



Department
for Business
Innovation & Skills

Better
Regulation
Delivery Office

Consultation Paper

Data Sharing for Non-economic Regulators

April 2014

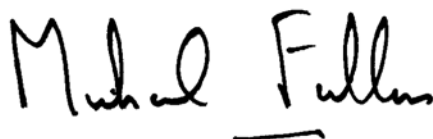
Foreword



Regulation and the way it is delivered play an important role in achieving prosperity and growth in our economy, and maintaining essential social and environmental protections. Delivered at the front line by national regulators and local authorities, it is Government's role to create the conditions whereby regulation can be most efficient and effective.

We have already made significant progress in our work to drive better enforcement, including the publication of the new Regulators' Code and the 'Growth Duty' currently proceeding through Parliament. We need to continue these improvements, and address the issues standing in the way of productive partnerships between businesses and regulators.

Businesses have told us that data collection remains a significant burden for them. Regulators have told us that data sharing is the biggest challenge they face in meeting the provisions of the new Regulators' Code. This consultation seeks to explore the issue of data sharing amongst non-economic regulators, and build the evidence to design effective solutions that work for businesses and regulators alike.

A handwritten signature in black ink that reads "Michael Fallon". The signature is written in a cursive style with a horizontal line underneath the name.

Michael Fallon
Minister of State for Business and Enterprise
Department for Business, Innovation and Skills

Consultation Summary	
<i>Who should read this document?</i>	This consultation is relevant to non-economic regulators and local authorities, and to businesses and other bodies subject to regulation by these regulators. This consultation is also of interest to consumer representative bodies, trade associations and trade unions.
<i>Making your views heard</i>	We are keen to gather all views on the subject of data sharing for non-economic regulators and any supporting evidence. You should not feel constrained by the specific questions nor feel obliged to offer responses to all of them. Concentrate on those in which you have the most interest.
Views are requested by 7 July 2014	
<i>Phone enquiries</i>	0121 345 1200
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<i>Your details</i>	Representative groups may wish to give a summary of the views of the people and organisations they represent and, where relevant, how they consulted with them. You may wish to include contact details for follow-up.
<i>Confidentiality</i>	The position regarding the confidentiality of any information provided is set out on page 24 of this document. Unless you state otherwise (and an automatic disclaimer generated by your IT system does not constitute such a statement), we will assume you are content for us to publish your response.
<i>Additional copies</i>	This consultation is available for download from: https://www.gov.uk/government/organisations/better-regulation-delivery-office

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1. Introduction

- 1.1 Regulators need to collect information from businesses and those they regulate as part of their day to day activities. A wide variety of data is collected from businesses, including basic factual information such as business names and addresses and more detailed information about activities and data regarding inspections, investigations and enforcement action. This information is essential to enable regulators to carry out their duties effectively, ensuring compliance with legislative requirements and ensuring that the operational and resourcing decisions they make are evidence-based.
- 1.2 Many businesses are regulated by more than one regulatory agency, and for these businesses in particular, there is value in regulators sharing the information they collect from them. For example, enabling regulators to share this information could result in fewer requests for information being made to businesses and potentially fewer (or shorter) inspections. It could also assist to deliver earned recognition (rewarding businesses for their compliance efforts). This is recognised in the Regulators' Code¹ (the Code), the framework that sets out Government's expectations regarding effective enforcement.
- 1.3 The Code provides that regulators should have regard to the principle of 'collect once, use multiple times' when collecting information about the businesses they regulate, and should agree mechanisms to share information, where the law allows. The Code applies to all non-economic regulators and sets out a framework for the way in which they interact with businesses. A list of these regulators is included at Annex A. It is proposed that all non-economic regulators subject to the Code should be included in any option to encourage further data sharing and the consultation seeks views in this regard (see 3.12 – 3.13 below).
- 1.4 There are many reasons why regulators should share data collected from business, such as a need to use resources more efficiently, to support improved compliance and improved protections and to reduce time and cost burdens to businesses and regulated bodies. Government believes that improved data sharing can contribute to improvements in burden reduction and the targeting of regulatory resources.
- 1.5 Businesses indicate that providing information to regulators can be burdensome. In the Business Perceptions Survey 2012, 60 per cent of business agreed, or strongly agreed, that completing paperwork for Government was a burden and a further 66 per cent found having to provide the same information more than once was a burden. If regulators collected information from business once and shared it with other regulators we could prevent multiple requests being made of a business.
- 1.6 In addition to reducing the time and cost for business associated with data returns, improved data sharing could lead to better targeting of regulatory resources, and an improvement in the way operational and resourcing decisions are taken, using a wider range of data and information.
- 1.7 Regulatory resources should be targeted according to risk, and this is not possible without access to timely and accurate data. Information held by regulators about the activities and approaches to compliance of businesses, and the results of inspections and other interventions, assist them in making informed decisions about the risk posed by a business.

