



Department  
for Business  
Innovation & Skills



**CabinetOffice**  
Behavioural Insights Team

mi**i**data

Government response to 2012 consultation

# *mi*data

#*opendata*

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# Contents Foreword and executive summary

## Introduction

1. In the midata consultation document<sup>1</sup> the Government set out its strong support for the benefits of giving consumers access to data which businesses collect about their transactions and consumption in an electronic, machine-readable form. The consultation asked for views on proposals to provide midata with a statutory underpinning. There was a good response to the consultation: around 400 written responses were received and about 60 people attended five open forum events.
2. There is a growing body of evidence that personal data is becoming an increasingly important asset to businesses. It will form an ever more vital part of the way goods and services are provided in the 21<sup>st</sup> century. The Government believes that the UK could benefit significantly from embracing and taking advantage of this trend.
3. Under current law individuals have the right to access the information held on them by businesses, though not necessarily in a format most useful to them. The Government believes that in the digital age consumers, as well as businesses, should be able to benefit from their data. For this to happen consumers must be able to access their data. A balance needs to be struck between the rights of individuals, the costs to businesses and wider benefits to the economy. At the same time this balance needs to reflect the digital age and the increasing amount of data that is now available.
4. It is the Government's view that where businesses choose to collect information about an individual consumer's transaction history and keeps data linked to the individual, those consumers should also be able to access their own transaction data in a useful format.
5. Giving people access to data about their own activities and behaviour in a useful format could make a real difference to people's lives. Services which analyse and make sense of this personal data will help people to manage

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<sup>1</sup> The midata review and consultation was published on 25 July and the consultation closed on 10 September 2012. A copy of the consultation is available at:  
[www.bis.gov.uk/assets/biscore/consumer-issues/docs/m/12-943-midata-2012-review-and-consultation.pdf](http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/m/12-943-midata-2012-review-and-consultation.pdf)

their spending much more effectively, putting them in a stronger position to deal with the cost of living in difficult economic times. Looking beyond saving money, services using personal data, and combining this with data from different sources, have the potential to provide people with rich new insights and to help them manage their lives in ever more sophisticated ways.

6. The Government believes that midata can help build the foundation of a competitive digital economy which will build trust among consumers, promote competition between firms and create an opportunity for innovation - to create benefits for consumers and create value for the economy.

## Consultation responses

7. The consultation demonstrated widespread support for the aims of the midata programme, although there was less agreement that regulating in this area has become necessary. There is support among individuals, consumer groups and some businesses for the proposal to underpin the midata work with legislation. There were some reservations about the proposals: some large businesses, which collect data and would therefore be subject to the proposed duty, are concerned about the potential costs of implementation. Some businesses also expressed concern about the benefit which might accrue to their competitors (who do not collect the same amount of data) if customers were given easier access to data about their transactions.
8. Privacy concerns were frequently raised in the consultation responses. A key part of the existing voluntary programme has been to identify ways to ensure appropriate security and privacy of the data. This work will be completed as a priority as part of the ongoing voluntary programme and appropriate safeguards will be in place before any regulations are introduced.
9. The consultation asked for views on the appropriate enforcement mechanism for midata. Many respondents saw parallels with the principles of Data Protection and suggested the Information Commissioner should be lead enforcer. The Government agrees that there is a good fit with the Information Commissioner's current role and therefore proposes to give the Information Commissioner's Office the lead role in enforcing any duties that are introduced. We are also considering granting concurrent enforcement powers to other regulators. It may be appropriate for them to lead enforcement cases in their specialist area, perhaps where there is evidence of a wider sector specific issue. The Government has not decided whether to grant other regulators concurrent enforcement powers; this will form part of any subsequent consultation(s) before introducing regulations.

10. Many of the consultation responses expressed strong views that better understanding is needed of the likely costs to business of the proposed duty. Many of the respondents with these views suggested that regulations should only be applied in particular sectors or when the voluntary approach has been given more chance to succeed.
11. The Government has decided to include flexibility in the power to give micro-businesses the right to access their data in the same way as individual consumers. The decision on whether to include them in any regulations will be taken following further consultation and assessment of the costs.

## Government response to the consultation

12. The Government agrees that the voluntary approach has many potential benefits and intends to continue this work. Over the past 18 months the voluntary programme has concentrated on the energy , finance and telecoms sectors. We will now start to broaden the sectors engaged in the current voluntary programme.
13. A number of consultation responses questioned what data was considered 'transaction data'. As set out in the consultation document the Government defines 'transaction data' as data about a consumer's purchase/ consumption of products and services from a supplier. The data is only factual information, for example what a consumer bought, where they bought it, how much they paid for it. This definition does not include any subsequent analysis that the data holder has undertaken on the information, for example, analysis to help segment consumers by purchasing behaviour. Any regulations would only apply to businesses that already hold this information electronically in a way which easily links the data to an individual consumer and it will only have to be released if requested by consumers. Businesses would not be required to collect any new information. More details about the type of data that would fall under any regulations are given in the section below titled "Format and categories of data covered".
14. The Government still believes that the widespread availability and use of personal transactional data in electronic, machine readable form will bring significant consumer benefits. However, reflecting on the consultation responses, the Government's intention is to focus the power on markets with certain features leading to clear consumer detriment.
15. The Government has also decided to proceed with its plan to legislate for a power to impose a duty on businesses which collect this kind of data, but initially target a few specific sectors, namely energy supply, the mobile phone sector and current accounts and credit cards. The Government will

