



Department for
Digital, Culture,
Media & Sport

Review of exemptions from paying charges to the Information Commissioner's Office

Government response to the public consultation

November 2018
Department for Digital, Culture, Media and Sport

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1. Contact details

This document is the Government's response to a consultation about exemptions to the data protection charge (also known as the data protection fee) paid to the Information Commissioner's Office (ICO) under the Data Protection (Charges and Information) Regulations 2018. The consultation took place from 20 June to 1 August 2018.

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This report is also available at <https://www.gov.uk/government/consultations/review-of-exemptions-from-paying-charges-to-the-ico>

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Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Data Protection Team at the above address.

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Information provided in the course of this consultation, including personal information, may be published or disclosed in accordance with access to information regimes, primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA 18).

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This consultation follows the UK Government's [consultation principles](#).

2. Executive summary

An effective data protection regulatory framework, supported by an appropriately resourced and funded regulator, is fundamentally important to the UK. The General Data Protection Regulation (GDPR), which became law on 25 May 2018, marked a significant step in strengthening and unifying data protection legislation fit for the digital age. GDPR, and the Data Protection Act 2018 (DPA 18), strengthened the legal framework around the processing of personal data, providing individuals with robust information rights, and ensuring a strong and effective regulator is in place to support this legal framework. In the UK, the Information Commissioner's Office (ICO) is the regulator for data protection and information rights. The ICO is predominantly funded through data protection charges, payable by UK data controllers under the Data Protection (Charges and Information) Regulations 2018. Article 4 of GDPR defines a controller as a "natural or legal person, public authority, agency or other body which, along or jointly with others, determines the purposes and means of the processing of personal data ...".

The Government recognises the importance of a flexible and fair framework for data controllers. The exemptions to payment of the annual data protection charge provide for a number of scenarios where payment of a charge would not be appropriate, for example because payment of the charge would give rise to significant negative impact.

Currently, data controllers do not have to pay the data protection charge if they only process personal data for one (or more) of the following purposes:

- Staff administration;
- Advertising, marketing and public relations;
- Accounts and records;
- Not-for-profit purposes;
- Personal, family or household affairs;
- Maintaining a public register;
- Judicial functions;
- Processing personal information without an automated system such as a computer.

The Government undertook a public consultation from 20 June 2018 - 1 August 2018, requesting feedback from the public about whether these exemptions remained appropriate and fit for purpose.

The consultation also sought views on the automatic placement in tier 1 of the data protection charge structure for small occupational pension schemes and charities, and welcomed views on new exemptions, including a proposed new exemption for elected representatives, candidates (including prospective candidates) for election and members of the House of Lords.

The Government received 430 substantive or partial responses to this consultation. There was broad support for the current exemptions schedule to remain unchanged. The main reason for retaining current exemptions was to avoid potential negative impact upon micro organisations; small and medium sized enterprises and small, informal, voluntary groups. Some responses also thought the charge set at tier 1 was still too high for some of the small organisations, and if these companies had a very small turnover, or had very few members

of staff, they should be totally exempt from the charge.

A high number of respondents said that while some data controllers should not pay the data protection charge, they should nevertheless still be required to register with the ICO, an action many saw as reminding them of their need to comply with the DPA 18. However, under GDPR and DPA 18, there is no longer a legal requirement for data controllers to formally register with the ICO, and Government is not planning to reintroduce this obligation. We have outlined where reference has been made to this registration process throughout this response, however, we have not addressed this point each time this has been raised.

Under the Data Protection (Charges and Information) Regulations 2018, data controllers are legally required to provide certain information to the ICO to help determine the correct charge. Exemption from the data protection charge does not relieve data controllers of their data protection obligations. The ICO reminds data controllers of their data protection obligations through advice and guidance on its website, and through its enquiry handling services (including specific guidance and a dedicated helpline for micro, small and medium organisations). The ICO's online self-assessment tool, which helps data controllers determine whether they are liable for payment of a charge, also makes clear that even if exempt from paying the charge, organisations that process personal data must still comply with data protection legislation.

In this Government response, we have tried to address the variety of concerns raised by respondents during the consultation, as well as setting out our policy intentions in relation to these exemptions. We have taken into consideration each response received, and consulted further with the ICO and other Government Departments, as well as the devolved administrations, before reaching a final policy position on each exemption.

After detailed analysis, the Government has decided:

- Not to change any of the current exemptions at this point in time;
- To introduce a new exemption from payment of the data protection charge for all processing relating solely to standing for or fulfilling the office of all categories of elected representatives as defined in paragraph 23(3) of Schedule 1 to the Data Protection Act 2018 and members of the House of Lords.

3. Background

The GDPR came into force on 25 May 2018, and was supplemented by the DPA 18, which replaces the Data Protection Act 1998 (DPA 98). Article 52(4) of the GDPR places a requirement on Member States to ensure that their supervisory authorities are provided with the human, technical and financial resources necessary for the effective performance of their tasks.

The Data Protection (Charges and Information) Regulations 2018 (hereafter 'the Funding Regulations'), which also came into force on 25 May 2018, introduced a new charge regime for data controllers. These new Regulations require organisations that determine the purpose for which personal data is processed (controllers) to pay the ICO a data protection charge unless they are exempt. This new charge replaced the previous requirement to register with the Information Commissioner's Office (notify) and pay an associated notification fee.

The level of data protection charge payable is dependant upon the number of members of staff and the turnover of the organisation. Charities and small occupational pension schemes automatically pay the lowest tier of charge.

The charges payable are as follows:

Tier 1 – micro organisations with a maximum turnover of £632,000 or no more than ten members of staff pay an annual charge of £40 (or £35 if paid by direct debit); charities and small occupational pensions schemes are automatically classified within tier 1;

Tier 2 – small and medium sized organisations with a maximum turnover of £36 million or no more than 250 members of staff pay an annual charge of £60 (or £55 if paid by direct debit); and

Tier 3 – large organisations not meeting the criteria of Tiers 1 or 2 pay an annual charge of £2,900 (or £2895 if paid by direct debit).

The funding model for the Information Commissioner has three main policy objectives:

- ensure an adequate and stable level of funding for the ICO;
- build regulatory risk into the charge level; and
- raise awareness of data protection obligations in organisations, thereby increasing their compliance.

Government did not consider changes to the exemptions schedule at the same time as the new data protection charges because it was important to assess the impact on the ICO's income of the new charge structure before considering changes to exemptions, which would have a further impact on the level of income generated by the data protection charge.

However, the Explanatory Memorandum to the Funding Regulations made it clear that Government would undertake a full review of these exemptions, including publishing a consultation within the year. This was also reiterated during the Parliamentary debates on the Funding Regulations, when Government Ministers publicly committed to hold a public

consultation on the exemptions, including consideration of a new exemption for elected representatives and members of the House of Lords.

In reaching our policy positions on each of the exemptions, we have considered carefully the impact of any changes upon all data controllers, and also upon the ICO, to ensure they have adequate funding to support them in their regulatory work.

4. Consultation Statistics

The consultation on the *Review of exemptions from paying charges to the Information Commissioner's Office* was launched on 20 June and closed on 1 August 2018 at 4.00pm. Respondents were encouraged to provide their response using Qualtrics, the online survey platform used by the Department to conduct the survey, although responses submitted via other means were also accepted. To publicise the survey further, the Department also contacted a number of key external stakeholders to make them aware of this consultation. A summary of responses to each of the consultation questions has been included within this Government response, together with full analysis and details of our decision as to whether any changes or amendments will be made to the existing exemptions.

The Government received a total of 430 substantive or partial responses to its consultation. 428 of these were submitted via Qualtrics, and six hard copy responses were also received. Four of these hard copy responses were from organisations who had previously responded via Qualtrics and either repeated their views or provided additional evidence to support their case. Although the additional evidence from these four organisations was taken into consideration, we did not count these as new responses as these organisations had already been accounted for in our statistics. Therefore, only two hard copy responses were included in the overall total of responses received, making a total of 430 responses received to the consultation.

The table below provides a breakdown of responses between individuals and organisations.

	Number of responses	Percentage of responses
Individual	322	75%
Organisation	108	25%
Total	430	100%

For those respondents that selected 'organisation', there was a further question on which sector best categorised their organisation. The table below reflects the responses to this question:

	Number of responses to this question	Percentage of responses to this question
Public Sector	33	30%
Private Sector	19	18%

Charitable Sector	35	32%
Other (please specify)	18	17%
Non-response	3	3%
Total	108	100%

148 respondents indicated they were data controllers, and of these responses, 102 indicated they paid the data notification fee (since introduction of the General Data Protection Regulations in May 2018, this has now been replaced by the data protection charge).

5. Summary of the results of the consultation

1. Core Business Purposes

The consultation sought views on the exemption related to 'core business purposes' i.e. the processing of personal data for one or more of the following purposes:

- staff administration
- advertising, marketing and public relations, and
- accounts and records.

(a) Staff administration

This exemption covers organisations that only process personal data for administration in relation to their staff, including past, existing and prospective staff (as well as contractors and volunteers). It includes processing of staff members' personal data for the purposes of appointments or dismissals, pay, discipline, superannuation, work management and other personnel matters.

Do you consider this exemption:

- Still appropriate
- No longer appropriate
- Don't know

Number of Responses (N)	<u>Still appropriate</u>	<u>No longer appropriate</u>	<u>Don't know</u>	<u>Non Response to this question</u>
430	43% (186)	11% (46)	26% (111)	20% (87)

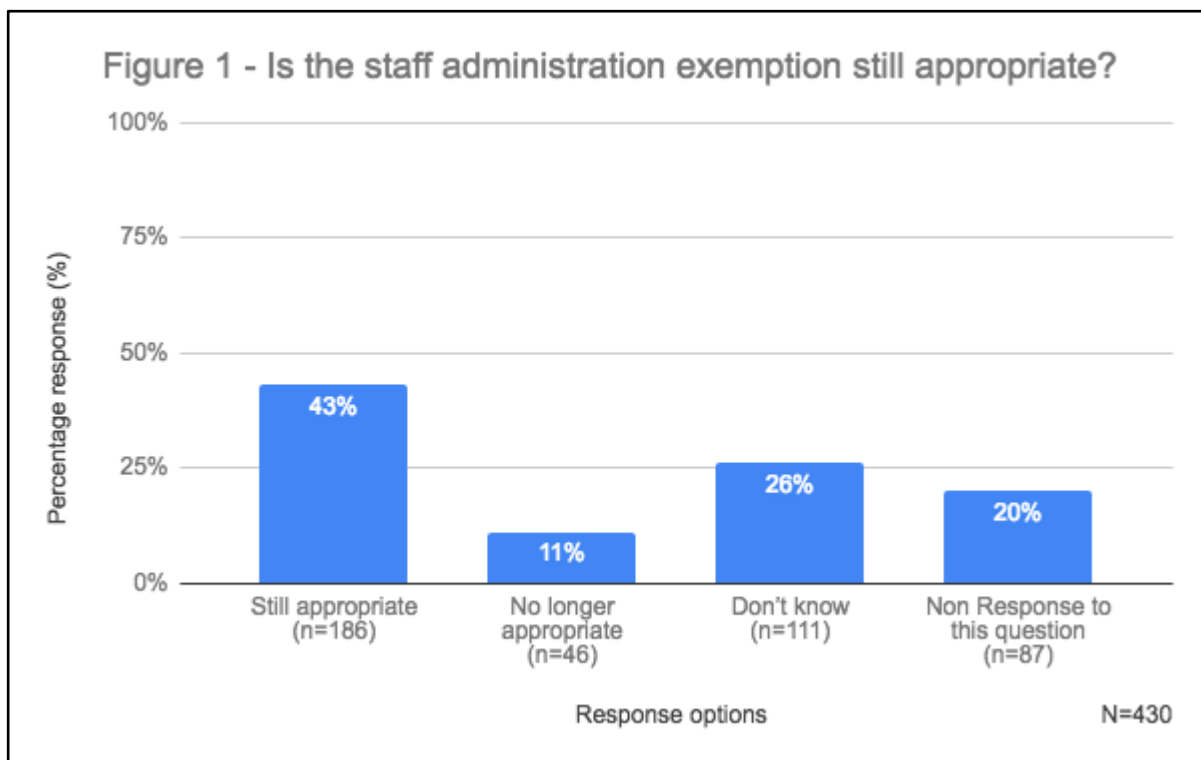


Figure 1 - is the staff administration exemption still appropriate?

Analysis

As indicated in Figure 1 above, 43% of respondents considered that this exemption was still appropriate. Only 11% felt that this exemption was no longer appropriate, whereas 26% did not have a view whether the exemption was appropriate or not.