¹ The Regulator's Code is came into force on 6 April 2014. It is available here: <https://www.gov.uk/government/publications/regulators-code>

- 1.8 This in turn drives decisions about the best course of action to achieve compliance, making best use of available resources by targeting action towards those businesses and activities that pose the greatest risk. Using risk in this way to identify those businesses that choose not to comply with the law or fail to give sufficient effort to compliance protects citizens and prevents unfair competition with businesses that do invest in compliance.
- 1.9 Better use of shared data to inform risk assessment could also include greater recognition of businesses' own efforts towards compliance. Often, a business will invest in processes, such as audits or sampling of products, as part of a compliance management strategy. The data gathered during such processes will be used by the business to improve its performance but there is also potential for data gathered by businesses to be shared with regulators for the purposes of improving risk assessment through earned recognition.
- 1.10 Despite the potential benefits of data sharing for both regulators and businesses, Government believes that current levels of data sharing are not sufficient.
- 1.11 Often, the type of data shared, and the means by which it is shared, is influenced by factors such as: the availability of resources, how frequently the data needs to be accessed and updated, and legal and practical constraints. Some regulators have developed a database or interface specifically for the purpose of sharing data, whilst others exchange information via less sophisticated means (such as exchanging data via spreadsheet).
- 1.12 Government wishes to identify and resolve the legal, practical and other barriers which prevent or discourage regulators from sharing data. Some respondents to the recent consultation² on the development of the Code indicated that legal barriers prevent them from sharing information. For example, some regulators have expressed concern that the Data Protection Act 1998 (DPA) prevents data sharing amongst regulators. Others feel that they are expressly limited by their enabling statutes.
- 1.13 There are likely to be other reasons which prevent regulators from sharing data, such as resource constraints. For example, in some situations data sharing could require the development of new databases or procurement of specialist software and IT equipment.
- 1.14 Some regulators may not have considered data sharing to be appropriate for their circumstances, or are concerned that establishing data sharing mechanisms would prove too difficult or time/resource intensive.
- 1.15 Government recognises that there are inherent risks when data is shared, and that these risks need to be carefully managed, with appropriate safeguards in place to protect business.

Purpose of this consultation

- 1.16 This consultation seeks to understand the types of data that exist, the types of data that are currently being shared, and the purposes for which it is shared. We wish to identify the tangible benefits of sharing data, from both regulator and business perspectives, and also explore the barriers which prevent non-economic regulators from sharing information.

² Amending the Regulators' Compliance Code, BRDO 2013 URN 13/685, available here: <https://www.gov.uk/government/consultations/amending-the-regulators-compliance-code>

- 1.17 Effective data sharing will require adequate safeguards, and we wish to explore the issues around different data types and safeguards to inform development of appropriate solutions.
- 1.18 We wish to consider a range of options for implementation to facilitate further data sharing amongst regulators. For example, primary legislation could provide a power for regulators to share certain types of information under certain circumstances. Alternatively, exploring best practice, guidance and solutions could encourage regulators to share data more often and provide clarity about legal barriers. This consultation seeks views on several options to inform development of appropriate solutions to enable non-economic regulators to better satisfy the provisions of the Code. A list of those regulators is included at Annex A. It is proposed that all non-economic regulators subject to the Code should be included in any option to encourage further data sharing and the consultation seeks views in this regard.
- 1.19 This consultation runs alongside a pilot involving a small group of non-economic regulators sharing information under controlled conditions, and a research project examining the practical implementation of data sharing under the Code. Responses to this consultation and the results of the pilot and research will jointly inform next steps. Accordingly, the Government's response to this consultation will be published following the completion of this consultation, the pilot and the research project, in Autumn 2014.

Devolved Administrations

- 1.20 In Northern Ireland, Wales and Scotland, the Code applies to local authority regulatory functions and national regulators in relation to reserved matters only. We are working with Welsh Government and the Welsh Regulators' Forum to explore data sharing amongst regulators, and this consultation forms part of this work.

2. Exploring data types

- 2.1 Regulators collect many different types of data about the businesses they regulate. This consultation seeks to explore the different types of data which could be shared by regulators, and sets out a list of different data types (see list below). This list is suggested as a starting point for discussion and we are interested in exploring other types of data which regulators may share (or wish to share). To be clear, this consultation focuses upon regulators sharing data with regulators. It is not concerned with making data publicly available (although it is recognised that some data types are already in the public domain).

