



HM Revenue  
& Customs

# Sharing and publishing export data for public benefit

## **Consultation document**

Publication date: 25 June 2014

Closing date for comments: 19 September 2014

<b>Subject of this consultation:</b>	Proposals for export data sharing and publication by HM Revenue & Customs (HMRC) to deliver wider public benefits.
<b>Scope of this consultation:</b>	HMRC invites views on the potential benefits, risks and safeguards needed in connection with the proposal to publish specific data items relating to exports on the HMRC uktradeinfo.com website. Views are welcome on the principles underlying the proposal, the approach to implementation and legislative intention.
<b>Who should read this:</b>	We are very keen to hear views from those with an interest in public data, trade and professional bodies and businesses, especially exporters whose information is at the heart of the proposal.
<b>Duration:</b>	The consultation period runs from 25 June 2014 to 19 September 2014.
<b>Lead official:</b>	Bruce Stewart, HM Revenue and Customs
<b>How to respond or enquire about this consultation:</b>	Please email <a href="mailto:international.documents@hmrc.gsi.gov.uk">international.documents@hmrc.gsi.gov.uk</a>  Alternatively, you can sent a written response to:  Export data sharing consultation HM Revenue and Customs Customs Directorate 10 <sup>th</sup> Floor West Alexander House 21 Victoria Avenue Southend on Sea SS99 1AA
<b>Additional ways to be involved:</b>	HMRC will be consulting key stakeholders about these proposals, including trade members of the Joint Customs Consultative Committee. If you would like to be included in a consultative meeting/discussion, please let us know via the email address above.
<b>After the consultation:</b>	The Government will publish a response as soon as possible after the end of the consultation period. This will include a summary of the responses received.
<b>Getting to this stage:</b>	The Government published its response to the Shakespeare Review of Public Sector Information on 14 June 2013 and this consultation is a key part of HMRC's commitment to this.
<b>Previous engagement:</b>	This is the first consultation on this proposal.

# Contents

	Ministerial foreword	4
1	Introduction – Using HMRC export data to deliver wider benefits	6
2	Publication of exporter data	8
3	Consultation questions	11
4	The consultation process	12
Annex A	Lawful disclosure	14

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# Ministerial foreword

The data held by the public sector is among the most useful and valuable anywhere. This is why the UK Government is at the forefront in making a step change in the availability of data held by the public sector, with the potential to deliver significant public benefits.

In 2013, the Government took two significant steps towards realising these benefits. First, the Government published its response to the Shakespeare Review of Public Sector Information, setting out a framework for pursuing this agenda in the public sector. Secondly, the UK helped secure the G8's Open Data Charter, which presumes that the data held by Governments will be publicly available unless there is good reason to withhold it.

It is important that HMRC plays a full part. HMRC's relationship with businesses and individuals is unique, and this is reflected in the scope and depth of the information HMRC collects, creates and protects on behalf of taxpayers. This includes a wealth of immensely valuable information that HMRC holds in respect of imports and exports.

HMRC operates under a strict legislative framework that limits data sharing. This provides all of us with the assurance that our information will be protected, essential to the effective operation of the tax system and taxpayers relationships with HMRC.

However, some of the customs data that HMRC holds has the potential to be used in ways which could generate real public benefits if made more widely available, without compromising the core principle of taxpayer confidentiality. In particular, the ability for HMRC to share and publish certain export data would enable HMRC to more effectively support and contribute to public and private sector initiatives to help UK exporters compete and prosper in the global market place.

This consultation proposes the release by HMRC of a limited set of exporter data alongside similar data that HMRC already makes available in respect of importers. Release of some exporter data would provide a number of potential benefits such as:

- greater visibility of UK exporters to new customers in the global market place;
- assisting developers to create exporter registers and online shop fronts to advertise and showcase UK exporters and their products;
- enabling those who provide export services to more easily identify their customers;
- helping importers to locate alternative UK suppliers.

There are likely to be further positive uses which emerge only once the data is available.

It is paramount that any data release has appropriate safeguards, essential to maintaining taxpayer confidence and protecting HMRC's reputation. The proposal introduced in this consultation does not intend release of taxpayer financial or tax payment data.

This consultation explores important issues of how publicly-held export data could be used to realise wider public benefits. I welcome it and would encourage all interested parties to participate.