Exemption still appropriate

Some responses indicated this exemption was especially beneficial for small and medium sized enterprises (SMEs) who process data only for staff administration purposes, a core business activity required to the essential running of a business. In these cases, it was seen that the data was only being used in a way that was expected by the data subject, and was only required as part of statutory record-keeping.

It was felt that SMEs could benefit from less bureaucratic measures (including the need to register), which in turn would make them more efficient. Removing the exemption would impose additional burdens (including financial) on small companies, which could have major implications upon them. One respondent believed any required charge should take into account public interest, considering whether increased regulation would be equal to the public benefit it served. Whilst this exemption does not relieve SMEs of their data protection responsibilities under DPA 18 and the GDPR, some responses noted that if any data breaches *did* occur, it was highly unlikely they would be extensive. There was also concern about the impact of the removal of this exemption on the voluntary sector which would affect the people they support. It was felt that as this type of processing was mandatory for all employers, regardless of the size of the organisation, the exemption should remain.

Exemption no longer appropriate

There were a number of reasons why respondents felt that this exemption was no longer appropriate. Some felt that all organisations and individuals who process personal (staff) data should register with the ICO and pay the annual charge, especially as the data held by employers could be considerable and sensitive, and data breach risks remained. Other respondents felt that organisations should be more accountable for the decisions they made involving the personal data they held, and they needed to be more responsible for protecting that data. Payroll breaches were considered just as important as other data breaches.

It was thought that requiring all companies to register with the ICO would help ensure data controllers remained proactive in adhering to their data protection obligations. It was recognised that paying an annual charge to the ICO provided the regulator with more revenue to conduct investigations, with some respondents thinking that a single transparent policy requiring all data controllers to register and pay the charge removed any doubt about their need to be data protection compliant. There was also thought that the exemption should only apply to smaller businesses, although one response queried if data collected is subsequently used in a legal dispute whether this brought that data outside the exemption.

Government Response

This exemption covers the processing of personal data specifically for the purposes of staff administration, and includes data that is being processed for the purposes of appointments, pay, discipline, and other personnel matters - for both current staff as well as those no longer employed by the company. It should be clear that data controllers claiming this exemption must not be processing any other data that falls outside the scope of any other exemption. It should also be made clear that although data controllers may cite this exemption for not paying the data protection charge, this does not relieve them of their other data protection responsibilities. All data controllers need to take care when processing personal data and are subject to the same penalties and enforcement powers of the ICO, regardless of whether or not they pay a charge.

The Government's policy is not to increase regulatory or financial burdens on small businesses. Given the evidence put forward, the Government is minded to retain this exemption as any impact as a result of removal is most likely to be significant for those in the SME category as well as micro organisations. All data controllers should be aware of their data protection responsibilities and any move to require them to register with the ICO annually (whether or not they pay the annual charge) is likely to increase burdens upon them.

Accordingly, the Government does not believe any changes should be made at this time either to remove or amend this exemption or to re-introduce the requirement to register with the ICO.

(b) Advertising, marketing and public relations (in connection with an individual or organisation's own business activity);

This exemption allows an individual or organisation to market or advertise its business activity, goods and services to past, existing or prospective customers and suppliers. The exemption does not apply where an organisation sells lists of customers' details to other organisations.

Do you consider this exemption:

- Still appropriate
- No longer appropriate
- Don't know

Number of Responses (N)	Still appropriate	No longer appropriate	Don't know	Non Response to this question
430	31% (134)	18% (75)	26% (113)	25% (108)

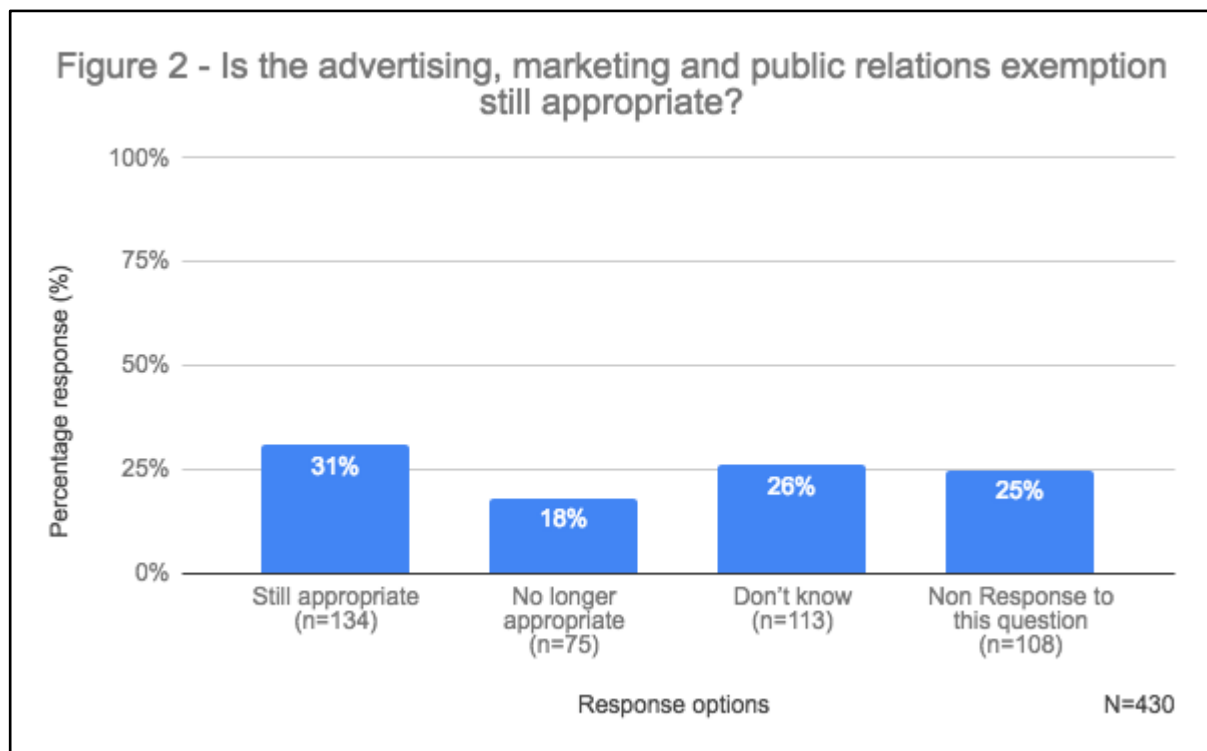


Figure 2 - Is the advertising, marketin and public relations exemption still appropriate?

Analysis

As can be seen in Figure 2 above, 31% of respondents believed the exemption was still appropriate whilst 18% thought it no longer appropriate.

Exemption still appropriate

Some respondents believed this exemption was still necessary as this type of processing was considered a core function, required to help businesses grow; a function especially

important for micro businesses and SMEs. Removal of this exemption was seen as a form of “stealth tax” on such organisations. It was noted that this exemption allowed small charities and voluntary organisations to advertise or market their services and activities without having to pay the charge, and small businesses and sole traders were required to do this administrative work in order to trade. Given that the activity itself was not a profit making activity, it was felt that processing of this type of data should not invoke the data protection charge.

As organisations are already required to comply with data protection legislation, some respondents thought that if the processing activities were implicit in being a small organisation, no useful purpose would be served by burdening them with the additional responsibility to register. While some responses thought the exemption was still appropriate, but only as far as it involved advertising, they were also of the view that any processing involving long lists of contacts should require registration. A number of respondents thought it was appropriate for existing customers to be contacted by organisations, although they were also of the view that there should be an easy process for customers to be removed from any contact lists if they so wished.

Exemption no longer appropriate

There were a number of respondents who felt that this exemption was no longer appropriate. Some noted that electronic marketing had evolved significantly over the last few years, and, as a consequence, failure to comply with legislation governing marketing was one of the biggest drains on the ICO’s resources. As such, data controllers processing personal data for the purposes of marketing (even in respect of their own products and services) should register with the ICO and pay a charge which would ensure proper regulation. It was also noted that the marketing industry was now large and often profitable, and advertising and marketing could involve large scale processing of personal data, especially by those companies that acted as third-party data capture services. This was seen as an increased risk to data breaches, which could result in causing distress to individuals.

Some respondents questioned the marketing practices of certain companies (particularly nuisance marketing) and felt that as this had given rise to an increased regulatory burden on the ICO in investigating these practices, then it was only right that data controllers who carried out this type of processing paid the annual charge.

A distinction was noted between those small companies who advertise/send updates to existing contacts, and those who undertake blanket marketing for the purposes of profit making. In light of this, it was felt there needed to be a clearer definition of what constituted “marketing”. Generally, there was support for SMEs to remain exempt, although one respondent noted that the exemption did not apply to organisations that sold lists of personal data, but did apply to those who wished to buy such lists. A proposal was put forward that perhaps this exemption should be clearly defined, i.e. by number of records or level of income to ensure SMEs, in particular, were not affected by any change. A number of responses were also of the view that many SMEs did not always understand their data protection obligations, and that registration with the ICO (referring to the previous process under DPA 18) would provide greater accountability.

Government Response

The Government recognises that advertising and marketing is a core function to businesses. It has to be understood that this exemption relates only to the processing of personal data being used by individuals or organisations to market or advertise their own business, services, goods etc to existing or new customers. This includes charities advertising or marketing their own goods or services as part of fundraising activity. There is no doubt that advancements in technology have made marketing and advertising much easier than 20 years ago, and that the trade in personal data has increased. But, any trade in the personal information of customers is not covered by this exemption and organisations who undertake this type of work fall outside the scope of this exemption.

The ICO's data protection charge guide for data controllers, which can be found on the ICO's website (www.ico.org.uk) is clear that the exemption only applies in the following circumstances:

- The information held by the data controller on individuals is restricted to those whose personal information is needed for the company's own advertising marketing or public relations – for example past, existing or prospective customers or suppliers;
- The information held is restricted to information that is necessary for the required advertising, marketing and public relations for example, names, addresses and other identifiers;
- The personal data held is being used only for the advertisement and marketing of that particular organisation's own goods and services;
- Any personal information obtained (including purchased) from a third party is used for the purpose of marketing the data controller's own goods and services. In this case, if they were only using that information to market their own goods and services, the organisation purchasing the personal data would be able to claim this exemption, but the organisation selling the personal data would not.

As already indicated, Government does not want to increase burdens for micro organisations and SMEs, and considers that they are most likely to be affected by any changes to this exemption (as many larger organisations are also likely to undertake processing that falls outside the scope of the exemptions schema). As part of the policy making process, Government considered removing the exemption for larger data controllers only. However, additional stakeholder consultation with the ICO and advertising trade bodies and further assessment of potential impact has highlighted that changes to the exemption to cover only certain data controllers (such as SMEs/micro organisations) are likely to cause confusion and added complexity for data controllers. Given this, and the likelihood that most larger organisations would not be able to claim this exemption as currently structured, we have concluded that it is preferable to maintain a single straightforward exemption which is easily understood and applied.

Any sharing or disclosure of personal data (including lists of customer details) between data controllers must be conducted in accordance with the requirements of the GDPR. In addition, the Privacy and Electronic Communications Regulations (PECR) works in conjunction with the DPA 18 and the GDPR, and gives people specific privacy rights in relation to electronic communications as well as providing specific rules on e-marketing. Any organisation found to be in breach of the DPA 18, GDPR and/or PECR could face enforcement action by the ICO.

Given the hardship companies, especially micro organisations and SMEs, could face if this exemption was removed, the Government intends to retain this exemption. We recognise there are already measures in place for the ICO to take enforcement action against companies who do not comply with electronic marketing legislation, and for individuals to seek redress against those data controllers who breach individuals' rights.

(c) Accounts and records, accepting customers and suppliers, and financial forecasts

This exemption covers processing for the purposes of keeping accounts or records of transactions, deciding whether to accept a customer or supplier, or making financial forecasts. However, the exemption specifically does not apply in respect of information processed by or obtained from credit reference agencies. In addition, controllers who are providing accounting services for their customers are not exempt.

