. This consultation explains the business models that this change intends to capture, and seeks views on:
 - the scope of these changes;
 - the best approach to delivering them in legislation; and
 - ways to minimise any costs for businesses to comply with the new requirements.

2. Background: HMRC's data-gathering powers

10. Using data effectively is an essential component of how HMRC operates the tax system and uses data to inform our targeted approach to compliance risk. We ask taxpayers to provide us with information directly, and secure “bulk” data from third parties. This consultation relates to the powers used by HMRC to gather bulk data.
11. HMRC's data-gathering powers enable the collection of data about income and assets which can be compared with other data to enable HMRC to target compliance activity. For example, HMRC requires banks to report details of interest paid on savings accounts and compares such data against tax returns and PAYE information. Any mismatches alert HMRC to possible non-compliance. The existence of these powers, and the fact that information is shared with HMRC, acts as a deterrent against concealing sources of income.
12. The bulk data-gathering powers were modernised and simplified in 2011 and 2012 following two consultations as part of the HMRC Review of Powers, Deterrents and Safeguards. The revised powers brought together existing powers under a single modern framework. They also set out that the data can be gathered for the purposes of almost all taxes except excise and customs duties.
13. The approach taken in the legislation is twofold. Firstly, groups of data-holders are set out in primary legislation¹, though typically these are expressed by functions, rather than type of holder, e.g. a person who pays interest, rather than a bank. Secondly, the types of data that can be required from each data-holder are separately specified in regulations (secondary legislation²). The range of data that can currently be required under the law includes information about income, transactions and assets, as well as name and address information to help us identify taxpayers. Typically, HMRC will issue a data-holder with a notice to provide data by a certain date and in a particular format.
14. These powers do not allow HMRC to require a data-holder to provide data about itself for the purposes of HMRC establishing the individual tax position of that data holder. Use of the data will be restricted to identifying businesses who are not complying with their tax obligations, and not the transactions of individual consumers; chapter 3 provides more details on this. There are also a number of safeguards to protect data-holders from unreasonable requests. For example, HMRC Data Governance Groups ensure these data-gathering powers are being used effectively and responsibly. There is also a right to appeal to a tribunal against a notice on the grounds that it would be unduly onerous to

Schedule 23 Finance Act 2011¹ <http://www.legislation.gov.uk/ukpga/2011/11/schedule/23/enacted>
<http://www.legislation.gov.uk/ukpga/2011/11/schedule/23/enacted> (as amended)

² Statutory Instrument 2012/847 <http://www.legislation.gov.uk/uksi/2012/847/contents/made> (as amended)

comply. Data-gathering powers allow HMRC to centrally pool data to obtain a national picture of risks, particularly under-declared tax and failures to register, which can be used to support better compliance.

15. HMRC takes its responsibility for data security extremely seriously, and the rules on how data is handled are a fundamental element of the way in which HMRC operates. For example, HMRC has adopted Secure Electronic Transfer to securely handle the increasing trend towards electronic data exchanges. This significantly reduces the number of times data has to be handled before it is finally processed, minimising the risks of shared data becoming corrupted, misused or lost.
16. HMRC has kept these powers under review to ensure that they remain up to date and relevant, and that HMRC can collect data that it requires to undertake compliance activity effectively. However, non-compliant taxpayers continue to exploit the gaps in HMRC's data-gathering powers. HMRC is seeking to acquire data to help to close the tax gap and create a level playing field between compliant and non-compliant businesses. The next chapter considers two areas where Ministers have announced their intention to seek to extend data powers.

3. Targeted extensions to HMRC's data-gathering powers

17. HMRC has had considerable success in using third party data to better target compliance activity and to tackle the hidden economy.
18. This chapter explores in more detail the new challenges HMRC faces in tackling the hidden economy and discusses the extension of data-gathering powers to ensure they cover emerging classes of data-holder and data sources.