Data types

- Personal data
 - Fact based standard data
 - Fact based specialist data
 - Licence data
 - Compliance data supplied by business
 - Data voluntarily supplied by business
 - Inspection results and analysis
 - Ongoing investigations
 - Complaints data
 - Enforcement action
- 2.2 The benefits of sharing data, and the associated risks can differ for each type of data. These benefits and risks may also differ according to perspective. For example, a regulator may consider that sharing a particular type of data about a business with another regulator is very important for the exercise of its regulatory functions, but the business may regard this sharing as inappropriate, or even as a risk. Conversely, there may be some types of information which a business is content for regulators to share because the sharing is likely to deliver benefits to business, such as reduced burden or fewer inspections.
- 2.3 It is important to identify the different types of information that regulators may wish to share, and the associated benefits and risks of sharing it. The extent to which a particular type of data could be shared may be constrained by legal requirements or other barriers. The remainder of this section identifies a series of data types and seeks views on the benefits and potential barriers to sharing each data type.

Personal data

- 2.4 Personal data is data that relates to a living individual who can be identified from that data, or other information which is in the data controller's possession (or is likely to come into their possession). For example, this may include information such as name, date of birth, address, and opinions about the individual. It also includes any other information from which the individual could be identified. This could include information about certain businesses such as sole traders (trading under their personal name and/or home address).
- 2.5 Some categories of personal data are defined as being particularly sensitive and generally have a greater level of protection under the DPA. For example, this includes racial or ethnic origin, religious beliefs and political opinions, amongst others.

- 2.6 The DPA applies to the sharing of personal data and provides a framework for organisations to share personal data in a fair, reasonable and secure way. The DPA should not be a barrier to justified and proportionate sharing of personal data.³

Question 1: Should personal data be shared? If so, for what purpose?

Question 2: Do you have the necessary legal power (vires) to enable you to share this data? If so, does it specify a purpose for which this data is allowed to be shared?

Question 3: Are there any circumstances in which personal data should not be shared? Do you feel that the Data Protection Act 1998 prevents the sharing of personal data? Please provide detail for your answer.

Question 4: Do regulators consider data regarding sole traders to be personal data?

Fact based standard data

- 2.7 Fact based standard data is the 'basic' information about a business and includes items such as business name and premises address(es). This type of data is routinely collected by regulators and is sometimes publicly available (for example via Companies House or the internet). Much of this data would usually be considered as business rather than personal, and would not be subject to the provisions of the Data Protection Act 1998 (DPA). The DPA governs the protection of personal data and provides a framework for organisations to share personal data in a fair, reasonable and secure way. In some situations the distinction between personal and business information may be unclear, for example, a sole trader trading from a home address. The difficulty associated with identifying and separating personal information from business information may constrain sharing of this type of data.

- 2.8 Enabling regulators to share this type of data could offer benefits to both regulators and business. For regulators, it could improve efficiency by reducing wasted visits and contact with businesses which no longer exist or have moved premises. It could also assist with planning of inspections. For business, it could reduce the number of requests from regulators for this information, thereby reducing any unnecessary burden.

Question 5a: Should fact based standard data be shared? If so, for what purpose?

Question 5b: Do you have the necessary legal power (vires) to enable you to share this data? If so, does it specify a purpose for which this data is allowed to be shared?

Question 5c: Are there any circumstances in which fact based standard data should not be shared?

³ The Information Commissioner's Office provides further detail on the DPA via its website: http://ico.org.uk/for_organisations/data_protection/the_guide

Fact based specialist data

- 2.9 Fact based specialist data is the detailed, specialised information about a business' activity. It may for example include data about the processes or equipment used by the business which are subject to regulatory requirements. Where a business is regulated by multiple regulators, it is likely that each regulator will hold data of this type about its activities. If regulators were able to share this data it could result in improved efficiency and reduced burdens for both regulators and business, as regulators would need to spend less time gathering this information from the business. It would also allow regulators to be better informed about the activities undertaken by the business which would assist in determining risk ratings. This type of information is less likely to be personal.

Question 6a: Should fact based specialist data be shared? If so, for what purpose?

Question 6b: Do you have the necessary legal power (vires) to enable you to share this data? If so, does it specify a purpose for which this data is allowed to be shared?

Question 6c: Are there any circumstances in which fact based specialist data should not be shared?

Licence data

- 2.10 This data relates to licences held by a business and includes information on licence types and conditions. Often information concerning licences held by a business is publicly available, for example by way of a public register maintained by the regulator responsible for issuing the licence. Whilst the information may be publicly available, it may not be readily apparent or accessible to another regulator. For example, where a business is licensed by local authorities in relation to each of its premises, and is also regulated for other purposes by a national regulator, the information about each of these licences is likely to be held in different places (such as online registers for each regulator). Also publicly available information may not contain the level of detail required by regulators (such as licence conditions).
- 2.11 Enabling regulators to share this type of information could reduce burden for regulators and businesses, as regulators would be able to obtain this information without requesting it from the business. It could also allow a regulator considering a licence application to have regard to similar licences held by the same business, and the conditions attached to these. This data is unlikely to be personal.