Do you consider this exemption:

- Still appropriate
- No longer appropriate
- Don't know

Number of Responses (N)	<u>Still appropriate</u>	<u>No longer appropriate</u>	<u>Don't know</u>	<u>Non Response to this question</u>
430	36% (157)	6% (25)	30% (129)	28% (119)

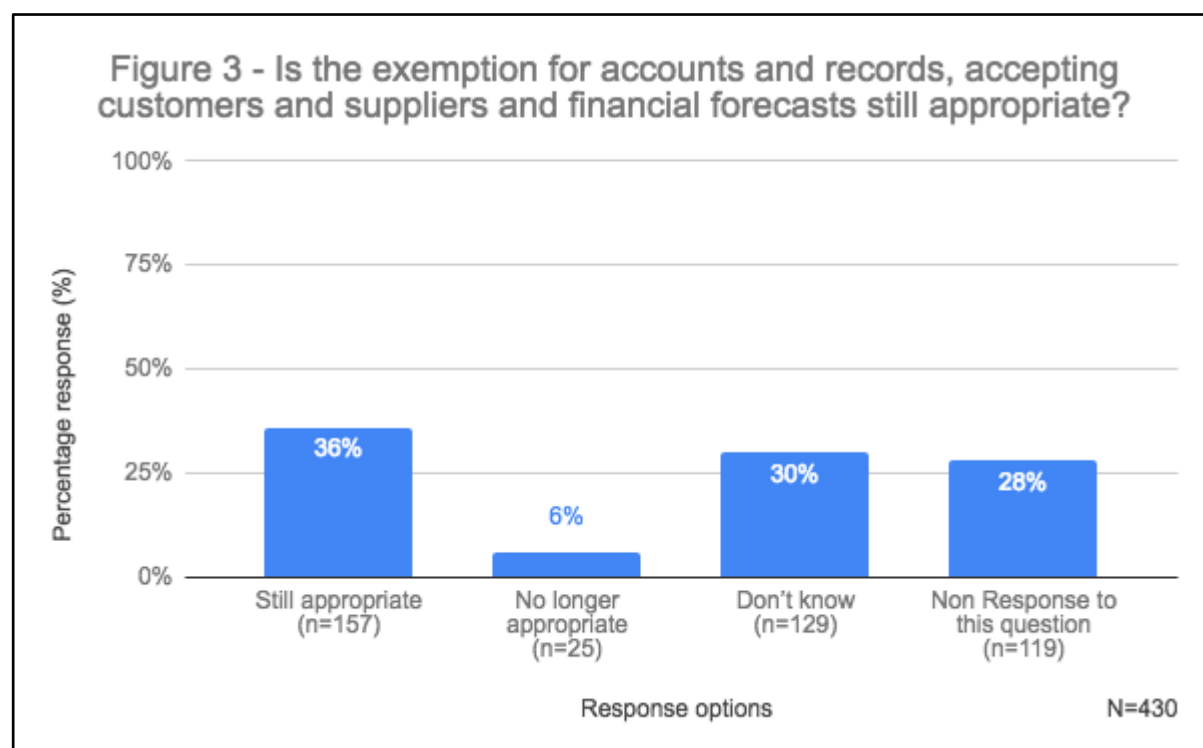


Figure 3 - Is the exemption for account and records, accepting customers and suppliers and financial forecasts appropriate?

Analysis

Just over a third of respondents thought this exemption should remain in place (36%), with a much smaller number of respondents believing this exemption was no longer appropriate (6%) - see Figure 3 above.

Exemption still appropriate

This type of data processing was generally seen as a core, mandatory activity for businesses, given that maintaining and keeping financial records is an essential part of business. As individuals would expect this processing to take place, it was felt that removing the exemption would place an unnecessary burden on small businesses in particular, especially as this type of processing was very limited and was seen as not having commercial value (outside its function).

One respondent noted that keeping financial data and accounts could be quite complicated for small organisations, and, in light of the “Making Tax Digital” process becoming mandatory in 2019, that no change to the exemption should be made at this time, therefore enabling smaller companies to focus on HMRC’s digital changes taking place. Some respondents thought no useful purpose would be served by either making small organisations pay the data protection charge for processing this type of data, or requesting them to register (referring to the previous process under DPA 98), given that any public benefits in removing the exemption were very small.

Respondents noted that the production of accounts for businesses was necessary, but one respondent stated that it was not clear how long these records should be kept, especially as HMRC could raise an issue on accounts going back many years. For clarity, in most cases such records must be kept for 6 years from the end of the last company financial year they relate to, although retention may be required for a longer period in certain circumstances. It was felt that organisations should be allowed to keep information relevant to keeping their business safe, so long as it was secure and not divulged to others, without the need to register and pay further fees. One respondent was of the view that most organisations used electronic means to manage relationships with its customers (and not just to keep accounts or records) and therefore this exemption needed to be clarified in light of this.

Exemption no longer appropriate

A number of the responses from those who considered this exemption no longer appropriate indicated that any processing of personal data should come within the parameters of the data protection legal framework, as risks still existed for data subjects. It was felt that data controllers still needed to be held accountable for the information they held, and registering with the ICO and/or paying the annual charge would remind them of their data protection legal responsibilities and increase accountability. It was also considered that this type of processing could be linked to commercial applications (one respondent thought that this information could be misused to increase prices for services - such as car insurance companies) and used for financial gain.

Government Response

This exemption is intended for those data controllers who only process personal data for the purposes of keeping accounts relating to any business or activity carried out by that particular person or organisation. The information being processed must be limited to the processing of the data controller’s accounts and records, for example, to information only pertaining to existing or past customers; suppliers; records systems for purchase or sales ledgers; the production of invoices etc. Although this exemption does not define financial or management forecasts, the processing must be limited to what is necessary to help carry out business activity. For example, an insurance company could not use this exemption for processing related to their insurance assessments as insurance is not an exempt purpose under this, or any other current exemption.

In all cases, regardless of whether the exemption is applicable, all data controllers processing personal data must comply with their data protection obligations. Failure to do so could lead to enforcement action being taken by the ICO.

It is likely that any data controller that processes personal data only for the purposes of keeping accounts and recording transactions for the running of that organisation, will be a micro organisation or small business. As highlighted above, larger organisations are likely to process additional data, and therefore, will fall outside of the remit of this exemption.

The Government does not believe there to be a significant justification for the removal of this exemption and considers it likely that any change to this exemption would create unnecessary additional burdens for SMEs in particular, and therefore has concluded that this exemption should remain.

Other exemptions

(d) Judicial functions

This exemption is for the processing of personal data carried out by a judge, or person acting on behalf of a judge, in relation to exercising “judicial functions”. This can include case work, and also covers the processing of personal data in relation to the appointment, discipline, administration or leadership of judges. ‘Judge’ includes a justice of the peace (or, in Northern Ireland, a lay magistrate); a member of a tribunal; and a clerk or other officer entitled to exercise the jurisdiction of a court or tribunal.

Do you consider this exemption:

- Still appropriate
- No longer appropriate
- Don’t know

Number of Responses (N)	<u>Still appropriate</u>	<u>No longer appropriate</u>	<u>Don’t know</u>	<u>Non Response to this question</u>
430	34% (144)	6% (27)	31% (133)	29% (126)

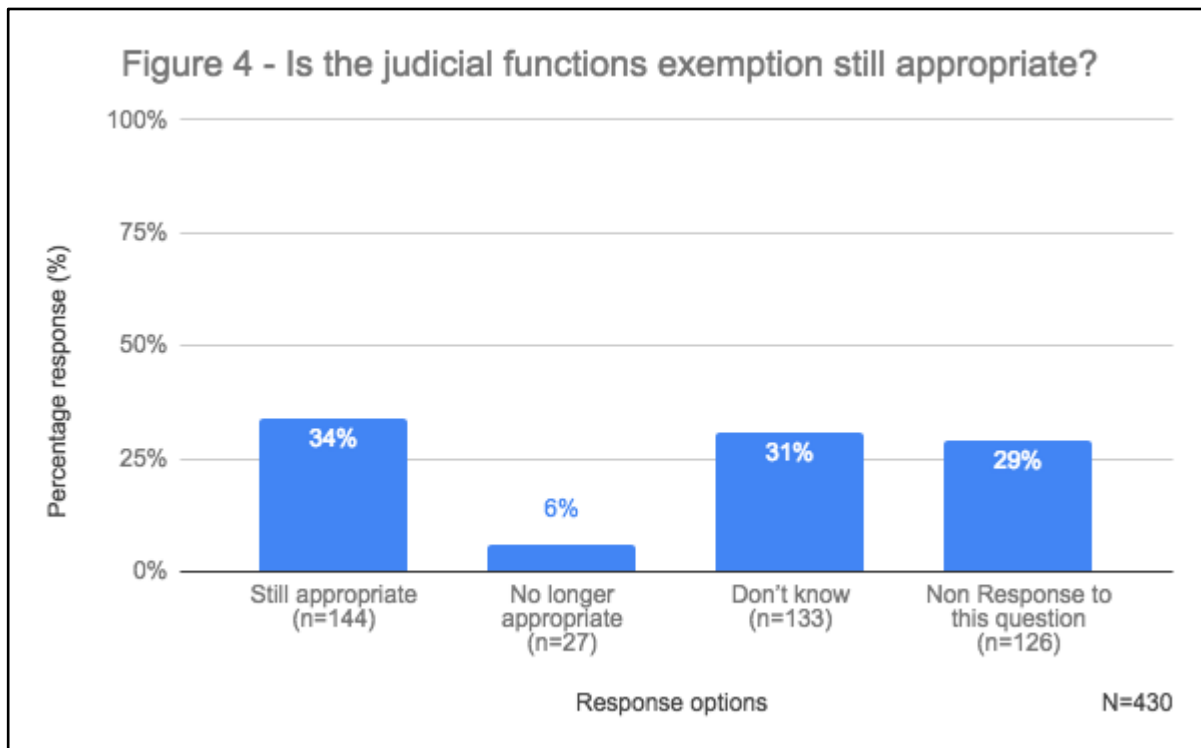


Figure 4 - Is the judicial functions exemption still appropriate?

Analysis

As can be seen from Figure 4 above, out of the 430 respondents to the survey, a third (34%) thought this exemption was still appropriate. Only 6% of respondents thought this exemption was no longer appropriate.

Exemption still appropriate

The general view from respondents was that the judiciary had no choice about whether they process personal data. Such processing was undertaken as part of legal proceedings and in line with them fulfilling a statutory function; the data was not being processed as part of a profit-making activity. Some respondents thought requiring the judiciary to pay the annual data protection charge could be to the detriment of essential public services and hinder judicial proceedings. It was also felt that any change to the exemption could interfere with the independence and operation of the judiciary. Although it was recognised that processing of personal data by the judiciary and law enforcement purposes were in the public interest, it was felt that this processing should still be regulated and scrutinised, and while the payment of a charge would not be appropriate, registration (referring to the previous process under DPA 98) could still take place.

Exemption no longer appropriate

A relatively small number of respondents felt that this exemption was no longer appropriate. Given that personal (and sometimes sensitive) data was being processed by the judiciary (or a person on behalf of the judiciary), it is still possible for a serious breach to occur. The type of data being processed could have far reaching consequences for data subjects.

Respondents thought that requiring those who process data in relation to exercising “judicial functions” to register (under the DPA 98 process) and pay the annual data protection charge would ensure they remained accountable for the information they held, retaining transparency and accountability. It was also felt that there had been an increasing number of data breaches within the legal profession, although it was recognised that there was a difference between those within the legal system who processed data and made a profit (such as those in private practice), and those within the judicial system who did not. One respondent queried whether functions relating to “appointment, discipline, and administration” within this exemption was relevant as it felt more like an organisational activity rather than a “judicial function” and did not rest comfortably with the exemption. A number of other respondents thought that members of the judiciary should not be singled out for exemption and should lead by example.

Government Response

This exemption covers the processing of personal data required for judicial functions, which includes processing carried out by or on behalf of a judge or by a person acting on a judge’s instructions. Data processed for the purpose of exercising judicial functions including those relating to appointment, discipline or administration is also covered by this exemption. The exemption clearly defines the data controllers covered by this exemption and the types of processing. The exemption does not include wider legal processing such as that undertaken by barristers or solicitors. All processing under this charge exemption must still comply with the requirements of the GDPR and the DPA 18.

The Government agrees that any processing undertaken for the purposes of judicial functions should be exempt from paying the data protection charge. Judicial processing still meets the rationale for introducing the exemption in 2009 which includes that judicial processing is ‘unlikely to prejudice the rights and freedoms of data subjects’ because of the strict obligations on judges only to proceed on evidence that is capable of being tested or corrected in the course of proceedings, and the public and transparent nature of their decisions.

Section 117 of the DPA 18 (referencing Article 55(3) of the GDPR) states that there is nothing in the Act that permits or requires the Information Commissioner to exercise their functions in relation to the processing of personal data conducted in a judicial capacity, and as a result of this, oversight of data protection in the judiciary is the responsibility of the Judicial Data Protection Panel. However, as members of the judiciary can still fall within the definition of data controllers and be required to pay the data protection charge, it is clear that the exemption remains relevant, to ensure that the processing of personal data for judicial functions remain exempt.

Government does not consider it appropriate to make a change to this exemption.

(e) Personal, family or household affairs (including recreational purposes)

People are exempt from paying charges if the only information they process is for their own personal, family or household affairs that have no connection to any commercial or professional activity. The exemption includes recreational activities and the capturing of images (photographs or video footage) that contain personal data, even if such images are captured in a public space, provided they are for their own personal, family or household affairs. Examples could include a personal address book, or an individual’s personal social

media account. The exemption includes a householder’s personal CCTV, even if the CCTV is capable of collecting images of public spaces.