retain the possibility of regulating other sectors should there be an evident need to do so, but with a high bar for doing so. This will provide the Government with the power to act quickly to bring forward regulations at a future date, potentially in 2013, which it may do should it consider that adequate progress is not being made sufficiently quickly through the voluntary route. The Government considers that a sufficient increase in the pace of progress is vital if the benefits for consumers, innovation and competition are to be fully realised.

16. In the consultation document the Government set out proposals for ‘a general power that might be exercised broadly or in a more targeted way, for example, a particular sector (regulated or otherwise) or by exempting certain categories of business such as SMEs.’<sup>2</sup> After considering the consultation responses we are taking a more targeted approach which we believe will ensure that the power is applied effectively and proportionately while retaining flexibility to apply regulations in markets which are failing to work well for consumers, either now or in the future.

### Factors to be taken into account before regulations are made in the “non-core” sectors

17. Other than in relation to certain core sectors (namely energy supply, the mobile phone sector and current accounts and credit cards), the Government intends that, before regulations are made in relation to a particular sector, **Ministers** will need to be **satisfied** having taken into account a number of **factors** that it is in fact **appropriate to regulate** that sector.
18. The Government will take into account various factors when deciding whether to bring forward regulations in relation to the non-core sectors. The Government is considering further what these factors should be, but they may be along the following lines
- a. the market is not working well for consumers, for example where consumers find it difficult to make the right choice or where an individual’s behaviour affects the price they pay, but it is difficult for consumers to predict what their behaviour will be;
  - b. there tends to be a one-to-one, long-term relationship between the business and the customer, with a stream of ongoing transactions;

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<sup>2</sup> Paragraph 1.12 midata 2012 review and consultation [www.bis.gov.uk/assets/biscore/consumer-issues/docs/m/12-943-midata-2012-review-and-consultation.pdf](http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/m/12-943-midata-2012-review-and-consultation.pdf)

- c. consumer engagement is currently limited, e.g. evidenced by low levels of switching between tariffs, account types or providers; or competition needs promoting; and
- d. The sector does not voluntarily provide transaction/consumption data to customers at their request in portable electronic format.

More detail about these possible factors is given in the section on “Type of legislation”.

- 19. Bearing in mind these possible factors and current progress under the voluntary midata programme the Government intends to concentrate in the first instance on energy supply; the mobile phone sector and current accounts and credit cards.
- 20. The power itself will not impose a duty on business – such a duty will only be imposed if secondary legislation is subsequently made. If the power is exercised, and regulations are introduced, the Government will not impose the duty on micro-businesses (those with less than 10 employees) and will consider exempting SMEs more broadly. This is consistent with the Government’s general approach to regulation.

## Conclusion

- 21. The Government wishes to see the voluntary midata programme under Professor Nigel Shadbolt’s chairmanship continue, with close cooperation and engagement between Government, business and consumer groups. The Government expects to see increased participation in the voluntary programme and quicker progress made to give consumers access to their transaction data in electronic machine readable format. In the next few months the voluntary programme will focus on data privacy, security and redress. Should the Government come to the view that it is appropriate to bring forward secondary legislation under the power, it will undertake further consultation and engagement with business and other stakeholders, including further, detailed work to assess the costs and benefits of regulating.
- 22. The remainder of this document gives more details about the consultation responses and the Government’s conclusions.

## Introduction

1. In April 2011 the Government announced the consumer empowerment strategy, *Better Choices: Better Deals; Consumers Powering Growth*, and midata was part of that strategy.<sup>3</sup> The aim of the midata programme is to give consumers access to their transaction data in a way that is electronic, portable and safe. Since April 2011 midata has been a voluntary partnership between the UK Government, businesses, consumer groups, regulators and trade bodies.
2. midata is part of the Government's growth agenda; it will help achieve economic growth by improving information sharing between organisations and their customers, sharpening incentives for businesses to compete keenly on price, service and quality, building trust and facilitating the creation of a new market for personal information services that empower individuals to use their own data for their own purposes.
3. In July the Government published a consultation on creating an order-making power to enable the government to require transaction data to be released in an electronic, machine readable format at the consumer's request. The consultation closed on 10 September 2012.<sup>4</sup>
4. The Government received over 400 responses to the consultation as well as over 60 attendees to the 5 Open Forums that were held in the BIS offices over the summer. Of these responses we received over 50 from major businesses and other stakeholders, including consumer groups. In addition a number of bi-lateral meetings were held with trade bodies and businesses from across a range of sectors.
5. The consultation set out the Government's proposal to take a power in primary legislation. This power would grant the Secretary of State the ability to introduce regulations to compel suppliers of goods/services to supply, at a consumer's request, personal transaction data relating to their purchase/consumption of products and services from that supplier in an