Business intermediaries

19. Many businesses use intermediaries to handle transactions and route custom through to their businesses. With the development of the digital economy, there has been a proliferation of such business models. Intermediaries operate across many industries, for example for restaurants supplying take away food; for hotel bookings; or to enable ticket resale for events. These intermediaries provide a framework for smaller businesses to trade.
20. Where a business is using an intermediary to offer goods and services, HMRC believes that the intermediary will be able to provide valuable information that can identify sellers that have not registered with HMRC or who have not declared the full value of their sales. Using such data will allow HMRC to match data received with registration data and compliant business' tax returns, helping to identify unregistered businesses and target resources more effectively on the non-compliant. This will support the growth of compliant businesses, protecting them against unfair competition from a minority who do not register for and pay the tax they owe.
21. The types of intermediary which are likely to hold such data include:
 - **Advertising boards or platforms**
 - provide a service where advertisements for goods or services are displayed with the intention of linking a supplier with a potential customer.
 - **App stores**
 - provide a platform to advertise applications for devices such as smartphones or tablets. Customers set up a store account with a connecting payment method attached. Some apps also provide in-app purchases which are paid for via the app store.
 - **Booking and Reservation Intermediaries:**
 - facilitate a booking or a reservation of goods or services, and may facilitate taking of deposits or other payment in respect of the goods or services booked and or reserved.

- provide online booking and reservation services directly linked to the business' site management system or to a booking and reservation engine's system. Customers can search the listed businesses by area and availability, make a reservation, and pay either a deposit or the full rate.
 - make reservations but take no deposits or payments.
22. It is important that the data-gathering powers are proportionate. This means that the administrative burden placed on the intermediary business when preparing and providing the data must be commensurate with the benefit from using the information obtained. HMRC expect that in the scenarios described in this consultation document the administrative burden will be relatively small. HMRC would provide guidance and give support to ease the process. But, as is currently the case, data-gathering powers provide safeguards to guard against any disproportionate requests.

Question 1: Are there other data-holders or business models who should be included within these changes?

Question 2: Do you have any views on how frequently HMRC should request data from these data-holders?

Payment Providers

23. HMRC extended its data-gathering powers in Finance Act 2013 to allow the collection of bulk data from Merchant Acquirers.
24. While cash, credit and debit card payments remain the basis for the vast majority of transactions, businesses are increasingly adopting other new payment models made possible through developments in the digital economy. This is largely driven by consumer demand for new ways of conducting transactions quickly and securely. Some of these new ways will not be covered by existing legislation, preventing HMRC from requiring similar data to that which they receive from merchant acquirers.
25. One example of a new payment model is the use of “digital wallets”, a software application that serves as an electronic version of a physical wallet that allows individuals to make electronic commerce transactions. These digital wallets can be used in conjunction with mobile payment systems that allow individuals to make purchases with their smart phones. The customer loads a virtual wallet with funds from his/her bank account or payment card which can be used to transfer funds to retailers or traders.
26. In order to ensure that these methods of payments do not become a natural hiding place for those wishing to evade tax, the Government has proposed that legislation is updated for HMRC to receive aggregated and/or transactional level data from these and other newer types of payment provider. In doing so, HMRC proposes that the legislation is “future-proofed” so similar data can be requested from new business models as they emerge.

Question 3: Are there any other types of payment providers that should be included in the scope of the legislation?

Definition

27. One way to construct the new power is to cite a definition of a payment provider in the legislation. The Financial Services (Banking Reform) Act 2013 provides a definition of a payment provider:

- Section 42(5) “Payment service provider”, in relation to a payment system, means any person who provides services to persons who are not participants in the system for the purposes of enabling the transfer of funds using the payment system.
- Section 42(6) A payment service provider has “direct access” to a payment system if the payment service provider is able to provide services for the purposes of enabling the transfer of funds using the payment system as a result of arrangements made between the payment service provider and the operator of the payment system

28. The definition above does not include “indirect payment service providers”. The General directions given by the Payment Systems Regulator (March 2013)³ defines an “indirect payment service provider” as:

“a payment service provider that has indirect access to a regulated payment system through a contractual arrangement with a direct payment service provider to enable it to provide services (for the purposes of enabling the transfer of funds using that regulated payment system) to persons who are not participants in the system.”

29. HMRC’s view is that both direct and indirect payment providers should fall within the scope of the data gathering powers.

Question 4: Do you agree that HMRC should be able to require information from an indirect payment provider? Are the Financial Services (Banking Reform) Act 2013 definitions fit for the purpose of defining data-gathering powers?

