



HM Revenue
& Customs

Tackling the hidden economy: Extension of data- gathering powers to Money Service Businesses

Consultation document

Publication date: 26th August 2016

Closing date for comments: 21st October 2016

Subject of this consultation:	Changes to HMRC's data-gathering powers to obtain additional data from money service businesses, to help tackle the hidden economy.
Scope of this consultation:	The government is considering legislation to extend HMRC's data-gathering powers to obtain data from money service businesses on customers who use their services and their aggregate transactions, in order to identify businesses trading without being registered with HMRC. This consultation invites views on the scope of potential changes, the best approach to delivering them in legislation, and ways to minimise the cost of compliance.
Who should read this:	The proposed changes would directly affect money service businesses, as they may be required to provide data to HMRC under the proposed legislation. They may also affect businesses and individuals who regularly utilise money service businesses.
Duration:	8 weeks, starting from 26 th August 2016 and closing 21 st October 2016.
Lead official:	Alex Barrow: HMRC Hidden Economy Policy and Strategy Team.
How to respond or enquire about this consultation:	Please send email responses to: lsbc.compliancepolicy@hmrc.gsi.gov.uk Please send written responses to: Alex Barrow, Alex Wakefield and Sarah Harris HMRC Room G/73 100 Parliament Street London SW1A 2BQ
Additional ways to be involved:	If you would like to meet to discuss this consultation please email your request to: lsbc.compliancepolicy@hmrc.gsi.gov.uk
Getting to this stage:	This is the first consultation on this proposal, announced at Budget 2016. HMRC's bulk data-gathering powers were modernised and simplified in 2011. In 2013 HMRC obtained new powers to require data from merchant acquirers, and in 2015 HMRC consulted and published draft legislation on extending these powers to require data from two new categories of data-holder – providers of electronic stored-value payment services and business intermediaries.
After the consultation:	Responses will be taken into account in further developing the proposal, and a response document will be published.

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On request this document can be produced in Welsh and alternate formats including large print, audio and Braille format

Foreword

The vast majority of UK taxpayers pay what they owe, but a small minority seek to evade or avoid paying their fair share. The hidden economy consists of those businesses who fail to register for tax, and individuals who fail to declare a source of income that should be taxed.

By hiding their activity from HMRC, those operating in the hidden economy deprive the government of much needed funds to run public services and invest in the UK's future. In 2013/14, the hidden economy tax gap was £6.2bn. This places an unfair burden on the vast majority of people and businesses who pay their fair share of tax.

Hidden economic activity also disadvantages compliant businesses. Competition between businesses is distorted when a small minority seek to hide under the radar from their tax obligations.

This government will continue in its efforts to ensure that the UK remains a great place to set up and grow a business. We're making paying tax quicker, easier and more convenient for the compliant majority through moving to a largely digital tax system, providing businesses with their own digital tax account and enabling them to register for taxes online at a time that suits them.

Today, we are asking for your views on new proposals to tackle the hidden economy. At Budget 2016, the government announced the consultations that are being published by HMRC today. These cover:

- Proposals to extend HMRC's bulk data gathering powers to Money Service Businesses (MSBs). This will allow HMRC to identify and take action against those who misuse cash services offered by MSBs to hide sources of income from HMRC and operate in the hidden economy.
- Tougher sanctions for those who participate in hidden economy activity including repeated non-compliance.
- The principle of making access to licenses or services for businesses conditional on them being registered for tax.

Changes arising from these consultations will help us to support the majority of UK businesses by levelling the playing field between the compliant and non-compliant.

This builds on progress that the government has already made to tackle the online hidden economy, and through investment in HMRC to fund more frontline investigators to step up their response to the hidden economy.

Our message to those operating in the hidden economy is clear – it is getting harder to hide your activities, come forward before HMRC catches up with you and join the vast majority of businesses that pay their fair share of tax.

