

Draft Regulations: The Platform Operators (Due Diligence and Reporting Requirements) Regulations

Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 We welcome the opportunity to comment on the draft Regulations which implement the Organisation for Economic Co-operation and Development's (OECD) Model Reporting Rules for Digital Platforms.
- 1.2 Very broadly these rules will require UK platform operators to collect, verify and report certain details of sellers who work on their platform to HMRC, and to provide a copy of the reported information to sellers.
- 1.3 The draft Regulations set out further details of the actions that digital platforms will be required to take to comply with the rules, and the penalties (and appeals process) for non-compliance.
- 1.4 There are gig economy workers, such as in food delivery, couriers, drivers etc, where activities can generate levels of income which can create income tax and/or National Insurance liabilities. For some of those workers, the complex Self Assessment (SA) system means they can easily fall into non-compliance. It is mainly on behalf of these workers that we are responding to this technical consultation.
- 1.5 On this basis, and given that the goal here must be to encourage compliance from the outset (rather than to use the data to uncover non-compliance further down the line, when people's problems may have snowballed and it is probably harder for HMRC to collect what is owed), we mainly focus on the requirement that reports must be made to sellers as well as HMRC. This is an important feature of the rules and could help sellers to comply and complete their tax returns correctly.

- 1.6 A Government Verification System (GVS) may be helpful to reduce the amount of sensitive personal details that platforms will be required to collect and store. However we note that HMRC intend to do more work in this area and so this may not be available immediately. Therefore there could be significant data protection considerations in the meantime, in terms of platforms protecting data from loss or theft/ensuring it is secure and the consequences if it is not.
- 1.7 We think some platforms will face enormous challenges in verifying information about individual sellers. As the draft Regulations provide for penalties for non-compliance, we are concerned this may lead to platforms denying sellers work. Migrants to the UK could be particularly disadvantaged if their information cannot be verified as readily as for others. Indeed, equality issues might be raised which HMRC need to look at, so that people aren't prevented from working unnecessarily.
- 1.8 In our original submission, we said 'The reporting deadline of 31 January following the calendar year end is problematic for workers in the context of the UK's tax year end on 5 April. The introduction of Making Tax Digital for Income Tax Self Assessment (MTD for ITSA) in April 2024 – which will require some people to report income and expenses to HMRC each quarter – and basis period reform will likely make this even more so. HMRC should require platforms to provide information to workers monthly or quarterly and should ensure that the requirement is formally underpinned in order to provide certainty to workers.' We are disappointed that the reporting deadline remains 31 January. In our view, it severely undermines the key policy objective, of helping taxpayers get their taxes right.
- 1.9 Notwithstanding this, the reports will be useful to some sellers. To make the reports as user friendly as possible, we think the Regulations should stipulate the format in which the data should be presented to the sellers by the platform operators, to ensure it is easily understandable and consistent. We note that there do not seem to be any penalties in relation to Regulation 4 (4) – HMRC should consider whether there will be any consequences for the platform if they fail to meet their obligations to sellers.
- 1.10 The Regulations say that a platform operator is not required to make a report to HMRC or the seller where it reasonably believes that another platform operator will report the required information. It is not clear to us when this Regulation might apply, and what will constitute reasonable belief in these circumstances. We are also concerned that it may leave workers without some of the information they need to be able to deal with any tax obligations.
- 1.11 HMRC need to be resourced properly to manage the rules and everything that flows from them. We recommend some kind of post implementation review is carried out to evaluate the effectiveness of the rules and whether any further actions are required.
- 1.12 In several places we highlight that good guidance, to help explain and clarify the various requirements, will be key. We have lots of ideas and are willing to help with this. More broadly, we would urge HMRC to work more closely with online platforms from an educative / guidance point of view as workers may be more receptive to information about their taxes coming from a 'friendly' platform (with whom they have a relationship) rather than HMRC. We are pleased to note HMRC's

intentions with regard to ongoing engagement with stakeholders and platforms to develop good guidance and other resources as set out in their response to the 2021 consultation.¹

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Introduction

- 3.1 We welcome the opportunity to comment on the draft Regulations. We do so as tax specialists with particular interest and expertise in the tax and related welfare problems of the lowest paid gig economy workers. This includes those in food delivery, couriers, drivers etc, where activities can generate levels of income which can create income tax and/or National Insurance liabilities, but for whom the complex Self Assessment (SA) system means some can easily fall into non-compliance.
- 3.2 The draft Regulations follow on from the 2021 consultation, to which we responded² and from the Summary of Responses to the 2021 consultation³. Unfortunately the link to the Summary of Responses on the GOV.UK page hosting the draft Regulations is broken⁴.