Do you consider this exemption:

- Still appropriate
- No longer appropriate
- Don’t know

Number of Responses (N)	<u>Still appropriate</u>	<u>No longer appropriate</u>	<u>Don’t know</u>	<u>Non Response to this question</u>
430	64% (276)	4% (15)	4% (19)	28% (120)

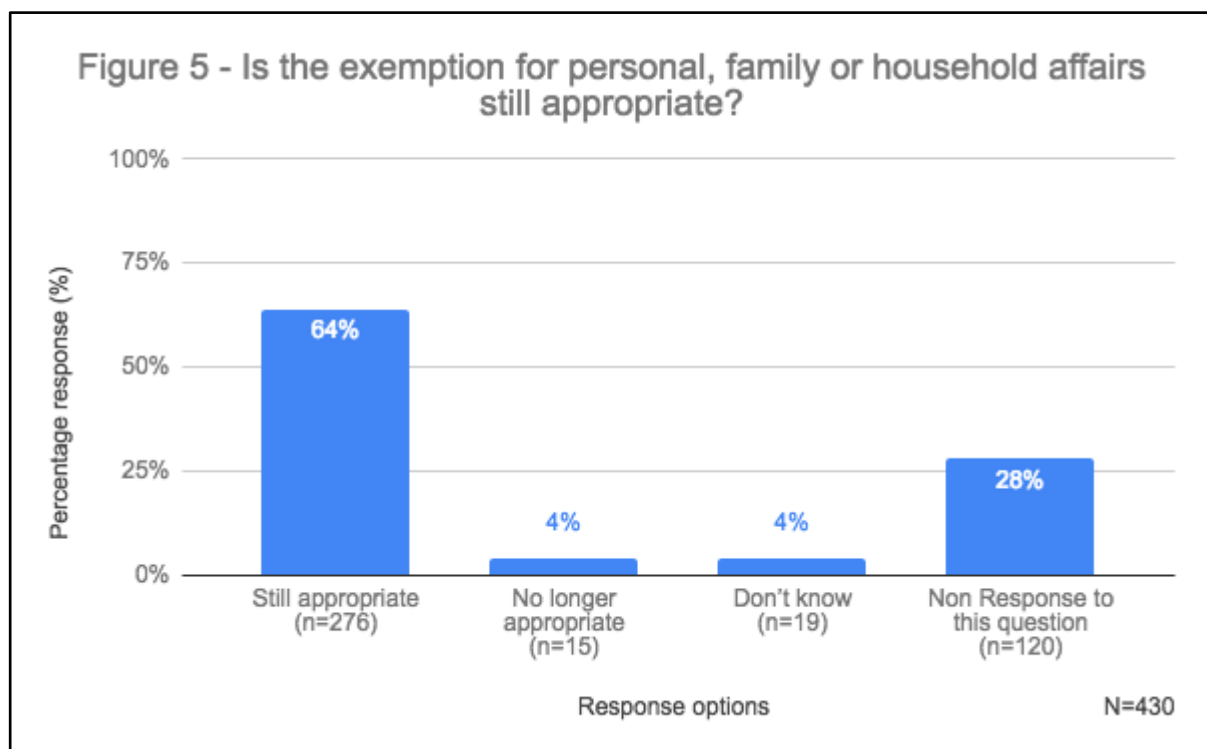


Figure 5 - Is the exemption for personal, family or household affairs still appropriate?

Analysis

As can be seen from Figure 5 above, there was wide support for this exemption to remain with 64% of respondents deeming it still appropriate and only a small number (4%) thinking it no longer appropriate.

Exemption still appropriate

Most respondents who considered the exemption to still be appropriate highlighted that the removal of this exemption would be burdensome - not only for individuals, as it would apply to most people within the UK, but also for the ICO as it would practically be very difficult to enforce. It was felt that expecting most people to pay the data protection charge would be

disproportionate to the assistance or services they could expect in return from the regulator. The majority of responses believed the withdrawal of this exemption would be unfair to individuals, for a number of reasons. Some considered this to be state interference in people's lives, and thought regulating data for personal use would be in breach of the European Convention on Human Rights. Others thought that if this exemption was removed, everyone would be expected to pay the charge, including children.

There was mixed views about whether the processing of data from CCTV images should be exempt. Some felt that CCTV in use in public places, or those that captured images outside a household's boundary should not be included within the exemption, although the majority of responses thought the use of CCTV within private homes should remain exempt, especially as the use of images captured on household appliances could assist in crime prevention and crime detection. A number thought that guidance should be made available on the use of CCTV in the domestic environment, especially where it encroached on public spaces. Some respondents were of the view that removing the exemption could lead to a decrease in the use of CCTV for security purposes, thereby possibly increasing the crime rate. It was highlighted that law enforcement agencies sometimes sought CCTV evidence from households and therefore any charge upon the processing of this data would effectively be charging individuals for assisting in crime detection. Some also thought that to introduce charges for the processing of this CCTV data for the protection of personal property and crime prevention would amount to an unfair tax.

Exemption no longer appropriate

There was limited evidence provided to support views that this exemption was no longer appropriate. Some respondents thought that data controllers who use CCTV in public spaces should at least be registered (referring to the DPA 98 process) with the ICO without paying the charge. Others considered the increased use and popularity of sharing messages on-line carried privacy risks to others involved in any capture, as it was possible that their images could be shared without consent. In light of this, some believed this exemption was no longer appropriate. It was felt that there was a fine line between personal use of data and privacy rights of others.

Government Response

The Government agrees with the majority of respondents and does not plan to change this exemption. Not only does this exemption cover information such as correspondence and information held in address books, it also covers wider processing such as social networking and online activities - providing they are undertaken for social and domestic purposes. The nature or content of the data is not material when considering whether this exemption is applicable, as long as it only relates to domestic use.

With regards to CCTV images captured by households, the Government agrees with the majority of respondents and does not plan to reintroduce the data protection charge for the processing of this type of data for domestic purposes. Although the exemption extends to the capturing of images beyond the boundaries of properties, it is only applicable for domestic users. CCTV for non domestic use is still subject to the data protection charge and both domestic and non domestic users of CCTV must abide by the requirements of the GDPR where relevant. The ICO intends to publish additional guidance on the use of CCTV by the end of 2018.

Where images are shared online without consent for purely personal or social purposes, the DPA 18 and GDPR do not apply and therefore this activity is not subject to regulation by the ICO. In most cases, any objection to this sharing would be a matter to be taken up directly with the person responsible for posting the material, or with the social media service provider, unless the circumstances warranted intervention by the police.

The Government has considered the evidence put forward in conjunction with wider consultation with additional stakeholders and has decided that this exemption should remain as is.

(f) Some not for profit organisations

This exemption is for not for profit organisations carrying out processing of personal data for membership purposes, or in the context of activities for members or other individuals who have regular contact with the organisation concerned. Examples could include a food bank or a park’s volunteer group.

Do you consider this exemption:

- Still appropriate
- No longer appropriate
- Don’t know

Number of Responses (N)	<u>Still appropriate</u>	<u>No longer appropriate</u>	<u>Don't know</u>	<u>Non Response to this question</u>
430	40% (173)	7% (31)	22% (95)	31% (131)

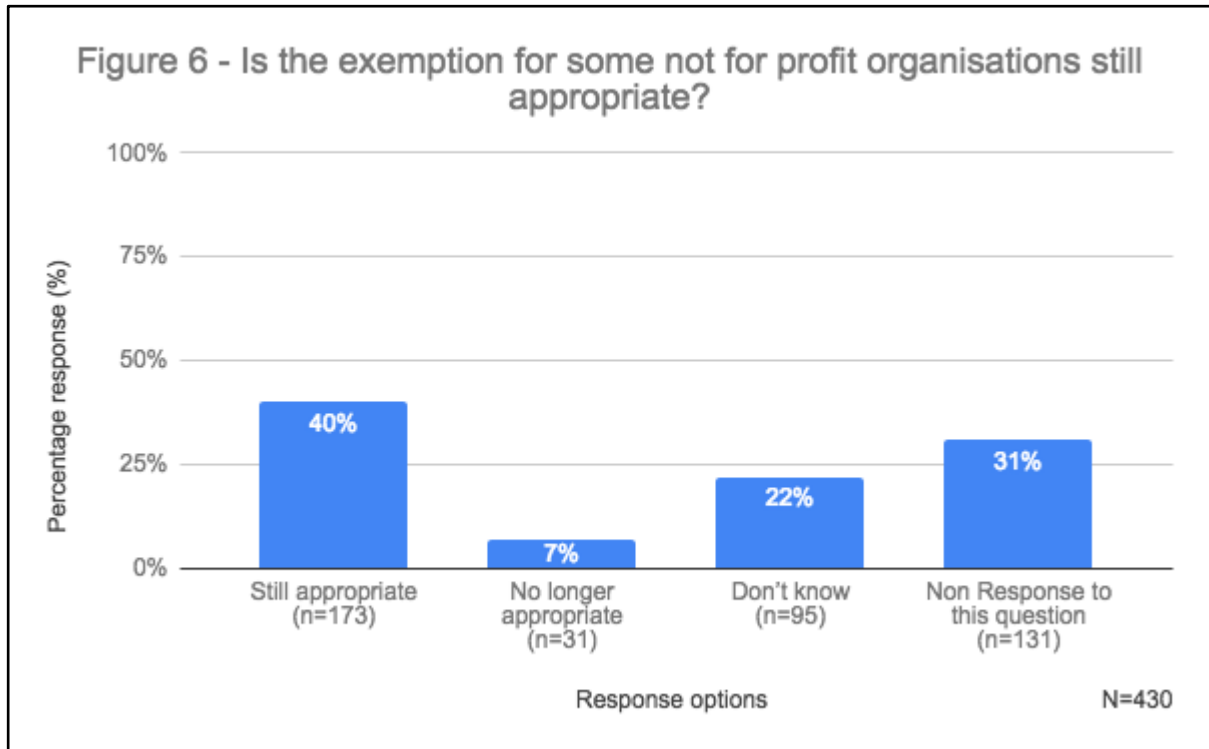


Figure 6 - Is the exemption for some not for profit organisations still appropriate?

Analysis

Figure 6 above shows that 40% of respondents thought this exemption was still appropriate. Only 31 (7%) of the 430 responses received thought the exemption was no longer appropriate.

Exemption still appropriate

Many respondents who agreed that this exemption was still appropriate thought that not for profit organisations should not have to pay the data protection charge and that the money instead should be used to support the nature of their organisation. It was noted that organisations that fell within this category are often managed by volunteers (such as Neighbourhood Watch schemes) and the requirement to pay the annual charge could cause the relevant organisation hardship or additional burdens, and even damage or destroy them. As these groups tend to be independent, and are usually not registered with the Charity Commission or part of an umbrella organisation, it was thought that enforcing payment of the charge would also be practically difficult.

However, there was also support for these organisations to register (referring to the previous process under DPA 98) with the ICO, without having to pay the data protection charge, given that they do process personal data. It was felt they should be held accountable for the information they held, although others noted that any personal data processed by these organisations would be very limited and would not include sensitive information. A number of

respondents were of the view that larger organisations should not be exempt from paying the data protection charge, and the level of the required charge should be linked to the amount of profit made, volume and type of personal data processed, the level of turnover or the size of the organisation. Alternatively, another option put forward was to set the registration threshold at the same amount for registering with the Charity Commission (income of over £5.000). One respondent suggested donor details should be recorded for not for profit organisations, although these details should then not be used to request money.

Some respondents also thought the exemption should be extended to Town and Parish Councils. It should be noted that Parish and Town Councillors themselves are not normally required to pay a charge as they generally only process personal data on behalf of their Town or Parish Council (and therefore are covered by the charge payable by the council itself).

Exemption no longer appropriate

Of those respondents who did not think the exemption was still appropriate, some were of the view that there should be a single approach taken regarding paying the annual charge, and that all organisations that collect and process personal data (which could include bank details) should pay the charge. It was felt that data breach risks still existed and that all organisations needed to be regulated. It was also felt that if not for profit organisations sold their membership lists then the exemption should not apply to them, although it was noted that many charitable organisations do contact people to seek donations and share personal details of individuals between them without obtaining their permission.

Many believed that these organisations should not pay a high charge, but that a nominal amount would help ensure they paid attention to data protection regulations. Some comparisons were made with other organisations who are exempt from paying the charge, for example, it was noted that some large not for profit organisations that handle large amounts of sensitive personal data are not required to pay the data protection charge whereas small Parish Councils who handle non sensitive data are required to pay. It was also noted that Councillors, who are not for profit workers, and receive allowances as part of undertaking their duty and voluntary public service work, have to pay the charge under the current scheme (although a new exemption for elected representatives, candidates (prospective and nominated) for election and members of the House of Lords has been considered as part of this consultation).

Government Response

This exemption is only for not for profit membership purposes or in the context of activities for members or other individuals who have regular contact with the organisation, and therefore would not apply in many of the instances highlighted by respondents who did not feel the exemption remained appropriate. Charities and other organisations can be included within this exemption as long as they are established for not for profit making purposes and do not make a profit, or if they do make a profit, it isn't used to enrich others. Each organisation must determine for themselves if they are established as not for profit making.

This exemption is limited only to the processing of:

- Information necessary to establish or maintain membership or support;

- Information necessary to provide or administer activities for people who are members of the organisation or have regular contact with it;
- Information on individuals whose data is required to process for this exempt purpose;
- Personal data that is restricted to that necessary for this exempt purpose.

Any other type of processing falls outside the scope of this exemption including the selling and trading of any personal information/membership lists.

It should be made clear that the fact that a number of organisations fall within this exemption does not derogate them from their responsibilities as a data controller; all relevant requirements of the DPA 18 and the GDPR must still be complied with.

The Government believes the impact of removing this exemption would cause additional burdens on those organisations that fall within this group. While it is possible that there are larger organisations that operate on a not for profit basis, they are also likely to process additional personal information that will bring them outside the scope of this exemption. In addition, the parameters of this exemption are limited to only specific types of personal data and restricted to data used for membership purposes. As such, any organisations that fall within this exemption are likely to be smaller, voluntary and local groups, which do not make any profit.

The removal of this exemption would have a significant adverse impact on not for profit organisations, and for this reason, the Government will not make any changes to this exemption at this time.

(g) Maintaining a public register

'Public Register' in this exemption refers to those registers that are required by statute to be open for public inspection, or open to inspection by any person having a legitimate interest. For example, it covers the collection of personal data for the Electoral Roll, and the publication of the Open Register.

Do you consider this exemption:

- Still appropriate
- No longer appropriate
- Don't know

Number of Responses (N)	<u>Still appropriate</u>	<u>No longer appropriate</u>	<u>Don't know</u>	<u>Non Response to this question</u>
430	36% (157)	9% (38)	23% (98)	32% (137)

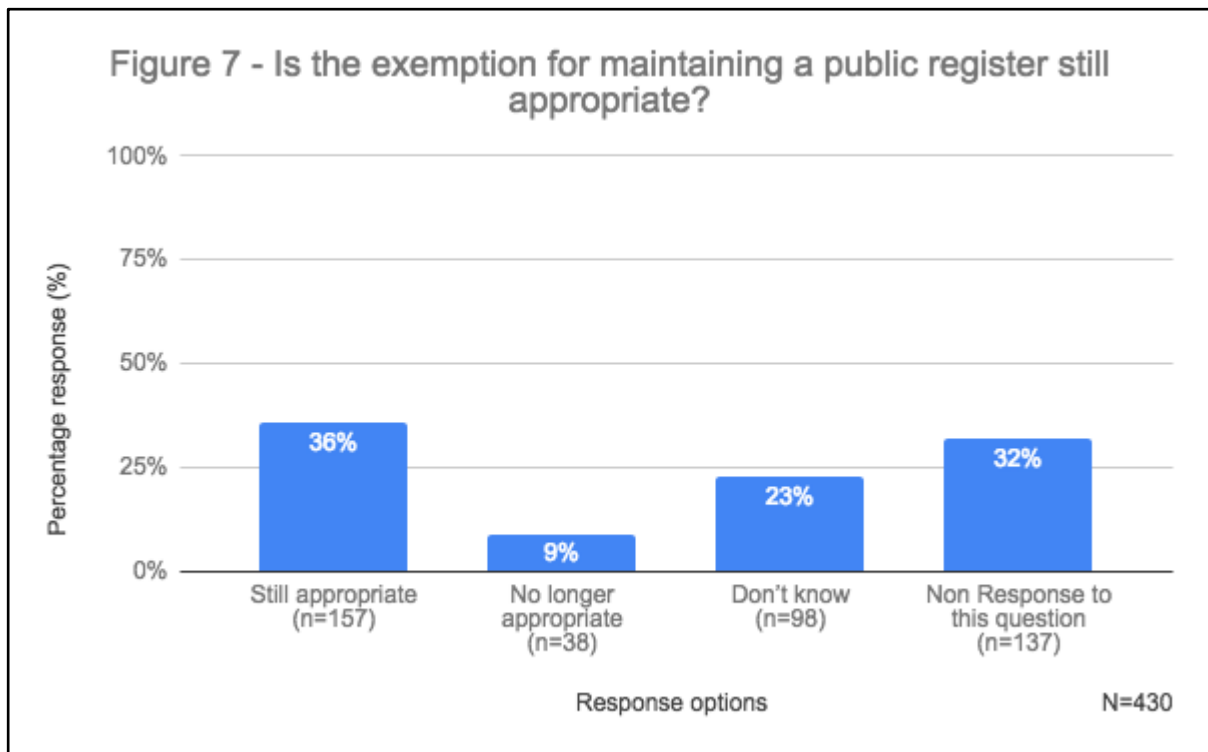


Figure 7 - Is the exemption for maintaining a public register still appropriate?

Analysis

Just over a third of responses (36%) thought that this exemption was still appropriate. Only 38 (9%) responses of the 430 received thought that this exemption was no longer appropriate (see Figure 7 above).

Exemption still appropriate

Of those respondents who considered this exemption to still be appropriate, many thought that as the processing of personal data for the purposes of maintaining a public register was a statutory duty, rather than a voluntary role, and as the role was essential to a representative democracy, the exemption to paying the data protection charge should remain. This was reinforced by the fact that the purposes of these types of registers, such as the open electoral register, a list of overseas electors (as well as other records published by the Electoral Registration Officer) or the register kept by Companies House were clear and the records were open for public inspection, all of which reinforced the transparency of collecting personal data.

It was felt that the exemption was justified especially as any payment of the charge by some data controllers could just be re-claimed back and was therefore seen as a shifting of burden of resources from one Government Department or authority to another. Some respondents thought the maintenance of such records should be done confidentially, while others were happy with the open nature of these registers. It was also felt that as councillors could hold this information, any removal of the exemption would mean they would have to pay this charge from the small taxable allowance they receive. It was also believed that if the exemption was removed, this could affect the role of Electoral Registration Officers by adding further costs.

Exemption no longer appropriate

A small number of respondents felt that this exemption was no longer appropriate - and that data controllers who hold such registers should pay the data protection charge and register (referring to the DPA 98 process) with the ICO, especially as it was seen that the information available could be open to misuse, with potentially significant impacts upon data subjects. A way of limiting misuse of this data was put forward as only having the information available for viewing, but not for sale or print. Those data controllers who maintain public registers were seen as usually being large organisations (such as local authorities) who needed to be regulated.

There were concerns that some public authorities had made it difficult for data subjects to opt out of having their data shared - and a number thought that as the compilation of these registers could be undertaken by contractors, the exemption was no longer appropriate. There was also thought that many organisations profit from the sale of these lists, and the exemption should not be applicable in these circumstances. A suggestion of local authorities paying the ICO a charge when information is sold was put forward, given that individuals had no say in how their information was used when sold commercially.

It was also felt unfair that these types of processing attracted no charge, whereas those organisations that processed substantially less data had to pay the annual data protection charge. One respondent queried whether the exemption was accurate as it covered the publication of the open register but did not cover the possible sale of the edited register and therefore excluded all the persons it was designed to exempt.

Government Response

This exemption is clear in that any processing done by a data controller of personal data with the sole purpose of maintaining a public register as set out by legislation is exempt from paying the annual data protection charge. The exemption is only applicable to the information that is required to be published. If organisations are compiling public registers but are also holding information as part of that compilation which is not being published, then this exemption is not applicable. Equally, those data controllers who hold information on a public register which is then sold can not rely on this exemption.

Electoral Registration Officers and Returning Officers are unlikely to fall within this exemption as while they may collect information required for the purposes of a public register i.e. electoral register and absent voting lists, they are likely to also hold other personal information necessary for the delivery of the democratic process (which is not public information).

It is a legal requirement for individuals to register on the "full" register; this is the version that is only accessible to electoral registration officers, political parties, MPs, libraries, local authorities, the police, courts, government departments and credit reference agencies. Data subjects have no control or right of erasure with this register. It is important to note that this register is protected, and it is a criminal offence for anyone to disclose information from it without justification.

The 'edited' or 'open' electoral register contains the same information as the full register but

individuals do have the right to opt-out of it, either at the point that their details first go on the register, or at any point afterwards by making a request to their local electoral registration officer. The open register can be sold to organisations for a wide range of purposes. The ICO have published more information about this at <https://ico.org.uk/your-data-matters/electoral-register/>

Government understands that there are only a small number of data controllers who are able to rely on this exemption, as a high proportion of controllers who maintain a public register will also hold or process data which falls outside the scope of this exemption. However, we consider that those elements of processing which fall outside the scope of the exemption do so because they reflect a higher level of information risk, and therefore it is appropriate that the exemption does not apply in these cases. Government does not intend to make any changes to this exemption.

h) Data Controllers that do not process personal data by automated means

This exemption covers manual processing of personal data (but not where data is recorded manually, with the intention that it should be processed by automated means). For example, it would cover an organisation that only held customer records in a manual or hard copy filing system. Personal data that is processed using any kind of computer (including cloud computing, desktops, laptops and tablets) would not be covered by this exemption.

Do you consider this exemption:

- Still appropriate
- No longer appropriate
- Don't know

Number of Responses (N)	<u>Still appropriate</u>	<u>No longer appropriate</u>	<u>Don't know</u>	<u>Non Response to this question</u>
430	26% (111)	15% (67)	26% (111)	33% (141)

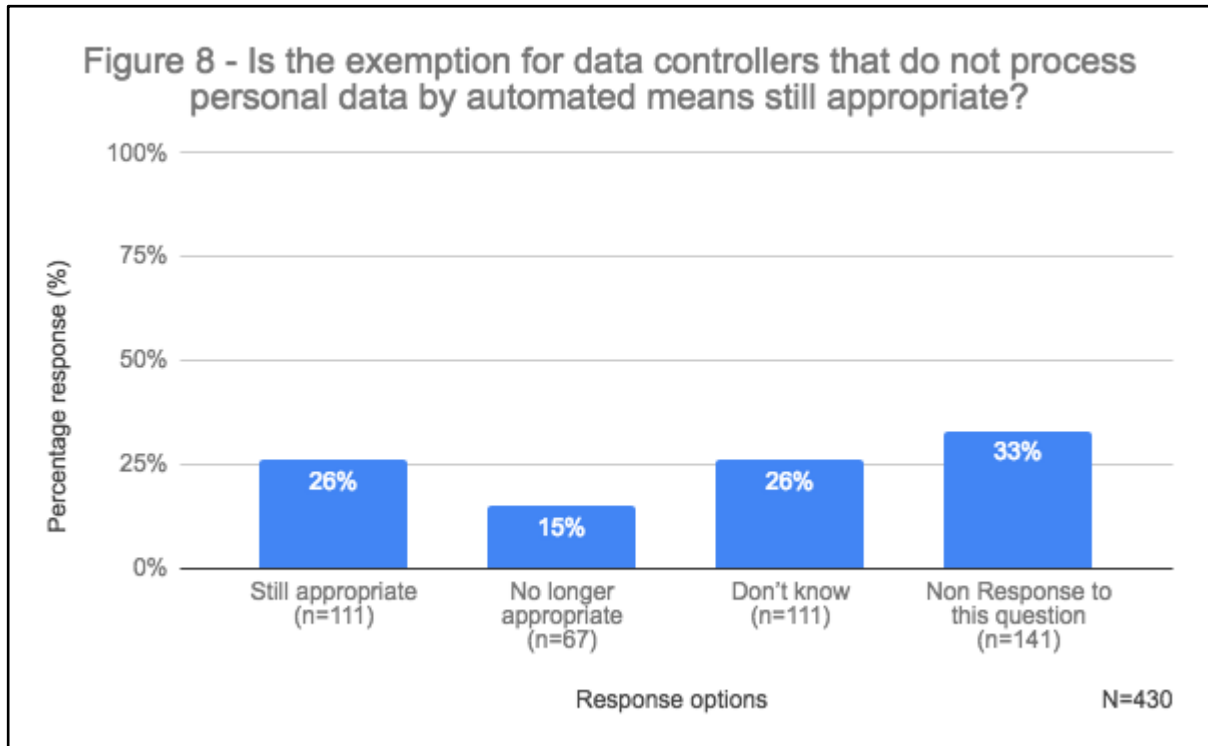


Figure 8 - Is the exemption for data controllers that do not process data by automated means still appropriate?

