



## REVIEW OF EXEMPTIONS FROM PAYING CHARGES TO THE ICO

Issued 1 August 2018

ICAEW welcomes the opportunity to comment on the *Review of exemptions from paying charges to the ICO* published by Department for Digital, Culture, Media and Sport (DCMS) on 20 June 2018, a copy of which is available from this [link](#).

We believe that any fee regime should be applied in a fair and equitable way. To support this we suggest that the fee structure should be based on the size not the type of organisation. Thus an alternative to the current exemption regime would be to exclude any organisation whose annual income or turnover is below a certain threshold. In addition all organisations, including charities, with a similar number of employees and turnover would pay the same fee.

This ICAEW response reflects consultation with the Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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## MAJOR POINTS

1. ICAEW as a representative body supports small and large organisations in the professional business services sector - both by way of policy work and directly through our members who operate or advise businesses
2. ICAEW's response to this consultation is given as a leading body of business professionals, and comments are given around particular aspects of the consultation that might affect the burden and efficiency of the new funding model. We have therefore chosen not to respond to the detailed questions but to offer some more general thoughts on charging and exemptions. In the same vein we also believe is not appropriate for us to comment on the proposed monetary value of each tier.
3. We note that the short, six week consultation period is only half the recommended 12 week period, (see <https://www.gov.uk/government/publications/consultation-principles-guidance>) and was too short to allow ICAEW to undertake a detailed consultation with our members affected by these changes. We are also concerned about the DCMS' ability to draw valid conclusions from the consultation exercise, given that respondents have had so little time to review the proposals.
4. We note that the new funding model for the Information Commissioner's Office (ICO) has three main policy objectives:
  - i. To ensure an adequate and stable level of funding for the ICO;
  - ii. To build regulatory risk into the charge level; and
  - iii. To raise awareness of data protection obligations in organisations, thereby increasing their compliance.
5. We are not convinced that the new model will enable the three policy objectives to be met. In particular we question whether the proposed funding model will provide an adequate level of funding. As noted in the consultation document the DCMS has estimated that 99% of data controllers will pay either the Tier 1 fee (£40) or the Tier 2 fee (£60). This means all those who pay the Tier 1 fee by direct debit will be paying the same as they have been paying since 2001. This is not offset by the significant increase in the Tier 3 fee as so few (1%) data controllers will pay it. Given the huge increase in the processing of personal data by data controllers since 2001 and therefore the increase in the workload of the ICO we feel it is unlikely that the new funding model will prove sufficient.
6. We note that the proposed exemptions are almost identical to those currently in place, even though these were set nearly 20 years ago. As before we question whether this is appropriate given that now there is far more processing of personal data than previously, with the consequent increase in supervision by the ICO.
7. We believe that the fees charged and any exemptions should be applied in a fair and equitable way and to that end we suggest an alternative to the current exemption regime for not for profit organisations. The current exemption for not for profit organisations only applies to processing which is for the purposes of: establishing or maintaining membership; supporting a not for profit body or association or providing or administering activities for either the members or for those who have regular contact with the organisation. The exemption is therefore available irrespective of the size of the not for profit organisation. We propose that only those charities, not for profit organisations and, possibly, for profit organisations, whose annual income or turnover is below a certain threshold should be able to take advantage of this exemption from registration. We are not advocating that fee exemption should be extended to an exemption from data protection laws and regulations more generally but that it should be based on regulatory risk.

8. The proposed regime also provides for a continuation of the reduced fee structure for all charities. This means that some of the smallest charities if they are unable to avail themselves of the aforementioned exemption, will have to register and pay the Tier 1 fee. We understand that as at March 2018<sup>1</sup> out of just under 168,000 registered charities, some 65,000 are believed to have income below £10,000 and a further 27,000 to have income of between £10,000 and £25,000. Even a £40 fee might be material for organisations of this kind and the additional administrative burdens may deter small charitable (or not for profit) activity.
9. At the other end of the scale there are some 11,000 charities with an income of over £500,000 and some of these if they were companies would be subject to the Tier 2 or 3 fee. We question whether allowing such charities to pay a reduced fee on the basis of their status rather than their size does build regulatory risk in to the fee structure. We are instead advocating for a fee structure that reflects regulatory risk and the ability to pay. Although size is not the only determinant of risk, it is an indicator that is reflected in the fees charged for all other types of organisations.

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<sup>1</sup> Charity Commission statistics as at March 2018 <https://www.gov.uk/government/publications/charity-register-statistics/recent-charity-register-statistics-charity-commission>