David Gauke MP

Exchequer Secretary to the Treasury

# 1. Introduction – Using HMRC export data to deliver wider benefits

## Overview

The nature and extent of HMRC's relationships with businesses and individuals are unique and this is reflected in the scope and depth of the information HMRC collects and creates. The data sets that HMRC holds are among the largest and richest held by government and include key international trade data on imports and exports.

The Government wishes to explore whether and how the use of information could be optimised to achieve benefits beyond HMRC's specific business requirements. HMRC is keen to identify and develop opportunities to support the Government's Open Data policy<sup>1</sup> and work more effectively with other public sector bodies and business to improve transparency and promote economic growth, for example through utilising and sharing information about exports that could make a positive contribution to supporting public and private sector efforts to boost exports by helping exporters to compete and prosper in the global market place.

The G8 Open Data Charter<sup>2</sup> sets out principles on the use of open data, the first of which is 'open data by default'. This presumes that data will be released unless there are strong reasons not to do so, for example legal, commercial or security concerns. The fifth principle, 'releasing data for innovation', recognises that the greatest social and economic value can be unlocked by opening data to the widest range of people and organisations. This can only be achieved by improving the access to, and use of, data.

The Shakespeare Review<sup>3</sup> identifies the need for people to feel confident that the benefits of open data can be achieved while safeguarding privacy. This means ensuring that data is made as useful as possible but not misused. This balance is core to our approach.

This consultation seeks feedback on a proposal to release a limited data set relating to exporters and the products they export that could make a real difference in HMRC's ability to contribute to wider public goals, while safeguarding the core principle of taxpayer confidentiality.

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<sup>1</sup> Open data white paper: Unleashing the Potential – Improving the transparency and accountability of government and its services.

[Open Data White Paper: Unleashing the Potential - Publications - Inside Government - GOV.UK](#)

<sup>2</sup> G8 Open Data Charter – [Open Data Charter - Publications - Inside Government - GOV.UK](#)

<sup>3</sup> In May 2012 the Government invited Stephan Shakespeare, Chair of the Data Strategy Board, to conduct an [independent review of public sector information](#) and to explore new ways to use information held by the public sector.

## Current position

HMRC was created by the Commissioners for Revenue and Customs Act 2005 (CRCA). This legislation provides strong protection for the information that HMRC holds. HMRC officials are prohibited from sharing information except in the limited circumstances set out in legislation (see Annex A for a summary of the main exceptions).

The prohibition on sharing applies to all of HMRC's information, including import and export data. It covers non-identifying (aggregate or anonymised) information as well as information on identifiable individuals or legal entities. This is the case even where the same information is already in the public domain.

Maintaining confidence in the core principle of 'taxpayer confidentiality' and the related safeguards is essential to the effective operation of the tax system and HMRC's relationship with taxpayers because it supports compliance and willing cooperation. This consultation does not seek to disturb that core principle. However, the existing legislation arguably goes further than necessary by extending strong protection to non-identifying information, and to information such as name and address which is often widely available from other sources.

Within the framework of its existing legislation, HMRC already makes a lot of useful data available for broader use. HMRC is fully and actively committed to the open data principle. We already make a great deal of information on imports and exports available where existing legislation permits us to do so. A significant amount of that data is currently published in aggregated and anonymised form on the HMRC website, [www.uktradeinfo.com](http://www.uktradeinfo.com).

In addition to this, a specific data set in respect of importers and the products that they import is also published on [www.uktradeinfo.com](http://www.uktradeinfo.com), under powers conferred by the Finance Act 1988 (see Annex A for summary of this gateway). This information has been made publicly available for over 25 years and we are not aware of any concerns about its release.

There is currently no legal basis to permit equivalent information in respect of identifiable exporters and their products to be published. The Government wishes to seek feedback on the benefits of publishing exporter information, on a level footing with that currently published in respect of importers, in advance of implementing regulations being made.

## Purpose of consultation

The existing legal framework for HMRC starts from the position that information HMRC holds, including data on exports, should not be shared with third parties except in specified circumstances set out in legislation.

