



The Information Commissioner's Office (ICO) Response to the HMRC Consultation on Tackling the Hidden Economy: Extension of Data-Gathering Powers to Money Service Businesses ('the Consultation')

The ICO has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) and the Privacy and Electronic Communications Regulations 2003 (PECR). We also deal with complaints under the Re-use of Public Sector Information Regulations 2015 (RPSI) and the INSPIRE Regulations 2009. We are independent from Government and uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The ICO does this by providing guidance to individuals and organisations, solving problems where we can, and taking appropriate action where the law is broken.

The stated aim of this consultation is to invite views on 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, in order to identify traders operating in the hidden economy. We welcome the opportunity to respond to this consultation. We have confined our comments to the potential information rights impact of the proposals under consideration by HMRC rather than answering specific consultation questions.

Extension of data gathering powers

HMRC's bulk data-gathering powers are set out in Schedule 23 to the Finance Act 2011¹. Section 3.8 of the consultation states that "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." The proposed extension of such powers to MSBs would allow HMRC to, as Section 4.2 states, "require data on the identity and transaction record of their [MSBs'] customers."

¹ <http://www.legislation.gov.uk/ukpga/2011/11/schedule/23>

This consultation does not set out the specific data fields that would be shared by MSBs with HMRC. However Section 4.12 states:

*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 (our emphasis).*

The DPA regulates the use of personal data². Based on Section 4.12, it is clear that some of the information that may be provided to HMRC for the purposes of extending data gathering powers to money service businesses will constitute personal data in instances where the customer is an individual, a sole trader or a partnership.

It will therefore be an important data protection obligation for the MSBs under the scope of the proposed legislation to provide their customers with privacy notices. A privacy, or fair processing, notice is an oral or written statement that individuals are provided with by a data controller when information about them is collected. The fair processing notice should state the purpose or purposes for which a data controller intends to process the individual's information and any extra details a data controller needs to give that individual in the circumstances to enable them to process the information fairly.

As MSBs are currently subject to anti-money laundering regulation by HMRC it is likely that they, in their role as data controllers, have already issued their customers with fair processing notices that include reference to providing customer data to HMRC for this purpose. If the proposed reforms in this consultation enter into force, MSBs will be obliged under the DPA to ensure that their fair processing notices are updated to explicitly state:

- that customers' data will be passed to HMRC;
- the new purpose for which this will be done; and
- the data fields which will be passed to HMRC.

It would be helpful, in order to ensure a consistent approach to these data protection obligations, if HMRC were to remind the MSBs falling under the scope of the proposals in this consultation to communicate these updated

²Personal data is defined in section 1 (1) of the DPA as follows: "Personal data means data which relate to a living individual who can be identified –
(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."

privacy notices to their customer base at the outset of the new data gathering powers coming into force. HMRC may also wish to direct the MSBs to the ICO's written guidance on privacy notices³ which we recommend all organisations follow when drafting and communicating privacy notices.

Section 4.12 further states that "The specific data fields would be set out in regulations, subject to further consultation." As the ICO has a relevant interest where personal data is being processed, we would appreciate being kept up-to-date by HMRC on the specific data fields that may be added, further to those outlined in this consultation.

Safeguards

We note that Sections 2.6-2.8 of the consultation discuss safeguards to ensure data security, for example through the adoption of Secure Electronic Transfer to handle electronic data exchanges. It is helpful to see that HMRC have given consideration to how data security can be embedded into these proposals and how the risk of misuse or loss of the information can be minimised. As some of the information being transferred by MSBs to HMRC will be personal data, Principle 7⁴ of the DPA should be a relevant consideration for both HMRC and MSBs covered by these proposals. Principle 7 does not prescribe specific safeguards or technical measures, but does charge data controllers with a responsibility to consider the nature of the data being processed and the harm that may result from misuse or loss when considering security measures and risk mitigants. These considerations may have already been adequately covered by HMRC's consideration of data security, but it is worth being aware of the obligations under Principle 7 and that these would apply to both HMRC and MSBs as data controllers.

We are pleased that Section 4.11 of the consultation states that "The aim of the proposal is to discover the aggregate activity of MSB customers" rather than collect data relating to individual transactions. The minimisation of the collection of personal data of individual consumers is an important privacy protection principle in financial transactions.

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³ <https://ico.org.uk/for-organisations/guide-to-data-protection/privacy-notices-transparency-and-control/>

⁴ Principle 7: "Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data."