

EXPLANATORY MEMORANDUM TO
THE DELIVERY OF TAX INFORMATION THROUGH SOFTWARE (ANCILLARY METADATA) REGULATIONS 2019

2019 No. 360

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument imposes a requirement on software suppliers who offer products which are used to deliver tax-related information to HMRC electronically. The requirement is to ensure that their software products operate so that any delivery of tax-related information is accompanied by the delivery of metadata, for example the identity of the device or server being used to interact with HMRC. This metadata is used for fraud prevention and to protect customer data. The instrument will ensure that HMRC continues to collect the same data as it does now for all customers. The instrument gives the Commissioners for HMRC (the Commissioners) the power to specify, by direction, the relevant metadata. The instrument makes provision for a penalty for non-compliance with the requirement.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The instrument relies on Section 135(4)(a) of the Finance Act 2002 to give the Commissioners power to specify certain requirements by direction. In particular, it allows them to give directions (a) specifying the relevant metadata and (b) making provision as to the manner in which this metadata is to be collected and the electronic form in which it is to be delivered to HMRC. See also 6.3 below.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Ancillary metadata used for the purposes of detecting fraud against the Exchequer is collected currently when taxpayers deliver tax information to HMRC by electronic means. This instrument establishes a legal obligation on software suppliers whose products are used to deliver tax information to HMRC. The obligation is to ensure that their products will collect and deliver to HMRC the relevant metadata.
- 6.2 Section 135 of the Finance Act 2002 gives the Commissioners of HMRC power to make regulations about the use of electronic communications for the delivery of tax-related information. In particular, the section permits regulations to impose conditions that must be complied with in connection with the use of electronic communications and also to require the use of intermediaries.
- 6.3 Section 135 also gives the Commissioners power to impose any requirement under regulations to be imposed by direction. The present instrument gives the Commissioners power to specify, by direction, the set of metadata which they consider necessary to receive alongside deliveries of tax-related information, in order to ensure the authenticity and security of such deliveries. It also gives them power to give directions concerning the technical details of how the metadata is collected, such as the required standard of accuracy, and the electronic form in which it is to be delivered to HMRC. It was considered preferable to have this detail specified by direction, rather than in the instrument itself, because of the technical nature of the specification and to allow greater flexibility in updating the set of relevant metadata. When a direction is made, it will be available on the gov.uk website with a hard copy available on request from Her Majesty's Revenue and Customs, 100 Parliament Street, London SW1A 2BQ.

7. Policy background

What is being done and why?

- 7.1 Customers who send tax-related information electronically to HMRC currently already provide certain ancillary information, commonly known as transaction monitoring metadata. For example, when a customer files a Value Added Tax (VAT) return online using HMRC's online service, HMRC collects this metadata at the same time as the return is submitted, in line with HMRC's published privacy notice (<https://www.gov.uk/government/publications/data-protection-act-dpa-information-hm-revenue-and-customs-hold-about-you/data-protection-act-dpa-information-hm-revenue-and-customs-hold-about-you>).
- 7.2 This metadata helps identify who is using HMRC services, the electronic device or server being used to interact with HMRC services, and the part of the world from which those services are being accessed.
- 7.3 HMRC uses transaction monitoring metadata for the detection and prevention of organised fraud and the protection of revenue due to the Exchequer. It has no bearing on the calculation and assessment of any tax. By using the metadata to establish normal online behavioural patterns, HMRC can detect if a customer's account might have been hacked, their data security might have been compromised, or there might be a risk of financial theft. HMRC can then take action to protect the customer and protect against financial loss.