Jane Ellison
Financial Secretary to the Treasury

1. Introduction

Tackling the hidden economy

- 1.1 The majority of UK taxpayers pay what they owe, but a small minority seek to evade or avoid paying their fair share. The hidden economy consists of those who fail to register for tax and those who fail to declare a source of income. HM Revenue and Customs (HMRC) estimates that the 2013/14 tax gap due to the hidden economy stood at £6.2bn, which equates to 18% 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.
- 1.2 The UK has one of the smallest reported tax gaps in the world. HMRC remains committed to reducing it further, and as part of this, achieving a significant and sustained narrowing of the hidden economy tax gap. To accomplish 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 things right;
 - **prevent** non-compliance, preventing mistakes and stopping things from going wrong; and
 - **respond** to non-compliance, targeting HMRC's approach to tackling complex cases and deliberate cheats.
- 1.3 Hidden economy activity disadvantages compliant businesses. Tackling the hidden economy will ensure a level playing field for those who comply with their tax obligations. This means working to improve the ways in which HMRC's customers register for tax and report their income, helping them to get things right the first time. HMRC will also make it increasingly difficult for businesses and individuals to enter the hidden economy, and robustly tackle those who continue not to pay the right amount of tax.
- 1.4 Those who operate in the hidden economy may also demonstrate non-compliance in areas of their business besides tax, which might include health and safety violations, failure to comply with employment rights for workers and immigration offences. By tackling the hidden economy HMRC can help to shrink the space for wider criminality and non-compliance to flourish.

HMRC's approach

- 1.5 The nature of business and employment is changing. Greater numbers of individuals now have multiple or flexible sources of income throughout their working lives. Technology supports these changes, with people using smart phones to access products and services and to make payments. Reflecting this, in recent years, HMRC has increased its focus on tackling the hidden economy using new data and smarter compliance work.

- 1.6 HMRC aims to support those starting in business to get their tax affairs in order early. Behavioural evidence and operational experience indicate that the greatest impact on the hidden economy tax gap stems from stopping customers entering the hidden economy in the first place, and HMRC is seeking to develop new “promote” interventions to address this.
- 1.7 To ensure that it becomes increasingly difficult for businesses to hide their income, the government has introduced new targeted data gathering powers to identify hidden economy businesses trading online, supporting interventions to prevent and respond to non-compliance. The government has also invested in HMRC to recruit additional hidden economy investigators to make use of these new data streams. These policy changes and HMRC investment, both announced at the 2015 July Budget, are expected to contribute total additional revenues of £860m by 2020-21.
- 1.8 These approaches are putting more pressure on those operating in the hidden economy. One strand of HMRC’s response to hidden economy activity is the deployment of targeted compliance teams. In 2015/16, those teams closed 11,000 investigations and identified unpaid tax of £174m, an increase from £146m in 2014/15.
- 1.9 This consultation, and others published alongside it, set out the government’s proposed next steps in tackling the hidden economy. That action is an important part of the government’s stance on supporting compliant businesses – by levelling the playing field so that those playing by the rules do not face unfair competition from those not paying their fair share.

Future options to tackle the hidden economy

- 1.10 HMRC remains committed to tackling the hidden economy in new and innovative ways. At Budget 2016 the government announced consultations on three proposals to cover the full range of promote, prevent and respond activity.
- 1.11 This consultation concerns the proposal to extend HMRC’s bulk data-gathering powers to include data held by money service businesses (MSBs) relating to their customers’ identities and aggregate transactions through an MSB. This would allow HMRC to better check the accuracy of declarations that customers make about tax, and identify non-compliant customers who are exploiting MSB services to hide their income and operate in the hidden economy.**

1.12 Two parallel consultations on hidden economy measures will be launched alongside this one:

- **conditionality** – defined as the principle of making access to licences or services for businesses conditional on them being registered for tax
<https://www.gov.uk/government/consultations/tackling-the-hidden-economy-conditionality>
- **Hidden economy sanctions** – exploring the potential for new penalties and sanctions to tackle hidden economy participants including those who have already been penalised for deliberate non-compliance, but have not changed their behaviour.
<https://www.gov.uk/government/consultations/tackling-the-hidden-economy-sanctions>

1.13 This consultation explains the types of businesses that the proposed change to HMRC's bulk data-gathering powers is intended to apply to, and seeks views on:

- the scope of these changes;
- the best approach to delivering them in legislation;
- the approach to customer data collection across the sector; and,
- ways to minimise any burdens on MSBs in complying with the proposed new requirements, and adverse impacts on their customers.