Question 7a: Should licence data be shared? If so, for what purpose?

Question 7b: Do you have the necessary legal power (vires) to enable you to share this data? If so, does it specify a purpose for which this data is allowed to be shared?

Question 7c: Are there any circumstances in which licence data should not be shared?

Compliance data supplied by business

- 2.12 This data consists of information a business is required to supply to its regulator(s) in relation to its compliance with regulations or certain occurrences or activities. For example, the Reporting Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) places duties on employers to report certain serious workplace accidents, occupational diseases and specified dangerous occurrences (near misses). The Civil Aviation Authority operates a Mandatory Occurrence Reporting Scheme (MORS) in accordance with an EU Directive.
- 2.13 Allowing regulators to share this data could assist in targeting resources effectively. Where a business is regulated by multiple regulators, allowing these regulators to access this data could assist them to plan their regulatory activities efficiently and reduce duplication. In turn, this could ensure that interventions are targeted appropriately, which could reduce burden for business.

Question 8a: Should this type of compliance data be shared? If so, for what purpose?

Question 8b: Do you have the necessary legal power (vires) to enable you to share this data? If so, does it specify a purpose for which this data is allowed to be shared?

Question 8c: Are there any circumstances in which this type of compliance data should not be shared?

Data voluntarily supplied by business

- 2.14 A business may sometimes choose to supply data to its regulator(s) voluntarily, for example in relation to its compliance procedures, which is beyond the requirements of regulation. Often this data is supplied in order for the business to be recognised for its compliance efforts (earned recognition). For example, a business may voluntarily supply information to its regulator about the results of sampling or independent audit activity it has commissioned as part of its approach to managing compliance. Allowing regulators to share this data may assist businesses to access wider earned recognition and may result in efficiency gains for regulators.

Question 9a: Should this type of data be shared? If so, for what purpose?

Question 9b: Do you have the necessary legal power (vires) to enable you to share this data? If so, does it specify a purpose for which this data is allowed to be shared?

Question 9c: Are there any circumstances in which this type of data should not be shared?

Inspections results and analysis

- 2.15 Regulators record the results of inspections and other activities they carry out on business premises and hold these as part of compliance records for the business. Analysis of inspection data may also be carried out for example for the purpose of awarding risk ratings. Data concerning inspections may be shared, for example, where a business is regulated by multiple local authorities and has a Primary Authority Inspection Plan in place which requires feedback.

- 2.16 Enabling regulators to share the inspection results and analysis could assist them to target their resources according to risk, and thereby improving efficiency. It could also result in fewer inspections for compliant businesses, thereby assisting them to access earned recognition. This would need to be supported by appropriate safeguards governing the use of such information.

Question 10a: Should inspection results and analysis be shared? If so, for what purpose, and what benefits are might result?

Question 10b: Do you have the necessary legal power (vires) to enable you to share this data? If so, does it specify a purpose for which this data is allowed to be shared?

Question 10c: Are there any circumstances in which inspection results and analysis should not be shared?

Ongoing investigations

- 2.17 Where a regulator is conducting an investigation into business activities, it may be useful for other regulators to be aware of this. Allowing regulators to share data about the existence of an ongoing investigation, and/or the details of that investigation, may assist regulators in making decisions about how to make best use of their resources. It may also assist regulators to scan the horizon for wider issues which may need attention. For example, if multiple local authorities are conducting investigations in response to an issue affecting businesses in a specific sector, it may assist the national regulator to establish a view as to issues affecting the sector nationally, identify trends and coordinate responses. It could also facilitate regulators to assist each other where necessary, to make best use of resources. This would need to be supported by appropriate safeguards governing the use of such information.

Question 11a: Should the existence of ongoing investigations be shared? If so, for what purpose?

Question 11b: Should details of ongoing investigations be shared? If so, for what purpose?

Question 11c: Do you have the necessary legal power (vires) to enable you to share this data? If so, does it specify a purpose for which this data is allowed to be shared?

Question 11d: Are there any circumstances in which the existence and/or details of ongoing investigations should not be shared?

Complaints data

- 2.18 Regulators are often alerted to potential compliance issues by way of complaints made by members of the public. Complaints play an important role in assisting regulators to develop an understanding of sector-specific compliance issues. Analysis of complaints made also assist regulators to target their resources according to risk. For example, a high number of complaints in relation to a particular issue may indicate that further action is required, and this can then be factored into decisions regarding the allocation of resources. It may also assist regulators to identify the areas in which staff need to develop specific skills or knowledge.