Protecting Privacy

30. As set out in chapter 1, HMRC will use this data to identify businesses in the hidden economy and businesses that are under-declaring their income. As such, HMRC’s use of the power, and the data arising from it, will be restricted to information on the receiving party, rather than the payer. This is the same position as the existing powers to obtain merchant acquirer data, where HMRC

³ <https://www.psr.org.uk/sites/default/files/media/PDF/Create%20File%20page/PSR%20General%20directions.pdf>

obtains and examines data revealing the volume or business sales. HMRC does not intend to use the data to examine the volume of payments made by individuals, to examine amounts that people have received not through their business activity (for example electronic transfers of money between friends), or the nature of transactions conducted by individuals.

Types of Data

31. The type of data HMRC would require from business intermediaries and payment providers would depend on their business model. This would include, for example: identifying information such as the names and addresses of sellers/advertisers/app developers, goods and/or service providers, and any relevant tax identification numbers; and gross values of transactions and volumes of contact visits facilitated by the provider. However, HMRC can only require this information provided it is already held by the data-holder.

Existing powers

32. Paragraph 17(2) Schedule 23 Finance Act 2011 allows HMRC to require data held in a register (see provisions in Annex A). To ensure that HMRC can gather the payment provider and business intermediary data required, two broad legislative approaches have been identified to extend the existing powers. One approach would be to amend the definition of “register” to give clarity that the widest possible interpretation of these provisions can be used by HMRC in requesting data from third parties. An alternative route would be to define a group of “intermediaries” which would be mean the provisions were more targeted.
33. The changes to the data-gathering powers would be made in primary legislation, which sets out the groups of data-holders, by adding business intermediaries and payment providers; with additional changes to secondary legislation which sets out the types of data that can be required.

Question 5: HMRC would welcome your views on:

- a. Expanding or better defining the “register” provisions; or
- b. Introducing a definition of intermediaries to ensure legislation covers these as data-holders.

4. Other Issues

34. In considering the extensions to data gathering powers discussed in this document, HMRC has identified a number of additional issues on which it would welcome views as part of this consultation. They include appropriate safeguards for data-holders.

Minimising costs to business

35. As set out in paragraph 22, the administrative burden placed on data-holders when preparing and providing data must be proportionate. To best enable HMRC to effectively administer the tax system, data should be provided electronically and in a standardised format to meet high quality and accuracy standards. HMRC could work with data-holders to agree standardised data items and a standard format for the provision of data, and would welcome views on whether this would help to manage the impacts on data-holders.

Question 6: How can HMRC minimise any costs to business in complying with these new requirements?

International

36. HMRC would like to obtain data where business intermediaries facilitate other taxable trades and where the information is held outside the UK. This will be an important element in ensuring that comparable businesses can compete on a level playing field.

Question 7: Do you have any views on the approach HMRC should take to data-holders who may have no or only limited presence in the UK?

Safeguards

37. Schedule 23 powers are subject to a number of safeguards, including the right of appeal to the Tribunal against a data-gathering notice and/or penalty. This ensures that data-holders have recourse if they consider a notice to be unduly onerous, or if the data-holder or types of information are not covered by the law. HMRC can only require data that data-holders already collect for their own purposes and liaise with the data-holder about any data request.
38. HMRC's view is that the existing safeguards present in Schedule 23 should be sufficient for the purposes of the extension of powers discussed in this consultation, but would welcome views.

Question 8: Do you agree that the existing safeguards are sufficient?

5. Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2015-16	2016-17	2017-18	2018-19	2019--20	2020-21
	nil	+15	+110	+195	+255	+285
	<p>These figures were set out in Table 2.1 of Summer Budget 2015 and have been certified by the Office of Budget Responsibility. More detail can be found in the policy costings document published alongside Summer Budget 2015. They cover all changes announced at Summer Budget 2015 to tackle the hidden economy; they therefore refer include the impact of additional HMRC staff to exploit this data, and the introduction of a new digital disclosure channel, as well as the extension to HMRC's data-gathering powers.</p>					
Economic impact	The measure is not expected to have a significant economic impact.					
Impact on individuals and households	This measure is not expected to have an impact on individuals.					
Equalities impacts	HMRC has considered the equalities impact and it is not expected that this measure will have a negative impact on any equality group.					
Impact on businesses and Civil Society Organisations	<p>The majority of businesses affected by this measure will be non-compliant SMEs and sole traders that are not declaring their full income or are trading in the hidden economy. These entities will face greater scrutiny as a result of these changes.</p> <p>We acknowledge that there will be some impact in respect of additional administrative burdens for business intermediaries and payment providers, as they will be required to provide HMRC with this information and data. Because this is a proposed extension of existing powers, HMRC believe this burden to be relatively small for individual data-holders, and that the total administrative burden will be negligible. However, HMRC seek views from businesses as part of this consultation on these impacts, and how HMRC can help minimise the costs to businesses in complying with these requirements.</p> <p>This measure is expected to benefit compliant small and medium enterprises by ensuring a level playing field between those businesses who comply with their tax obligations, and those that do not.</p>					

Impact on HMRC or other public sector delivery organisations	There will be an impact on HMRC in respect of analysing the data collected and undertaking compliance action based on the information where appropriate.
Other impacts	Other impacts have been considered and none have been identified.

6. Summary of Consultation Questions

Question 1: Are there other data-holders or business models who should be included within these changes?

Question 2: Do you have any views on how frequently HMRC should request data from these data-holders?

Question 3: Are there any other types of payment providers that should be included in the scope of the legislation?

Question 4: Do you agree that HMRC should be able to require information from an indirect payment provider? Are the Financial Services (Banking Reform) Act 2013 definitions fit for the purpose of defining data-gathering powers?

Question 5: HMRC would welcome your views on:

- a. Expanding or better defining the “register” provisions; or
- b. Introducing a definition for intermediaries to ensure legislation covers these as data-holders.

Question 6: How can HMRC minimise any costs to business in complying with these new requirements?

Question 7: Do you have any views on the approach HMRC should take to data-holders who may have no or only limited presence in the UK?

Question 8: Do you agree that the existing safeguards are sufficient?

7. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

How to respond

A summary of the questions in this consultation is included at chapter 6.

Responses should be sent by 14 October 2015, by email to ;
consultation.extensionofdata-gatheringpowers@hmrc.gsi.gov.uk

or by post to:

Claire Williamson
HMRC
3rd Floor, Charles House
8 Winckley Square
Preston
PR1 3HY

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC inside Government](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes.

These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Oliver Toop, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Extracts of current legislation on data-gathering powers

Groups of data-holders are set out in primary legislation, described by functions rather than type of holder e.g. a person who pays interest rather than a bank. Here is an extract:

“*Merchant acquirers etc.*” was inserted in [Schedule 23](#) to Finance Act 2011 by Section 228 Finance Act 2013 – see below:

Merchant acquirers etc

- 13A (1) A person who has a contractual obligation to make payments to retailers in settlement of payment card transactions is a relevant data-holder.
- (2) In this paragraph—
“payment card” includes a credit card, a charge card and a debit card;
“payment card transaction” means any transaction in which a payment card is accepted as payment;
“retailer” means a person who accepts a payment card as payment for any transaction.
- (3) In this paragraph any reference to a payment card being accepted as payment includes a reference to any account number or other indicators associated with a payment card being accepted as payment.
- (2) This section applies in relation to relevant data with a bearing on any period (whether before, on or after the day on which this Act is passed).

Here is the primary legislation referred to in paragraph 13 of this document

Licences, approvals etc

- 17 (1) A person by whom licences or approvals are issued or a register is maintained is a relevant data-holder.
- (2) “Register” includes –
(a) any record or list that a local authority maintains, and
(b) any record or list that any other person is required or permitted to maintain by or under an enactment.

The types of data HMRC can require from each data-holder are separately specified in regulations (secondary legislation⁴):

Here is the secondary legislation for para 17 shown above:

Licences, approvals etc

- 15 The relevant data for a data-holder of the type described in paragraph 17 of Schedule 23 are—
(a) the name and address of anyone who is or has been the holder of a licence or approval or to whom an entry in the register relates or related;
(b) particulars of the licence, approval or entry;

⁴ Statutory Instrument 2012/847 <http://www.legislation.gov.uk/ukSI/2012/847/contents/made> (as amended)

- (c) information relating to any application for such a licence or approval or for entry on that register.

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