Analysis

As can be seen from Figure 8 above, just over a quarter of respondents (26%) believed this exemption was still appropriate, with 15% believing this exemption was no longer appropriate.

Exemption still appropriate

Some respondents who considered the exemption remained appropriate felt that only very small organisations, such as sole traders or small community groups - usually with low profit margins, would process personal data manually. As such, respondents considered the risk of the information being misused and causing harm to individuals very low. It was felt that as only very small businesses use this exemption, and as it reduced administrative and financial burdens for those businesses, no useful purpose could be served by placing additional responsibilities upon them.

The difficulty in regulating paper based records meant it was unfair to expect those companies to pay the data protection charge (some felt this was disproportionate to the possible risks) although there was no doubt that these data controllers still had a duty to respect and accurately maintain the data they held - and to keep that data secure. One suggestion put forward was, in order to increase the security of paper records, there should be a number of principles/conditions linked to the exemption. This would help protect that data being manually held, given that if such information is lost, it could be more difficult to trace.

Exemption no longer appropriate

Of the responses received who believed this exemption was no longer appropriate, a number thought that anyone processing manual data could do so just to avoid justifying their processing; in these cases, more should be done to encourage organisations to move towards electronic processing of data, rather than giving them a financial incentive not to do so. Others thought this exemption was outdated and that legislation should concentrate on the data being processed, rather than the method of storage as the effect of any loss would be the same.

Some respondents thought there should not be any exemptions to any data processing and that the way the data is captured, stored, maintained or used should not matter. They believed data contained in paper records could pose a data risk to data subjects as much as computerised records. It was noted that a number of data breaches involving paper records had already occurred, and care had not been taken in the disposal of such records.

Some suggested a threshold could be set as to the amount of personal data being held on paper records above which data controllers would then pay the data protection charge; alternatively, the exemption should only be limited to processing not linked to marketing purposes. It was also noted that manual records could be more accessible than records kept on a password protected system, and that manual systems were prone to human error and therefore more vulnerable than automated systems. Other respondents thought having separate rules for paper processing caused confusion, for example, under this exemption, local councillors were exempt if they managed all aspects of their casework on paper, but were not exempt if they dealt with any part of their casework on electronic devices.

Government Response

This exemption specifically relates to the processing of personal information without an automated system, such as a computer. The Government believes that only very small organisations or groups are likely to be processing personal data in a manual format rather than electronically. Processing data on an electronic device has far more advantages than a manual set-up, and there is no evidence to suggest that avoiding a relatively low charge is the driver behind an organisation's choice to retain manual records. The exemption only relates to the payment of the data protection charge, and does not mean those organisations within this category are exempt from all other legal data protection responsibilities.

To remove this exemption is likely to place significant burdens upon the small organisations that fall within this group. Accordingly, the Government is of the view that this exemption should remain.

Automatic Fee Tier 1 (£40, or £35 if paid by direct debit)

(i) Small occupational pension scheme

A small occupational pension scheme is defined as a scheme with fewer than twelve members where all members are trustees of the scheme, and either all decisions made have unanimous agreement from the members; or the scheme has a trustee who is independent in relation to the scheme (for the purposes of section 23 of the Pensions Act 1995) and is registered with the Pensions Regulator.

Do you consider this automatic classification in fee tier 1:

- Still appropriate
- No longer appropriate
- Don't know

Number of Responses (N)	<u>Still appropriate</u>	<u>No longer appropriate</u>	<u>Don't know</u>	<u>Non Response to this question</u>
430	30% (127)	9% (40)	28% (121)	33% (142)

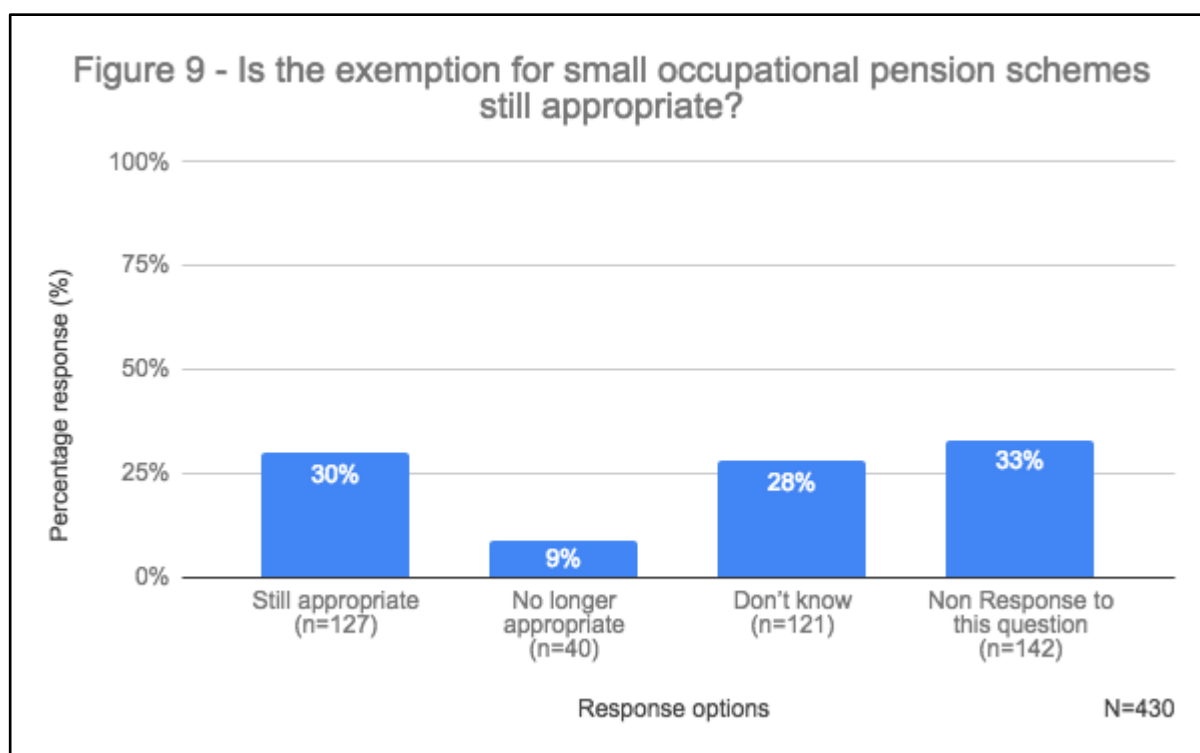


Figure 9 - Is the exemption for the small occupational pension schemes still appropriate?

Analysis

Figure 9 above demonstrates that just under a third (30%) of respondents thought small occupational pension schemes should automatically fall within tier 1 of the data protection charge scale. Only 40 (9%) of the respondents thought this classification was no longer appropriate.

Automatic classification in fee tier 1 still appropriate

Of those respondents who felt this automatic tier 1 charge was still appropriate, a number thought the charge payable proportionate; balancing the minimisation of red tape for these types of businesses, with consideration of the level of data protection risks posed. Some also felt that these organisations should be exempt from paying the data protection charge as the data protection risks were considered low.

Automatic classification in fee tier 1 no longer appropriate

Some respondents felt the charge structure was unfair, with large organisations ending up paying less per head than small businesses, thereby giving them a cost advantage. Some felt there should be a lower charge (one respondent suggested £10 was appropriate) while others felt these organisations should be totally exempt from paying the data protection charge.

Government Response

The Government has considered responses to this question, but does not consider there to be significant evidence that small occupational pension schemes should pay a higher charge to the ICO, and therefore considers that automatic classification to the lowest tier is correct. The relevant schemes are specifically defined in the Data Protection (Charges and Information) Regulations 2018, and by their very definition, will be small organisations, with fewer than twelve members. Accordingly, the Government believes that to pay an annual charge of £40 (reduced to £35 if paid by direct debit) is the correct amount.

The Government therefore believes this automatic classification of small occupational pension schemes into tier 1 should remain.

(j) Charities

A data controller that is a charity automatically pays the lowest level of charge. For these purposes, “charity”:

- in England and Wales, has the meaning given in section 1 of the Charities Act 2011,
- in Scotland, means a body entered in the Scottish Charity Register maintained under section 3 of the Charity and Trustee Investment (Scotland) Act 2005, and
- in Northern Ireland, has the meaning in section 1 of the Charities Act (Northern Ireland) 2008.

Do you consider this automatic classification in fee tier 1:

- Still appropriate
- No longer appropriate
- Don't know

Number of Responses (N)	<u>Still appropriate</u>	<u>No longer appropriate</u>	<u>Don't know</u>	<u>Non Response to this question</u>
430	29% (126)	13% (58)	24% (101)	34% (145)

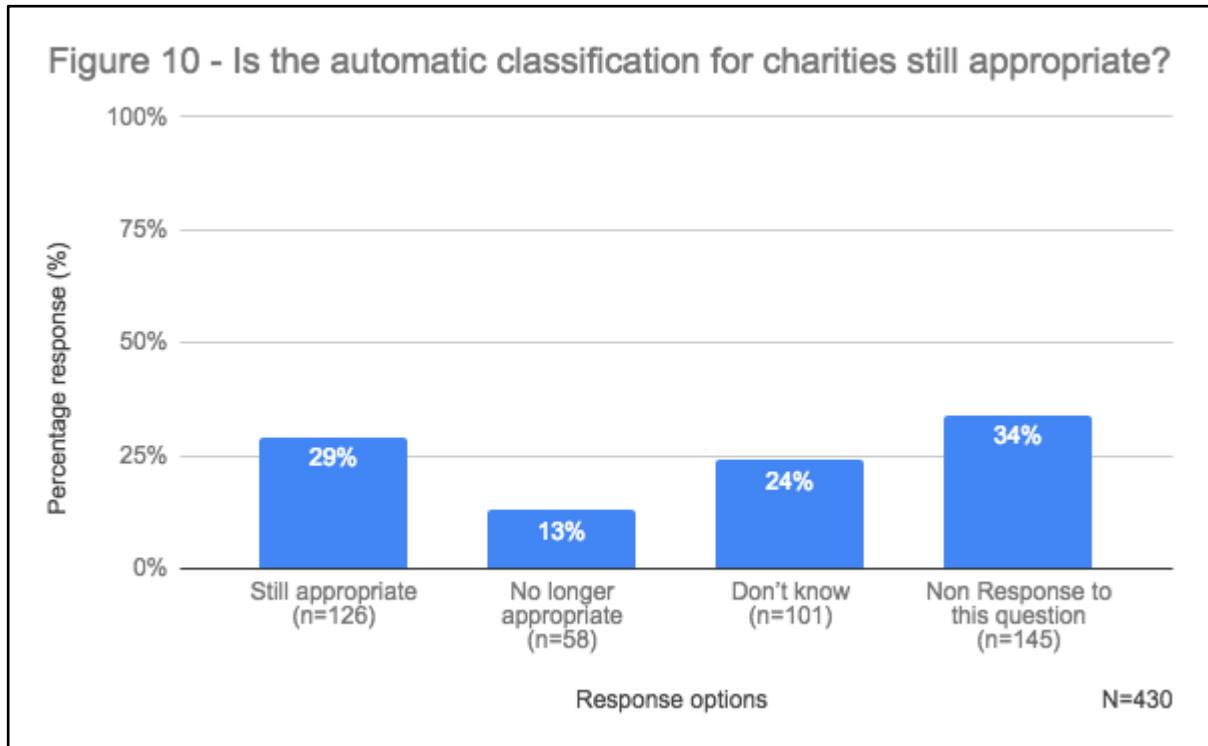


Figure 10 - Is the automatic classification for charities still appropriate?

Analysis

Just under a third (29%) of responses thought that automatic tier 1 classification for charities was still appropriate, with 58 (13%) of respondents expressing the view that the exemption was no longer appropriate (see Figure 10 above).

Automatic classification in fee tier 1 still appropriate

Many of those who considered that the automatic tier 1 classification for charities was still appropriate felt that it achieved a balance between reminding charities of their obligations and achieving transparency whilst recognising the beneficial nature of their work by placing them in the lowest tier.

Some respondents who agreed that the tier 1 classification was appropriate commented that charities, in particular smaller charities with little funds, should be entirely exempt from the charges, and the money saved could be put to better purposes and not used for a regulatory function.

Some thought that registering with the ICO (as per the previous DPA 98 process) without payment of the charge would remind them of the data protection legal responsibilities, without incurring a valuable cost to them, while others thought that charities should be entirely exempt from paying the charges, particularly as they worked for good causes.