- 7.4 Transaction monitoring metadata is used across many different sectors, not just by governments. For example, banks and other entities in the financial services sector makes use of the metadata they receive in order to implement safety measures to prevent deception and protect customer data before it is threatened. This is even more important now as more and more people are using modern digital technology in their daily lives.
- 7.5 Many taxpayers now choose to use commercially available tax software to submit their tax returns and provide other tax-related information. With effect from 1 April 2019, VAT registered businesses with taxable turnover above the VAT registration threshold will be required to keep their business records digitally and file their VAT returns using software. Many more taxpayers will therefore start using such third party products.
- 7.6 This instrument will place obligations on software suppliers from the coming into force date of this instrument to ensure the relevant set of metadata is collected by software and provided to HMRC every time a customer uses the software to deliver tax-related information to HMRC. This will protect the interests of customers and Government, provide a clear legal basis to provide the data HMRC needs, and ensure a consistency of approach across the software market.
- 7.7 As with any legal obligation, the instrument provides for a sanction in case of non-compliance. Section 135 of the Finance Act 2002 already enables regulations under that section to provide for a penalty for any failure to comply with the regulations of a specified amount not exceeding £3,000. The regulations provide for the maximum amount to be imposed, limited to one penalty per year in relation to any one product of a supplier, however HMRC will have discretion over when to assess the penalty. In practice, HMRC will work with a supplier to rectify any non-compliance before seeking to impose a penalty. Any penalty is also subject to the normal rights and safeguards that apply to other penalty provisions contained in tax law, including a right of appeal.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There are no plans to consolidate associated with this instrument. These regulations stand alone.

10. Consultation outcome

- 10.1 HMRC has engaged with a variety of software suppliers about the requirement to collect metadata and provide it to HMRC. Those suppliers who responded said they were satisfied that the data required by HMRC is proportionate and that this instrument will ensure consistency of approach to the collection of such data across the marketplace for software products.

11. Guidance

- 11.1 Transaction monitoring features as a key part of Fraud Prevention strand in the HMRC Developer Hub (see <https://developer.service.hmrc.gov.uk/api-documentation/docs/using-the-hub>). Guidance has been provided to software

suppliers on the ancillary information that HMRC needs to collect (see <https://developer.service.hmrc.gov.uk/api-documentation/docs/fraud-prevention>).

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.
- 12.4 The use of monitoring as a method of protecting secure communications is commonplace and a well-recognised preventative security measure, and indeed already happens now when a customer files a tax return online using HMRC's online service. Consequently, this data is available to software suppliers through use of commercial software products by HMRC's customers. This instrument will therefore ensure consistency of approach to the collection of such data across the market. This instrument has no direct impact on other businesses, or on charities and voluntary bodies, but will ensure information about the source of their communications with HMRC is sent to HMRC alongside the tax information they send or receive. In fact, the approach taken ensures there is no need for businesses to share transaction monitoring information with HMRC separately, thereby preventing additional burden.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses only where these are software suppliers.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take is as follows. HMRC considers that it is important that all software suppliers are treated the same in respect of the obligations set out in these regulations, in order to ensure a free and fair market. HMRC has consulted with all software suppliers (including those which are small businesses) about the importance of capturing and collecting transaction monitoring data and the requirements form part of the Terms of Use concerning the creation and operation of software services that make use of the Application Programming Interface library hosted on the HMRC Developer Hub (see <https://developer.service.hmrc.gov.uk/api-documentation/docs/terms-of-use>).

14. Monitoring & review

- 14.1 This instrument will be monitored through continuous review and communication with those software suppliers who are subject to the obligation, to ensure that the policy is operates as intended. HMRC may vary the scope based on feedback from suppliers and on any identified criminal attacks which may harm taxpayers.
- 14.2 The instrument does not include a statutory review clause because the duty to include such a clause under section 28 of the Small Business, Enterprise and Employment Act 2015 does not apply to instruments which make provision in connection with tax.

15. Contact

- 15.1 Kamran Quadri at HM Revenue and Customs, Telephone: 03000 524463 or email: kamran.quadri@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Anna Thomas, Deputy Director, Strategic Policy & Design, in the Making Tax Digital Programme at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mel Stride, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.