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<sup>3</sup> BIS and BIT, 2011, Better choices: better deals – consumers powering growth. Available at: [www.bis.gov.uk/policies/consumer-issues/consumer-empowerment](http://www.bis.gov.uk/policies/consumer-issues/consumer-empowerment)

<sup>4</sup> The midata review and consultation was published on 25 July and the consultation closed on 10 September 2012. A copy of the consultation is available at: [www.bis.gov.uk/assets/biscore/consumer-issues/docs/m/12-943-midata-2012-review-and-consultation.pdf](http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/m/12-943-midata-2012-review-and-consultation.pdf)



electronic, machine readable format. The Government's intention is that any requirement would only apply to information held electronically by a business (or on its behalf) about its customers and which the business can link to a customer.

6. The Government believes there are two main benefits from midata:
  - **Helping consumers make better choices:** with access to their transaction data in an easy to use format, consumers will be able to make better informed decisions, often with the help of a third party. Being able to base decisions on their previous behaviour will mean individuals can choose products and services which better reflect their needs and offer them the best value. This in turn will reward firms offering the best value products in particular markets, allowing them to win more customers and profits and resources. This will drive competition in the economy.
  - **As a platform for innovation:** midata will lead to the creation of new businesses which will help people to interact with their consumption data in many innovative ways.
7. Although switching and infomediary services are the most easily quantified benefit of midata, significant consumer benefits will also come from new services enabling people to interact with their consumption behaviour in many innovative ways. For example:
  - Finland's leading grocery retailer has coupled with a third party to provide customers with a breakdown of the nutritional content of their shopping basket via data collected through their loyalty cards. This provides a real time weight and diet management tool for individuals and families.<sup>5</sup>
  - There are several money manager tools that have come onto the market. Mint and Yodlee are examples. Services like these provide a platform to financial institutions and intermediaries that can be used by consumers to aggregate all their online financial accounts and receive financial advice. There are also applications being developed that combine purchasing information through a customer's bank card to information from the merchant's point of sale service to enable the download of e-receipts. Customers will be able to access this data in real time.

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<sup>5</sup> [www.tuulia.fi/corporate.htm](http://www.tuulia.fi/corporate.htm)

- In the US Wattvision is a device that takes consumers' energy usage and helps them adjust usage patterns to save money.
8. The Government believes that midata will create opportunities for new markets to develop and businesses that help consumers use their data to make better consumption decisions and manage their lifestyle choices will emerge. Increasing access to data in a usable format will ensure that the UK is well placed to take advantage of what is a strong potential growth market.

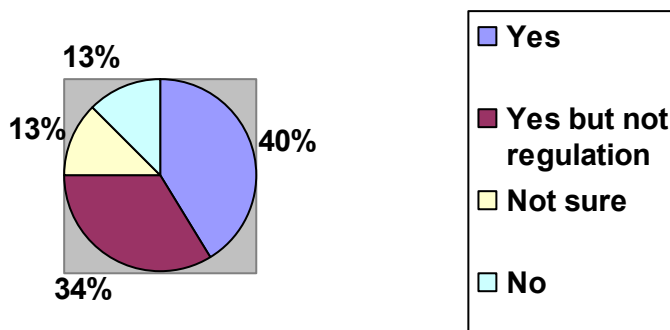
## Type of legislation

1. The consultation set out the Government's proposal to take a power to require the release of transaction data electronically. This power would allow the Secretary of State to make regulations to compel suppliers of services and goods to provide to their customers, upon request, their historic transaction/consumption data in an electronic, machine readable format. The Government's intention is that any requirement would only apply to information held electronically by a business (or on its behalf) about its customers and which the business can link to a customer.
2. There was broad support for the principles of midata across a majority of respondents. There was also broad agreement that increased transparency would lead to better outcomes for consumers, and increased competition through rewarding businesses that offer the best value in particular markets, allowing them to win more customers. The pie chart in figure 1 shows the level of support amongst large organisations for the principles of midata and figure 2 shows the level of support for the principles of midata from the responses received through the SurveyMonkey questionnaire.<sup>6</sup>
3. Whilst there was support for the aims of midata and agreement on the potential benefits, a large proportion of those in support of the principles questioned the need for regulation. The responses indicated that there was concern amongst businesses which currently hold customer data about the potential costs of any legislative requirements. Some respondents also questioned if there was sufficient consumer demand for transaction data in an electronic, machine readable format.

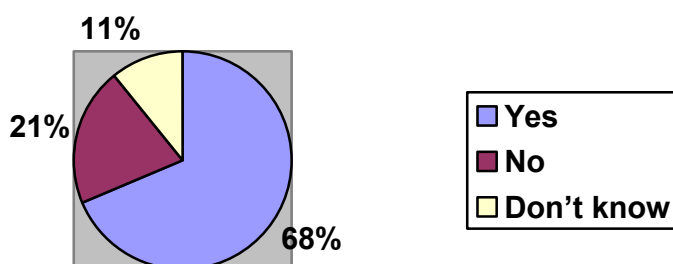
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<sup>6</sup> The consultation received 433 responses overall. Of these 56 were from large organisations, including business, consumer groups, regulators and trade and representative bodies. The remaining responses were from the public, the vast majority of which were received through SurveyMonkey. Figure 1 includes responses from 56 of 56 responses from large organisations on this issue; Figure 2 includes responses 382 of a possible 389 responses on this issue.

**Figure 1: Do you agree with the principles of midata? Responses from major organisations**



**Figure 2: Do you agree with the principles of midata? Responses from survey monkey**



4. There were also concerns about the impact that increased access to electronic data could have on privacy and security. In addition there was concern amongst business that the voluntary programme has not been given sufficient time to deliver results.
5. Energy and personal current account providers said that they already offered their customers high levels of transparency for their products, in some cases due to participation in the voluntary midata programme.
6. Generally, representatives from the retail market questioned the value of the release of electronic data in a broadly competitive market where consumers were free to move between suppliers and prices are readily comparable both in store and on the internet.

7. It was felt that quality indicators could not easily be compared through consumption and transaction data. The Government recognises the need to avoid a race to the bottom or an inappropriate focus on comparisons based only on price in all sectors. Accessing quality, detailed information requires a greater sophistication of tools in the comparison market, and this is something the Government wishes to encourage.
8. There was strong support amongst consumer groups for the principles of midata recognising the potential of midata to “empower consumers, facilitate choice and bring about radical changes to the current use of data”<sup>7</sup> and redress the current imbalance between companies and individuals with regards to personal data. However, there was also genuine concern around the potential impact the increased availability of data could have on privacy and security.
9. This is an area the midata programme had already identified as important and work is underway to address the issues raised. Five working groups of members of the voluntary programme have begun work on identifying the real nature of the risks and developing solutions on a range of issues including:
  - Assuring the identities of those making requests for data, to avoid breaching privacy
  - Enabling the safe transmission of data from a business to a customer through appropriate encryption and protection;
  - Data storage requirements including the minimisation of data storage and retention;
  - The possibility of developing new safeguards around data release, transfer and sharing to minimise the risk of customers inadvertently agreeing to their data being shared or sold or losing their data;
  - What redress mechanisms there should be for customers if things go wrong and the relationship with current and potential future data protection rules;
  - And the appropriate role for third parties in accessing and analysing data and how this should be managed.

The groups include representatives from business, consumer organisations, regulators and government departments.

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<sup>7</sup> Which? response to midata consultation

- 10. In light of the broad support of the principles of midata the Government proposes to continue the existing voluntary programme but also to introduce legislation at the earliest opportunity conferring a power to bring forward regulations in relation to certain core sectors, and also in relation to other sectors providing that certain factors have been considered in relation to the latter (see next section).**
11. Subject to Parliamentary agreement, this power will give the Secretary of State the ability to bring forward regulations requiring suppliers of goods/services to allow customers access to their consumption and transaction data in an electronic, machine readable format.
12. This approach will enable the Government to consider if and how the power should be exercised through secondary legislation. Following further consultation Government will decide which sectors should be subject to regulation. These may be the core sectors, or they may be other sectors where the Government considers that it is appropriate to regulate having considered the factors that have been set out in legislation. The Government will also consider whether to exempt certain categories of business, such as small business, from the regulation.
13. The evidence in the impact assessment shows that there are a wide range of estimates for potential costs.<sup>8</sup> The level of cost will depend on a number of factors including existing IT infrastructure in a business. The final cost will depend in part on how any regulations are imposed; for example any differentiation in requirements for different parts of a business's databases (e.g. 'live' and 'archived' data), how quickly data needs to be provided once requested and whether any specific formats are mandated.
14. The responses make clear the need to investigate costs further before making specific regulatory proposals for a sector or product group. IT experts and some businesses have suggested that technically it would be relatively straightforward to add a download facility to existing account presentation structures, but for others the upfront investment required could be substantial.
15. The Government will also investigate further the impact on the data holders of conferring the right to request electronic data on micro-businesses (who may access data in a different way to individual customers), before deciding whether to confer this right in regulations.