HMRC currently shares and publishes a lot of useful information but the blanket nature of the prohibition on disclosing its information has prevented the department from fully and promptly contributing to initiatives to increase transparency and data sharing. This

has been highlighted as a current constraint to delivering better services and support to exporters because HMRC does not currently have the legal basis to share and publish the appropriate information it holds. While certain export data could be classed as identifying information, some of it could potentially be shared more widely without causing material harm and with public benefits as a result, especially given the fact that much of the data is already available from other sources.

Chapter 2 sets out a proposal for release of a limited set of exporter data. The proposal contributes to the delivery of HMRC's Open Data Strategy<sup>4</sup>, which sets out a strong commitment on transparency and the exploration of new opportunities to optimise the use of HMRC information. The key issue is how to maximise benefits while safeguarding confidentiality and security.

Legislation would be required to enable HMRC to implement the proposal. The 2014 Small Business, Enterprise and Employment Bill, includes draft clauses that would provide the Commissioner's for Revenue and Customs with the power to make secondary legislation to allow the disclosure of specified export data. This full 12 week consultation is being undertaken in advance of making any implementing regulations. The Government will carefully consider all responses before making an announcement on taking this forward.

## 2. Publication of exporter data

### Why consider release of exporter data?

The proposal in this chapter deals with the release of very limited amount of data that would identify a group of international trade businesses - exporters. There is no intention to disclose any financial or tax payment data.

An underlying principle in developing the proposal in this chapter is brought out in the Shakespeare Review<sup>5</sup>. Data belongs to citizens and the presumption of Government should be towards openness, unless this causes harm. It should not be for Government to dictate the nature of the opportunity. The corollary is that the Government will not always be aware of the range or scale of potential benefits.

The Shakespeare Review (page 7) states that, "The benefits will be many including: transparency, accountability, improved efficiency, increased data quality, creation of social value, increased participation, increased economic value, improved communication, open innovation, and data linkage". This consultation will help to establish these.

There is increasing interest from within the public and private sectors in release of exporter data as a key information source to generate benefits and provide better targeted and appropriate services to exporting businesses. Some of this information is

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<sup>4</sup> HMRC Open Data Strategy - [HMRC Open Data Strategy | data.gov.uk](https://www.gov.uk/government/publications/hmrc-open-data-strategy)

<sup>5</sup> Shakespeare Review – an Independent Review of Public Sector Information', May 2013  
<https://www.gov.uk/government/publications/shakespeare-review-of-public-sector-information>

already deliberately placed in the public domain by businesses, for example, in business directories and advertising on the internet and elsewhere, and on commercial stationery and invoices. However, the data is not always readily accessible or systematically available as a full set and may not always be managed and kept up to date. HMRC exporter data would be a comprehensive source of up to date and accurate information.

## What are the potential benefits of release?

Publication of a specific limited exporter data set could provide a number of benefits:

- Enable public and private sector organisations that provide services aimed at businesses that export to more easily identify exporters and provide better targeted and appropriate support and advice;
- Assist private sector developers to create innovative exporter registers and online shop fronts to advertise and showcase UK exporters and their products;
- Increase the visibility of UK exporters, particularly small and medium size businesses, in the global market place and make it easier for foreign buyers to identify UK suppliers of goods they want to buy;
- Help businesses find UK suppliers for goods they currently import.

These are some of the possible benefits that have been identified so far and there are likely to be others yet to be identified. The Shakespeare Review highlighted that the disclosure of information can quite often generate benefits in ways not initially foreseen.

## Proposal for public release of exporter data

There is currently no legal basis to permit HMRC to release exporter data. While the 2014 Small Business, Enterprise and Employment Bill would provide the legislative enabling base, secondary legislation would be needed to implement release. HMRC is therefore consulting before any implementing regulations are made.

### Option 1: Core proposal for public release of certain export data

The core proposal for public release of exporter data by HMRC is a very selective extract that consists of the following data items:

- Exporters identity (company name);
- Exporters address;
- Description of the goods;
- Commodity Code applicable to the goods (from Volume 2 of the Tariff);
- Month/year of export.

The intention would be for this exporter data to be published digitally on [www.uktradeinfo.com](http://www.uktradeinfo.com) and it would be updated regularly.

The exporter data would sit alongside and complement similar data that is currently published by HMRC on [www.uktradeinfo.com](http://www.uktradeinfo.com) in respect of importers, under powers contained in the Finance Act 1988 (see annex A for a summary of this gateway).