¹ Issued in July 2022: <https://www.gov.uk/government/consultations/reporting-rules-for-digital-platforms/outcome/reporting-rules-for-digital-platforms-summary-of-responses>

² <https://www.litrg.org.uk/sites/default/files/files/211020-LITRG-response-Reporting-rules-for-digital-platforms.pdf>

³ Here is a link to the summary of responses that works:
<https://www.gov.uk/government/consultations/reporting-rules-for-digital-platforms/outcome/reporting-rules-for-digital-platforms-summary-of-responses>

⁴ See second link down on this page: <https://www.gov.uk/government/consultations/draft-regulations-the-platform-operators-due-diligence-and-reporting-requirements-regulations>

- 3.3 The draft Regulations rely heavily on, and incorporate by reference, much of the text of the Model Rules themselves. This includes many of the basic definitions such as ‘platform’, ‘platform operator’ and ‘reportable seller’. The link given to the Model Rules on the GOV.UK page hosting the draft Regulations, links to the original version of the rules rather than a version that has been updated for subsequent amendments¹. This made it hard to cross refer.
- 3.4 Fixing glitches such as these would allow stakeholders to provide meaningful comments as to whether the Regulations will achieve their intended policy effect while guarding against any unintended consequences, much more quickly and easily.
- 3.5 We made some very broad comments in our original submission in 2021. However, in this technical submission we are mainly providing comments on the provisions focussed on workers/sellers – as this is where we have most relevant knowledge and experience.
- 3.6 We welcome the date of entry in Section 2 (4) (i) now being 31 January 2024 as opposed to 31 January 2023. This means the first reports will be due in January 2025, which will give the industry a more reasonable amount of time to prepare for this significant change.

4 General comments

- 4.1 Broadly, the OECD Model Rules work as follows:
- platforms must collect certain details about their sellers, including information to accurately identify who the seller is and where they are based, as well as how much they have earned on the platform over an annual period
 - platforms must verify the seller’s information to ensure it is accurate
 - platforms must report the information, including the seller’s income in respect of a calendar year, to the tax authority annually by 31 January after the end of the calendar year to which it relates
 - platforms must also give that information to the sellers, so that they can use it to help them complete their tax returns
 - tax authorities then exchange information with other tax authorities where the sellers are resident (or rental property is located)
 - the information is used by tax authorities to ensure that sellers are complying with their tax obligations and to tackle non-compliance if they are not

¹ For example those in the optional module for the Sale of Goods: <https://www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm>

- tax authorities must enforce the rules and see that platforms are operating them correctly, and there may be penalties for non-compliance.
- 4.2 Platforms provide many people with the opportunity to earn money who might otherwise struggle to find suitable work. For some time we have said that the government needs to think more strategically about how to tax workers in the gig economy and consider other potential approaches.
- 4.3 The reason for this is that, due to the factors set out in our 2021 response¹, some workers are at best confused and at worst completely unaware of their tax obligations when participating in the gig economy, meaning they are likely to be inadvertently non-compliant.
- 4.4 Non-compliance can have many ramifications for workers. For example, they may not realise they need to register for income tax in the first place due to the irregular and often ‘on demand’ nature of the income. This leaves the workers open to potential action and penalties from HMRC. Furthermore, where Self Assessment tax returns should be filed but are not, workers can find themselves in significant debt very quickly. This can turn into a life-changing situation, including bankruptcy in some cases, if HMRC pursue collection and the worker cannot pay and/or does not engage with HMRC to resolve the issues arising. Ultimately this can threaten workers’ livelihoods and cannot be good for long-term sustainable growth of the sector. We would also highlight that that tax non-compliance can affect people’s National Insurance record, which may impact on their ability to claim certain contributory benefits.
- 4.5 One of the main objectives of the OECD Model Rules is to help enhance compliance and minimise burdens for workers. It is therefore positive that the government is implementing them. But in trying to give a voice to these unrepresented taxpayers, we are naturally keen to ensure that the Regulations that relate specifically to this objective are certain, clear and effective.