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<sup>8</sup> [www.ialibrary.bis.gov.uk](http://www.ialibrary.bis.gov.uk)

## Which businesses are covered?

1. The consultation asked questions on the scope of the power including who the duty to release data should apply to. Consumer groups in particular argued for a broad power across all sectors. Other respondents saw the benefits of a broad power, but believed that either a sectoral approach or phased implementation was more appropriate. For example, many respondents recognised the benefits of midata in markets where the goods supplied were compared on price and/or where there was an ongoing contractual relationship between the supplier and the customer (telecoms and energy for example). However, some did not believe that the duty should be extended to markets which are competitive and where the consumer is less tied to the supplier, because the potential consumer benefits were much smaller.
2. Others believed that the duty should be focussed on regulated sectors and agreed with the midata approach taken so far that has targeted financial services, energy and telecoms but thought some value could be gained by including key retail product groups.
3. The Federation of Small Businesses (FSB) argued for an exemption for micro-businesses and either an exemption or opt in system for SMEs as they recognised the scope for regulation to benefit some SMEs, who were involved in the price comparison or data analytics market for example.
4. Some respondents pointed out that there were similar duties to the midata proposal in regulated sectors. For example, the financial services industry have to comply with FSA information disclosure requirements and some in the energy sector pointed out that the release of data will be mandated by the roll out of smart meters that is expected to begin in 2014 and questioned the need to have dual regulation in this space.
5. The consultation also explained that in light of separate action covering the public sector through the Open Data White Paper,<sup>9</sup> led by the Cabinet Office, it was not the intention that the legislation should apply to the public sector. A number of respondents were concerned that the public sector was out of scope of the proposed legislative framework. One public sector body pointed out that it will be important to clearly differentiate who is in and out of scope in relation to the public and private sector.

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<sup>9</sup> <http://data.gov.uk/library/open-data-white-paper>

6. The Government recognises the concerns over a twin track process, but it believes that it will be more effective for the public sector to continue the action already underway in this area through the implementation of Departmental Action Plans, published as a part of the Open Data White Paper. **It is therefore still the intention that the public sector will, in general, be out of scope of the duty**, and outsourced services delivered to consumers by private sector partners on behalf of public sector or quasi-public sector bodies are similarly out of scope in most circumstances. **The Government will continue to work to ensure complementary paths are followed for the public and private sectors.**
7. The Government has listened to concerns raised about the proportionality of applying the power across all sectors. As a result the Government will take a power to regulate certain core sectors, but with the ability to regulate other sectors once certain factors have been taken into account. The Government needs to consider further exactly what these factors should be but they are likely to be along the following lines:
  - a. The market is not working well for consumers, for example, where consumers find it difficult to make the right choice or where it is difficult for consumers to predict what their behaviour will be, but where this behaviour affects the price they pay;
  - b. there tends to be a one-to-one, long-term relationship between the business and the customer, with a stream of ongoing transactions
  - c. consumer engagement is currently limited, e.g. evidenced by low levels of switching between tariffs, account types or providers; or competition needs promoting;
  - d. The sector does not voluntarily provide transaction/consumption data to customers at their request in portable electronic format.
8. More detail about these factors may be given in guidance.
9. Based on the above conditions and current progress under the voluntary midata programme the Government will concentrate on energy supply; the mobile phone sector, current accounts and credit cards.



## Who can request data?

1. The consultation sought views on who should have the right to request electronic data; specifically whether only named account holders should have the right, or whether that right should also extend to other household members. The consultation also asked for views on requiring data to be supplied directly to third parties with appropriate authorisation from a consumer, and whether a third party should be able to request electronic data directly from a supplier on behalf of a consumer.
2. The views on requiring data to be supplied to third parties were finely balanced. On the one hand, it was recognised that the analytics provided by third parties would make the data more useful to consumers, including helping them getting a better deal. On the other hand, many respondents had concerns about data security and privacy, including the risk of data loss.
3. The need for a robust privacy and security framework was seen as necessary if businesses were to be required to disclose information directly to a third party at the customer's request or at a duly authorised third party's request. Many business responses also said that third party access would further increase costs of compliance with the proposed new duty, for example, through applying additional encryption or through the need to check the authenticity of a request.
4. Additional concerns were also raised around third party access increasing the potential for the development of unscrupulous practices, including the potential for the data to be manipulated or abused.
5. The Government has established working groups consisting of representatives from business, consumer organisations, regulators and Government Departments to address consumer protection and trust. The working groups' remit is to identify and recommend existing best practices and/or new approaches that may be needed to ensure that where individuals wish to forward on their midata data to third parties, the consumer:
  - retains control over that data and how it is used;
  - has their privacy fully protected;
  - does not become subject to data misuse and exploitation.
6. Specifically the working groups, will consider questions such as:

- What existing regulation, best practice, protocols or standards could be applied or adapted to midata?
  - How might a business that receives a midata request from a third party for a customer's data satisfy itself that the third party has been duly authorised by the customer to make the request and/or that the third party will only use the data in the way the customer wants the third party to use it?
  - Does regulation, best practice, protocols or standards need to be strengthened, owing to the extra risks posed by midata? If so, how should this be done in a way that is proportionate to risk?
  - How will midata interact with any other requirements in this area, e.g. the Confidence Code applying to third parties in the energy switching process?
7. Measures to protect the consumer may not necessarily lie in further regulation and if they do, protections may not be specific only to midata or be best dealt with through the midata regulations. This will be a matter for further consideration by the working groups.
8. The Government is very keen that midata policy is joined up with other Government initiatives, such as the Smart Metering Implementation Programme, and that policies look to complement the overarching need to protect consumers adequately.
9. The consultation also asked about the need, if any, for additional requirements on secondary users. Responses indicated that at a minimum all parties should continue to be subject to the existing requirements and principles of the Data Protection Act 1998 when handling this data.
- 10. The Government is conscious of and recognises the importance of security and privacy of any data released through midata. Government will work with business and consumer groups as part of the midata voluntary programme, to identify the range of risks posed by greater availability and use of electronic personal transactional data. Where current data protection or other consumer legislation does not fully address the risks identified we will develop solutions to ensure that data is only released with the appropriate safeguards.**
11. The Government also asked for views on whether the right to request consumption and transaction data in electronic format should be given to certain categories of small business. There were limited responses to this question, however, the Government believes that there is a case for extending the scope to micro-businesses. **The Government therefore intends to retain the option to extend the right to request data to micro-businesses,**

**recognising the important potential growth benefits this could bring.** The Government will explore this issue in detail through further consultation on any regulations.

## Format and categories of data covered

1. The consultation set out that the Government's aim is to ensure the data is disclosed in a commonly used machine readable format. It also set out its intention that Government would not designate a particular format beyond this.
2. A large majority of the responses to this question agreed that this was the right approach. Concerns were raised that if a format was specified, it could incur extra costs for business and over time the prescribed standard could become obsolete.
3. However, there were some responses that pointed out that a common format, specified in legislation, could make it easier for intermediaries to develop services and products to help consumers analyse their data. Some responses pointed out that whilst prescribing a set format was not an appropriate area for regulation, guidance on formats, issued by the Government, or lead regulator, or other appropriate body, could be helpful and lead towards standardise formats.
4. **The Government does not intend (in the event that regulations are made) to specify in detail the format that the data should be provided in, but only to require the data to be released in "an electronic machine readable format".**
5. A number of consultation responses questioned what data was considered 'transaction data'. In the consultation 'transaction data' was defined as data about a consumer's purchase/consumption of products and services from a supplier.
6. The Government intends only data that is factual information, for example, what a consumer bought, where they bought it, how much they paid for it should be released. This does not include any subsequent analysis that the data holder has undertaken on the information, for example, analysis to help segment consumers by purchasing behaviour. Businesses would not be required to collect any new information.
7. **Any regulations would only apply to businesses that hold this information electronically in a way which links the data to an individual consumer.** Table A1 gives a number of examples of different types of data and whether they could be covered by regulation under the proposed power, provided the conditions set out in para 7 on page 15 are met.

**Table A1: data that will be covered by any regulations introduced**

Type of data	Potentially covered by midata regulations?
Purchases made online with a user registration	Yes if in a sector included when regulations are made
Purchases made in-store using a loyalty card scheme	Yes. Not currently a priority sector
Purchases made online with through a 'guest' account with no user registration	No
Purchases made in-store, paid for by credit or debit card but with no loyalty card	No - if requested from the retailer
Purchases history, interest charges and penalty charges on a credit/debit card	Yes – if requested from credit/debit card provider and sector included when regulations are made
Oyster/travel smartcard usage and charges	Yes – if the travel card is registered. Not currently a priority sector
Gym attendance	Yes – if the information is recorded and linked to an individual. Not currently a priority sector
Location data (from phone company or internet maps)	No
Which TV/film channels have been watched on pay-for TV	Yes – if the information is recorded and linked to an individual. Not currently a priority sector

Internet pages visited/products viewed <i>when logged in to an account</i> , regardless of purchases made.	Yes – if the information is recorded and linked to an individual. Not currently a priority sector
Internet history / downloads / bandwidth usage for broadband	Yes – if the information is recorded and linked to an individual. Not currently a priority sector
Telephone usage records, including mobile internet	Yes if sector included when regulations are made.
Historic energy/utility use	Yes if sector included when regulations are made.
Communications made with service providers (e.g. telephone calls, emails, submissions of online forms)	No
Records related to complaints or claims for compensation	No

8. The exact type of information will depend, to some extent, on the sector where the request is made. The Government believes data about consumption has the most value to consumers because it will help consumers compare products across a market, for example: what was purchased, when and for how much, and possibly where. Beyond this the Government believes that it is business that is best placed to understand what types of data are subject to consumer demand and what data it would be useful for the consumer to access.
9. Through the voluntary programme the energy sector has already made progress on releasing data. Participants in the voluntary programme worked together with the industry body to develop the following blueprint for the data to be released.