2. HMRC's data-gathering powers

- 2.1 HMRC's bulk data-gathering powers are set out in Schedule 23 to the Finance Act 2011. A detailed explanation of these powers is outlined in Annex A of this consultation.
- 2.2 Reflecting trends towards greater use of digital record-keeping by businesses, and the use of electronic transaction methods, the government has introduced a series of targeted extensions of HMRC's bulk data-gathering powers to include new types of data-holders.
- 2.3 In 2013, HMRC obtained new powers to collect data from merchant acquirers – businesses that process credit and debit card transactions. Building on this, the government is introducing legislation this year to require data from providers of electronic stored-value payment services, also known as operators of “digital wallet” transactions, and business intermediaries who facilitate transactions between suppliers and customers, particularly online.
- 2.4 These measures will increase the sources of third party data available for checking the accuracy of customers' information, and enable more effective tax risking and identification of potential non-compliance. HMRC analysis of merchant acquirer data has already identified examples of potential non-compliance, and investigations are actively being pursued with the potential to yield millions of pounds in unpaid tax.
- 2.5 A number of non-compliant taxpayers continue to seek to exploit gaps in HMRC's data-gathering powers to avoid paying their fair share. Therefore HMRC wants to acquire better data to improve its visibility of those operating in the hidden economy, better target compliance efforts, and deter customers from entering the hidden economy in the first place.

Data security and governance

- 2.6 HMRC takes its responsibility for data security extremely seriously, and the secure handling of taxpayer data is fundamental to the way in which HMRC operates. The processes and infrastructure used to move and store large data sets are kept under constant review.
- 2.7 This ensures that they remain as secure as possible, and relevant to new business practices, payment and financial technologies, and trends in how taxpayers conduct their financial affairs. It also ensures that the burdens on businesses in complying with them are minimised.
- 2.8 For example, HMRC previously adopted Secure Electronic Transfer to handle the increasing trend towards electronic data exchanges, significantly reducing the number of times data has to be handled before it is processed, and minimising the risk that shared data becomes corrupted, misused or lost.

2.9 The next two chapters set out the case for extending HMRC's data-gathering powers to include MSBs, and ask for views on how best to implement the proposed change.

3. Case for change

Money service businesses

- 3.1 Money service businesses (MSBs) are entities which provide money transmission, cheque cashing, or currency exchange services by way of business. This covers a wide range of business models, including high street money transmitters and their agents, foreign exchange currency traders, and peer-to-peer money transmitters, as well as other enterprises that may offer these services in addition to their main line of business.
- 3.2 MSBs provide valuable financial services that are relied upon by many tax-compliant customers. For instance, they allow customers to transfer money earned in the UK's formal economy to relatives living abroad, or to cash cheques where high street banking is unavailable or the funds are needed quickly. This consultation recognises that compliant customers should be able to continue easily accessing these important services.

Compliance risk

- 3.3 The aim of this proposal is to gather data in bulk from MSBs that would allow HMRC to better identify non-compliant customers who are trading and not declaring their income for tax purposes.
- 3.4 The majority of taxpayers, and the majority of customers of MSBs, comply with their tax obligations. However, operational experience shows that some hidden economy businesses that trade primarily in cash exploit MSBs, particularly money transmission and cheque cashing services, to attempt to hide their income.
- 3.5 Under existing powers and proposals currently before Parliament, HMRC will be able to identify traders in the hidden economy who receive undeclared payments through merchant acquirers, or electronic stored-value payment services and business intermediaries, particularly online. A minority of non-compliant customers continue to attempt to exploit gaps in HMRC's data-gathering powers. Extending these powers to include data on MSB customers will improve HMRC's visibility of the hidden economy and the efficient targeting of compliance activity.

Existing powers

- 3.6 Under anti-money laundering legislation, certain circumstances require MSBs to conduct due diligence checks on customers, for example when the value of their transaction is above a mandated threshold. The majority are supervised for compliance with these regulations by HMRC, unless they are already supervised by the Financial Conduct Authority or another supervisory body for another activity. HMRC can require information from MSBs under its supervision for anti-money laundering purposes in order to check their compliance with those regulations, but not with the objective of checking the tax position of their customers.

3.7 HMRC has powers under Schedule 36 to the Finance Act 2008 to request information or documents from a specified third party, such as an MSB, which relate to a named taxpayer. This power is unsuitable for the routine gathering of data in bulk to identify those operating in the hidden economy.

Proposed powers

3.8 One way to implement this proposal would be to include MSBs as a new category of “relevant data-holder” under Schedule 23 to the Finance Act 2011, which is outlined in the previous chapter. Regulations would be made specifying what “relevant data” HMRC may require from MSBs about their customers and those customers’ transactions through the MSB.

3.9 Where HMRC identified evidence of potential non-compliance, the data would allow cases to be generated for further investigation, and targeted compliance interventions if necessary.

3.10 The proposed bulk data-gathering power would not alter or replace the existing anti-money laundering supervisory regime, although data collected under this power could be used by HMRC for the purposes of anti-money laundering supervision. The proposed power would not alter or replace any of the obligations of MSBs under anti-money laundering legislation, including the requirement to submit Suspicious Activity Reports where there is suspicion of money laundering or the financing of terrorism. The proposed power would also not require MSBs to check their customers’ tax position, nor identify cases of tax non-compliance from their own customer data.

3.11 By collecting this data, HMRC’s ability to tackle the hidden economy would be improved, creating a level playing field for compliant businesses and ensuring that the government receives the revenue it is owed to fund vital public services. By enabling HMRC to better target compliance activity, the proposed powers would deter the exploitation of MSB services for illicit purposes.

4. Extension of data-gathering powers to money service businesses

4.1 This chapter sets out HMRC's proposal in more detail, and invites views on the scope, detail, and potential implementation of the measure.

Proposed legislation change

4.2 Part 2 of Schedule 23 to the Finance Act 2011 sets out the data-holders from whom HMRC can require bulk data to help effectively and efficiently discharge its tax functions. The proposed extension would include MSBs within the scope of this measure as "relevant data-holders", in order to allow HMRC to require data on the identity and transaction record of their customers.

Question 1: What are your views on the proposed inclusion of MSBs as "relevant data-holders"? Is there a better route for HMRC to achieve the aims of this proposal?

Definition

4.3 An MSB is defined in paragraph 2, Part 1 of The Money Laundering Regulations 2007 as:

"an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers;"

4.4 This is a broad definition based on services provided and may include a number of business types, from high street money transmission and cheque cashing businesses to some banks or building societies. At Budget, the government announced that it would consult on gathering bulk data from MSBs, i.e. businesses whose principal activity is acting as an MSB, rather than banks or building societies, who often provide MSB-type services to banking clients. This proposal is intended to help HMRC address a specific hidden economy risk around the exploitation of MSBs by hidden economy businesses trading primarily in cash.

4.5 HMRC's proposal is that entities performing MSB services should be within scope of this power, including those whose principal anti-money laundering supervisor is not HMRC, with the exception of credit institutions such as banks, building societies, and other deposit-receiving institutions such as credit unions and friendly societies.

4.6 Building societies¹, credit unions² and friendly societies³ are defined in legislation. There is no such universal definition of a bank. For example, HMRC defines “bank” and “banking company” variously for the purposes of corporation tax and the banking levy.⁴ Additionally, the regulator Prudential Regulatory Authority (PRA) defines a bank as:

“a firm with a Part 4A permission to carry on the regulated activity of accepting deposits and is a credit institution;”⁵

where Part 4A refers to Part 4A of the Financial Services and Markets Act 2000 (as amended).

4.7 The relevant definition of the term “credit institution” is within EU Regulation 575/2013 Article 4(1):

“an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.”

4.8 By drawing on one or a combination of these definitions, HMRC will be able to restrict this power to entities which are MSBs but which are not banks or building societies. One way to do so could be to take the existing definition of MSBs within the Money Laundering Regulations 2007 based on the types of services provided, as outlined above, but to exclude credit institutions with permission to carry on the regulated activity of accepting deposits

Question 2: What are your views on the proposed range of persons and businesses which the measure will cover, including different types of MSB? Are there businesses conducting substantially similar activities to MSBs that do not fall within this range?

Question 3: What are your views on whether the proposed definition captures the full range of businesses which HMRC proposes to include, and no others? Is there a better way of defining the businesses HMRC wishes to include, or those HMRC wishes to exclude?

Data

4.10 Data that HMRC aims to gather would allow the identification of MSB customers by matching with other taxpayer data, and give the volume and aggregated value of transactions conducted by the customer through that MSB. HMRC can only require data that is in a data-holder’s possession or power to provide, and will always work closely with the data-holder before a notice is served to ensure these conditions are met.

¹ S.119 Building Societies Act 1986.

² S.31 Credit Unions Act 1979.

³ Incorporated under the Friendly Societies Act 1992 or registered under the Friendly Societies Act 1974.

⁴ See for example S.269BA Corporation Tax Act 2010, Paragraph 73 of Schedule 19 to the Finance Act 2011, and S.133F of the Corporation Tax Act 2009.

⁵ <http://www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/52212/03-09-2015>

- 4.11 HMRC acknowledges that many customers are likely to conduct one-off, relatively low-value transactions through an MSB. The aim of this proposal is to allow HMRC to discover the aggregate activity of MSB customers. This will help to identify where more significant amounts of money, which may have been earned in the hidden economy, have been transacted through an MSB.
- 4.12 This data would include identifying details of MSB customers, such as names and addresses, or the registration number and registered address of business customers. It would also include data relating to the number and aggregated value of transactions by the customer through the MSB, and may include other details related to the transactions. The specific data fields would be set out in regulations, subject to further consultation.
- 4.13 MSBs which are supervised under anti-money laundering regulations are already required to collect identifying details of their customers where due diligence checks are undertaken. They are also required to monitor the aggregated value of linked transactions, to identify whether repeat customers reach the transaction value thresholds to trigger due diligence checks.
- 4.14 HMRC's operational experience indicates that customer information collected by MSBs, along with commercial records generated through day-to-day business, should provide adequate data for the aims of this proposal. HMRC would work with MSBs to agree standard data fields and formats, to minimise the cost of complying with a data notice.

Question 4: Do you agree that MSBs should already hold adequate relevant data to allow HMRC to meet the aims of this proposal?

- 4.15 HMRC welcomes that many MSBs choose to undertake due diligence checks on transactions below the mandated value thresholds. Better understanding how and when customer information is collected will enable HMRC to precisely specify the data required, and better estimate the benefits of this proposal.
- 4.16 The updated EU Funds Transfer Regulations, effective from June 2017, will remove the value threshold for collecting payer information on money transmission in many cases. However, understanding how this information has been collected historically will be useful in implementing the proposal.

Question 5: In relation to the customer information collected by MSBs:

- A. At what thresholds below the statutory requirement do MSBs collect and verify identifying customer information?**
- B. How do these thresholds vary between different services, e.g. money transmission versus cheque cashers or currency exchangers, and between electronic and cash transactions?**

- 4.17 To enable the effective analysis of MSB customer data, it would need to be provided electronically and in a standardised format to meet accuracy and consistency requirements. HMRC would work with MSBs to agree standard data fields and formats, to minimise the cost of complying with a data notice.
- 4.18 HMRC would welcome information on the systems, formats and software used across the sector to store customer and transaction data, in order to assess the format in which the data should be requested.

Question 6: What systems, formats and software are used for storing customer information and transaction records across the MSB sector?

Question 7: What are your views on the costs and benefits of agreeing a single standardised data reporting format between HMRC and the MSB sector?

5. Safeguards and other issues

Safeguards

5.1 HMRC's bulk data-gathering powers provide for a data-holder to appeal against a data-gathering information notice. This ensures that data-holders have recourse if a notice is unduly burdensome for them to comply with, they are not a data-holder or the data requested is not "relevant data" under the regulations. HMRC can only require data that is in a data-holder's possession or power to provide, and will always work closely with the data-holder before a notice is served to ensure these conditions are met.

Minimising costs to business

5.2 HMRC is committed to minimising the burdens businesses face in complying with their tax obligations, including third party data-gathering requests, and MSBs are no exception to this. It is important to ensure that MSBs are able to continue offering legitimate, convenient and valuable money services for their customers, and that those customers can easily access them.

5.3 HMRC would welcome views on the potential costs to MSBs of complying with the proposed data-gathering measure, whether different types of MSBs might face different costs, and how these could be further minimised. This will help to ensure that action to tackle the hidden economy does not disproportionately impact on MSBs' operation.

Question 8: What are your views on how regularly HMRC should request data from money service businesses?

Question 9: What are your views on the potential costs to MSBs of complying with this proposal?

Question 10: How else can HMRC minimise any additional burdens placed on MSBs in complying with this proposed data-gathering power?

Protecting privacy and data

5.5 HMRC recognises the need to ensure its data-gathering powers strike an appropriate balance between the privacy of customers and the need to ensure its ability to check their tax status is adequate and up to date.

5.6 These powers will not allow HMRC to require an MSB to provide data about itself for the purposes of establishing the tax position of that MSB. HMRC is proposing to collect data about the identities and aggregated transactions of MSBs' customers only.

5.7 Equally, data requests will not be targeted at particular groups or communities who are more likely to utilise MSB services. HMRC's data-gathering activities are targeted based on a national picture of risks that takes account of many factors, including operational intelligence, data from other government departments and agencies, and tax return information. These activities generate the intelligence that enables effectively and efficiently targeted national campaigns and specialist task forces, which incorporate intensive bursts of compliance activity aimed at high risk trade sectors and locations across the UK.

5.8 HMRC also takes extremely seriously its responsibility to ensure the security of customers' information, and commercial data provided by third parties. As set out in Chapter 2 of this consultation, HMRC's data handling processes and governance arrangements are constantly reviewed and updated to minimise the risk that shared data becomes corrupted, misused or lost.

Question 11: HMRC would welcome views on any other potential impacts that may need consideration when implementing this proposal.

6. Summary of questions

Question 1: What are your views on the proposed inclusion of MSBs as “relevant data-holders”? Is there a better route for HMRC to achieve the aims of this proposal?

Question 2: What are your views on the proposed range of persons and businesses which the measure will cover, including different types of MSB? Are there businesses conducting substantially similar activities to MSBs that do not fall within this range?

Question 3: What are your views on whether the proposed definition captures the full range of businesses which HMRC proposes to include, and no others? Is there a better way of defining the businesses HMRC wishes to include, or those HMRC wishes to exclude?

Question 4: Do you agree that MSBs should already hold adequate relevant data to allow HMRC to meet the aims of this proposal?

Question 5: In relation to the customer information collected by MSBs:

- A. At what thresholds below the statutory requirement do MSBs collect and verify identifying customer information?**
- B. How do these thresholds vary between different services, e.g. money transmission versus cheque cashers or currency exchangers, and between electronic and cash transactions?**

Question 6: What systems, formats and software are used for storing customer information and transaction records across the MSB sector?

Question 7: What are your views on the costs and benefits of agreeing a single standardised data reporting format between HMRC and the MSB sector?

Question 8: What are your views on how regularly HMRC should request data from money service businesses?

Question 9: What are your views on the potential costs to MSBs of complying with this proposal?

Question 10: How else can HMRC minimise any additional burdens placed on MSBs in complying with this proposed data-gathering power?

Question 11: HMRC would welcome views on any other potential impacts that may need consideration when implementing this proposal.

7. Summary of impacts

Exchequer impact (£m)	2016 -17	2017 -18	2018-19	2019 -20	2020 - 2021
	<p>HMRC is currently piloting the analysis of non-bulk MSB customer data acquired under other powers. Final costing will be based on the findings of this analysis and responses to this consultation, and will be subject to scrutiny by the Office for Budget Responsibility.</p>				
Economic impact	<p>This proposal would not be expected to have a significant economic impact.</p>				
Impact on individuals, households and families	<p>This proposal imposes no additional requirements on MSBs to collect customer information. Therefore the measure would not be expected to have an impact on individuals, households, or families, or their access to these services.</p>				
Equalities impacts	<p>HMRC has considered the equalities impact and it is not expected that this measure would have a negative impact on any equality group.</p> <p>The proposed measure would not target or disproportionately impact MSB customers based on ethnicity or any other protected characteristics.</p>				
Impact on businesses and Civil Society Organisations	<p>This measure would be expected to benefit compliant businesses by ensuring a level playing field for those who comply with their tax obligations. The majority of businesses affected by this measure would be non-compliant businesses and traders that are not declaring their full income or are trading in the hidden economy. These entities would face greater scrutiny as a result of this measure.</p> <p>HMRC acknowledges that there would be some impact in respect of additional administrative burdens for MSBs that would be required to provide HMRC with this data. Because MSBs are already required to hold the relevant data, HMRC believes this burden to be relatively small for individual data-holders. HMRC would work with data-holders to agree a reasonable format and method for providing the required data before a data notice was issued.</p> <p>The number of MSBs affected and impacts on them will be reviewed in light of responses to this consultation.</p> <p>Small and Micro business assessment</p> <p>The number of small and micro businesses affected and any additional impacts on them will be explored as part of this consultation.</p>				

Impact on HMRC or other public sector delivery organisations	There would be an impact on HMRC in respect of analysing the data collected, and undertaking compliance action based on the data where appropriate. The systems for doing this are already in place within HMRC.
Other impacts	Other impacts have been considered and none have been identified. HMRC seeks views from respondents as part of this consultation on any other potential impacts of this proposal.

8. The consultation process: How to respond

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 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

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

Responses should be sent by 21st October 2016, by e-mail to isbc.compliancepolicy@hmrc.gsi.gov.uk or by post to:

Alex Barrow, Alex Wakefield and Sarah Harris
HMRC
Room G/73
100 Parliament Street
London
SW1A 2BQ

Telephone enquiries: 03000 589 760 or 03000 540 848 (from a text phone prefix this number with 18001)

Please do not send consultation responses to the Consultation Coordinator (named overleaf).

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's GOV.UK pages](#). 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:

John Pay, 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: Background – HMRC’s bulk data-gathering powers

The role of data

The gathering of data in bulk about taxpayers’ income and assets is vital to the successful discharge of HMRC’s responsibilities as the UK tax authority. HMRC routinely compares data provided by customers with third party data linked to their financial activity. This enables HMRC to check customers’ tax status and the accuracy of their returns, while minimising the administrative burden of providing additional information where needed.

In the future, third party data will play an increasingly important role in how HMRC conducts its tax functions. The Making Tax Digital programme will transform the UK tax system, by moving services and customers’ information online. Where possible, HMRC wants to present its customers with data to check and a clear picture of how this affects the tax they owe, rather than forms and tax returns to complete. This will create a more transparent service and give customers a greater understanding of their tax situation, reducing errors and improving customer service.

Bulk data collection is also vital for the efficient and effective targeting of compliance activity. By using data from multiple sources, HMRC is able to better identify the non-compliant minority who try to avoid paying their fair share, through greater visibility of their transactions and sources of income. The existence of these powers, and the fact that information is shared with HMRC, act as a deterrent against concealing sources of income.

