

The Information Commissioner's response to the HM Revenue and Customs' consultation 'Digital by Default'

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 and the Freedom of Information Act 2000. He is independent from government and promotes access to official information and the protection of personal information. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to respond to this HMRC consultation document. In this response we shall focus on issues that have data protection and privacy implications.

We note that this consultation focuses delivering an online service for the tax arrangements of small and medium enterprises. It follows therefore that some enterprises covered by these proposals will be sole traders and also self employed individuals.

That being the case, it is important to recognise that the information sought by HMRC

relating to these enterprises will comprise the personal data of those individuals concerned and therefore covered by the Data Protection Act. Any arrangements proposed by this initiative therefore should accord with the requirements of all the data protection principles. Those principles state that:

- Personal data should be processed fairly and lawfully
- Personal data should be obtained only for one or more specified and lawful purposes
- Personal data shall be adequate, relevant and not excessive in relation to the purpose for which they are processed
- Personal data shall be accurate and where necessary, kept up to date
- Personal data processed for any purpose shall not be kept for longer than is necessary for that purpose
- Personal data shall be processed in accordance with the rights of data subjects under the DPA
- Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to, personal data
- Personal data shall not be transferred to a country or territory outside the EEA unless that country or territory ensures an adequate level of protection in relation to the processing of personal data.

The Information Commissioner recognises HMRC's wish to promote an on line service by extending the 'One Click' programme to enable businesses to use a single online facility to register for multiple taxes and services.

In promoting the initiative however, it is important that HMRC establishes a clear legal basis for the arrangements it plans to introduce, making clear what is optional and what is not. To clarify this point, HMRC should ensure that in the absence of a statutory requirement, any processing of personal data that is founded on a consensual basis should be on the basis of specific, freely given consent. In order to facilitate this it will be necessary for HMRC to provide a real choice of service delivery mechanisms which allow switching by individuals.

As with any online service, it will be necessary for HMRC to ensure that identities for online transactions are properly attributed and securely issued. Arrangements should seek to minimise the amount of personally identifiable data collected and retained. We would expect that HMRC will wish to establish appropriately high levels of security and related mechanisms to ensure that individuals are protected from any possible security breach. Additionally systems supporting this initiative should facilitate access to an individual's own personal data.

Finally, it will be important that the arrangements for this initiative take advantage of the more effective and privacy friendly identity management techniques currently being developed, including the Government's own Identity Assurance (IDA) programme.

October 2011