2.19

When considering whether complaints data should be shared, and any potential benefits of such sharing, it is relevant to consider the nature of the data involved. For example, sharing data which deals only with the number or nature of complaints may differ from data which includes the names of complainants. There may be some benefits to sharing the names of complainants, for example where one complainant has made complaints to multiple regulators regarding the same issue, one of those regulators could respond on behalf of the others. Conversely, sharing names or personal details of complainants is likely to constitute personal data, and this may raise issues in terms of the DPA.

- 2.20 Allowing regulators to share information about complaints would enable each regulator to see a wider picture in relation to the issues which are the subject of the complaints, and would assist with targeting of resources. Business may have concerns about complaints data being shared however, and safeguards would play an important role.

Question 12a: Should complaints data be shared? If so, for what purpose?

Question 12b: Do you have the necessary legal power (vires) to enable you to share this data? If so, does it specify a purpose for which this data is allowed to be shared?

Question 12c: Are there any circumstances in which complaints data should not be shared?

Enforcement action

- 2.21 Enforcement action is used in this context to refer to any action taken under statute which relates to securing compliance and is part of a range of options available to regulators to secure compliance. Types of enforcement action vary widely according to regulation, and the associated sanctions and rights of appeal also vary.

- 2.22 Whilst individual regulators record detail and outcomes of enforcement action, sharing of this data is patchy. Details and outcomes of enforcement action are sometimes made public, such as where a matter proceeds to court and the outcome is published as a public record. However, as regulators use a range of methods to secure compliance without the need to instigate legal proceedings, most enforcement action is not a matter of public record.

- 2.23 Greater sharing of this data would enable regulators to target enforcement more effectively and efficiently. It may also result in better coordination of enforcement action, and could improve protections. Business may have concerns about the sharing of this data. Appropriate safeguards would need to be in place to ensure proportionality.

Question 13a: Should enforcement action data be shared? If so, for what purpose, and how much detail should be shared?

Question 13b: Do you have the necessary legal power (vires) to enable you to share this data? If so, does it specify a purpose for which this data is allowed to be shared?

Question 13c: Are there any circumstances in which enforcement action data should not be shared?

- 2.24

The draft list used in this section is presented for comment; it is not necessarily comprehensive. There may be other types not yet identified or alternative ways of categorising data types. This consultation seeks to identify any further types of data which regulators may share, or wish to share, which could prove beneficial and we welcome views on the following questions.

Question 14a: Other than those listed above, are there any other types of data which regulators could share? If so, for what purpose?

Question 14b: Do you have the necessary legal power (vires) to enable you to share this data? If so, does it specify a purpose for which this data is allowed to be shared?

Question 14c: Are there any circumstances in which this information should not be shared?

3. Routes to improved data sharing

Understanding current activity

- 3.1 Some non-economic regulators have already established mechanisms and ways of working to share data with each other for the purposes of using resources more efficiently, to save time or to improve protections.
- 3.2 As illustrated by the case studies below from the Health and Safety Executive and the Medicines and Healthcare Products Regulatory Agency, the means by which data may be shared varies. For example, some regulators may develop a database or interface specifically for the purpose of sharing data, whilst others regularly exchange information via less sophisticated means (such as via spreadsheet). Often, the type of data, and the means by which it is shared, is influenced by practicalities: the availability of resources, how frequently the data needs to be accessed and updated, legal and practical constraints, and so on.
- 3.3 Before exploring potential routes to facilitate improved data sharing amongst non-economic regulators, we wish to understand current practice, including identifying types of data exchanged, benefits gained for businesses and regulators and barriers to further sharing of information.

Question 15: Which regulators currently share data, and how is it shared? What is the purpose of sharing the data, and what benefits does it bring?

Please name the regulators involved, or indicate the type of regulator (for example, national regulator, local authority) and give details as to how the data is shared (for example, by use of a database, on request, etc).

Question 16: Is there any type(s) of data which regulators need to share, but do not share at the present time? If so, please explain why this data is not shared.

Question 17: What are the consequences of this inability to share data? Please give details (for example, wasted time, additional costs).

Question 18: What prevents regulators from sharing data? Please be as specific as possible.

Case study: Find it tool – Health and Safety Executive (HSE)

In response to the Government's intention to reduce the burden of regulation on business, to make regulators more accountable for their activity, and to focus declining resources where they will have greatest impact, Health and Safety Laboratory (HSL) developed the 'Find-It' tool for HSE. It is now possible, via an intuitive map-based interface, to immediately identify businesses and premises (filtered by a number of customisable criteria) that are 'high risk' in terms of their likelihood to be in breach of health and safety regulations, that is leading a transformation in the effectiveness of HSE's inspection activities.