Importer information has been made available for 25 years without issue and HMRC is often asked if similar information about exporters can be released. Informal soundings have not identified any major concerns, but we are mindful that the exporter population is large and there are many views that we have not yet heard.

It is possible that the specific data proposed for release is at the lower end of the sensitivity scale because most of the information can already be found in the public domain. Many businesses already take steps to actively publicise themselves, their products and contact details through advertising, directory listings and internet presence. Invoices and other commercial documentation will also include some of this information.

The greater the number of data items to be released the greater the potential impact on privacy and commercial interests. Restricting publication to a core of potentially less contentious but still valuable information would provide a comprehensive and accurate data set of exporters and the products they export. It would provide a credible minimum data release that would serve as a sound foundation for wider use and could contribute to the realisation of a range of benefits without compromising privacy or commercial confidentiality interests.

## Risks and safeguards

Any risks arising from publication of exporter information need to be identified and appropriately managed. It is important to ensure that publication of exporter data does not increase the potential for fraud against HMRC or for fraud against exporters, for example by impersonation or identity theft.

Publication of the core proposal exporter data would provide an additional source of identifying data (exporter identity and address) which are used in these types of fraud. However, this data is already widely available through other sources and the risk through HMRC publication is probably low.

Some businesses, particularly smaller ones that do not have a current public presence, for example where they have no website or directory listing, would become more visible to potential fraudsters. However, it is unlikely that publication of the proposed data would necessarily make fraud easier or increase its incidence. It would not add to the availability of private information required to perpetrate a successful fraud which is determined more by other factors than simple availability of trader name and address.

If HMRC were given the power to disclose specific exporter information, this would remain subject to the same robust principles and processes currently applied to HMRC information:

- release of information would need to be proportionate and relevant, and not infringe on any individual's right to privacy;

- legislation would be ‘permissive’, meaning that HMRC would be able, but not obliged, to share information in each instance;
- criminal sanction would remain a strong deterrent and safeguard against unlawful disclosure of identifying information.

In addition, HMRC would continue to ensure that in taking disclosure decisions, appropriate consideration was given to the impact on HMRC’s resources and the delivery of its core business objectives alongside the total package of benefits.

## Option 2: Exceptions to or opting out of the core proposal

The legislation to implement the core proposal could provide for exceptions from publication. Relevant categories of businesses could be identified or an opt-out facility could be made available for those businesses that did not want their details to be part of a public disclosure. An opt-out could be presented as a simple free choice option or alternatively could be allowed where the business wishing to opt out met specific criteria, such as being able to demonstrate a risk of harm or damage that could potentially arise from being identified.

Providing an opt-out option or exceptions to publication might be considered to provide greater scope to protect privacy. However, this is already significantly protected by setting the core proposal on the data elements to be released at the minimum end of the range.

Importantly, any exception or opt-out would potentially reduce the value of the data set published and users would not be able to rely on it being comprehensive. It is hard to estimate the likely loss of value in these circumstances. It would depend in part on the number of exporters that were excluded from the publication. This is likely to be the greatest in the case of a free choice opt-out.

A significant factor in allowing exceptions or opt-outs from publication would be the substantial increase in administrative costs for managing such arrangements and ensuring that only the correct and appropriate selection of data was published. The greater the number of exceptions or opt-outs that have to be managed, there is a higher risk of processing errors and inappropriate disclosure.

## 3. Consultation questions

**Q1 What potential uses and benefits do you think would arise from publishing the proposed set of export data items?**

**Q2 Do you think that the safeguards proposed are sufficient to mitigate any risks arising from publication?**

**Q3 What, if any, additional impacts and risks do you think may arise and what further safeguards should be considered?**

**Q4 Do you agree with the core proposal (Option 1) to publish exporters name and address, the commodity code and description of the goods they export and month/year of export? Please give reasons for your answer.**

**Q5 What are your views on the proposal (option 2) to allow exceptions or opt-outs to publication?**

## 4. The consultation process

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

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 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. The draft legislation to permit release of specific exporter data are expected to be similar to the provisions that are in place in the Finance Act 1988 to permit release of similar importer details (see annex A for a summary of this gateway).