### Dataset from the energy sector

Through the midata voluntary programme the energy sector drew up the following list of data to be included in their downloadable csv files:

- Customer account number
- Meter Point Administration Number (MPAN) for electricity and the Meter Point Reference Number for gas (MPRN)
- The tariff Name and any contract end date
- The latest available information on how much energy the customer has used for 12 months in kilowatt hours for each register. This could be from the customer's last annual statement.
- The estimated cost in pounds for the next 12 months if you stayed on the same tariff, if the tariff stayed the same (e.g. no price rises or price cuts) and if you carried on using the same amount of energy. This will be available for all customers based on the best available information.
- The customer's payment method.
- A data dictionary which provides a more detailed description of each data item described above.

10. More broadly on energy, through the Smart Metering Implementation Programme, and consistent with the Government's broader midata initiative, arrangements will be put in place to enable domestic consumers to easily access their own energy consumption data. Consumers will be able to access their own energy consumption data through their In-Home Display, through the connection of additional devices to the Home Area Network, or by requesting information from their supplier.
11. The EU Energy Efficiency Directive, which was endorsed by the European Council in October 2012, includes a requirement on the provision of easy access for domestic customers to historical daily/weekly/monthly/annual energy consumption data for at least the previous 24 months via the internet or the meter interface, free of charge. Member States will have 18 months to implement the requirements. The Government is currently assessing whether additional steps need to be taken through the Smart Metering Implementation Programme to meet this requirement
12. The consultation also asked for views on whether it would be helpful to include information that might not be considered personal to an individual consumer but that may be needed to make an effective comparison and/or choose a

product or service; for example, current terms and conditions and warranties on offer by the supplier.

13. The responses to this question were mixed but the general view from business in particular was that this type of information was already readily available. In some sectors regulations exist covering the disclosure of terms and conditions in certain markets.
14. Some responses, including from the retail sector, recognised that releasing warranties as part of midata could be a helpful for consumers. As one respondent stated, “it is something that we would welcome as we appreciate that our customers may find it difficult to retain proof of purchase or warranty documents.” Given the balance of responses on this issue and being mindful of existing regulations in some sectors requiring the disclosure of this type of information, **the Government does not intend to include non-personal information in the scope of the proposed power.** However, we would encourage businesses to continue their efforts to be as transparent as possible when issuing their standard terms and conditions, warranty or tariff information for example and welcome efforts for innovation in this area.



## Charging and timings

1. The consultation set out the Government's view that for midata to work well, the data needs to be made available to the consumer in electronic format as quickly and inexpensively as possible after it has been requested.
2. Most respondents recognised the benefits to consumers if companies release data both quickly and inexpensively. However, many businesses pointed out that there are practical obstacles to mandating that this should be the case. For example, ID authentication for sensitive or complex data is unlikely to be instant. Many businesses also pointed out that the need for secure ID authentication and assurance would be even more essential, and likely to take longer, in the case of releasing data directly to a third party; either at the customer's request, or if duly authorised third parties were able to request data directly from a supplier on behalf of a customer.
3. A majority of responses from businesses holding data supported allowing a charge to be made for providing data. This was because it was felt by some that a majority of consumers will not want, or access midata, and that it was unfair for those consumers to cross-subsidise a service used by a minority. Other responses pointed out that a charge, even a nominal charge, will help prevent vexatious or frivolous requests for consumption/transaction data by consumers. One respondent pointed out that a charge could also help ensure the veracity of a request by firmly linking it to an individual, thus helping to reduce potential security and privacy risks around midata requests.
4. Whilst a majority of businesses supported being able to levy a charge there were some that believed that the service should be free. For example some energy companies pointed out that under the smart metering initiative consumption and transaction data will be provided to consumers for free. One trade body from the financial services sector also pointed out that none of their members currently charged a fee for providing similar types of data. Of those organisations that did not support a charge, a majority felt that a charge would act as a disincentive to consumers in terms of accessing their transaction/consumption data.
5. One large energy company also argued that the cost of the midata service needed to be shared by both parties holding the data, which included the supplier of the data and the third party organisations in receipt of the data. They argued that a "network" charge paid for by all those wishing to be part of the network would be the fairest model. They also believed that the cost burden would be less for all participants if midata was broadly adopted.

6. Some responses pointed out that a useful backstop for both cost and timeframe was the Data Protection Act, where businesses are permitted to charge up to £10 for a Subject Access Request and have up to 40 days to respond. However, as one respondent noted the current draft EU Data Protection Regulation proposes the abolition of such 'subject access request' fees.
7. **The Government does not intend to stipulate in primary legislation either a charge or a timeframe to release the data. The power will enable the regulations to make provision about charges by suppliers and a timeframe within which data has to be released once requested. This issue will form an important part of the consultation(s) which would take place before introducing any secondary legislation.**