5 Specific comments

- 5.1 *Excluded seller definition*
- 5.2 The government has adopted the extension for ‘occasional’ sellers of goods where the platform facilitated less than 30 sales and where the seller received consideration of no more than €2,000 in a reportable period. This ensures that platforms do not have to collect, verify and report details of such sellers.
- 5.3 In the Regulations, at Section 2 (4), it is said – ‘In their application for the purposes of these Regulations, the Model Rules are to be read as if— (h) the reference to “2,000 EUR” in Section I(B)(4)(d) (definition of excluded seller) were a reference to £2,000.’

¹ Which itself, draws on our 2018 response to HMRC’s consultation looking at online platforms’ role in ensuring tax compliance by their users: <https://www.litrg.org.uk/latest-news/submissions/180608-role-online-platforms-ensuring-tax-compliance-their-users>

- 5.4 This means that Section I(B)(4)(d) (definition of excluded seller) reads ‘for which the Platform Operator solely facilitated less than 30 Relevant Activities for the sale of Goods and for which the total amount of Consideration paid or credited did not exceed £2,000 during the Reportable Period.’
- 5.5 The Model Rules say that the amount of the Consideration is the amount *net* of any fees, commissions or taxes withheld or charged by the Reporting Platform Operator.
- 5.6 We take this opportunity to reiterate comments made in our consultation response in 2021 on this point, namely that we know that people are already **incorrectly** comparing the net income amount (per their bank statements) to the £1,000 trading allowance threshold¹ - the trading allowance being referable to gross income and something which is often relevant to gig economy workers. Using a net income figure for this excluded seller threshold risks perpetuating the problem further.
- 5.7 This will also be a very important distinction when establishing whether someone has exceeded the gross turnover threshold of £10,000 and so needs to comply with the Making Tax Digital for Income Tax regime from April 2024.
- 5.8 Good guidance will be needed to ensure that sellers do not become further confused and so that the idea that you count net income for all tax purposes does not become further entrenched.
- 5.9 HMRC need to be clear with sellers that even where they are under the £2,000 threshold they could still be trading and so still have an obligation to notify HMRC and complete a Self Assessment tax return. For example, they could be doing a lots of work but over multiple platforms, meaning they do not breach the threshold on any one platform; there could be smaller amounts of income on record because it is the beginning or end of their business; or they could be selling things they have bought or made specifically to sell on with a view to making a profit on a fairly regular basis, albeit on a small scale. This is particularly important given the mismatch between the £2,000 threshold and the trading allowance – that is, there will be some with taxable platform income above the trading allowance but whose income is not being reported by the platform. (And vice versa, even if people do exceed the £2,000 threshold, they may be selling things they do not need any more or because they want to clear some space which probably does not amount to trading.)
- 5.10 *Collection of information about sellers and due diligence*
- 5.11 Regulation 3 (1) (a) states - A reporting platform operator must establish and maintain procedures that are designed to— (a) collect information about sellers²... and at (1) (c) goes on to say— verify information about sellers...

¹ <https://www.litrg.org.uk/latest-news/news/211202-are-you-using-trading-allowance-correctly>

² Per the Model Rules, The Reporting Platform Operator must collect the following information for each individual Seller: a) the first and last name; b) the Primary Address; c) the TIN issued to the Seller, including the jurisdiction of issuance; and d) the date of birth.

- 5.12 Firstly, we would like to highlight a point we made in our 2021 submission about the operational cost for platforms in complying with these new administrative burdens ultimately being passed on to workers and/or consumers. Any knock on effects of this will need monitoring carefully. We recommend that some kind of post implementation review is carried out to assess any such consequences and unintended outcomes.
- 5.13 In terms of the wording of the Regulation, what exactly does ‘verify information’ mean? It is not really clear from the Model Rules¹, which seem to assume that the platforms will have already done some identity checks (for example for AML/KYC purposes²) which they can rely on. It is not clear to us that platforms are under a legal obligation to do AML/KYC checks³, even though some may routinely collect documents for background checks as part of the onboarding process. Considering this, along with the sheer number of people looking for gig work, and the fact that platforms are usually eager to put them to work straight away, it is conceivable that platforms may not always have robust identity information to fall back on.
- 5.14 In some instances, we think it could be really quite challenging to verify seller information and it may require platforms to collect new information and/or documentation for existing sellers. To the extent that this happens, we assume it will involve official documents such as a birth certificates, passports, driving licenses or utility bills. However some gig workers may have chaotic and transient lives, and we would have thought there is a risk of many of them not being able to be produce documents at all (as they are lost or in storage for example) or not being able to produce acceptable documents – as they not in English or out of date. The potentially complex nature of relationships in some cases (for example, we have read some reports that some Uber driver accounts are shared between several individuals) must also be causing concern.
- 5.15 What happens when the platform operator cannot verify information about sellers? Will concerns around the enforcement of these rules mean that the sellers are denied work?
- 5.16 Migrants to the UK could be particularly disadvantaged if their information cannot be verified as readily as for others. Indeed, equality issues might be raised which HMRC need to look at, so that people aren’t prevented from working unnecessarily. This could have short-term effects for both workers and platforms and could even risk driving workers into the hidden economy. One potential way of mitigating impacts such as this is to give platforms more space to check sellers’ information – allowing them to concentrate on new sellers to start with perhaps, and then bringing in existing sellers to the regime later down the line?