Automatic classification in fee tier 1 no longer appropriate

Some respondents thought that the nature of the work undertaken by charities should not necessarily mean an automatic classification in tier 1 of the annual data protection charge structure. Others argued that larger charities, especially those with a very high turnover, effectively operated as large businesses and should not automatically pay the lowest charge.

Some respondents noted that these types of charities had CEOs on high salaries, and as such, the automatic tier classification was not appropriate, while others indicated that charges should be tiered and/or linked to other factors such as turnover or number of employees.

Some respondents also argued that charities should not automatically pay the lowest amount because they processed a lot of sensitive personal data, and because there had been incidences of data breaches and misuse of personal data including the harassment of elderly and vulnerable people.

Others felt that the definition of charities was not wide enough and did not take into account the range of organisations in existence, for example, small campaigning organisations which, it was felt, should be exempt or be subject to a lower charge.

Government Response

All charities that are not otherwise subject to an exemption are currently only liable to pay the tier 1 charge, regardless of their size or turnover. Government recognises the valuable work that charities do, and the importance of ensuring that charitable funds are put to best use. As some respondents have highlighted, this needs to be balanced with the regulatory risk from the wide range of different charitable organisations to which this exemption currently applies. Government is of the view that this exemption should remain for the moment but will give further consideration to whether this exemption remains fit for purpose.

Proposed new exemptions

- a) Elected representatives, candidates (including prospective candidates) for election and members of the House of Lords

Elected representatives (separate to their elected assembly or political party) can be data controllers in their own right particularly where they engage with and undertake casework on behalf of their constituents. Government has previously committed to considering the appropriateness of elected representatives being required to pay a charge in respect of their processing of personal data. The Government is minded that this activity deriving from their public office and public function should not be liable to a charge. The Government also wishes to avoid barriers to democratic engagement, mirroring the approach that the Government has taken during the passage of the Data Protection Act through Parliament. The Government is minded that all elected representatives should be exempt, as well as members of the House of Lords and (prospective) candidates for those elected offices. N.b. Elected representatives as defined in Schedule 1 of the Data Protection Act 2018.

Do you agree?

- yes
- no
- don't know

Number of Responses (N)	<u>Yes</u>	<u>No</u>	<u>Don't know</u>	<u>Non Response to this question</u>
430	29% (125)	15% (63)	24% (104)	32% (138)

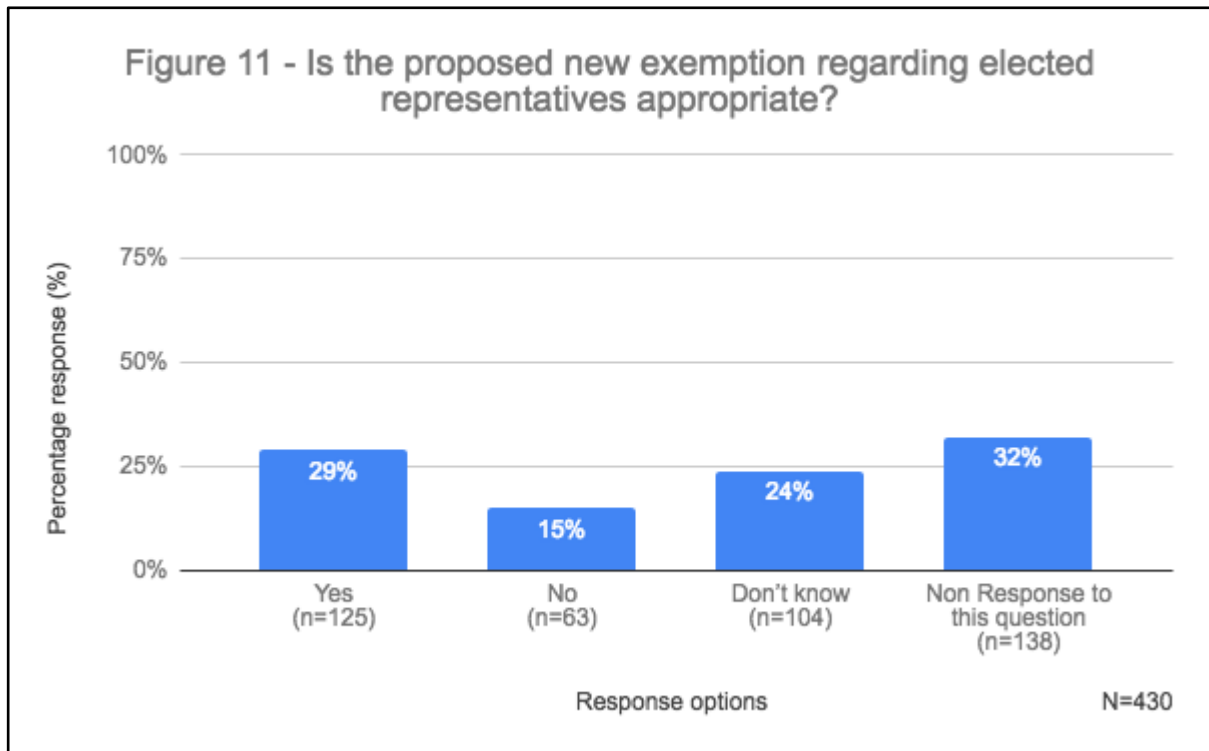


Figure 11 - Is the proposed new exemption regarding elected officials appropriate?

Analysis

Figure 11 above shows that of the total responses to the consultation, 29% supported a new exemption for elected representatives, candidates (including prospective candidates) for election and members of the House of Lords, while 15% of respondents did not agree with the proposed exemption.

In favour of a new exemption for elected representatives

Of those who responded in favour of a new exemption for elected representatives, nearly 50% added comments to their response, with most of those comments indicating support for an exemption for local authority councillors in particular. Some also supported an exemption for Members of Parliament (MPs) and members of the House of Lords, recognising that MPs process personal data while holding public office (for example undertaking constituents' casework) which was an essential function to their role. Many of those commenting indicated they agreed with the rationale for the exemption set out in the consultation; that the charges constituted a 'barrier to democracy' and that activity deriving from public office should not be liable to a charge.

Some considered the charges were discouraging people from becoming local councillors, as many of these roles are largely unpaid or low paid and are situated at the first tier of local government (parish and neighbourhood councils). There was also a strong feeling that charges for councillors were bureaucratic, lacked purpose and represented a form of taxation (met by the taxpayer as opposed to the data controller).

Several respondents pointed out that elected representatives could claim the charges as an expense which put an additional administrative and financial burden on the taxpayer, and one respondent indicated that people would reasonably expect their local councillors to be undertaking data processing. A small number of respondents considered that local councillors should be covered by the charge paid separately by their local authority.

Not in favour of a new exemption for elected representatives

There were a number of reasons why respondents did not favour a new exemption for elected representatives. Some considered that the requirement to register (which arose under DPA 98 but is no longer in place) was important for transparency and it reminded elected representatives about their data protection related obligations and responsibilities, especially given their processing of sometimes highly sensitive personal data and previous breaches of the legislation by some MPs.

Others felt that MPs should not be given 'special treatment' over other data controllers who were required to pay the charge, especially as they receive remuneration and it was considered that the charge was relatively low compared to the level of remuneration received. It was noted that this charge could also be claimed from Members' expenses. Some respondents perceived it to be unfair and unreasonable that MPs required others to pay a charge whilst not having to pay a charge themselves.

Government Response

Elected representatives often process very sensitive personal data when handling case work, and the Government understands the need to ensure that elected representatives handle that data appropriately and in accordance with the expectations of those who they serve. The ICO has produced advice on data protection specifically aimed at elected representatives and candidates for election. MPs and members of the House of Lords also receive guidance and support through the House of Commons Information Rights and Information Security Service (IRIS), whilst local authority elected members receive similar support through representative bodies such as the Local Government Association (LGA), who provide dedicated support on their website: <https://www.local.gov.uk>.

As with other existing exemptions, implementing a new exemption for elected representatives, candidates (including prospective candidates) for election and members of the House of Lords from payment of the data protection charge does not absolve them of their data protection responsibilities. Those who are data controllers for their constituents' casework, will remain controllers, and will continue to be subject to the same penalties and enforcement powers of the ICO as other controllers. The Government notes the support from respondents for those who take up public office roles, some of which do not receive substantive remuneration, and intends to remove perceived or actual barriers to those roles where appropriate.

We also believe that any exemption for elected representatives should recognise that all levels of elected representative fulfill the same, important role in representing the public. We have therefore decided to proceed with implementing a new exemption for all processing relating solely to standing for or fulfilling the office of all categories of elected representatives as defined in paragraph 23(3) of Schedule 1 to the Data Protection Act 2018 and members of the House of Lords. In practice, we expect this exemption to cover all processing of

personal data relating to the fulfilment of the duties of their office undertaken by elected representatives (as defined in paragraph 23(3) of Schedule 1 to the DPA 18) and members of the House of Lords. This will extend to personal data processed by prospective candidates prior to their nomination and validly nominated candidates, where that processing relates solely to these individuals standing for the elected offices defined in paragraph 23(3) of Schedule 1 to the Data Protection Act 2018.

The new exemption will include approximately 18,000 individuals who are currently paying charges to the ICO, representing an estimated impact on the ICO's future income of approximately £720,000 (based on £40 payment). The Government will work with the ICO to assess and mitigate any impacts arising from this change.

b) Other

Do you think that any other groups of data controllers or data processing that should be exempt from paying the charges? Please provide reasons for your response.

- yes
- no
- don't know

Number of Responses (N)	<u>Yes</u>	<u>No</u>	<u>Don't know</u>	<u>Non Response to this question</u>
430	17% (73)	15% (63)	35% (150)	33% (144)

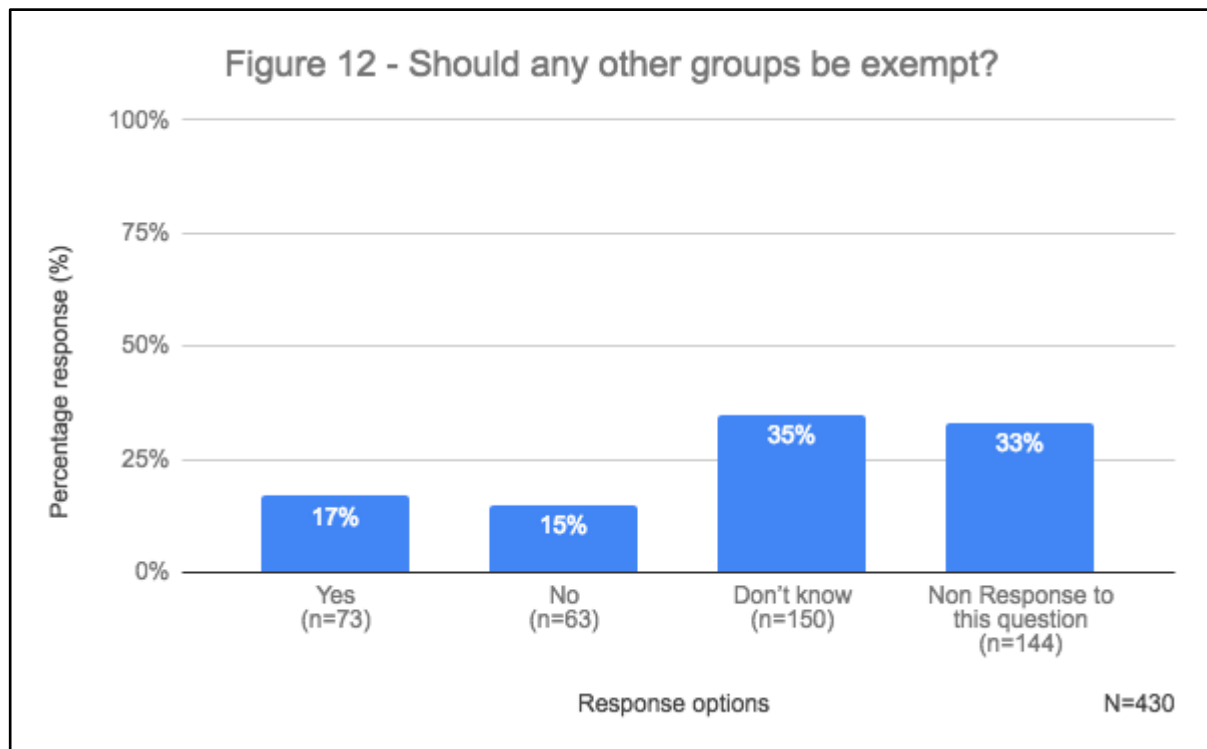


Figure 12 - Should any other groups be exempt?

Analysis

Figure 12 above illustrates that 17% of respondents thought that there should be exemptions for new groups of data controllers while 15% were of the view that there should not be any new exemptions. Suggestions for new exemptions were very varied, with no overwhelming support for any particular individuals, groups or type of processing. Other respondents thought that there should not be any exemptions at all and all data controllers should be required to pay a charge. The main support for an exemption was for the private or domestic use of CCTV (nine respondents), with the main reason given as the assistance it could provide the police in the investigation of crime or anti-social behaviour. Four respondents also supported an exemption for use of CCTV by business, for a similar reason, and also where only a minor amount of other personal data was processed by the operator concerned.

Five respondents indicated that local authorities should be exempt with reasons given as administration costs of collecting the charges; the need for local authorities to save money, and the lack of consistency with some local authorities paying and some not.

Otherwise, exemptions for processing were supported where that processing was likely to be minimal, with five respondents supporting exemptions for micro and small businesses and one supporting an exemption for sole traders. Some supported exemptions for those processing on behalf of an organisation which had a separate registration, for example, locum GPs, consultants and insolvency practitioners. Support for exemptions was also linked to income levels, including for those on low pay or working on a voluntary basis, such as small charities, clubs and voluntary groups, local councillors and childminders. There was also a feeling that those who were subject to other regulatory frameworks should be exempt, for example electoral and returning officers, counsellors and HMRC. Three respondents supported exemptions for educational institutions, and one respondent supported an exemption for pre-schools, commenting that guidance needed to be clearer as to whether pre-schools were exempt or not. We should be clear that there is no specific exemption for pre-schools although, as per other data controllers, they may be able to claim a charge exemption depending on the processing undertaken or if they were established as a not for profit organisation.

There was individual support for exemptions for those processing personal data for security checks; churches, Ministers of religion, processing for the 'special purposes' (journalism, literature and art) and individuals processing FOI requests. One respondent indicated that all charities should be exempt. Four respondents disagreed with the regime completely, with one referring to Recital 89 of the GDPR which indicates that registration should be abolished (which it has been under the new regulatory regime implemented by DPA 18) and another stating that registration should be required but not the charges.

A summary of the possible new exemptions with support from one or more respondents in this part of the consultation can be found below:

Type of data controller	Number in support
--------------------------------	--------------------------

CCTV users - private (one response mentioned dashcams, another video doorbells).	9
Micro and small businesses, small start ups	5
Small clubs and voluntary groups	5
Local councils (various levels)	5
CCTV users - business	4
Charities	4
Educational institutions	3
Everyone should be exempt	3
Childminders	2
Electoral registration officers and returning officers	2
Insolvency practitioners	2

Government Response

Users of domestic CCTV are already exempt from payment of the data protection charge. The Data Protection (Charges and Information Regulations) 2018, introduced a clarification to the wording of the exemption relating to processing for personal and household purposes so as to make clear that homeowners using CCTV for these purposes were no longer required to pay a charge under the new scheme. The ICO provide information on their website to advise households that they are not required to pay the charges. The ICO has also indicated that, for those who previously registered (under the DPA 98 regime) and paid a charge, renewal correspondence will not be issued and the charge will no longer be payable upon expiry.

We note that educational institutions have been put forward for consideration as a new exemption to the annual data protection charge. It is possible that educational institutions, including pre-schools (and some religious organisations) can look to one or more of the exemptions already in place, such as the not for profit exemption, however, if they process personal data that takes them out of any of the exemptions (for example, if they held CCTV outside their school), then they will need to pay the charge. Of course, if an educational institution held charitable status, they would automatically fall within tier 1 under the current regime.

Whilst a range of other types of processing have been put forward for consideration as a new exemption to the annual data protection charge, Government does not consider there to have been sufficient evidence presented or public drive for new exemptions to be introduced. In light of this, the Government does not intend introduce any other new exemptions at this time.

The Equality Act 2010

The Equality Act defines discrimination as someone being treating unfairly because of who they are. There are nine protected characteristics in the Equality Act. Discrimination which happens because of one or more of these characteristics is unlawful under the Act. The nine protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Do you consider any of the current or proposed exemptions to impact on any of the nine characteristics protected under the Equality Act 2010.

- Yes
- No
- Don't know

Number of Responses	<u>Yes</u>	<u>No</u>	<u>Don't know</u>	<u>Non Response to this question</u>
430	4% (15)	30% (131)	30% (131)	36% (153)

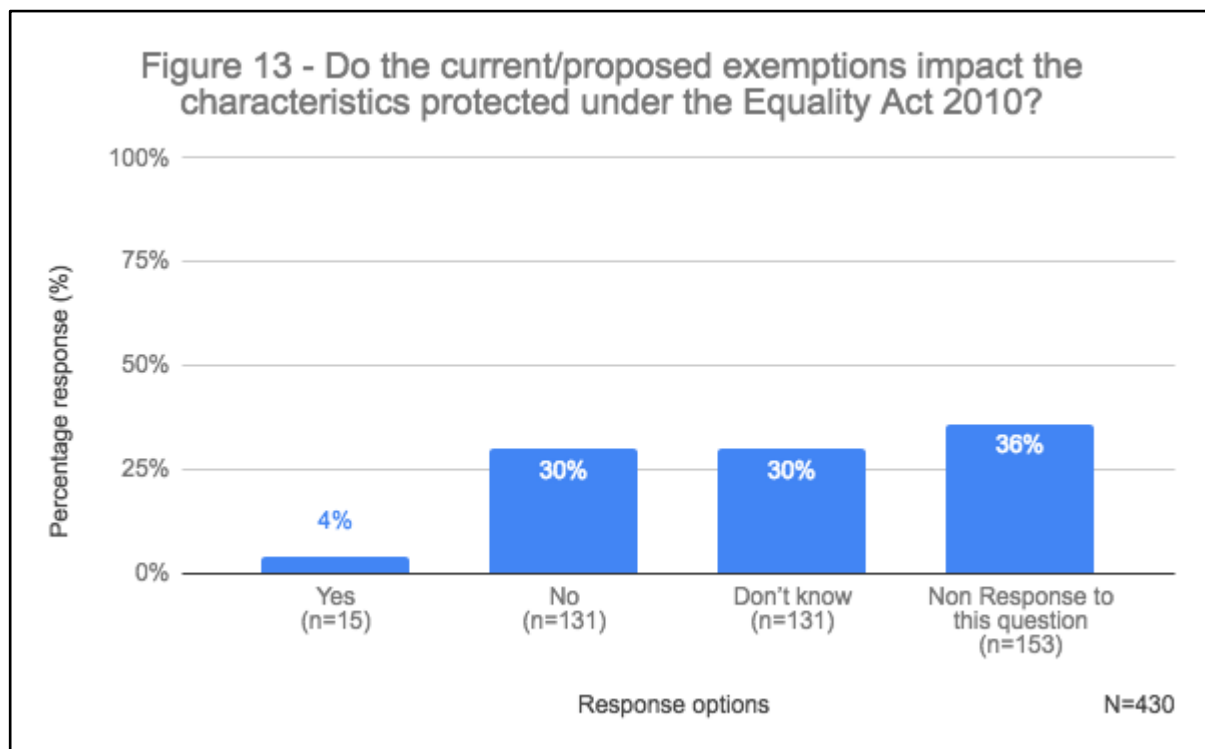


Figure 13 - Do you consider the proposed exemptions to impact on the Equalities Act 2010?

Analysis

As can be seen from Figure 13 above, 30% of respondents answered 'no' (131) and 30% responded 'don't know' (131), and did not supply reasons for their response. Only 15 respondents were of the view that the current or proposed exemptions had an impact on any of the nine characteristics protected under the Equality Act 2010. These responses are summarised in the below table, broken down by protected characteristic.

Characteristic	Number of responses
Age	11
Disability	11
Gender reassignment	8
Marriage and Civil Partnership	7
Pregnancy and maternity	8
Race	11
Religion or belief	12
Sex	9
Sexual orientation	9

Consider that the current or proposed exemptions have an impact on any of the nine protected characteristics

Of the 15 who answered 'yes', 10 gave reasons for their response. A small number raised the point that personal data that related to the protected characteristics was likely to be sensitive personal data. Other views put forward included the need that the exemptions should be considered and clarified with respect to the Equality Act, and a couple of respondents thought that a requirement to register (in reference to the previous process under DPA 98) in relation to the processing of this data was necessary.

Charities were also recognised as data controllers likely to be dealing with groups related to the protected characteristics, and requiring registration (in reference to the previous process) could impact on the support they received, in addition to the 'regulatory burden' of registration discouraging volunteers.

One respondent indicated there could be an impact on the protected characteristics of age and disability, as individuals affected may not have online access and could be excluded from GDPR and ICO requirements generally (rather than registration per se) because of physical, mental and other conditions. Another considered that removing the exemption for residential CCTV could lead to less CCTV being installed, potentially having an impact on the safety of vulnerable groups, including particular religious groups. There was also a view

that any exemption that currently applies to any organisation processing personal data relating to the nine protected characteristics should be abolished.

Government Response

The Government considers that the exemptions do not have a specific impact on any of the nine characteristics protected under the Equality Act 2010. Some of these characteristics are also classified as special category data, and as such, require more protection under GDPR. The Government believes adequate legal safeguards are in place to protect this data, which, at the same time, do not place disproportionate burdens on smaller organisations who may require processing of this type of data. The Government considers that the exemption from the data protection charge for small not for profit organisations recognises the voluntary nature of much not for profit work, and does not pose an undue risk in relation to protected characteristics.

Any additional comments

In addition to completing the survey, 38 responses provided additional comments.

A number of respondents agreed that the ICO undertook an important role and needed to be suitably funded in order to be an effective regulator. One response stated: *“The principles underlying the Data Protection Act and the GDPR are excellent, and should be better known. Organisations which are found to be perverting or contavening those principles should be prosecuted with vigour, and the results more widely publicised.”*

However, there were mixed views about how this funding should be raised. Some saw the charge as a form of stealth/indirect tax on companies, especially upon SMEs, with one respondent of the view that funding for the ICO should primarily come from HM Government. Concern was also raised about the current data protection charge structure and whether this would provide sufficient funding for the regulator, given the ever increasing amount of processing of personal data leading to increased work for the ICO. It was noted that 99% of data controllers fell within tiers 1 and 2, with only 1% of data controllers paying the higher charge of £2,900.

In terms of the ICO funding structure, there was support for a new lower tier charge to cater for those small companies with extremely low turnover, voluntary, community and third sector organisations. Reconsideration of the funding structure was advocated by some respondents. One response, whilst acknowledging the importance of the Data Protection legal framework, was of the view that small businesses and self employed individuals were being impacted by the information risk inherent in larger corporate organisations. There was also considerable support for small organisations, and volunteer groups not to face additional administrative or financial burdens. It was also thought that there was a large gap between the tiers and perhaps a sliding scale would be more appropriate.

With regards to new exemptions, some thought this could be based on the level of non sensitive personal data which would cause less impact to data subjects than if certain types of data was mishandled or lost, such as medical information or financial data. Another

thought more exemptions for the smaller businesses could be considered, such as one for organisations with less than 50 employees who may not receive as much benefit from the ICO than the larger companies. The £40 (£35 by direct debit) charge for small companies was seen as expensive and high enough to put some businesses (voluntary organisations) out of business. Clarification was also sought on a number of exemptions as it was felt that, as currently worded, they were too wide and not clear, with a number of organisations incorrectly applying the exemption charge.

A considerable number of respondents reiterated their concern on the possibility of the data protection charge being reimposed for domestic CCTV users, which could affect their willingness to share CCTV footage with law enforcement agencies.

Some respondents provided comments wider than the question posed on exemptions to the data protection charge. For example:

- Closer scrutiny on the way political parties accumulated personal data, especially over user account profiling used by a number of social media platforms;
- Preservation of data for historical purposes;
- Stronger enforcement of the data protection legal framework.

The Government is committed to having an effective and well resourced regulator and will be keeping the funding regime under regular review. However, it does not intend to directly respond to policy concerns raised that fall outside the parameters of this consultation at this stage.

6. Next Steps

The Government wishes to thank everyone for submitting their views and comments to the consultation on *Review of exemptions from paying charges to the Information Commissioner's Office*.

As explained in this response, the Government will be taking forward work on creating a new exemption for the processing of personal data used solely for the purposes of standing for or fulfilling the office of elected representatives, as defined in paragraph 23(3) of Schedule 1 to the Data Protection Act 2018, and members of the House of Lords. This will extend to personal data processed by prospective candidates prior to their nomination and validly nominated candidates, where that processing relates solely to these individuals standing for the elected offices defined in paragraph 23(3) of Schedule 1 to the Data Protection Act 2018.

We are currently working on a new Statutory Instrument which we intend to lay in Parliament at the end of this year. The new legislative instrument will require a debate in both Houses, and, subject to these debates, will come into force in Spring 2019.