

The data we collect (data categories)

5.9 Information may include your name, address, email address, job title, and employer, as well as your opinions. It is possible that you will volunteer additional identifying information about yourself or third parties.

Legal basis of processing

5.10 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop effective government policies.

Special categories data

5.11 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

5.12 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

5.13 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop effective policies.

Purpose

5.14 The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

5.15 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information regulations 2004 (EIR).

5.16 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

5.17 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

5.18 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

5.19 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/government/organisations>.

5.20 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (retention)

5.21 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

5.22 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your rights

- You have the right to request information about how your personal data are processed and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
- You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
- You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a Data Subject Access Request (DSAR)

5.23 To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
G11 Orange
1 Horse Guards Road
London
SW1A 2HQ
dsar@hmtreasury.gov.uk

Complaints

5.24 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk.

5.25 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

5.26 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

5.27 The data controller for any personal data collected as part of this consultation is HM Treasury, the contact details for which are:

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ
London
020 7270 5000
public.enquiries@hmtreasury.gov.uk

5.28 The contact details for HM Treasury's Data Protection Officer (DPO) are:

The Data Protection Officer
Corporate Governance and Risk Assurance Team
Area 2/15
1 Horse Guards Road
London
SW1A 2HQ
London
privacy@hmtreasury.gov.uk

Annex A

List of Questions

Recent improvements to the regulatory and supervisory regimes

1. What do you agree and disagree with in our approach to assessing effectiveness?
2. What particular areas, either in industry or supervision, should be focused on for this section?
3. Are the objectives set out above the correct ones for the MLRs?
4. Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?

High-impact activity

5. What activity required by the MLRs should be considered high impact?
6. What examples can you share of how those high impact activities have contributed to the overarching objectives for the system?
7. Are there any high impact activities not currently required by the MLRs that should be?
8. What activity required by the MLRs should be considered low impact and why?

National Strategic Priorities

9. Would it improve effectiveness, by helping increase high impact, and reduce low impact, activity if the government published Strategic National Priorities AML/CTF priorities for the AML/CTF system?
10. What benefits would Strategic National Priorities offer above and beyond the existing National Risk Assessment of ML/TF?
11. What are the potential risks or downsides respondents see to publishing national priorities? How might firms and supervisors be required to respond to these priorities?

Extent of the regulated sector

12. What evidence should we consider as we evaluate whether the sectors or subsectors listed above should be considered for inclusion or exclusion from the regulated sector?
13. Are there any sectors or sub-sectors not listed above that should be considered for inclusion or exclusion from the regulated sector?
14. What are the key factors that should be considered when amending the scope of the regulated sector?

Enforcement

15. Are the current powers of enforcement provided by the MLRs sufficient? If not, why?
16. Is the current application of enforcement powers proportionate to the breaches they are used against? If not, why?

17. Is the current application of enforcement powers sufficiently dissuasive? If not, why?
18. Are the relatively low number of criminal prosecutions a challenge to an effective enforcement regime? What would the impact of more prosecutions be? What are the barriers to pursuing criminal prosecutions?

Barriers to the risk-based approach

19. What are the principal barriers to relevant persons in pursuing a risk-based approach?
20. What activity or reform could HMG undertaken to better facilitate a risk-based approach? Would National Strategic Priorities (discussed above) support this?
21. Are there any elements of the MLRs that ought to be prescriptive?

Understanding of risk

22. Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?
23. What are the primary barriers to understanding of ML/TF risk?
24. What are the most effective actions that the government can take to improve understanding of ML/TF risk?

Expectations of supervisors to the risk-based approach

25. How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?
26. Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?
27. What more could supervisors do to take a more effective risk-based approach to their supervisory work?
28. Would it improve effectiveness and outcomes for the government and / or supervisors to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high value intelligence to law enforcement as an explicit goal?
29. What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?

Application of enhanced due diligence, simplified due diligence and reliance

30. Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?
31. Are the measures required for enhanced due diligence appropriate and sufficient to counter higher risk of ML/TF? If not, why?
32. Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?
33. Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?
34. Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?

35. Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?
36. Are there any changes to the MLRs which could mitigate derisking behaviours?

How the regulations affect the uptake of new technologies

37. As currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending and in what way?
38. Do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?
39. More broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?

SARs reporting

40. Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?
41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?
42. If you have concerns about enhancing this role, what limitations and mitigations should be put in place?
43. What else could be done to improve the quality of SARs submitted by reporters?
44. Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?
45. To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession?

Gatekeeping tests

46. Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?
47. Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?
48. Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?

Guidance

49. In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?

50. What barriers are there to guidance being an effective tool for relevant persons?
51. What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?

Structure of the supervisory regime

52. What are the strengths and weaknesses of the UK supervisory regime, in particular those offered by the structure of statutory and professional body supervisors?
53. Are there any sectors or business areas which are subject to lower standards of supervision for equivalent risk?
54. Which of the models highlighted, including maintaining the status quo, should the UK consider or discount?
55. What in your view would be the arguments for and against the consolidation of supervision into fewer supervisor bodies? What factors should be considered in analysing the optimum number of bodies?

Effectiveness of OPBAS

56. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?
57. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?

Remit of OPBAS

58. What if any further powers would assist OPBAS in meeting its objectives?
59. Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?

Supervisory gaps

60. Are you aware of specific types of businesses who may offer regulated services under the MLRs that do not have a designated supervisor?
61. Would the legal sector benefit from a 'default supervisor', in the same way HMRC acts as the default supervisor for the accountancy sector?
62. How should the government best ensure businesses cannot conduct regulated activity without supervision?

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk