



HM Revenue
& Customs

Tackling the hidden economy: Extension of data-gathering powers

Summary of Responses

9th December 2015

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1. Introduction

- 1.1 HMRC published a consultation on 22nd July 2015 entitled “Tackling the hidden economy: extension of data-gathering powers”. The consultation closed on 14th October.
- 1.2 In 2013 (Finance Act 2013 section 228) HMRC obtained new powers to request 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.
- 1.3 The consultation concerned the announcement at the Summer Budget that the government would legislate to extend access to two similar sorts of data to help tackle the hidden economy. The changes would 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.
- 1.4 HMRC sought views on the scope of the changes, the best approach to delivering them in legislation, and ways to minimise any costs for business to comply with the new requirements.
- 1.5 HMRC is grateful for the interest this consultation generated and wishes to thank those who responded, recognising the time and effort that went into the comments and contributions.
- 1.6 HMRC received 37 written responses from professional firms, representative bodies and individual businesses. HMRC also held meetings with a number of respondents.
- 1.7 This document summarises the responses received and the next steps.

2. Responses

Responses including Government responses

2.1 General responses

- 2.1.1 The majority of respondents agreed with the government's view that data-gathering powers should be updated in order to create a level playing field.
- 2.1.2 Several respondents made the point that those trading within the hidden economy not only undermine compliant businesses who pay their taxes, but may be denying consumers the protection they are afforded by consumer law.
- 2.1.3 Some respondents stated that the prices of their products were being undercut by other sellers, mainly on the internet, who were in their view evading VAT and other taxes on their sales in the UK, and that these actions were potentially driving them out of business.
- 2.1.4 Some of the intermediaries expressed concerns that their users may be reluctant for data about their businesses to be provided to HMRC, and as a result may seek alternative intermediaries to provide services for them, should the powers not extend to all intermediaries.
- 2.1.5 A view was expressed by some respondents that the proposed legislation may discriminate against digital businesses where equivalent powers did not exist in respect of non-digital competitors. For example, online advertising intermediaries could be within scope whereas traditional advertising platforms could be out of scope. HMRC's view is that these new powers will not be limited to only online intermediaries. This is because business intermediaries, regardless of whether they operate online, may hold data in relation to businesses providing goods and services. This data would assist HMRC in identifying those businesses within the hidden economy. The powers will apply to entities providing the function of a business intermediary and holding relevant data, regardless of whether the business is primarily delivered digitally or offline.
- 2.1.6 Other respondents observed that cross-government initiatives should be taken into consideration whilst drafting new legislation - such as HM Treasury's Application Programming Interface (API) standard for UK banking and their input to the EU's Payments Services Directive II, and DWP's work with the payments industry.

2.2 Responses to specific questions

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

2.2.1 Some respondents suggested that it was important for specific payment routes and social media sites, as well as online classified advertising websites, to be included as data-holders within the scope of this legislation.

HMRC agrees that the scope of the legislation will need to be capture the full range of business intermediary activities.

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

2.2.2 The views of respondents varied on this question with some suggesting monthly, others quarterly and some suggesting it should be limited to one request per year.

HMRC will consider each data request individually and as such may vary the timing and frequency of requests for data, in a way that is proportionate to both any administrative burdens on the data-holder, and the value of the data in meeting HMRC's aim of effectively tackling the hidden economy.

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

2.2.3 A number of respondents from the payments industry suggested the new powers should be applicable to all providers facilitating the processing of payments to businesses. This would ensure HMRC obtains a full picture and that there would be an equal regulatory burden across all payment providers.

HMRC recognises the case for equal treatment across all payment providers. However this objective must be weighed against the need to take well-defined powers which deliver the Government's policy intention. HMRC's view is that in order to include all providers processing or facilitating payments to businesses, the extended data-gathering power would need to be very broad in scope, and such a power would go beyond the scope of the changes Government announced at the July Budget and discussed in the consultation.

The Government proposes to target the powers to include only those payment facilitators who operate digital wallets where customers load their virtual wallet with funds from their bank account or payment card, and then use the wallet to transfer funds to a retailer or trader.

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?

2.2.4 A number of respondents raised concerns about the use of definitions relating to direct and indirect payment providers, suggesting they would not be the best way to define the types of new business models HMRC are seeking to bring into the scope of this legislation.

The legislation will apply to those who operate digital wallets and similar payment mechanisms. This avoids the use of definitions which refer to direct and indirect payment providers.

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.**

2.2.5 Some respondents were not in favour of HMRC expanding the “register” provision (in FA 2011 para 17(2) Schedule 23) – which allows HMRC to require data held in a register - as their view was that by doing so would not provide the clarity they were seeking.

2.2.6 Respondents’ preference was for HMRC to introduce a new category of data-holder with a targeted definition of intermediaries. HMRC should also provide sufficient clarity on the specific information to be reported by the categorised data-holder.

The legislation will introduce a new category of data-holder with a specific definition to capture the range of activities of intermediaries within the FA2011 Sch 23, and will describe the data required in secondary legislation. However, HMRC will keep this under review in case new types of intermediary emerge which fall outside of the new definition.

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

2.2.7 Respondents generally requested that HMRC undertakes early consultation with those data-holders to be affected by this legislation, and that there should be some flexibility with regards to the format for the data to be provided to HMRC in rather than a fixed generic standard.

2.2.8 Some respondents stated that complying with data requests would place an unnecessary administrative burden on their business by way of increased resource required in reporting the data sets needed and also in any systems and process changes necessary.

HMRC will only issue information notices to data-holders where there is a commensurate benefit from the value of the data that will be obtained and will consider the administrative burden placed on the data-holder.

Before a notice is served, HMRC will work with that data-holder to understand their data, how the data is collated and what format it is in. This will aim to minimise the burden on the data-holder and ensure that the data is useable when it is passed to HMRC.

2.2.9 A number of respondents suggested introducing a de-minimis value of transactions, below which data need not be provided to HMRC.

HMRC is not planning to introduce a de-minimis value. This is to ensure that HMRC has visibility of businesses who use several different intermediaries or make several uses of a single intermediary. In some cases, this may lower the burden on data-holders, in that they do not have to sort through or arrange their data before providing it to HMRC.

2.2.10 In the payments industry, some respondents stated that, should the power require them to distinguish between payments made to businesses and those made to individuals, payment providers would not be able to do so without significant and costly changes to their systems.

HMRC's view is that it would not be reasonable to expect payment providers, or business intermediaries, to routinely distinguish between businesses and individuals, but that the power would usually be used following consultation with the data-holder about the least burdensome way to gather the data that HMRC requires to detect businesses that are trading without being registered, or failing to declare taxable income.

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

2.2.11 Respondents stated a view that those operating within the UK, though they may not be physically present in the UK, should be within the scope of this legislation.

2.2.12 However, some respondents questioned HMRC's ability to enforce the new powers outside of the UK, and raised concerns that any inability to do so could place UK-based businesses at a competitive disadvantage.

2.2.13 One respondent suggested for those trading within the UK but without a UK presence, their trade should be curtailed by HMRC if they fail to comply with a data request.

HMRC's data gathering powers have no territorial boundaries. HMRC can serve an information notice on entities who operate in the UK but who are based elsewhere. In this regard HMRC recognises the importance of enforcing this legislation outside of the UK, and continues to work closely with treaty partners under our international tax agreements.

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

2.2.14 Some respondents thought the current safeguards were sufficient. However there were others who suggested the following:

- a) additional safeguards may be necessary to protect the information of individuals which HMRC may obtain through this route which could be an intrusion of privacy,
- b) lack of clarity on the safeguards against disproportionate requests,
- c) inclusion of a reasonable minimum amount of time to respond to data requests.

There is a right to appeal against either a data-gathering notice and/or penalty, particularly if the requirement is onerous to comply with. Whenever possible, HMRC works with the data-holder to ensure that the requirements are reasonable and that the data-holder is content to provide the required data. This ensures that the impact on the data-holder is minimised and that the protection of any individuals' data is fully considered. HMRC will use these powers to identify businesses who are failing to register with HMRC or under-declaring what they owe, not to track customers' purchases.

Other comments

2.2.15 Some respondents alerted HMRC to the danger that those operating within the hidden economy will exploit new technologies and move from physical and digital cash to virtual currencies which may make tracking their ownership more difficult.

2.2.16 A suggestion was made that the onus could be placed on intermediaries, and particularly sales platforms, to ensure their sellers are tax compliant, and to deny services to them if they are not.

2.2.17 A number of responses were received from animal welfare organisations, highlighting a particular aspect of the hidden economy involving the sale of animals through online platforms (for example as household pets). These respondents expressed a view that data gathered under HMRC's extended powers could bring broader benefits, for example in tackling illegal animal trading and animal cruelty. The government agrees that effectively tackling the hidden economy can have wider benefits, by shrinking the space for other forms of criminality and non-compliance.

HMRC will consider these points as part of its wider work to address tax evasion and the hidden economy.

3. Next steps

- 3.1 Draft legislation, adding two new types of data holder to Schedule 23 of Finance Act 2011, and intended for inclusion in Finance Bill 2016 was published today (9 December 2015). Draft secondary legislation, defining the types of data that can be required from these new data-holders, was published alongside this. Both of these can be found in Annexes B and C.
- 3.2 The consultation on draft legislation will run until 3rd February 2016. HMRC will consider any comments received on the draft legislation before including the legislation in Finance Bill 2016 and laying the accompanying regulations.

Annex A: List of stakeholders consulted

AAT (Association of Accounting Technicians)
ABTA (Association of British Travel Agents)
Baker & McKenzie
BBA (British Bankers' Association)
British Business Federation Authority
CBI (Confederation of British Industry)
Chartered Institute of Taxation
Cornwall Council
Deloitte
Etsy
Federation of Small Businesses
Grant Thornton
HomeAway
HP (Hewlett Packard)
ICAS (Institute of Chartered Accountants of Scotland)
ICO (Information Commissioner's Office)
Law Society of Scotland
LITRG (Low Incomes Tax Reform Group)
Payments UK
The Law Society
UK Cards Association
Vodafone

7 responses from other businesses

8 responses from animal welfare organisations

Annex B: Draft primary legislation

Data-gathering powers: providers of payment or intermediary services

(1) In Part 2 of Schedule 23 to FA 2011 (data-gathering powers: relevant data-holders), after paragraph 13A insert—

“Electronic payment service providers

13B (1) A person who provides electronic payment services is a relevant data-holder.

(2) In this paragraph “electronic payment services” means services by means of which monetary value is stored electronically for the purpose of payments being made in respect of transactions to which the provider of those services is not a party.

Business intermediaries

13C (1) A person who—
(a) provides services to enable or facilitate transactions between suppliers and their customers or clients, and
(b) receives information about such transactions in the course of doing so,
is a relevant data-holder

(2) In this paragraph “suppliers” means persons supplying goods or services in the course of business.

(3) For the purposes of this paragraph, information about transactions includes information that is capable of indicating the likely quantity or value of transactions.”

(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).

Annex C: Draft secondary legislation and draft explanatory memorandum

STATUTORY INSTRUMENTS

2016 No.

TAXES

The Data-gathering Powers (Relevant Data) (Amendment) Regulations 2016

Made.....
Laid before the House of Commons.....
Coming into force.....

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 1(3) of Schedule 23 to the Finance Act 2011(a):

Citation and commencement

1. These Regulations may be cited as the Data-gathering Powers (Relevant Data) (Amendment) Regulations 2016 and come into force on [1 October 2016].

Amendment of the Data-gathering Powers (Relevant Data) Regulations 2012

2. The Data-gathering Powers (Relevant Data) Regulations 2012(b) are amended as follows.

3. In regulation 11A(1)—

(a) after sub-paragraph 11A(1)(a) insert—

“(aa) the identifying information of a retailer to whom the data-holder has a contractual obligation to make payments and the identifying information associated with a merchant account; and”;

(b) for sub-paragraph 11A(1)(b) substitute—

“(b) information relating to the account into which payments are made by the data-holder to the retailer, including any account reference number and any other unique identifying number and, where necessary for identifying the account, the branch where the account is held.”;

(c) Omit sub-paragraphs 11A(1)(c) to 11A(1)(f).

(a) 2011 c.11; paragraph 13A of Schedule 23 was inserted by section 228 of Finance Act 2013 c.29; paragraphs 13B and 13C of Schedule 23 were inserted by section [] of Finance Act 2016 (c.xx).

(b) S.I. 2012/847, amended by S.I. 2013/1811 and S.I. 2015/672.