The Find-It tool was fully implemented on a national scale in April 2012 and in conjunction with a refined targeting approach, has already brought significant benefits to HSE:

- 75% reduction in 'redundant' visits due to the business no longer being in operation;
- 50+% success rate when visiting premises, in terms of finding a material breach; and
- reduction from 1 day to 15 minutes to plan an inspector's schedule.

A pilot is underway to explore the application of the Find-It tool to allow a small group of local authorities and the HSE to share data under controlled conditions.

Case study: Medicines and Healthcare Products Regulatory Agency (MHRA)

The MHRA, automatically transfers data from the MHRA Sentinel database to the European Medicines Agency (EMA) Eurda GMDP database. This includes information on Manufacturing and Importation Authorisations (MIA) and Wholesale Distribution Authorisations (WDA) and post-inspection Good Manufacturing Practice certificates (GMPc) and Good Distribution Practice certificates (GDPC) issued by the MHRA. The database receives data from all EEA regulatory authorities who have responsibility for this area.

The database aims to:

- improve the sharing of information between regulators and the public, including the pharmaceutical industry;
- aid the coordination of inspections of manufacturers in third countries among national competent authorities;
- eliminate the need for industry to submit paper documents to support marketing-authorisation and variation applications;
- help protect the medicine distribution chain and active-substance supply chain by facilitating the verification of legitimate actors; and
- facilitate the sharing of information on the outcomes of inspections conducted by European Economic Area (EEA) authorities with regulatory authorities elsewhere in the world.

Identifying options

- 3.4 We are interested in exploring a range of options that could facilitate and enable further sharing of data amongst non-economic regulators to deliver benefits of greater efficiency and effectiveness for businesses and regulators alike. This consultation seeks views on a number of options, including the scope of such measures, and developing appropriate safeguards.

Primary legislation

- 3.5 Primary legislation could be used to give powers to regulators to enable them to share data. In order for this to be effective, it would be necessary to specify the regulators intended to use the power, and the types of data to which the power would apply. It is envisaged that this would be an enabling power to expressly allow named regulators to share data. Such a measure would also need to include safeguards to ensure adequate protections for business (see 3.15 – 3.16 below).
- 3.6 An enabling power allowing the sharing of data would not override the provisions of the DPA. The DPA allows the sharing of this personal data under certain conditions providing that certain safeguards are in place to prevent data being processed in a way which causes distress or damage to the individual, or infringes their rights. An enabling power would sit alongside the provisions of the DPA. Depending on the type of data regulators wish to share and in what quantity, additional safeguards to those provided in the DPA may also be considered where necessary (see paragraph 3.15 – 3.16).
- 3.7 Primary legislation would give certainty to regulators as to their ability to share data. It would set clear boundaries for data sharing and include specific safeguards, with sanctions as appropriate. Primary legislation involves a lengthy and costly process however, so if this option is to be taken forward, the evidence underpinning it needs to be clear and robust.

Question 19: Is a measure in primary legislation the most appropriate means of encouraging regulators to share data? Please give reasons for your answer.

Data sharing as best practice

- 3.8 It may be possible to encourage regulators to share data by embedding data sharing as a means of delivering best practice. This option will be dependent upon identifying the barriers which prevent or discourage regulators from sharing data, and responding to these appropriately, in order for data sharing to deliver best practice. This may mean that a generic or 'one size fits all' approach is unlikely to be successful.
- 3.9 Instead a programme of activities tailored to the circumstances of different regulators is likely to be necessary. Such activities could include assisting regulators to assess the way in which they operate and identify opportunities to share data which fit within legal, financial and technological constraints. This could also include clear guidance on sharing data within the framework established by the DPA.

Question 20: Is embedding data sharing as best practice the most appropriate means of encouraging regulators to share data? Please give reasons for your answer.

Single point of registration

- 3.10 Where a business is regulated by multiple regulators, it may be required to provide the same information to each regulator, thereby causing duplication of time and effort. It may be possible to reduce such burden for businesses by creating a single point of registration. This could enable a business to input the information it is required to provide to regulators once, on a voluntary basis, whilst allowing regulators to access this data, and any other data within its remit (such as inspection data, for example). A single point of registration could therefore deliver significant benefits for both business and regulators, particularly in terms of improving efficiency.
- 3.11 A single point of registration would require considerable resource to develop, and may demand additional IT infrastructure. It would involve identifying and overcoming legal and practical barriers so as to allow regulators to access data from a single point. Therefore a single point of registration would be a long term option, rather than a 'quick fix'.

Question 21: Do you have any views as to whether a single point of registration would be desirable?

Question 22: Other than the options outlined above, is there any other means by which data sharing could be encouraged?

Which regulators should be included?