### How to respond

The questions in this consultation are listed at chapter 3.

Responses should be sent by 19 September 2014, by e-mail to [international.documents@hmrc.gsi.gov.uk](mailto:international.documents@hmrc.gsi.gov.uk) or by post to:

Export data sharing consultation  
HM Revenue and Customs  
Customs Directorate  
10<sup>th</sup> Floor West  
Alexander House  
21 Victoria Avenue  
Southend on Sea  
SS99 1AA

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

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

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

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

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

## Consultation Principles

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

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

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

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

Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

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

## Annex A: Lawful disclosure

HMRC's commitment to confidentiality encourages trust and openness, promotes voluntary compliance and allows revenue to be collected efficiently. HMRC has a statutory duty of confidentiality, set out in the Commissioners for Revenue and Customs Act 2005, and the department has given assurances to Parliament that it will disclose information only in "controlled, limited circumstances".

Confidentiality is essential to the effective operation of the tax system. It promotes voluntary compliance and encourages openness because HMRC's customers have confidence that the sensitive information they give to the department will be protected.

HMRC officials are prohibited from disclosing any information held by HMRC in connection with its functions except in the prescribed circumstances ('gateways') set out in CRCA; these include:

- where there is an enactment permitting disclosure;
- with the consent of the subject(s) of the information; or
- where the disclosure is made for the purpose of an HMRC function.

It is a criminal offence to disclose unlawfully information relating to an identifiable person; 'person' includes individuals, companies, charities and members' clubs and is not confined to HMRC's customers.

Even where CRCA allows lawful disclosure, HMRC also needs to meet the requirements of the Human Rights Act 1998 (HRA) and the Data Protection Act 1998 (DPA) so should only disclose information that is relevant, necessary and proportionate to what the disclosure is intended to achieve.

### Finance Act 1988 Section 8

This Finance Act 1988 (the Act) sets provides a legal gateway permitting HMRC to disclose information about imports and importers. On this basis HMRC already published importer information consisting of:

- company name and address
- commodity code
- description of the goods
- month of import

#### 8 Disclosure of information as to imports

- (1) The Commissioners may, for the purposes of supplementing the information as to imported goods which may be made available to persons other than the Commissioners, disclose information to which this section applies to such persons as they think fit.

- (2) Such information may be so disclosed on such terms and conditions (including terms and conditions as to the payment of fees or charges to the Commissioners and the making of the information available to other persons) as the Commissioners think fit.
- (3) This sections applies to information consisting of the names and addresses of persons declared as consignees in entries of imported goods, arranged by reference to such classifications of imported goods at the Commissioners think fit.
- (4) This sections shall be construed as if it were contained within the Customs and Excise Management Act 1979.

## Information gateways

The prohibition on disclosure does not apply where the exceptions ('gateways') set out in CRCA apply. The main gateways are:

- where there is UK or EU legislation that permits disclosure ('legislative gateway');
- where the disclosure is made for the purpose of an HMRC function ('functions gateway'); or
- with the consent of the subject(s) of the information.

## Legislative gateways

HMRC shares information through legislative gateways with a range of public bodies including other government departments, agencies, the Devolved Administrations, Local Authorities and tax authorities in other countries.

The terms of each information gateway are specific as to the type of information that can be disclosed and the purposes to which it can be put.

## Functions gateway

The prohibition on disclosure does not apply to a disclosure that:

- is made for the purposes of a function of HMRC; and
- does not contravene any restriction imposed by the Commissioners for HM Revenue and Customs.

At present, no restriction has been imposed by the Commissioners.

## Consent

HMRC will only use the consent gateway if the following are evidenced:

- there is a positive indication of the wishes of the data subject;
- the consent is freely given; and

- the consent is fully informed and specific.

### **Data Protection and Human Rights Acts**

HMRC is subject to the Data Protection Act 1998 (DPA) and the Human Rights Act 1998 (HRA). Any disclosure of data must be in accordance with those principles, including the level of disclosure being 'proportionate' to the ends which the release is intended to achieve

### **CRCA and the Freedom of Information Act (FOIA)**

A disclosure by HMRC in compliance with FOIA is a lawful disclosure under CRCA, but information relating to identifiable individuals or legal entities is exempt from disclosure under FOIA.