¹ The explanatory notes say ‘Pursuant to subparagraph C(1), the verification generally needs to be done by using all records available to the Reporting Platform Operator, unless the exception of subparagraph C(2) applies. Such information includes information the Reporting Platform Operator maintains or already collected for AML/KYC procedures, as part of its on-boarding or re-documentation procedures, for payment purposes or other commercial or regulatory ends.’

² Anti-Money Laundering and Know Your Client checks

³ <https://www.gov.uk/guidance/money-laundering-regulations-who-needs-to-register>

- 5.17 We note that HMRC says ‘It is not anticipated that there will be impacts for groups sharing protected characteristics’¹ however would like HMRC to confirm whether a full Equality Impact Assessment has been done?
- 5.18 Although it is envisaged that a GVS will be developed to help platforms verify the identity of sellers, we note that HMRC intend to do more work in this area and so this may take some time to develop. We are also concerned that such a system may not have complete coverage, in that some gig workers may not be able to get through the Government Gateway, assuming this is the ‘access’ mechanism used for GVS in due course. As such, platforms may find themselves collecting significant amounts of personal information and having to retain it for quite a long time under the default provisions.
- 5.19 There are no requirements stipulated in the Regulations but platforms will obviously need to make sellers aware that their information will be collected and retained in this way. The government say they will also expect platforms to put in appropriate safeguards to keep seller data protected and secure but again, this obligation is not specified in the Regulations.
- 5.20 In the era of scams and fraudsters and data being hacked and intercepted, and given they are probably not experts in the field, good guidance will be required for platforms as to how the requirements to collect, verify and store data (which are probably over and above what they are currently doing), interact with data protection law. Additionally, if a platform intends to use a third party to carry out the due diligence (see our comments above) then platforms need to understand that this must be made clear to the potential seller so they can decide whether to proceed etc, given the requirement for informed consent in GDPR.
- 5.21 Regulation 3 (3) requires platforms to keep records - presumably in case HMRC want to inspect them - although we question if they will have the capacity to do this as things stand. HMRC will obviously need to be adequately resourced to deal with all the issues that could arise from the introduction of these rules.
- 5.22 Paragraph (4) then says - A reporting platform operator must keep the records required by paragraph (3) for a period of five years beginning with the day after the end of the reportable period (calendar year) to which they relate. This seems reasonable timeframe although we note a slight mismatch with the length of time that the self-employed need to keep their records for - five years from 31 January following the tax year for which the tax return is made.
- 5.23 *Reporting of information*
- 5.24 Regulation 4 (4) says - Subject to paragraph (5), where a reporting platform operator must make a report for a reportable period including information in respect of a reportable seller, the reporting

¹ See Equalities Impacts: <https://www.gov.uk/government/publications/reporting-rules-for-digital-platforms/reporting-rules-for-digital-platforms>

platform operator must provide that reportable seller with that information by no later than the 31 January following the end of the reportable period.