- 3.12 Irrespective of which option is identified as the most appropriate to facilitate greater data sharing, it is proposed that all non-economic regulators subject to the Code should be included in any option to encourage further data sharing. This is to ensure that all such regulators are able to meet their obligations under the Code. Regulators subject to the Code include most non-economic regulators, local authorities and fire and rescue authorities. A list of these regulators is included at Annex A.
- 3.13 It may be appropriate for some regulators to be excluded (for example because they are prohibited from sharing data by their enabling statute), or additional regulators to be included (for example, because they and business would benefit from being able to share data though may not be subject to the Code). This consultation seeks views in this regard. Note that there is no intention to compel regulators to share data beyond the provisions of the Code; the intention is to ensure that regulators have sufficient power to share data in order for their obligations under the Code to be met.

Question 23: Are there any regulators listed in Annex A which should be excluded or others which should be included? Please give reasons for your answer.

- 3.14 It may be desirable to facilitate the inclusion of additional regulators in future, if warranted. The nature of this mechanism would depend on the chosen measure. For example, if a primary legislation was considered the most appropriate option, a power could be included to enable the inclusion of further regulators by way of statutory instrument.

Question 24: Is it desirable to allow further regulators to be included in future, if warranted?

Safeguards

- 3.15 Safeguards will play an important role in ensuring adequate protection for business to ensure that data is not misused and is shared only for specific, legitimate purposes. In order to be effective, safeguards should be appropriate to the type(s) of data to be shared and the means by which data is shared. For example, if primary legislation is used to create a new power for regulators to share data, safeguards could be included to limit the power to certain regulators and specify the types of data that could be shared, and the purposes for which sharing could occur. Provision could also be made for businesses to request to see their information held by regulators which may be shared.
- 3.16 An example of the use of safeguards can be found in the Welfare Reform Act 2012 which governs the data sharing gateway between the Department for Work and Pensions and HMRC. The safeguard prevents onward transmission of the data by the recipient unless certain conditions are met.

Question 25: Under what circumstances would data sharing warrant the inclusion of safeguards, and how could this be achieved?

- 3.17 Depending on the circumstances, it may be appropriate to impose sanctions for misuse of data. A new power in primary legislation could for example include criminal sanctions for misuse of data shared under that power. If an alternative option is implemented, it may be sufficient to rely on existing statutory sanctions or implement alternative safeguards.

Question 26: Under what circumstances would the imposition of sanctions be appropriate?

Monitoring

- 3.18 Depending on how data sharing occurs, it may be appropriate for the sharing of data by regulators to be monitored. Monitoring could assist to analyse and improve regulator practice, and could also serve as a safeguard to ensure that data is shared lawfully. The need for monitoring might also depend on the mechanism by which data is shared, the regulators involved and the type(s) of data being shared. It would also need to complement safeguards against misuse of data, and any associated sanctions. In turn, these factors may determine who is best placed to monitor data sharing. For example, it may be appropriate for regulators to monitor, or use of an independent monitor may be justified.

Question 27: Should the sharing of data be monitored? If so, to what extent?

Question 28: Who should be responsible for monitoring the sharing of data?

Annex A: Regulators within scope of the Regulators' Code

Local Authorities

Specific local authority functions relating to environmental health, licensing, trading standards and fire safety are within scope of the Regulators' Code. A full list will be available shortly on the BRDO website.

National Regulators

Animal Health and Veterinary Laboratories Agency
Animals in Science Regulation Unit
British Hallmarking Council
Care Council for Wales
Care Quality Commission
Centre for Environment, Fisheries and Aquaculture Science, Fish Health Inspectorate
Charity Commission for England and Wales
Civil Aviation Authority⁴
Claims Management Regulation Unit
Coal Authority
Commission for Equality and Human Rights
Commission of Irish Lighthouses
Companies House
Companies House (Scotland)
Companies House (Northern Ireland)
Disclosure and Barring Service
Drinking Water Inspectorate
Driver and Vehicle Licensing Authority
Driving Standards Agency
Employment Agency and Standards Directorate
English Heritage
Environment Agency
Financial Conduct Authority
Financial Reporting Council
Fire and rescue authorities in England
Food and Environment Research Agency
Food Standards Agency
Forestry Commission
Gambling Commission
Gangmasters Licensing Authority
Groceries Code Adjudicator
Health and Safety Executive
Her Majesty's Revenue and Customs (so far as they relate to functions conferred by the Money Laundering Regulations 2007)
Highways Agency
Homes and Communities Agency

⁴ Other than any regulatory function under:

- Part 4 of the Airports Act 1986
- Part 1 of the Transport Act 2000
- Part 1 of the Civil Aviation Act 2012
- The Airports (Ground Handling) Regulations 1997
- The Single European Sky (National Supervisory Authority) Regulations 2004
- The Single European Sky (Functions of the National Supervisory Authority) Regulations 2006

Human Fertilisation and Embryology Authority
Human Tissue Authority
Information Commissioner⁵
Insolvency Service including Insolvency Practitioner Unit
Intellectual Property Office
Legal Services Board
Marine Management Organisation
Maritime and Coastguard Agency
Medicines and Healthcare Products Regulatory Agency
Monitor
National Counter Terrorism Security Office
National Measurement Office
Natural England
Natural Resources Body for Wales
Northern Lighthouse Board
Office for Fair Access
Office for Standards in Education, Children's Services and Skills
Office for Nuclear Regulation⁶
Office of the Regulator of Community Interest Companies
Pensions Regulator
Prudential Regulation Authority
Regulator of Social Housing
Rural Payments Agency
Security Industry Authority
Sports Ground Safety Authority
Traffic Commissioners
The Birmingham Assay Office
The Edinburgh Assay Office
The London Assay Office
The Sheffield Assay Office
Trinity House Lighthouse Services
Vehicle and Operator Services Agency
Vehicle Certification Agency
Veterinary Medicines Directorate

Others

A professional body listed in Schedule 3 to the Money Laundering Regulations 2007

A person authorised by the Homes and Communities Agency to carry out functions pursuant to sections 201, 202 and 203 of the Housing and Regeneration Act 2008

A person authorised by the Secretary of State under section 457 of the Companies Act 2006 for the purposes of section 456 of that Act

A body designated by the Secretary of State for the purposes of section 1252 of the Companies Act 2006

⁵ Other than any regulatory function under the Freedom of Information Act 2000

⁶ Other than any regulatory function exercised under or by virtue of:

- Section 2 of or Schedule 1 to the Nuclear Installations Act 1965
- The Import of Goods (Control) Order 1954
- The Nuclear Industries Security Regulations 2003
- Regulations 4 and 5 of the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004

Annex B: List of individuals and organisations consulted

In addition to the regulators listed in Annex A:

Asda
Association of British Bookmakers
Association of British Insurers
Association of British Travel Agents
Association of Convenience Stores
Association of Interior Specialists
Association of Licensed Multiple Retailers
Association of Town Centre Management
Assured Food Standards
B&Q TSI Business Members Group
Bond Dickinson LLP
Boots Retail
British Air Transport Association
British Association of Landscape Industries
British Association of Removers
British Beer and Pub Association
British Chamber of Commerce
British Frozen Foods Federation
British Healthcare Trades Association
British Home & Holiday Parks Association
British Hospitality Association
British Independent Retail Association
British Jewellery & Giftware Federation
British Marine Federation
British Meat Processors Association
British Parking
British Poultry Council
British Retail Consortium
British Sandwich Association
British Soft Drinks Association
British Toy and Hobby Association
CBI
Chamber of Commerce
Chemicals Industry Association
Chilled Food Association
Construction Products
Co-operative
Council for Responsible Nutrition
Dairy UK
DWF
EEF, The Manufacturers Association
Ethical Medicines Industry Group
Federation of Master Builders
Federation of Small Businesses
Food and Drink Federation
Forum for Private Business
Geldards
Glass & Glazing Federation
Health Food Manufacturers' Association
Higgs & Sons Solicitors

Hire Association Europe
Home Retail Group
Hornby
Independent Electrical Retailers
Institute of Directors
Institute of Food Science and Technology
International Meat Trade Association
John Lewis Partnership
Ladbrokes
Leatherhead Food
Management Consultants Association
Managing Agents Property H&S Forum
Moto
National Asian Business Association
National Casino Industry Forum
National Caterers Association
National Farmers' Retail & Markets Association
National Farmers' Union
National Federation of Fish Friers
National Federation of Meat and Food Traders
National Federation of Property Professionals
National Federation of Retail Newsagents
National Housing Federation
Peabody
Perry Scott Nash
Petcare
Proprietary Association of Gt Britain
Provisions Trade Federation
Remote Gambling Association
Retail Motor Industry Federation
Road Haulage Association
Rural Shops Alliance
Safety Assessment Federation Ltd
Seafish
Southall Associates
Tesco
The Giftware Association
Trade Union Congress
TSI Business Members Group
UK Cooperatives
UK Technology Industry
UK Weighing Machine Federation
Wilkinsons
Wine & Spirits Trade Association
Wragge & Co

Annex C: About this consultation

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

[Consultation Principles](#)

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data 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, amongst other things, with obligations of confidence.

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 the Department.

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

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BIS Consultation Coordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone John on 020 7215 6402 or e-mail to: John.Conway@bis.gsi.gov.uk

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This publication is also available on our website at:
<https://www.gov.uk/government/organisations/better-regulation-delivery-office>

Data Sharing for Non-economic Regulators

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