For example, HMRC requires banks to report details of the interest paid on savings accounts. This data is compared by analysts and sophisticated data-matching systems against tax returns and PAYE information. Any mismatches alert HMRC to possible errors or non-compliance, and generate cases for further investigation.

Data-gathering powers

HMRC’s bulk data-gathering powers were modernised and simplified in 2011 and 2012 as part of the HMRC Review of Powers, Deterrents and Safeguards. This combined existing powers within Schedule 23 to the Finance Act 2011, and set out that data can be gathered for the purposes of almost all taxes.

Data-holders to whom HMRC can issue requests for bulk data are set out in primary legislation. These are described by functions rather than types of data-holder, for example “a person who pays interest”, rather than a bank or building society.

The data HMRC can request from each type of data-holder is specified in secondary legislation. This includes information about income, transactions and assets, as well as names and addresses to identify taxpayers. This allows HMRC to match the data with individual customers. Typically, HMRC will issue a data-holder with a notice to provide data by a certain date and in a particular format.

Under this legislation, there are a number of safeguards to protect data-holders from unlawful or overly burdensome data requests. For example, HMRC can only ask for data that data-holders already hold. It is current practice that HMRC will work closely with a data-holder before a data notice is served, to ensure the requirements are reasonable, that the data required is held by the data-holder, and to minimise the costs of complying with the notice. Further detail on these safeguards can be found in Chapter 5 of this consultation.

Annex B: Extracts from relevant current legislation

Groups of data-holders are set out in primary legislation, described by functions rather than type of holder. This consultation proposes inserting MSBs as relevant data-holders into this legislation in a similar way. The below is an example from Part 2 of Schedule 23 to Finance Act 2011:

Rent and other payments arising from land

18 (1) Each of the following is a relevant data-holder—

- (a) a lessee (or successor in title of a lessee),
- (b) an occupier of land,
- (c) a person having the use of land, and
- (d) a person who, as agent, manages land or is in receipt of rent or other payments arising from land.

(2) The reference to a person who manages land includes a person who markets property to potential tenants, searches for tenants or provides similar services.

The extension of these powers to include “*Merchant acquirers etc.*” was inserted into Schedule 23 to Finance Act 2011 by Section 228 Finance Act 2013:

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).

The types of data that HMRC can require from each data-holder are set out separately in The Data-gathering Powers (Relevant Data) Regulations 2012. The types of data that can be required from merchant acquirers were added by The Data-gathering Powers (Relevant Data) (Amendment) Regulations 2013, as set out below. A similar set of amendment regulations would be laid to set out the data HMRC can require from MSBs.

Amendments to the Data-gathering Powers (Relevant Data) Regulations 2012

5. After regulation 11 insert –

“Merchant acquirers etc

11A.—(1) The relevant data for a data-holder of the type described in paragraph 13A of Schedule 23 are—

- (a) in relation to a retailer, information relating to payment card transactions recorded against a merchant account, including the currency these payment card transactions were made in;
- (b) the reference number of the account into which payments are made by the relevant data-holder to the retailer and, where necessary for identifying the account, the branch where the account is held;
- (c) any unique identifier which has been allocated to a retailer, for the purposes of identifying the retailer, as part of the business arrangement between the relevant data-holder and the retailer;
- (d) any identifier which has been allocated to a retailer, for the purposes of classifying the trade of the retailer, as part of the business arrangement between the relevant data-holder and the retailer;
- (e) any unique identifier which has been allocated to a retailer’s merchant account, for the purposes of identifying this merchant account, as part of the business arrangement between the relevant data-holder and the retailer;
- (f) the name, address, telephone number, e-mail address, website address and VAT number (“relevant details”) of a retailer and, if different, the relevant details associated with a merchant account.

(2) In this regulation—

“merchant account” means an account held by a retailer with the relevant data-holder, by reference to which the amount due to be paid by the relevant data-holder to the retailer in settlement of payment card transactions is calculated; and

“VAT number” means “registration number” for the purposes of paragraph (1) of regulation 2 of the Value Added Tax Regulations 1995(1).”