## Enforcement

1. The consultation set out a number of different enforcement bodies that could be involved in enforcing midata. For example, data protection is enforced by the Information Commissioner's Office (ICO), whilst the Office of Fair Trading, Trading Standards and sector regulators currently enforce consumer protection law.
2. The Government asked for views on who would be best placed to enforce the proposed new requirement. The ICO was overwhelmingly cited as the preferred lead enforcement body with 91 per cent of those who replied favouring this option. The view was that enforcing the proposed duty to release consumption and transaction data under midata would be consistent with the ICO's current role as an enforcer of data protection regulation. A large number of responses highlighted the parallels with the potential future duties of the ICO under the new Data Protection rules that are currently being debated in Europe.<sup>10</sup> It was also felt by a number of respondents that there could or should be a role for enforcing this duty for sector regulators.
3. **The Government agrees that the ICO is the appropriate lead enforcer and intends to grant the ICO lead enforcer status, recognising the crossover of the midata duty with its current role as enforcer of the Data Protection Act and other information and data legislation.**
4. As well as granting the ICO lead enforcer status the Government is also considering granting concurrent enforcement powers to sector regulators for the duty where appropriate. An enforcement framework is to be developed in conjunction with the ICO and regulators. The details of the enforcement framework for midata will form an important part of the consultation before any regulations are introduced.

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<sup>10</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:NOT>

## Risks and unintended consequences

1. Many respondents to the consultation raised concerns around the potential of the duty to increase privacy and data security risks. This concern was particularly marked amongst responses from the financial services industry with one respondent noting that, “there is significantly greater scope for harm from the misuse of personal financial data than there is from the misuse of data held by other industries.”
2. There was also some concern that the duty could impact on competition and act as a barrier to entry in some markets, for example, an SME trading as an online retailer. Others noted that those companies that had already invested in data systems were put at a disadvantage if the release of data became a universal requirement. One large bank was concerned by the “possibility that midata could damage this source of value, by enabling third parties to obtain this data at no cost to them and compete with the originating business for the custom of the same set of customers”. In addition, it was felt that this loss of competitive advantage could stifle innovation and product development.
3. The Government understands these concerns, but still supports the principle of giving consumers access to their personal transaction data in portable electronic format. We believe one of the benefits of midata is to increase competition by making it easier for consumers to compare the available options. The Government is also working with business and consumer organisations to identify the risks to privacy and security and to develop solutions.
4. Current data holders are well-placed to use the data they hold to develop their relationship with their own customers and to provide services making use of the data in a useful format. Providing customers with access to their data also opens up opportunities for new players in the market and so drive increased competition. Government seeks to promote competition and not protect competitors.
5. Two consumer groups were concerned that vulnerable consumers could be excluded from the benefits of midata. One respondent noted that 22 per cent of the UK does not use the internet at home and, of these, many are older and in lower socio-economic groups. In addition people with physical disability, sensory impairment or learning disability may have a range of problems in accessing and using data. However, despite these serious concerns there was recognition that there is a place for trusted, reputable third party services to help those who may struggle to use their data independently and that organisations acting as advocates and offering support for vulnerable people could offer services on their behalf. There are opportunities for services to be

developed utilising midata that address particular needs of some such consumers.

## Devolution

1. **The Government's intention is that the power should enable the duty to apply in relation to the whole of the United Kingdom.** The Government wishes the advantages to consumers and the benefits for innovation and competition to apply to all parts of the UK. It also wishes to maintain a level playing field between businesses operating from different parts of the UK.

## Conclusions

1. The responses to the consultation show there is broad support for the principles of midata, namely that consumers should be able to access their transaction and consumption data, in an electronic, portable form. There is also recognition for the potential for the data that is released to stimulate a burgeoning market in data services and advice. Respondents also agreed that making this data available and easy for consumers to use could help drive greater competition, although opinions differ on the extent of the benefit in different markets.
2. It is the Government's view that where businesses choose to collect information about individual consumer's transaction history which can be linked to that consumer, that individual should be able to access their own transaction data in a portable electronic format. This can help build the foundation of a competitive digital economy which will build trust among consumers, promote competition between firms and create an opportunity for innovation - creating benefits for consumers and creating value for the economy.
3. The Government is committed to continuing the work of the voluntary midata programme and expects to see progress accelerate, with more data being made available to customers electronically in the coming months. If, however, progress does not accelerate sufficiently, subject to Parliamentary agreement, the Government expects to bring forward regulations in reliance on the power, though no earlier than autumn 2013. The Government also recognises that ensuring appropriate safeguards are in place is crucial to make sure consumers are properly protected when they start to make increasing use of their data. The Government is convinced that midata has real potential to help consumers, business and the UK economy.
4. Further Details of the consultation and the responses received can be obtained at: [www.bis.gov.uk/midata](http://www.bis.gov.uk/midata)
5. For further information please contact [midata@bis.gsi.gov.uk](mailto:midata@bis.gsi.gov.uk)

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000

If you require this publication in an alternative format, email [enquiries@bis.gsi.gov.uk](mailto:enquiries@bis.gsi.gov.uk), or call 020 7215 5000.

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