4. In regulation 11A(2) insert the following definitions at the appropriate places—

““company registration number” means “registered number” for the purposes of section 1066 of the Companies Act 2006;

“identifying information” in relation to a retailer or associated with a merchant includes—

name, address (including email, website, and any other electronic address), and telephone number;

whether a retailer is an individual, partnership, limited company, or has any other legal status;

any unique or generic identifier allocated by, or used by, the data-holder for the purposes of identifying a retailer or merchant account, or classifying the trade of a retailer or merchant account holder;

national insurance number, unique taxpayer reference, VAT number, company registration number, and any other unique government-issued identifier;

“retailer” has the meaning given by paragraph 13A of Schedule 23;”.

5. After regulation 11A insert—

“Electronic payment service providers

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

(a) in relation to a payment recipient, information relating to transactions, including the currency these transactions were made in;

(b) the identifying information of a payment recipient; and

(c) information relating to the account or system into which payments are credited by the data-holder to, or on behalf of, a payment recipient, including any account reference number or other unique identifying number, and, where necessary for identifying the account, the branch where the account is held.

(2) In this regulation—

“company registration number” means “registered number” for the purposes of section 1066 of the Companies Act 2006;

“electronic payment services” has the meaning given to it by paragraph 13B of 23;

(a) Paragraph 13B of Schedule 23 was inserted by section [] of the Finance Act 2016 (c.xx).

“identifying information of a payment recipient” includes—
name, address (including email, website, and any other electronic address), and telephone number;

whether a payment recipient is an individual, partnership, limited company, or has any other legal status;

unique or generic identifier allocated by, or used by, the data-holder for the purposes of identifying a payment recipient or classifying the trade of a payment recipient;

insurance number, unique taxpayer reference, VAT number, company registration number, or any other unique government-issued number;

“payment recipient” means the recipient of a payment from a transaction for which the data holder provided electronic payment services;

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

Business intermediaries

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

- (a) in relation to a supplier—
 - (i) information relating to transactions that the data-holder enabled or facilitated; and
 - (ii) information that will assist the Commissioners to quantify or otherwise determine the volume or value of transactions of a supplier, whether or not the data-holder processed the payment for that transaction;
- (b) the identifying information of a supplier for whom the data-holder enables or facilitates transactions; and
- (c) information relating to the account or system into which payments are credited by the data-holder to, or on behalf of, a supplier, including any account reference number and other unique identifying number, and, where necessary for identifying the account, the branch where the account is held.

(2) In this regulation—

“company registration number” means “registered number” for the purposes of section 1066 of the Companies Act 2006;

(b) Paragraph 13C of Schedule 23 was inserted by section [] of the Finance Act 2016 (c.xx)

“identifying information of a supplier” includes—

name, address (including email, website, and any other electronic address), and telephone number;
whether a supplier is an individual, partnership, limited company, or has any other legal status;

any unique or generic identifier allocated by, or used by, the data-holder for the purposes of identifying a supplier or classifying the trade of a supplier;

national insurance number, unique taxpayer reference, VAT number, company registration number, and any other unique government-issued identifier;

“supplier” has the meaning given by paragraph 13C of Schedule 23;

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

Name
Name

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Data-gathering Powers (Relevant Data) Regulations 2012 (SI 2012/847) by specifying relevant data which an officer of Her Majesty’s Revenue and Customs (HMRC) may require from two new categories of data-holder introduced into Schedule 23 to the Finance Act 2011 (c.11) by sections [] and [] of Finance Act 2016 (c.xx).

The first category of data-holder are electronic payments service providers, from whom an officer of HMRC may require data relating to the electronic payments they facilitate for payment recipients.

The second category of data-holder are business intermediaries, which are those businesses which enable or facilitate transactions involving the supply of goods or services, and from whom HMRC may require data relating to the suppliers of those goods and services.

The Regulations also amend existing regulation 11A, which specifies relevant data that may be required from merchant acquirers, to align with the new provisions. A Tax Information and Impact Note covering the parts of this instrument which comprise a change in tax policy was published on 9 December 2015 and is available on the HMRC website at 4

<http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

EXPLANATORY MEMORANDUM TO

THE Data-gathering powers (relevant data) (amendment) regulations 2016

2016 No. [xxxx]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HMRC and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations specify relevant data that may be required from two categories of relevant data-holder introduced into Schedule 23 to Finance Act 2011 by sections [x] and [x] of Finance Act 2016.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Schedule 23 to Finance Act 2011 contains HMRC's bulk data-gathering powers. Persons whom HMRC may require relevant data from are called relevant data-holders and are specified in Part 2 of Schedule 23. The kinds of data that HMRC may require from particular data-holders are specified in the Data-gathering Powers (Relevant Data) Regulations 2012.
- 4.2 Sections [] and [] of the Finance Act 2016 introduce two new categories of relevant data-holder to Part 2 of Schedule 23 to the Finance Act 2011 – electronic payment service providers and business intermediaries.
- 4.3 These Regulations amend the Data-gathering Powers (Relevant Data) Regulations 2012 in order to specify relevant data that may be required from these new categories of relevant data-holder.
- 4.4 Additionally, the Regulations amend the relevant data that may be required from merchant acquirers, which are specified as data-holders in paragraph 13A of Schedule 23, in order to align it with the form of the new regulations.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is all of the United Kingdom.
- 5.2 The territorial application of this instrument is all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The policy objective is to provide HMRC with a power to require emerging forms of business - electronic payment service providers and business intermediaries - to provide data that will assist HMRC in tackling the hidden economy.
- 7.2 Electronic payment service providers provide services by means of which monetary value is stored electronically for the purpose of payments being made in respect of transactions to which the provider is not a party. They are used by retailers in order to receive payments for goods and services.
- 7.3 Business intermediaries facilitate and enable transactions between suppliers and their customer or clients. As such, they hold valuable information about the volume and value of suppliers' transactions. HMRC has evidence that many such suppliers currently underpay, or do not pay at all, appropriate tax on the income generated from these transactions, and the data from business intermediaries will assist in risk assessment.
- 7.4 These Regulations specify the relevant data that HMRC can require electronic payment service providers and business intermediaries to provide. In the case of business intermediaries, it is restricted to information about the suppliers of goods and services and associated transactions. In the case of electronic payment service providers, it is restricted to those who receipt payments via these services, who HMRC expects will mostly be persons acting in the course of business.
- 7.5 The kind of information HMRC may require includes information about accounts money has been transferred in to and identifying information about the supplier or payment recipient, including: the account holder's name, address, telephone number, email address, website address, national insurance number, VAT number, unique taxpayer reference, or any other identifying information. HMRC will also be able to require details of any associated bank account and whether the business is an individual, partnership or limited company. .
- 7.6 The data help HMRC tackle the hidden economy by identifying businesses that are receiving income but are not registered for tax, as well as those who are registered but under-declare their income to HMRC.

Consolidation

- 7.7 Not applicable.

8. Consultation outcome

- 8.1 A consultation document was published by HMRC on 22 July 2015 about the proposals to extend Schedule 23 to Finance Act 2011 to electronic payment service providers and business intermediaries. A summary of the responses was published on 9 December 2015.

8.2 Following the consultation draft primary and secondary legislation was published for comment on 9 December 2015 as part of the consultation on the Finance Bill 2016. The consultation will close on 3 February 2016.

9. Guidance

9.1 Relevant guidance will be updated and published.

10. Impact

10.1 There is no impact on charities or voluntary bodies.

10.2 The legislation applies to business intermediaries, including those facilitating online trade, and electronic payment service providers who operate digital wallets.

10.3 These measures are expected to benefit compliant businesses by ensuring a level playing field between those businesses who comply with their tax obligations, and those that do not.

10.4 There will be some impact in respect of additional administrative burdens for business intermediaries and electronic payment providers, as they will be required to provide HMRC with this information and data.

10.5 There will be some impact on HMRC to receive and process the data but there will not be an impact on the wider public sector.

10.6 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses but only if they meet the definitions in the primary legislation. The legislation is more likely apply to large business.

12. Monitoring & review

12.1 This measure will be monitored through compliance activity and communication with bodies required to provide HMRC with bulk data, to ensure the policy operates as intended

13. Contact

13.1 If you have any questions about this instrument please contact Angela Roach at HMRC, telephone: 03000 586962 or email: angela.roach@hmrc.gsi.gov.uk.