- 5.25 As has been commented on extensively, the reporting deadline does not fit well with the 31 January deadline for filing a UK Self Assessment tax return. The introduction of Making Tax Digital for Income Tax Self Assessment (MTD for ITSA) in April 2024 – which will require some people to report income and expenses to HMRC each quarter – and basis period reform (BPR)¹, will likely make this even more so. We are disappointed not to see anything in the Regulations that could mitigate this, for example, asking platforms to provide more timely information. This could also have been useful to help the individual comply with their universal credit obligations, as self-employed people on universal credit have to report their income and expenses once a month to DWP².
- 5.26 To make the reports as useful as possible to those workers who *can* use them somehow, we think the Regulations should stipulate that the data should be presented to the sellers by the platform operators in an easily understandable and usable format. This would also help ensure consistency across reports, which would be helpful to sellers.
- 5.27 We therefore suggest that it might be appropriate to specify the title, format and content of the report that is presented to sellers. We recommend the following addition to the Regulation 4 (4):
- 5.28 The information document must —
- (a) be clearly labelled and include a brief explanation about its purpose at the top
 - (b) be written in a clear and succinct manner;
 - (c) be a maximum of two sides of A4-sized paper when printed;
 - (d) be presented in a way that is easy to read, using characters of readable size; and
 - (e) contain contact details of HMRC and links to a gov.uk landing page for gig economy workers.
- 5.29 We also recommend that the government consider asking platforms to signpost to voluntary sector organisations such as TaxAid³ or Citizens Advice for further help.
- 5.30 We also think that ‘must provide’ in the wording of the Regulations is not specific enough. Should a hard copy be sent? Is email sufficient? Can this be clarified?

¹ Under BPR the current year basis is changed to a tax year basis (so businesses will have a 31 March/5 April year-end). The information for the period from 1 January to 31 March/5 April needed by taxpayers in order to complete their Self Assessment tax returns will not be available until the following 31 January which coincides with the Self Assessment filing deadline.

² See our guidance for more information: <https://www.litrg.org.uk/tax-guides/self-employment/how-do-i-work-out-my-profits-universal-credit>

³ <https://taxaid.org.uk/>

- 5.31 In addition, given the plethora of ways that documents can be provided to people these day, and the plethora of ways that these documents can pass people by, there should be a requirement on platforms to ensure, as far as possible that the information successfully reaches the target recipient.
- 5.32 In our view Regulation (4(4)) is one of the most important features of the model rules. Have HMRC considered whether there should be any consequences for the platform if they fail to comply? The draft regulations do not seem to cover penalties for this at the moment.
- 5.33 Clearly workers need to understand the significance of, and do something with, the information that is given to them by the platform. For example, HMRC will need to help taxpayers understand that they still have a responsibility to check for income not captured on any statement they receive. HMRC will need to explain how the figure on the statement relates to the requirement to register for Self Assessment. HMRC will also need to help people understand that even if the statement they are provided with does not indicate that they have triggered a tax obligation, people need to take into consideration taxable income from other sources. To be clear, the information on the statement cannot exist alone – to be effective, it must be accompanied by better central tax information for gig workers.
- 5.34 We suggest that a page/hub/collection on GOV.UK is developed to host better, tailored guidance for the gig economy, covering all of the above and more¹, which could then be linked to from the statement. We are pleased to note HMRC’s intentions with regard to ongoing engagement with stakeholders and platforms to develop good guidance and other resources as set out in their response to the 2021 consultation in July 2022.
- 5.35 Our understanding of regulation 4 (5)(a) and (b) – means that platform operators do not need to send the information in relation to a seller to HMRC nor the seller in circumstances where the platform has obtained adequate assurances that another platform operator fulfils the reporting obligations. It is not clear to us when this Regulation might apply, and we therefore think it needs to be re-drafted to make it clearer.
- 5.36 Is it only intended to cover situations where the platforms involved are different subsidiary parts of a business/different entities in another type of corporate structure? Is this a typical scenario?
- 5.37 In particular we note the references to ‘reasonably belie[f]’. How will this be determined in this context, given it is quite subjective? Surely there needs to be a test that has a definitive result rather than a ‘reasonable belief’ test? We are concerned that it may leave workers without some of the information they need to be able to deal with any tax obligations if they operate through more than one platform operator that falls within this provision. This provision as drafted seems to allow for platforms to both / all decide it is reasonable that one of the other platforms is complying in respect

¹ For example on allowable expenses, to limit instances of workers thinking the income, per the statement, is the end of the story and overreporting.

of that seller. This could then leave the seller with no information and caught between big platforms each stating they have a reasonable belief for assuming another platform has fulfilled the obligation. We think it would be helpful to have a clearer, less subjective, mechanism for determining absolutely which platform has the responsibility in a particular situation so there can be no doubt and no possibility of no platforms reporting the required information to HMRC or the seller.

LITRG
13/12/2022